UNLICENSED AND UNLAWFUL

The Failure to Ensure Safe and Evidence-Based Treatment at the Boys State Training School
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Appendix C – DRI Memo to DHS dated March 2, 2016, RE: DRI’s Investigation of Copper Lake School for Girls in Wisconsin (4 pages)


Appendix F – BSTS - DRI Recommendations for Regulations – Timeline (2 pages)
LETTER FROM THE EXECUTIVE DIRECTOR

A friend told me that when he misbehaved his mother told him that she was going to “send him to Eldora.” That was 50 years ago.

Under Iowa law, the Boys State Training School (BSTS) is required to “provide a positive living experience to prepare the juveniles for a productive future.” Its statutory mission is to “provide to juvenile delinquents a program which focuses upon appropriate developmental skills, treatment, placements, and rehabilitation.”

To better understand whether BSTS is meeting its mission, Disability Rights Iowa, with the help of mental health professionals, has been conducting a year-long investigation of the Boys State Training School, including visits, interviews, observations, research, document review, legal representation of individual residents, and other forms of examination.

Since DRI is the federally mandated protection and advocacy system for Iowans with disabilities and mental illness, DRI focused on BSTS youth with mental illness because a large population of the youth at BSTS have been diagnosed with a mental illness, including post-traumatic stress disorder, anxiety and depression.

This report focuses on the needs of BSTS youth with mental illness and their current mental health treatment. DRI found that the mental health services at BSTS are woefully inadequate and violate legal requirements.

Iowa has a new governor and a new director of the Iowa Department of Human Services. They have the opportunity to move BSTS into the 21st Century and make it a positive living environment where adjudicated juveniles can get the appropriate skills, rehabilitation and treatment they need.

Jane Hudson, J.D.
Executive Director
August 2017
The Boys State Training School (BSTS) is operated by the Iowa Department of Human Services (DHS) and is located in Eldora, Iowa. It houses boys, ages 12 to 18, who are adjudicated delinquent and who meet the criteria found in the Iowa Code. The criteria is quite broad. A boy who is at least twelve years of age and who has committed a forcible felony (i.e. 1st Degree Robbery) is eligible under this law. A boy who is at least fifteen years of age, has previously been adjudicated of any delinquent act (i.e. possession of marijuana), has previously been ordered by a judge to a community treatment program, and whose judge finds it in his best interest is also eligible under this law. Since the statute is broad and the best interest of the boy is a part of the criteria, not all boys who meet the criteria are court-ordered to the BSTS. In addition, of the boys who are ordered to the BSTS, many of them meet the more broad criteria rather than the forcible felony criteria. It is important to note that the Iowa law regarding waiver to adult court and the limitations on the juvenile courts’ jurisdiction of teenagers who commit forcible felonies results in teenagers who commit crimes such as murder being charged and sentenced in the adult system. The BSTS is not filled murderers, but instead, boys that have committed multiple lower level offenses. It is also important to note that no one may be voluntarily admitted to the BSTS.

The BSTS is currently capped at 130 beds and the recent daily census has been around 110-120 boys in the last year. The average resident age at the BSTS is sixteen. According to DHS, about 2/3 of the BSTS population has a mental health diagnosis that requires administration of prescription psychotropic drugs. Many of the residents at the BSTS have a history of early childhood trauma, were previous involved with the child welfare system as a victim of abuse or neglect, and have had multiple out-of-home placements.

The American Correctional Association (ACA) accredits the BSTS. The most recent accreditation of the BSTS by the ACA was in 2015 and accreditation visits are on a three-year cycle. This is voluntary because Iowa law requires no accreditation. There are no State imposed repercussions if the BSTS does not meet ACA Standards. There is no other independent oversight of the BSTS.

The BSTS has recently received certification for meeting the Prison Rape Elimination Act (PREA) Standards. This is required by Federal law and is not optional for a facility such as BSTS and detention facilities in Iowa. This law was passed in 2003 and the standards took effect on August 20, 2012. These standards address both sexual abuse and sexual harassment within adult prisons, jails, juvenile facilities, lockups, and community confinement facilities. These standards do not govern provisions of mental services or education services or the usage of restraint and seclusion. On March 5, 2015, the United States Department of Justice (DOJ) sent a letter to all State Governors notifying them of the standards audits being conducted by the DOJ and offering resources to the States to assist them in certification of meeting PREA standards. It has taken BSTS multiple PREA audits to meet these standards and receive the certification required by the federal government.
EXECUTIVE SUMMARY

Disability Rights Iowa (DRI) first visited the Boys State Training School (BSTS) in Eldora, Iowa and the Iowa Juvenile Home / Girls State Training School (IJH) in Toledo, Iowa in November 2012. At that time, DRI’s attention focused more on IJH because the practice of regularly using isolation for the long periods of time at IJH alarmed DRI and required immediate attention. During its investigation at IJH, DRI uncovered violations of Iowa law in regards to the use of restraint and seclusion, violation of federal laws regarding special education services, and a lack of mental health services. These issues ultimately led to former Governor Branstad creating a task force, which ultimately led to the closure of IJH.

DRI continued to be involved at the BSTS after the closure of the IJH, which has similar issues to IJH. DRI advocated for changes in special education services that were greatly lacking, as well as advocated for a reduction in the usage of restraint and seclusion. This included advocating for regulations regarding the use of restraint, seclusion, and mental health services. DHS has been unwilling to learn from the past problems at the IJH and has remained unwilling to remedy these same issues at the BSTS.

In August 2016, DRI received a grant through the Victims of Crime Act to provide legal advocacy for youth adjudicated delinquent who had previously experienced abuse or neglect. This work focused on Iowa Judicial District 2 in north central Iowa during the grant year. Among other things, DRI focused on providing legally based advocacy to individual youth at the BSTS. This grant was awarded to DRI based upon the fact that national statistics show that at least 75% of the youth in the juvenile justice system have experienced traumatic victimization. Furthermore, 65%-70% of youth in contact with the juvenile justice system have a diagnosable mental health disorder and almost 30% have disorders that are serious enough to require immediate and significant treatment.

As part of this grant, DRI visited the BSTS (11) times, interviewed (30) residents, reviewed six months of room confinement reports, reviewed multiple individual records and policies, and continued to advocate for the reduction of restraint and seclusion through the use of best practices, appropriate mental health services, and regulations with appropriate licensure and oversight. This included individual representation of three residents with the goal of obtaining court-ordered independent mental health evaluations, and representing three residents to ensure that they received special education services that met the federally required standards. DRI also contracted with three licensed mental health professionals to review the mental health service needs of residents at the BSTS and write a report comparing the needs to the services received and comparing those services to evidence based standards. The mental health report is included as Appendix A.

Lastly, as part of this grant, DRI is publishing this report that shows there is a lack of mental health services at the BSTS, there is an overreliance on the use of restraint and seclusion, and there is a complete lack of regulations, licensure, and oversight regarding this treatment of residents at the BSTS. Sadly, this continues to victimize youth who have high rates of childhood victimization and fails to provide them with the treatment and rehabilitative services required by law.

Lack of Mental Health Services

The BSTS has a statutory mission to provide residents with treatment and rehabilitation services and the residents at the BSTS have a constitutional right to mental health care. BSTS fails in this
statutory mission and violates the residents’ legal rights. The statutory mission of the BSTS is “…to provide to juvenile delinquents a program which focuses upon appropriate developmental skills, treatment, placements, and rehabilitation.” In addition, the BSTS is to “provide a positive living experience designed to prepare the juveniles for a productive future.” Furthermore, the United States Constitution requires that juvenile justice facilities provide youth in their care adequate mental health treatment. In 2004, the Court of Appeals for the Third Circuit held, “a state-run juvenile detention center at least has a duty to protect detainees from harm (whether self-inflicted or inflicted by others) and provide, or arrange for, treatment of mental and physical illness, injuries, and disabilities.” Importantly, mental health services must not depart from accepted professional judgment, practice, or standards.

A report by a Psychology Professor from Drexel University published in December 2015, found that the statutory mission and legal requirement to provide mental health services was not sufficient at the BSTS. Among many recommendations, the professor recommended hiring additional mental health staff, providing for a specialized unit on the BSTS for residents with high mental health needs, and ensuring contact with families regardless of the family’s resources. The BSTS did not follow these recommendations.

The mental health report attached to this report continues to find similar issues as the December 2015 report and found that there was a lack of evidence-based mental health services at the BSTS. The recommendations for improvement include placing a stronger emphasis on relationship improvement with residents, improving the environment to help build those relationships, decreasing the use of seclusion and restraints, building Evidence Based Practices, and additional mental health staff and/or alternative treatment facilities. Therefore, DHS continues to deny residents their constitutional right to mental health services and ignores the statutory mission of the BSTS and previous recommendations of a mental health expert.

Overreliance on Restraint and Seclusion

The BSTS overly relies on seclusion and restraint, which has a disproportionate and negative impact on youth of color and youth disabilities. This practice is in violation of the ACA standards, is not allowed according DHS rules for other juvenile justice facilities in Iowa, is harmful to youth, and is against best practices. DRI’s review of room confinement records from November 1, 2016 to April 30, 2017 found the following:

- Three-quarters (¾) of the BSTS residents experienced seclusion for a total of 9,458.27 hours which occurred during 1,045 different stays;
- Over half of the total stays were over an hour in length;
- Over half of the stays that total over an hour in length were in violation of the standards of the American Correctional Association (ACA); and
- Six percent (6%) of the total stays were over 24 hours and in violation of the ACA standards.

This data shows an over-reliance on the use of seclusion and other practices that violate the ACA standards. In addition, no juvenile justice facilities in Iowa, including detention facilities, are allowed to engage in such practices based on regulations promulgated by DHS. Lastly, the data clearly shows that these practices disproportionately and negatively affect African American residents and residents with disabilities.
DRI also found that the BSTS overly relies on restraint and uses the “wrap” often, rather than only for emergencies, which is in violation of the ACA standards. The wrap is a restraint bed with a strap for each arm and leg and then a Velcro body wrap that is applied over the full body. This has been used multiple times on students with high mental health needs and well-documented histories of childhood trauma, instead of providing therapeutic interventions.

DRI has provided DHS with multiple evidenced-based, peer-reviewed articles over the last four years that discuss the harm to youth caused by the use of restraint and seclusion. In addition, the attached mental health report discusses these harms as well. Research shows that youth, particularly with intellectual disabilities and histories of early childhood trauma are at risk of traumatization and re-traumatization because of the use of these harmful interventions. Furthermore, these harmful interventions can deteriorate the healing process through causing further mistrust of adults, furthering the narrative that there is no safe environment, and furthering the believe that a young person deserves such abusive treatment from adults. None of this furthers the mission of the BSTS to provide treatment and rehabilitation to its residents nor does it make the youth more likely to succeed in the community. In spite of this information, DHS has done little to reduce the use of restraint and seclusion at the BSTS.

Lack of Regulations

The BSTS currently lacks appropriate regulations, the DHS has a legal duty to write regulations, and facility policies cannot be a substitute for such regulations. Iowa law contains the explicit requirement that “[t]he administrators of particular institutions shall recommend to the council on human services for adoption such rules not inconsistent with law as they may deem necessary for the treatment, care, custody, [and] education…of residents.” The law is clear that there is legal authority and a duty to provide regulations for the BSTS. Those regulations must include rules on the usage of restraint and seclusion, and the provisions of education and appropriate mental health services so that the BSTS can adhere to its mission of providing treatment and rehabilitative services to its residents. Such critical and fundamental regulations are completely absent from the current BSTS regulations promulgated by DHS.

In addition, the DHS has failed to follow rulemaking procedures under the Iowa Administrative Procedures Act, which includes providing public notice and time for public comment. This process is an important part of public oversight of the rules that govern public facilities such as the BSTS. Instead of promulgating rules, DHS has revised policies on an ad-hoc basis. The ever-changing policies of BSTS have failed to reflect the ACA standards and the mission of BSTS. The DHS’ circumvention of the Iowa Administrative Procedures Act tramples on the rights of the public to have input on such rules.

The DHS’ practice of relying only on policies at BSTS, rather than regulations, directly conflicts with the DHS' own requirement that all other juvenile justice facilities in this state be subject to regulation. In compliance with the notice and hearing requirements of the Iowa Administrative Procedures Act, the DHS has promulgated regulations for all other facilities serving Iowa youth. DHS does not accept policies written by these facilities as a substitute for such required rulemaking. Therefore, it is hypocritical of DHS not to follow the very requirements that it places on all other juvenile justice facilities in this state.
Lack of Licensure and Oversight

The BSTS is an anomaly in the juvenile justice system in Iowa because it is currently unlicensed, which means it lacks oversight by an independent State entity. In addition, the DHS is not performing its legal duties of oversight under the current law. This current law inherently creates a conflict of interest. Accreditation by the ACA is not a substitute for licensure and oversight by the State.

The Department of Inspections and Appeals (DIA) is the licensing and regulatory body for numerous types of facilities in the State of Iowa, including all juvenile justice facilities other than BSTS. It is reasonable to question who oversees the BSTS if it is not DIA. Iowa law requires that DHS perform multiple duties in order to oversee itself, however, upon investigation; DHS is not performing these duties. Furthermore, this oversight by itself creates inherent conflicts of interest.

The accreditation by the ACA is not a substitute because it does not occur frequently enough and is not in depth enough to gain insight into the BSTS practices. As has been shown, the ACA has failed to notice the issues in this report. Furthermore, many of the standards in the ACA are voluntary; therefore, there is no way to enforce many of the standards. Lastly, even if BSTS fails to meet the mandatory ACA standards, there are no teeth to the enforcement, since law does not require accreditation and BSTS would face no punishment as a result.

Recommended Relief

As a result of the stated violations of the legal rights of the residents of the BSTS and the failure of the DHS to fulfill its mission under Iowa law, the following relief and protections are required. The Iowa legislature must provide appropriate funding to ensure that the relief and protections recommended below are not empty promises. The State of Iowa, and DHS, in particular, should:

1) Transfer all youth with mental illness or intellectual disabilities to proper treatment settings and provide them with appropriate Medicaid services to ameliorate their condition. The transfer and care must adhere to the “most integrated setting” requirements of the Americans with Disabilities Act. If the care cannot be provided for the individual with existing State or private providers, then the DHS must contract with appropriate entities through an RFP process and the legislature must fund these services, focusing on all levels of community based care.

2) Prohibit admission to the BSTS of youth with mental illness or intellectual disabilities, and provide these youth with the appropriate treatment and in alternative and “most integrated” settings.

3) Immediately implement all recommendations found in the attached Mental Health Service Audit Report, Iowa State Training School, July 2017, authored by Next Steps Counseling Services, Inc. to ensure appropriate mental health care services for youth with mental illness at the BSTS who are awaiting transfer. The recommendations include the hiring of additional licensed mental health providers to appropriately staff these services.

4) Immediately provide training to all BSTS staff in positive behavior interventions and supports, trauma informed care, and methods of reducing the use of restraint and seclusion. This training should be offered periodically to ensure consistent implementation of these practices with fidelity.

5) Immediately provide training on cultural competency, implicit bias, and tools for reducing disproportionate minority discipline outcomes in their severity and frequency. Make proactive efforts to hire a diverse staff at the BSTS that reflects the resident population.

6) Immediately eliminate room confinement as a punishment for minor rule infractions.
7) Immediately eliminate the use of the “wrap”. The Juvenile Detention Alternatives Initiative (JDAI) Juvenile Detention Standards prohibits the use of such outdated 4-5 point mechanical restraints.\textsuperscript{xxvii}

8) Immediately promulgate rules regarding the use of seclusion and restraint and provisions of mental health services and educational services that adhere to the JDAI Juvenile Detention Standards. Since 2006, Iowa has participated in the use of JDAI (Annie E. Casey Foundation) to reduce the use of detention and increase alternatives to detention in Iowa and therefore has been recognized in the State of Iowa as an important resource for over ten years.\textsuperscript{xxviii} Therefore, it makes sense to apply the JDAI Juvenile Detention Standards to the BSTS as has been previously requested by DRI.

9) Ensure licensure and oversight of the BSTS by a separate government entity such as DIA.

10) Immediately implement data collection in the areas of the reduction of restraint, seclusion, and disproportionate minority discipline and a procedure for review to ensure the data is used to inform practice at the BSTS. DHS must publish this data and actions taken in an annual report to the legislature and post this annual report on the DHS website in an accessible format.

**DRI is open and willing to meet with state officials to discuss its findings and recommendations.** However, DRI will take all appropriate and necessary action, up to and including filing a lawsuit in federal court against the Governor, the DHS Director and other state officials, if they do not remedy the problems that DRI has identified in this report and taken appropriate corrective action.
HISTORY

Disability Rights Iowa (DRI) first visited the Boys State Training School (BSTS) in Eldora, Iowa and the Iowa Juvenile Home/Girls State Training School (IJH) in Toledo, Iowa in November of 2012. The Iowa Department of Human Services operates both institutions. Courts order youth to these facilities for the purpose of rehabilitation and treatment.

DRI’s attention and efforts initially focused almost exclusively on IJH when DRI discovered that young women were being isolated in cells for long periods of time. DRI uncovered many other issues as it continued to investigate the policies and practices at IJH, including a major lack of special education services, illegal and inappropriate use of restraint and seclusion, and an extreme lack of mental health services. During the IJH investigation, DRI notified DHS that the same issues may be present at the BSTS and urged DHS to look into solitary confinement, special education and the use of restraint and seclusion at BSTS and take corrective action to ensure the safety and welfare of the young men at BSTS and to comply with the law.

During August 2013, former Governor Branstad appointed a task force to investigate the concerning legal issues at IJH and make recommendations to ensure a high level of care for IJH residents, which included a directive to eliminate seclusion rooms outside the cottage setting. DHS ultimately decided to shutter this facility in January 2014, since it was not economically feasible for the State to operate the facility once the State enacted the recommendations of this task force. At the time, DRI advocated that DHS put the saved resources towards community-based and group home services for girls. This did not occur.

DRI continued to follow-up with DHS regarding BSTS in spring 2014 by reviewing a sampling of Individual Education Plans (IEPs), which are required for students with disabilities under federal law. DRI, along with the Iowa Department of Education (DE), found multiple violations of federal special education law and the DE ordered corrective action as a result. A year later, DRI represented a resident at the BSTS and found the same educational violations as before, and filed a state complaint in spring 2015 based on these continued systemic issues. DRI successfully negotiated for a resolution of this complaint to ensure further systemic changes at BSTS in regards to education. In addition, during the fall of 2014 and the winter of 2015, DRI collected multiple months of seclusion and restraint reports and found an over-reliance on the use of restraint and seclusion at BSTS. These are the same issues DHS had at IJH; however, DHS did not see the need to make changes on their own without the involvement of the DRI.

During the winter of 2016, DRI visited Copper Lake School for Girls in Wisconsin because DHS had placed four Iowa girls in that facility due to the absence of appropriate community-based services designed for girls in the deep end of the system in Iowa. Similar to IJH, DRI found that these girls were being subjected to atrocious living conditions and solitary confinement. DRI negotiated with DHS to return the girls to Iowa and rescind the contract. DHS complied with this request, as well as the request to ensure out-of-state facilities follow Iowa law through contract requirements. However, DHS refused to promulgate regulations with regard to restraint and seclusion for State Training Schools in Iowa. This means that, if DHS contracts with a State Training School like Copper Lake in the future, there will not be any Iowa law for that facility to follow. In other words, the contract requirement to follow Iowa law would be empty because there would be no Iowa law to follow. Therefore, DHS left the door wide open for the abuse that occurred at Copper Lake to occur again with no legal protections.
for the youth. Thus, the conditions similar to IJH and some of the reasons behind its closure could continue to occur in other placements, both in state at the BSTS and out-of-state at secure facilities. This has continued to this day without the DHS learning anything from the past.

DRI began more in-depth monitoring of BSTS in August of 2016 and the following activities occurred:

1) DRI visited BSTS (11) times.
2) DRI interviewed (30) residents at BSTS.
3) DRI collected and reviewed (6) months of Behavior Stabilization Unit (room confinement) reports and followed-up with interviews with residents.
4) DRI collected and reviewed multiple facility policies and records regarding mental health treatment, seclusion, restraint, staff training, staff qualifications, reports by outside agencies, reports by the American Correctional Association (ACA), reports by DHS administration, and demographic data.
5) DRI contracted with three licensed mental health professionals to review a sample of files, follow-up interview with those residents, and write a report regarding mental health services at BSTS.
6) DRI represented (3) youth in receiving independent mental health evaluations due to very high amounts of restraint and segregation resulting from severe self-harming behaviors.
7) DRI represented (3) youth in special education issues, one of which was a due process complaint filed with the DE.
8) DRI advocated for additional mental health services at BSTS and the reduction of restraint and seclusion through multiple meetings and communications with DHS administrators.
9) DRI also advocated for regulations, oversight, and licensure through multiple meetings and communications with DHS administrators.
10) DRI advocated for equitable treatment and services for residents with disabilities and residents of color through multiple meetings and communications with DHS administrators.

Thus, over the last 4 ½ years, DRI has tried to work with DHS to ensure that the legal rights of youth DHS-operated juvenile justice facilities are protected, but to no avail. DHS has rejected DRI’s previous recommendations to improve staff training on de-escalation techniques and trauma-informed care. DHS has refused to issue regulations on the use of restraint and seclusion, failed to provide education in compliance with federal law, and ignored the need for appropriate mental health services. This is the disturbing historic context underpinning this report.
ISSUES

1) The BSTS has a statutory mission to provide residents with treatment and rehabilitation services and the residents at the BSTS have a constitutional right to mental health care. BSTS fails in this statutory mission and violates the residents’ Constitutional right to mental health care.

   a) The statutory mission of the BSTS.

       The statutory mission of the BSTS is “…to provide to juvenile delinquents a program which focuses upon appropriate developmental skills, treatment, placements, and rehabilitation.” In addition, the BSTS is to “provide a positive living experience designed to prepare the juveniles for a productive future.” Lastly, the Iowa Code states “administrators of particular institutions shall recommend to the council on human services for adoption such rules not inconsistent with law as they may deem necessary for the…treatment, care, custody, [and] education…of residents.” Therefore, part of the mission of the BSTS is to provide treatment and rehabilitation services to its residents, which would include mental health treatment services for those residents who are in need of such services to rehabilitate them for a productive future. The legislature thought that treatment was such an important part of the mission that it required the administrator of the BSTS to recommend rules regarding it. As discussed in more detail below, BSTS has violated and continues to violate the Iowa Code because it has not provided the mental health services to residents who need these services as part of their developmental skills development, treatment, and rehabilitation.

   b) The residents of BSTS of have a Constitutional right to mental health care.

       The United States Constitution requires that juvenile justice facilities provide youth in their care adequate mental health treatment. In 2004 the Court of Appeals for the Third Circuit held, “a state-run juvenile detention center at least has a duty to protect detainees from harm (whether self-inflicted or inflicted by others) and provide, or arrange for, treatment of mental and physical illness, injuries, and disabilities.” Importantly, mental health services must not depart from accepted professional judgment, practice, or standards. As discussed below, the BSTS fails to meet their burden to provide the constitutionally required level of mental health care.

   c) BSTS has ignored previous recommendations to ensure mental health treatment for the residents at the BSTS.

       The Iowa Department of Human Services contracted with a Psychology Professor, Kirk Heilbrun, from Drexel University in March of 2015 to “assess the State Training School’s practices in the treatment of juvenile delinquent boys”. The first site visit by Heilbrun was on April 16-17, 2015 and his second visit was on November 5-6, 2015. He published a report in regards to the findings from these visits and his recommendations on December 5, 2015.

       According to this report, the same part-time psychiatrist who worked at BSTS in 2015 and who currently works at BSTS, but is retiring in the near future, indicated that his replacement might need to be full-time considering the percentage of youth with behavioral health problems. Furthermore, the report stated that “[o]ne psychologist in a school for 130 youth is insufficient”, and “at least one position, and possibly two, should be added”. Moreover, “[a]n estimate 30-55% of STS students have behavioral health needs that should be reviewed and assessed by mental health professionals.” Based on this information, Dr. Heilbrun, “strongly recommend[ed] increasing the staff coverage in both
Despite, his recommendations, the same unlicensed psychologist and the same part-time psychiatrist continue to be employed at BST. DHS has not added any additional mental health staff. According to DHS meeting notes from November 2016, the psychiatrist planned to retire on March 31, 2017. Despite having multiple written notifications of this retirement plan, DHS only recently posted the RFP for the replacement of a part-time psychiatrist at the BSTS on June 20, 2017. Therefore, DHS has completely ignored the recommendations provided by a credentialed, licensed psychologist for almost two years to the detriment of the youth it serves.

In addition, the report recommended the “construction of a small specialized unit with 5 – 10 beds, more intensively staffed with the clearly defined goal of providing all reasonable interventions” to enhance living skills and address behavioral health needs. This was in response to residents at the BSTS that have serious behavioral health needs. This has partially occurred. BSTS has created a day program at a previously closed cottage on campus with a smaller staff-to-student ratio. This was started on December 19, 2016. However, no special training has been provided to the staff assigned to this cottage, no additional behavioral health supports have been provided to the residents in this cottage, and the residents are not allowed to sleep in the cottage because it is not suitable for overnight stays. All plans to continue with this recommendation have been put on hold since March 2017. Therefore, this recommendation has largely been ignored by the DHS.

Lastly, the report included recommendations for the BSTS to (1) expand the use of technology such as Skype and Facetime, to “provide more frequent personal and professional contact with families” which is noted as an important part of “rehabilitating antisocial youth”; (2) “allow youth to call home if they don’t have money in their state accounts”; and (3) consider “additional specific interventions” that the author provided in a listing with supporting evidence. None of these recommendations were followed by DHS over the last few years to the detriment of the residents of the BSTS.

d) BSTS currently fails to provide mental health treatment for residents with mental health needs.

According to current information from DHS, around 66% of residents at the BSTS are on psychotropic medications. Therefore, almost 2/3 of the population at the BSTS are in need of mental health services, which means that if BSTS fails to provide such services, it violates a majority of the BSTS residents’ legal rights, as discussed more fully below.

DRI contracted with Next Steps Counseling Services, Inc. (NSCS) in May 2017 to review the mental health services provided at BSTS, and report on whether these were considered Evidence Based Practices on a national scale. The findings were published in a report along with any recommendations to meet the needs of the residents at the BSTS. The full report is attached as Appendix A.

NSCS reviewed a sampling of records and followed up on interviews with those residents that included some brief surveys. They also reviewed BSTS policies and had short conversations with administration and staff. NSCS found there is a lack of mental health services provided at BSTS, as well as a lack of personnel to provide mental health services, to match the high levels of need at the BSTS. Their recommendations for improvement included placing a stronger emphasis on relationship improvement with residents, improving the environment to help build those relationships, decreasing the use of seclusion and restraints, building Evidence-Based Practices, and additional mental health staff and/or alternative treatment facilities.
NSCS found the following from their records review:\textsuperscript{liix}

- A lack of information in the records regarding how to interact with or program differently for clients with significant trauma;
- No documented plan for reducing suicidal ideation outside of suicide watch for clients who showed suicidal ideation;
- No evidence of individualized planning;
- No money to make phone calls to the family to promote family engagement;
- No acknowledgment of clients' strengths; documentation reviewed was deficits-based;
- Rare references to Evidence Based Practices, only one reference found;
- IQ scores increased when evaluations took place at the BSTS; and
- Concerns regarding consent and assent to medications

NSCS found the following from their interviews:\textsuperscript{lix}

- Some staff are helpful but some staff engage in power struggles;
- Residents perceive medical needs are not met;
- The level system is unfair and does not work;\textsuperscript{lixi}
- Lack of money for phone calls contributes to anxiety and depression or suicidality;\textsuperscript{lxii}
- Inadequate therapeutic services;
- Restrictions from coping mechanisms;
- Lack of access to African American hair products;\textsuperscript{lxiii} and
- High Adverse Childhood Experiences (ACEs) scores and high levels of symptomatology of residents.\textsuperscript{lxiv}

NSCS concluded that a high percentage of the population reviewed at the BSTS had needs for a high level of mental health services not provided at the BSTS.\textsuperscript{lxv} Despite the number of youth with serious mental illnesses, BSTS has only one part-time licensed psychiatrist and one unlicensed psychologist, who is tasked with the bulk of the therapeutic care at BSTS.\textsuperscript{lxvi} There are very few Evidence Based Practices used at the BSTS and the group counseling and psychology sessions are “grossly inadequate”.\textsuperscript{lxvii} Additionally, the high usage of restraint and seclusion at the BSTS is a reflection of a lack of training in de-escalation techniques that take into account the individual’s history of trauma and mental health needs instead, of offering a therapeutic environment this re-traumatizes the residents.\textsuperscript{lxviii} Therefore, the NSCS report does not reflect a facility that is providing much, if any, mental health treatment to its residents.

As stated above, there is no real mental health treatment services besides medication management provided to residents at the BSTS. Furthermore, ignoring several recommendations from the December 2015 report, that would have advanced BSTS efforts in fulfilling this statutory mission, show that there is no real interest in providing these services to fulfill the mission. This is an obvious violation of the residents’ constitutional rights to mental health treatment since the BSTS has completely ignored the known mental health needs of the youth at the BSTS. Sadly, DHS has not only failed in its statutory mission and ignored recommendations that would help DHS from continuing this failure, but DHS has also failed in its legal responsibility to provide these services to the residents with mental health needs who live at the BSTS.
2) The BSTS overly relies on segregation and restraint, which has a disproportionate and negative impact on youth of color and youth with disabilities. This practice is in violation of the American Correctional Association (ACA) standards, is not allowed according to DHS rules for other juvenile justice facilities in Iowa, and is harmful to youth, and is against best practices.

   a) Current use of segregation violates ACA standards, disproportionately impacts youth of color and youth with disabilities, and the current use at BSTS would result in violations of other juvenile justice facility regulations.

DRI reviewed all of the individual records of BSTS youth for every usage of the Behavioral Support Unit (BSU) between November 1, 2016 and April 30, 2017. The BSU is a locked cell used as a consequence for rule infractions at the BSTS. There are several of these cells located in Corbett-Miller Hall on the BSTS campus. These infractions range from inappropriate language, horseplay, and lying (minor rule violations) to abusive sexual contact, assault upon another person, and rioting (major rule violations). The infractions for which the resident is serving time in the BSU are noted in the BSU record to correspond with BSTS BSU policy. DRI compiled a short report on the data gathered from these BSU records (see Appendix B).

The data shows that almost three quarters (¾) of the residents at BSTS experienced segregation during this time and, if the total number of hours were converted to days, the total number of hours of segregation use during this time (9,458.27 hours or about 394 days (over a year). In addition, during this time there were 1,045 different stays in the BSU, which average about 174 stays per month or about an average of 6 stays per day. This shows a consistent overreliance on the use of segregation since best practices require segregation to be used as a last resort and for a minimal amount of time needed to calm the situation.

The total number of stays over an hour in length during this time totals 598 stays, which accounts for 57% of the total BSU stays. This is in direct conflict from what was verbally reported to DRI by BSTS at the beginning of our records review, which was that it is a rare occurrence for the BSU to be used over an hour. To the contrary, more than half the stays are over an hour.

The ACA standards set a maximum time limit of one hour for segregation used for minor rule violations, which are defined as those violations that do not threaten the safety of the resident, the safety of other residents, or the security of the facility. The total number of BSU stays that were over an hour in length and were for a minor rule violation, as defined in the ACA standards, is 327 stays, which accounts for over 55% of total number of BSU stays during this time. Therefore, the BSTS violated the ACA standards, for over half of these
stays. In addition, it is important to note that segregation (seclusion, room confinement, control room usage, etc.) can only be used for the safety of self, others, or property and cannot be used for punishment according to DHS rules for all other juvenile justice facilities, such as detention facilities.\textsuperscript{lxxiii} Therefore, these numbers would not be acceptable at any other juvenile justice facility in the State of Iowa since the regulations will not allow these facilities to use segregation for these rule infractions.

The ACA standards set a maximum time limit of twenty-four hours for segregation used for major rule violations and then requires administrator or designee review for periods longer than twenty-four hours.\textsuperscript{lxxiv} The total number of BSU stays that were over twenty-four hours during this time is 59 stays, which is about 6% of the total BSU stays. None of these stays were reviewed by an administrator or designee at the twenty-four hour mark. Therefore, the BSTS violated the ACA standards, in practice, in all of these instances. Furthermore, it is important to note that the practice of placing a resident in segregation for more than 24 hours is restricted at all other juvenile justice facilities in the State of Iowa.\textsuperscript{lxxv} Therefore, these numbers would be unacceptable in all other juvenile justice facilities in the State of Iowa.

The number of BSU stays resulting from a probable or possible power struggle between the staff and resident where de-escalation techniques may have been used to diffuse the situation is 693 stays, which is about 66% of the total BSU stays during this time. These records did not show an initial safety concern but may have risen to one as the resident became escalated in the power struggle. Therefore, about 2/3 of the BSU stays may have been able to be avoided through the use of de-escalation techniques that the NSCS report found were severely lacking at the BSTS.

The BSTS policy requires a hearing process for residents who are sent to the BSU.\textsuperscript{lxxvi} However, a total of 706 BSU stays reflected a waiver of this hearing which is about 68% of the total BSU stays. Therefore, residents chose to waive the hearing about 2/3 of the time. DRI asked a sampling of (30) residents who had spent time in the BSU why they chose to waive the hearings, the answer was unanimously found to be that they did not feel the hearing system was fair and they did not feel there was a point to having the hearing because of this perceived unfairness. The hearing process for the BSU seems to be ineffective in practice and in perception.

According to the State of Iowa, the following percentages of male youth (ages 10 to 17) were part of the juvenile population of Iowa in 2015: Caucasian (82%), Hispanic (9%), and African American (6%). Although this is not data for 2016/2017, it gives a baseline that should fall within a few percentage points given the reported growth/decline of these populations over the last few years. During the time of the DRI records reviews, the following percentages were part of the BSTS resident population: Caucasian (51%), Hispanic (8%), and African American (39%).\textsuperscript{lxxvii} Obviously, this data shows that Caucasian youth are disproportionately underrepresented in the BSTS population and African Americans are disproportionally overrepresented at the BSTS. These issues of disproportionality coincide with the well-documented and disturbing issues of disproportionality within the entire juvenile justice system and are of deep concern to many, including DRI.\textsuperscript{lxxviii}
Furthermore, African American residents were disproportionately overrepresented in the students that experienced segregation. African American residents have disproportionately more stays in segregation and disproportionately account for more stays over an hour when compared to the overall population of BSTS during this period. In addition, they are disproportionately represented in number of stays resulting from a power struggle. Lastly, not shown in the graphs above, but noted in the DRI review, they make up a larger disproportionate number of the BSU stays over twenty-four hours at 49% (almost half of the stays) and an even larger disproportionate number of the BSU stays for major rule violations at 51%. Therefore, all the issues with the use of segregation noted above have an even greater negative impact on African American residents, which must not continue.
Residents with individual education plans (IEPs) made up 58% of the youth population at the BSTS during this time and 61% of the residents with IEPs experienced being sent to the BSU. About 59% of the total BSU stays were residents with IEPs and about 55% of the total BSU hours were residents with IEPs. About 60% of the BSU stays were over an hour for youth with IEPs with 58% of the total minor rule violations stays being over an hour. About 54% of the BSU stays for more than twenty-four hours were residents on IEPs and about 61% of the total BSU stays related to power-struggles were residents with IEPs. Furthermore, youth with disabilities largely make up a disproportionate amount of the residents who have more than six stays each month in the BSU. It is important to note that when race and disability are taken into account, both African American and Hispanic residents have a greater amount of stays and hours than Caucasian residents do when comparisons are made within racial groups with IEPs. Therefore, the BSU issues noted above greatly impact residents with disabilities and have very concerning negative, disproportionate impacts on residents of color who have disabilities.

Some individual examples of egregious use of the BSU that has negatively affected African American residents includes:

- Sending a resident to the BSU for 45.98 hours for an incident that began with staff stating he could not go to chapel unless he took the twists out of his hair.

- Sending a resident to the BSU for 0.75 hours for not enunciated the word “four” correctly because he was saying “fœe”.

- Sending a student to the BSU for 14.93 hours for an incident that started over the student wanting to take a drink from his water bottle.
b) Currently, the BSTS overly relies on the use of restraint and has used highly restrictive means of restraint as a substitute for mental health treatment rather than for emergencies.

As stated in the NSCS report noted earlier, the BSTS overly relies on restraint, engages only minimally in the use of de-escalation techniques, and substitutes restraint for the provisions of appropriate mental health care. Of particular concern to DRI is the use of the “wrap” which has been of concern since first seeing it in November 2012. The wrap is a restraint bed with a strap for each arm and leg and then a Velcro body wrap that is applied over the full body.

According to the ACA standards, this restraint is only to be used “in extreme instances and only when other types of restraints have proven ineffective or the safety of the juvenile is in jeopardy.” Furthermore, the health authority or designee must assess the resident’s mental and physical health condition to see if an emergency admit to a mental health unit is needed after the facility administrator gives the approval for the restraint. DRI’s review of individual records and video for the wrap show that the use of the “wrap” has not been restricted to “extreme instances” as a last resort and there has been no sign-off on the assessment of the resident’s mental health needs that may require a possible emergency admit.

**INDIVIDUAL EXAMPLE:**

One resident was in the “wrap” OVER 40 times for a total of close to 40 hours in three-months. He is a resident with high mental health needs and a well-documented history of childhood trauma. A licensed mental health professional provided no therapeutic interventions during any of this time. This resident has had several negative mental and physical health symptoms as a result. BSTS continues to respond to this resident’s behaviors that result from unmet mental health needs with the “wrap” and no therapeutic interventions.

It is important to note that DRI was verbally told by BSTS that the “wrap” was rarely ever used at all anymore at the BSTS during our initial look into the BSU records in November 2016. This does
not seem to be the case based on the information in the NSCS report and DRI’s experience in representing residents at the BSTS. Furthermore, it is important to note that no other juvenile justice facility in the State of Iowa uses such a restraint.

c) The use of segregation (seclusion) and restraints are harmful to youth, DHS has been informed multiple times of these facts but continues to ignore the research, and has not used best practices to reduce these harmful effects.

The NSCS report states multiple sources of research that state that the use of segregation and restraints are harmful to youth and present a failure of treatment.\textsuperscript{lxxii} Research shows that youth, particularly with intellectual disabilities and histories of early childhood trauma are at risk of traumatization and re-traumatization because of the use of these harmful interventions.\textsuperscript{lxxiii} Furthermore, these harmful interventions can deteriorate the healing process through causing further mistrust of adults, furthering the narrative that there is no safe environment, and furthering the belief that one deserves such abusive treatment from others.\textsuperscript{lxxiv} None of this furthers the mission of the BSTS to provide treatment and rehabilitation to its residents nor does it make the youth more likely to succeed in the community.

Reading this report will not be the first time DHS will be privy to such research. Multiple evidence-based articles, such as the ones noted in the NSCS report, were provided by DRI to DHS during the investigation into the IJH during the year of 2013. Therefore, it is no surprise that former Governor Branstad’s Iowa Juvenile Home Protection Task Force was asked to focus on the “permanent elimination of seclusion rooms outside the cottage setting,” “improving services for residents,” and “ensuring [that] a high level of care is delivered.”\textsuperscript{lxxv} Furthermore, during this time DRI continued to push DHS to seek out free technical assistance from experts at the Substance Abuse Mental Health Services Administration of the U.S. Department of Health and Human Services (SAMHSA) in order to understand the harms of these interventions and work to reduce them at their facilities.

Shortly after IJH closed in January 2014, BSTS scheduled some Trauma-Informed Care trainings to be provided by SAMSHA in April and May 2014.\textsuperscript{lxxvi} The coordinator for this training requested that the BSTS provide three goals that they would like to measure as a result of receiving this training and how they will measure these goals.\textsuperscript{lxxvii} DRI requested documentation of these goals and their measurements on June 6, 2017 and DHS responded with no information regarding this part of the request. Therefore, this lack of documentation shows a complete lack of interest in actually using this training from SAMSHA to improve their delivery of services to residents at the BSTS by being further trauma informed. Furthermore, given SAMSHA’s heavy involvement in providing national technical assistance to facilities to help reduce the use of restraint and seclusion based on their own information regarding its harms to youth, it would not have been surprising that SAMSHA noted a need for reduction in the use of these harmful interventions at the BSTS. It is ironic that three years later, the NSCS is citing SAMSHA once again as a resource and it is sad that years have gone by where youth continue to be harmed by such practices while DHS willfully ignores the well-documented facts.

On July 25, 2016, DRI sent two more articles to DHS to provide them with information regarding strategies for reducing the use of restraint and seclusion. Obviously, from all of the findings noted in this report, DHS willfully chose to ignore them to the detriment of the residents at the BSTS.
3) The BSTS currently lacks appropriate regulations, the DHS has a legal duty to write regulations, and facility policies cannot be a substitute for such regulations.

   a) The DHS has the legal authority to make rules but has failed to make appropriate regulations for the BSTS.

As previously stated, the Iowa law contains the explicit requirement that “[t]he administrators of particular institutions shall recommend to the council on human services for adoption such rules not inconsistent with law as they may deem necessary for the…treatment, care, custody, [and] education…of residents.” Additionally, it mandates consistency in rules where persons with mental illness are served, and it requires that all “rules shall be kept current to meet the public need and shall be revised and published annually.” The BSTS is one of the particular institutions noted as administrated by the DHS.

In addition, Iowa law authorizes the DHS Director (and the Mental Health and Disability Services Administrator) to promulgate rules “…deemed necessary and appropriate for the proper administration of the duties, functions and programs with which the department is charged.” Furthermore, it imposes a duty that “[t]he department shall concern itself with the problems of human behavior, adjustment, and daily living through the administration of programs of…child…welfare,…treatment and rehabilitation of juvenile offenders, care and treatment of persons with mental illness or mental retardation, and other related programs as provided by law.”

Lastly, the DHS Mental Health and Disability Services Administrator (the Administrator with direct authority over the BSTS) has a specific duty to “[a]dmister state programs regarding the care, treatment, and supervision of persons with mental illness or an intellectual disability.”

Therefore, the law is quite clear that the DHS not only has the legal authority to provide regulations for the BSTS but has the duty to do so as well. As previously stated, the mission of the BSTS is “…to provide to juvenile delinquents a program which focuses upon appropriate developmental skills, treatment, placements, and rehabilitation.” The legislature has purposefully seen fit to delegate the care and custody of juveniles to the BSTS, with the fundamental duty to “provide a positive living experience designed to prepare the juveniles for a productive future.”

The only regulations that govern the BSTS are those found in Iowa Administrative Code Section 441, Chapter 103. These regulations focus almost exclusively on the institution’s power and authority over the juveniles rather than a balance of this authority with the rights of the youth in State care and custody. There are no mental health treatment requirements, limitations on the use of restraint, limitations on the use seclusion (room confinement), or educational requirements in these regulations.

The lack of BSTS regulations in regards to mental health treatment, the use of restraint and seclusion, and education shows a complete failure of the DHS in their legal duties to the residents at the BSTS.

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b) Creating policies to substitute for rulemaking fails to provide due process provided under the Iowa Administrative Procedures Act.

The purposes of the Administrative Procedures Act, in relevant part, are as follows: “[t]o provide legislative oversight of powers and duties delegated to administrative agencies; to increase public accountability of administrative agencies; …to increase public access to governmental information; [and] to increase public participation in the formulation of administrative rules.” xclix A “Rule” is defined by the Act as an agency statement “that implements, interprets, or prescribes law or policy, or that describes the organization, procedure, or practice requirements of any agency.”c Additionally, this Act requires public notice, a period for public comment, and, if the rule is finalized, availability to the public for inspection.ci Lastly, the council on human services is under a duty to “[a]dopt all necessary rules recommended by the director or administrators of [established] divisions…prior to their promulgation pursuant to chapter 17A.”cii

Therefore, DHS must follow a procedure for rulemaking that is subject to legislative and public oversight and input. It makes perfect sense that rules that are so necessary and essential to the duty and mission of the BSTS should be subject to this Act. This is because BSTS is not just accountable to its residents but it is also accountable to the public for their custody and care. Rulemaking in regards to BSTS increases public accountability for this care, and it increases public access to information about this care. Finally, rulemaking allows for public participation and input into the necessary and essential caregiving standards for youth who are residents of Iowa.

Rather than promulgating legally required rules regarding restraint and seclusion, DHS has, instead, on an ad hoc basis, chosen to create policies. In its sole discretion, such policies are created and altered at the whim of DHS and BSTS administrators. Aside from violating the legal obligation for rulemaking, BSTS’s unilateral decision to create and alter policies, at will, serves to deliberately thwart and circumvent all of the public purposes and benefits of rulemaking. No public notice is given, no public input is required, and no review by the Governor or the Attorney General or the Administrative Rules Review Committee is required. Consequently, no challenges, appeals, or further review is a part of the BSTS policymaking process and thus the intended involvement of the public is completely disregarded.

c) DHS refusal to promulgate appropriate regulations and instead substituting policy conflicts with its treatment of all other juvenile justice facilities in Iowa.

DHS has promulgated rules regarding mental health treatment, the usage of restraint and seclusion, and provisions for educational requirements for all other out-of-home placements used for youth adjudicated delinquent that are not regulated by federal regulations.ciii For example, the DHS promulgated rules that govern detention facilities that house most of the boys prior to the judge ordering the boys to the BSTS.civ

DHS provides regulations for Juvenile Detention facilities that state there

“…shall be a written care plan developed for each resident remaining in the facility over four days. The care plan will be based on individual needs determined through the assessment of each youth. The care plan shall be developed in consultation with childcare services, probation services, social services and educational, medical, psychiatric and psychological personnel as appropriate. The plan shall include: Identification of specific needs; Description of
planned service; which staff person(s) will be responsible for each element of the plan; where services are to occur; Frequency of activities or services.”

This is just one of the necessary and essential rules found in the rules governing detention facilities that are sorely lacking in BSTS regulations. Further, unlike the BSTS regulations, the detention facility regulations contain extensive rules regarding care, staffing, building and grounds, food, milk, water, personnel, employee health, facility safety, intake procedures, assessments (both personal and educational), health care, dietary, children’s rights, and, of course, the usage of restraint and seclusion.

These extensive regulations derive from a statutory requirement that “[t]he [DHS] director shall adopt minimal rules and standards for the establishment, maintenance, and operation of such homes as shall be necessary to effect the purposes of this chapter.” The “minimal rules and standards” established by DHS for the detention facilities are illustrative of the abject failure by all responsible officials with authority over the BSTS to legally establish any applicable necessary rules or standards whatsoever, despite the statutory requirement to do so.

It is astounding that detention facilities, which are designed for short-term stays, contain numerous significant and necessary regulations, while BSTS, which is designed for long-term stays, has virtually no applicable regulations at all. Furthermore, DHS will not accept policies for facilities other than BSTS as a substitute for these regulations, which shows they believe the procedures in the Administrative Procedures Act important to follow, even in situations of short stays.

Therefore, the hypocritical stance that policies are enough for the BSTS but not for any other juvenile justice facility must not be allowed to continue.

4) The BSTS is an anomaly in the juvenile justice system in Iowa because it is currently unlicensed which means it lacks oversight by an independent State entity. In addition, the DHS is not performing its legal duties of oversight under the current law. This current law inherently creates a conflict of interest. Accreditation by the ACA is not a substitute for licensure and oversight by the State.

a) Licensure and Oversight by DIA are required for all other Juvenile Justice facilities in Iowa.

DIA is the licensing body and oversight/regulatory agency for numerous entities, both public and private. This includes, but is not limited to: Hospitals, Nursing Facilities, Assisted Living Programs, Residential Care Facilities, Psychiatric Medical Institutions for Children, Facilities for Persons with Mental Illness or Mental Retardation, and, notably, DHS’s State Resource Centers, Woodward and Glenwood (Intermediate Care Facilities for persons with Mental Illness/Intellectual Disabilities).

One should reasonably question why DIA does not also provide oversight for the BSTS, especially given the fact that the Iowa legislature and the Governor’s Office have always, implicitly and explicitly, supported and affirmed the importance of DIA’s established, independent oversight of other DHS facilities: the State Resource Centers. The BSTS is voluntarily “accredited,” through DHS contract, by the American Correctional Association (ACA), but it remains unlicensed. One of the “Expected Practices” of the ACA specifies that “[t]he public or private agency operating a juvenile correctional facility is a legal entity or part of a legal entity and meets applicable licensing requirements
of the jurisdiction in which it is located."cviii While the BSTS is undoubtedly a “legal entity,” it does not, and cannot, “meet applicable licensing requirements” because they are non-existent.

For example, the DIA is explicitly required to inspect the juvenile detention facilities to ensure compliance with the regulations previously mentioned: "[t]he [DHS] director shall approve annually all such homes established and maintained under the provisions of this chapter. A home shall not be approved unless it complies with minimal rules and standards adopted by the director and has been inspected by the department of inspections and appeals."cix

Without inspections of the BSTS by DIA, who will continually oversee care plans, who will continually audit information contained in important files, who will continually assure necessary, essential, professional treatment and services, who will continually monitor unnecessary, inappropriate, harmful restraint and seclusion? The list goes on, with the ultimate question being: Who will independently hold the BSTS to account in a manner consistent with all other juvenile justice facilities in Iowa?

b) Oversight of BSTS by DHS is not occurring and the current law creates a conflict of interest.

According to Iowa law, the administrator of the DHS in control of the BSTS, is to visit the BSTS every six months and “minutely examine” the management of the institution, including seeing “every resident” of the BSTS and must give each resident an opportunity to speak with the administrator in the absence of staff.cx Furthermore, the administrator “shall encourage the scientific investigation…..as to the most successful methods of institutional management and treating the persons committed to the institution."cxi

The DHS provided DRI with a log of visits for the time period of January 1, 2013 to May 5, 2017 in response to a request for all documentation regarding the administrator visits to BSTS to “minutely examine” the facility.cxii The logs showed (43) visits with only (9) of these visits not prompted by DRI monitoring/investigations and the federally required Prison Rape Elimination Act (PREA) audit preparation.cxiii The log showed no records of “minutely examining” the BSTS every six months by the administrator and there was no evidence of resident interviews or discussions.cxiv Furthermore, DRI requested documentation/records of any “scientific investigations” that have occurred from January 1, 2013 to May 5, 2017 and the resulting recommendations, reports, bulletins, or actions.cxv The DHS responded, “[t]here are no documents responsive to this request”.cxvi

Therefore, the evidence shows that the DHS fails to adhere to the legal requirements of oversight of itself at some of the most basic levels. It is amazing that after these same legal requirements were brought to the DHS’s attention as missing components of the DHS oversight of the IJH/GSTS during DRI’s investigation of that facility in 2013, DHS has done nothing to remedy the issue at the BSTS. This shows the complete lack of ability of the DHS to regulate and oversee itself.

Furthermore, the DHS oversight of itself is an inherent conflict of interest. Such a conflict of interest is well illustrated by the fact that investigations of alleged child abuse at the BSTS are required to be “conducted by an agency other than [DHS]."cxvii Therefore, DHS recognizes that a conflict of interest exists in this instance, but somehow fails to recognize this same conflict exists in all other areas of oversight of the BSTS. This reflects the proverbial fox guarding the chicken house.

Moreover, guardianship of every resident of the BSTS is transferred to the DHS when the court orders the boy to the BSTS.cxviii Without independent licensure and oversight the BSTS is, in effect, the
judge, jury, and executioner over every aspect of the lives and education of its residents. Who, then, is responsible for watching over the guardian?

Lastly, the BSTS is no stranger to nepotism based on the listing of staff employed at the BSTS. This carries with it the natural tendency to watch one another’s backs and thus creates additional internal conflicts of interest. Consequently, safeguards must be established to eliminate even the appearance of impropriety. This can only happen when an independent agency, such as DIA, licenses and oversees the BSTS.

The DHS would never allow this type of lack of licensure and oversight for any other private entity charged with the care of Iowa youth in our delinquency system. Many of these entities do not have the additional conflicts of interest found at the BSTS and many would have faced some type of punitive measures for not adhering to the requirements of Iowa law. However, the DHS continues to dodge their own responsibilities and do the very thing that is not allowed in other entities. This cannot continue.

c) Accreditation by the ACA is not a substitute for licensure and oversight by the State.

While it is true that the BSTS is voluntarily accredited by the ACA, most of the ACA accreditation standards on the use of restraint and seclusion are not mandatory. Consequently, the BSTS does not face loss of accreditation for implementing and changing policies that violate particular standards. For example, the BSTS previously allowed for room confinement for up to two hours for wasting food and up to four hours for lying. ACA standards define minor rule violations as those that do not threaten the safety of self, others, the security of the facility and provide that minor violations of this type should result in no more than an hour of confinement. Despite this conflict, the BSTS still met the ACA standards for reaccreditation in May 2015. This issue was brought to DHS’s attention, along with many other issues, in a DRI Memo dated July 18, 2016. The BSTS revised their policy on 7/26/16, 8/22/16, 9/1/16 and 1/6/17, however this policy continued to lack a time limit of one hour for minor rule violations. After months of correspondence from DRI and the threat of legal action, DHS finally changed the policy to meet the ACA standard by limiting room confinement for minor rule violations to one hour in the BSTS policy. However, as previously noted, this did not change a practice that continued to be in violation of this ACA standard. This is one example out of many of DHS’s lack of desire to adhere to ACA standards regarding the use of room confinement because they are not mandatory and ACA’s inability to do anything about it even when it is in the best interest of the boys served at BSTS. Had DRI not been involved, DHS would have continued to do whatever it wanted to do in regards to the use of room confinement.

Furthermore, DRI provided BSTS with information regarding its review of room confinement documentation during the time of September 2014 to March 2015 that showed this violation of the ACA standard for minor rule violations was being violated in practice as well. According to the records during that time period, 62% of the stays over an hour in length were for minor rule violations. DHS did nothing with this information and the ACA’s couple of days at the BSTS did not uncover this information. Sadly, as previously noted, this practice continues today unchecked by anybody at the State level and it is doubtful the ACA accreditation process will ever have the time to uncover this practice.

The issues of the weakness of the ACA accreditation can be found in the ACA’s assessment of mental health services at the BSTS as well. On May 22, 2015, DHS Public Information Officer (PIO) Amy Lorentzen McCoy issued a press release touting “[the BSTS having] achieved 100 percent
compliance...by the American Correctional Association (ACA) as part of its rigorous accreditation review of the campus." She further stated, “[o]ther notable remarks from the ACA auditors included the excellence of therapeutic services.” Assuming Dr. Heilbrun was accurate in his 2015 assessment regarding notably “insufficient” therapeutic services, the 2015 “rigorous accreditation review” by the ACA must not have been so rigorous. Furthermore, the results of the most recent review in this report continue to show that the ACA accreditation process is unable to ensure appropriate mental health care for residents at the BSTS. Therefore, there must be a process for licensure and oversight by separate entity in the State of Iowa that can ensure the care of the residents at the BSTS is meeting State standards.
RECOMMENDED RELIEF

As a result of the stated violations of the legal rights of the residents of the BSTS and the failure of the DHS fulfill its mission to the State of Iowa, the following relief and protections are required. Furthermore, appropriate funding must be provided by the legislature to ensure the relief and protections are not empty promises. DRI recommends that the State of Iowa and DHS:

1) Transfer all youth with mental illness or intellectual disabilities to proper treatment settings and provide them with appropriate Medicaid services to ameliorate their condition.\textsuperscript{cxxvii} The transfer and care must adhere to the “most integrated setting” requirements of the Americans with Disabilities Act.\textsuperscript{cxxviii} If the care cannot be provided for the individual with existing State or private providers, then the DHS must contract with appropriate entities through an RFP process and the legislature must fund these services, focusing on all levels of community based care.

2) Prohibit admission to the BSTS of youth with mental illness or intellectual disabilities, and provide these youth with the appropriate treatment and in alternative and “most integrated” settings.

3) Immediately implement all recommendations found in the attached Mental Health Service Audit Report, Iowa State Training School, July 2017, authored by Next Steps Counseling Services, Inc. to ensure appropriate mental health care services for youth with mental illness at the BSTS who are awaiting transfer. The recommendations include the hiring of additional licensed mental health providers to appropriately staff these services.

4) Immediately provide training to all BSTS staff in positive behavior interventions and supports, trauma informed care, and methods of reducing the use of restraint and seclusion. This training should be offered periodically to ensure consistent implementation of these practices with fidelity.

5) Immediately provide training on cultural competency, implicit bias, and tools for reducing disproportionate minority discipline outcomes in their severity and frequency. Make proactive efforts to hire a diverse staff at the BSTS that reflects the resident population.

6) Immediately eliminate room confinement as a punishment for minor rule infractions.

7) Immediately eliminate the use of the “wrap”. The Juvenile Detention Alternatives Initiative (JDAI) Juvenile Detention Standards prohibits the use of such outdated 4-5 point mechanical restraints.\textsuperscript{cxxix}

8) Immediately promulgate rules regarding the use of seclusion and restraint and provisions of mental health services and educational services that adhere to the JDAI Juvenile Detention Standards. Since 2006, Iowa has participated in the use of JDAI (Annie E. Casey Foundation) to reduce the use of detention and increase alternatives to detention in Iowa and therefore has been recognized in the State of Iowa as an important resource for over ten years.\textsuperscript{cxxx} Therefore, it makes sense to apply the JDAI Juvenile Detention Standards to the BSTS as has been previously requested by DRI.

9) Ensure licensure and oversight of the BSTS by a separate government entity such as DIA.

10) Immediately implement data collection in the areas of the reduction of restraint, seclusion, and disproportionate minority discipline and a procedure for review to ensure the data is used to inform practice at the BSTS. DHS must publish this data and actions taken in an annual report to the legislature and post this annual report on the DHS website in an accessible format.
DRI is open and willing to meet with state officials to discuss its findings and recommendations. However, DRI will take all appropriate and necessary action, up to and including filing a lawsuit in federal court against the Governor, the DHS Director and other state officials, if they do not remedy the problems that DRI has identified in this report and taken appropriate corrective action.
END NOTES

i Iowa Code §218 (2016).


iii Id.

iv Id.

v Iowa Code §232.8(1)(c) and 232.45 (2016).

vi Iowa Code §233A (2016).


viii Id.

ix U.S. Dept. of Justice letter to Governors dated March 5, 2015.


xiii A.M. v. Luzerne County Juvenile Det.Ctr., 372 F.3d. 572, at 583 n.3 (3rd Cir. 2004).

xiv Youngberg at 320-323.

xv Site Visit Report, State Training School, Eldora, Iowa, December 5, 2015, Kirk Heilbrun, PhD

xvi Id.

xvii Mental Health Service Audit Report, Iowa State Training School, July 2017, Next Steps Counseling Services, Inc. at pp. 3, 32-42.

xviii DRI Report on BSTS Usage of the BSU – July 2017 (See Appendix A).


xx Mental Health Service Audit Report, Iowa State Training School, July 2017, Next Steps Counseling Services, Inc. at pp. 3, 32-42.

xxi DRI Report on BSTS Usage of the BSU – July 2017 (See Appendix B).

xxii Id.


xxiv Iowa Code §17A (2016).

xxv For detention facilities see IAC 441-105; for group foster care (including comprehensive residential facilities) see IAC 441-114 and 115.

xxvi Iowa Code §233A.14 provides the DHS administrator with this power to transfer residents at the BSTS.


xxix See “Response to the Iowa Girls Justice Initiative Recommendations”, February 2017, authored by: Nathan Kirstein, DRI; Jerry Foxhoven, Director of Clinical Programs, Neal & Bea Smith Law Center, Drake Law School; Brent Pattison, Director of the Joan and Lyle Middleton Center for Children’s Rights, Drake Law School; and Jim Chesnik, Division of Adult, Children, & Family Services, DHS.

xxx DRI Memo to DHS dated March 2, 2016, RE: DRI’s Investigation of Copper Lake School for Girls in Wisconsin. (See Appendix C).


xxxii BSTS – DRI Recommendations for Regulations – Timeline (See Appendix F).


xxxvii A.M. v. Luzerne County Juvenile Det.Ctr., 372 F.3d. 572, at 583 n.3 (3rd Cir. 2004).

xxxviii Youngberg at 320-323.


x Site Visit Report, State Training School, Eldora, Iowa, December 5, 2015, Kirk Heilbrun, PhD, p.1 and 7.

xi Id. at p. 1

xii Id. at p. 4

xiii Id.

xiv Id.

xv Id. at p. 12
Another Way to Fail Children and Youth

In 2015, the Division of the Rights of Individuals with Disabilities (DRI) requested that the Iowa Department of Human Services (DHS) provide adequate hair care services at the Boys State Training School (BSTS). DHS initially responded by providing African American residents with only a limited number of hair care products, such as shampoos, brushes/picks, and washers for African American residents. However, this did not meet the needs of African American residents who needed appropriate and culturally appropriate barber services. DHS also refused to change their policy of punishing African American residents for hairstyles that were not considered acceptable. DHS did not provide African American residents with adequate food, clothing, or educational opportunities, and the level system at BSTS was ineffective because it did not provide residents with the appropriate support and resources they needed to succeed.

ACEs are Adverse Childhood Experiences meaning experiences that create trauma for children. For more information about ACEs see http://www.iowaaces360.org/.


Not Used For Punishment” (4-JCF-2A-17), “Incident Reporting” (4-JCF-2A-19), “Room Restriction” (4-JCF-3B-06), and “Seclusion/Isolation” (4-JCF-4C-46).

Boys State Training School Policy, 5B-04, Revision 10/21/15.

Performance-Based Standards for Juvenile Correctional Facilities, Fourth Edition, Commission on Accreditation for Corrections (2009), 4-JCF-3B-06, 4-JCF-3B-10, and 4-JCF-3B-04.

Commission on Accreditation for Corrections Standards Compliance Reaccreditation Audit, Dated May 11-13, 2015.

See DRI Memo to DHS dated 7/18/16 (Appendix E)

Boys State Training School Policy, 5B-04, Revision 7/26/16, 8/22/16, 9/1/16, and 1/6/17.

Boys State Training School Policy, 5B-04, Revision 2/28/16.

Iowa Code §233A.14 provides the DHS administrator with this power to transfer residents at the BSTS.

Olmstead v. United States, 277 US 438 (1928).

JDAI juvenile Detention Standards VII(A)(3)(g).