



in and out of joint. Petition for Review ¶13. Montgomery avers that because of these disabilities he must walk with a cane and wear a leg brace and orthopedic shoes. *Id.* He also claims to suffer from neuropsychological impairment and organic personality disorder. *Id.*

According to Montgomery, he submitted a sick call request on July 26, 2007, and requested to be housed in a special needs cell. He was placed in Special Needs Unit A, which is also the unit closest to the prison's medical facility. Sometime in 2009, Montgomery was moved to Unit E, which is farther away from the medical facility. Montgomery filed a grievance alleging that the unit management team reassigned him to Unit E in retaliation for exercising his constitutional rights. The grievance officer denied the grievance, stating that Montgomery was removed from the Special Needs Unit because of "alleged negative impact he was having on the weaker SNU inmates." Petition for Review ¶19. Montgomery's grievance appeals were denied, and he remains housed in Unit E.

Montgomery argues that he suffers from increased back and leg pain because he must now walk further from his cell to the prison's medical and dining facilities. Citing the Department of Corrections' Policy Statement DC-ADM 006, entitled "Reasonable Accommodations for Inmates with Disabilities," Montgomery contends that the Secretary has a "ministerial duty" to accommodate his disabilities by placing him back in the Special Needs Unit. Montgomery seeks a writ of mandamus directing the Secretary to do so.

The Secretary has filed a preliminary objection in the nature of a demurrer.<sup>1</sup> He argues that Montgomery is not entitled to a writ of mandamus because he has no clear legal right to be housed in the Special Needs Unit and the Department has no corresponding legal duty to place him there. We agree.<sup>2</sup>

Mandamus is an extraordinary writ that lies to compel an official's performance of a ministerial act or mandatory duty where there is a clear legal right in the plaintiff, a corresponding duty in the defendant, and want of any other appropriate and adequate remedy. *Pennsylvania Dental Association v. Insurance Department*, 512 Pa. 217, 227, 516 A.2d 647, 652 (1986). Mandamus is not used to direct the exercise of judgment or discretion of an official in a particular way. *Id.* at 228, 516 A.2d at 652. Furthermore, the purpose of mandamus is not to establish legal rights, but to enforce those rights which are already established. *Jamieson v. Pennsylvania Board of Probation and Parole*, 495 A.2d 623, 625 (Pa. Cmwlth. 1985).

Montgomery's reliance upon the Department's Policy Statement DC-ADM 006 as the source of the Secretary's "ministerial duty" to assign him to Unit A is misplaced. To begin, "[a] general statement of policy is the outcome of neither a rulemaking nor an adjudication; it is neither a rule nor a precedent." *Weaver v. Department of Corrections*, 720 A.2d 178, 180 n.5 (Pa. Cmwlth. 1998)

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<sup>1</sup> When ruling on preliminary objections, this Court considers as true all well-pleaded facts which are material and relevant. *Silo v. Ridge*, 728 A.2d 394, 397 (Pa. Cmwlth. 1999). A preliminary objection in the nature of a demurrer is deemed to admit all well-pleaded facts and all inferences reasonably deduced therefrom. *Id.* at 397-398. In determining whether to sustain a demurrer the court need not accept as true conclusions of law, unwarranted inferences from the facts, argumentative allegations, or expressions of opinion. *Id.* at 398.

<sup>2</sup> The Secretary also objects to Montgomery's petition for review because he never served the Department in person or by certified mail as required under PA. R.A.P. 1514(c). Because we sustain the Secretary's demurrer we need not address this preliminary objection.

(quoting *Pennsylvania Human Relations Commission v. Norristown Area School District*, 473 Pa. 334, 349-350, 374 A.2d 671, 679 (1977)). Policy Statement DC-ADM 006 is an internal directive to Department employees which sets forth the procedures for inmates to request a reasonable accommodation, and the procedures for prison officials to process such a request, including how to determine whether a disability is “qualified”. Policy Statement DC-ADM 006 is not itself the source of a substantive legal right to be housed in a particular cell within a state correctional institution.

As aptly noted by the Department, the regulation most relevant to this case states unequivocally that “[a]n inmate does not have a right to be housed in a particular facility or in a particular area within a facility.” 37 Pa. Code §93.11(a). In a recent case applying that regulation, this Court noted that it is entirely a matter of the Department’s discretion where to house an inmate. *Clark v. Beard*, 918 A.2d 155, 160 (Pa. Cmwlth. 2007). Mandamus will simply not lie to compel the Secretary to exercise that discretion in a particular way.<sup>3</sup> Accordingly, because Montgomery is not entitled to mandamus relief, we sustain the Secretary’s demurrer and dismiss the petition for review.

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MARY HANNAH LEAVITT, Judge

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<sup>3</sup> It bears noting that after Montgomery was moved to Unit E he filed a grievance and availed himself of all levels of appeal. The Department’s stated reason for changing his housing assignment was the “alleged negative impact he was having on the weaker SNU inmates.” Petition for Review ¶9. Montgomery may not use a mandamus action to circumvent the grievance process and essentially ask this Court to second-guess the Department’s legitimate penological concerns.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Harry Montgomery,	:	
Petitioner	:	
	:	
v.	:	No. 593 M.D. 2010
	:	
Jeffrey Beard, Secretary for the	:	
Pennsylvania Department of	:	
Corrections,	:	
Respondent	:	

**ORDER**

AND NOW, this 8<sup>th</sup> day of March, 2011 the preliminary objection in the nature of a demurrer filed by the Secretary of Corrections in the above-captioned matter is SUSTAINED and the Petition for Review is DISMISSED.

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MARY HANNAH LEAVITT, Judge