



NEW YORK CITY DEPARTMENT OF CORRECTION

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Derrick D. Cephas, Chair
NYC Board of Correction
1 Centre Street, Room 2213
New York, NY 10007

RE: Continuing Variance Request from Minimum Standard §1-11 “Correspondence” for Raise the Age Specialized Secure Detention Facilities and Specialized Juvenile Detention Facilities

Dear Mr. Cephas:

Pursuant to §1-15(c) of the New York City Board of Correction’s (“Board”) Minimum Standards, the New York City Department of Correction (“Department”) requests a continuing variance from BOC Minimum Standard §1-11, “Correspondence,” for the purpose of establishing Specialized Secure Detention (“SSD”) facilities and Specialized Juvenile Detention (“SJD”) facilities as required by New York State’s Raise the Age legislation (“Raise the Age” or “RTA”). The Department asks that this variance take effect on the date the variance is approved by the Board.

In 2017, the Governor signed into law New York State’s Raise the Age legislation, which amended and enacted various provisions of law to raise the age of criminal responsibility from 16 to 18. This legislation changes the way 16 and 17 year olds are prosecuted and detained. RTA created a new category of criminal defendant under the Criminal Procedure Law, called “Adolescent Offenders” (“AOs”), for 16- and 17- year-old offenders charged with felonies.¹ AOs will have their cases heard in a newly created “Youth Part” of the Supreme Court,² and, if detained prior to trial, will be held off of Rikers Island in SSD facilities, which are jointly licensed by the Office of Children and Family Services (“OCFS”) and the State Commission on Correction (“SCOC”), and jointly operated by the New York City Administration for Children’s Services (“ACS”) and the New York City Department of Correction. RTA also amended state Correction Law to add a new section, 500-p, which prohibits the City from holding youth under 18 in a Rikers Island Correctional Facility or any facility located on Rikers Island after October 1, 2018 (“Rikers youth”). This population must be removed from Rikers Island and housed in an SJD facility, which, similar to an SSD, will also be jointly licensed by OCFS and SCOC and jointly operated by ACS and DOC.³

The City has identified appropriate facilities in which the AOs and existing Rikers youth can be housed by October 1, 2018, and these facilities are currently being renovated in order to accommodate the new populations and comply with State regulations. Both SSD and SJD facilities are subject to regulations jointly issued by OCFS and SCOC. These regulations set forth specific requirements for the housing and supervision of youth that align with the rehabilitative spirit of Raise the Age. As of the date of this variance request, both SCOC and OCFS have issued regulations. Various City agencies involved in

¹ This part of the law goes into effect for 16 year olds on October 1, 2018, and on October 1, 2019 for 17 year olds.

² Some adolescent offender cases originating in the Youth Part may thereafter be transferred to Family Court.

³ An SJD facility may be co-located with either an adult jail or an SSD facility.

RTA implementation⁴ carefully reviewed the regulations and compared them to the Board's Minimum Standards to identify conflicts. The agencies' representatives have worked with the Board on this issue to encourage an open dialogue and determine the best path forward to resolving any conflicts, and to pursue an outcome that most benefits the young population affected.

There are two general categories of conflicts. The first category consists of BOC Minimum Standards that directly conflict with a State regulation regarding the same topic. For this category, the State regulation preempts the BOC Minimum Standard. The second category consists of Minimum Standards that have no corresponding State regulation. For this latter category, there are several Minimum Standards that cannot be complied with in the SSD and SJD facilities for a number of reasons, most prominently related to physical space, but also based on differing models between the adult and juvenile justice systems. One of these is Minimum Standard §1-11, "Correspondence."

The Department is seeking a continuing variance from Minimum Standard §1-11 to allow for a modified model of correspondence for AOs and Rikers youth that more closely aligns with ACS's existing juvenile detention model. Under this system, there would generally be no restriction on either the amount of correspondence youth receive, or on the language used by youth in the correspondence. However, procedures will exist for identifying individuals for whom mail correspondence is prohibited ("non-contact") or restricted based on the safety and security of the youth, the facility, and/or consistent with any existing court orders. The SCOC regulations, in 9 NYCRR §7334.5, "Restrictions on correspondence," acknowledge that SSD facilities need the ability to restrict correspondence: "Nothing contained in this Part shall be deemed to prevent the director, or designee, from establishing a list of correspondents with whom youth shall be prohibited from corresponding in order to protect the safety, security, or operational stability of the facility, or the safety, security, or the health of a person."

Correspondence will never be read by facility staff unless youth request reading assistance. Correspondence will also only be opened in youth's presence, and it will only be opened and inspected prior to this if there is "reasonable suspicion" that the correspondence poses a safety or security risk.

The Department appreciates the Board's consideration of this continuing variance request, which, if granted, will allow the Department, in conjunction with ACS, to continue to prepare for the housing needs of both the Rikers youth and the new AO population consistent with the goals of Raise the Age.

Sincerely,



Cynthia Brann

cc: Martha King, Executive Director

⁴ Following passage of RTA, the Mayor's Office of Criminal Justice ("MOCJ") started a number of task forces for RTA implementation that include representatives from MOCJ, the Law Department ("Law"), the Mayor's Office of Operations ("Operations"), DOC, ACS, the Department of Design and Construction ("DDC"), and Health and Hospitals Corporation ("H&H").