



July 5, 2018

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

Re: Request for a Limited Variance Renewal to BOC Minimum Standards § 1-17(d)(2) Punitive Segregation

Dear Mr. Cephas:

Pursuant to §1-15(f) of the New York City Board of Correction's ("Board") Minimum Standards, the New York City Department of Correction ("Department") requests the renewal of the six (6) month limited variance to §1-17(d)(2) of the Board's Minimum Standards (Punitive Segregation) to allow the Department, in highly exceptional circumstances presenting safety and security concerns, to waive the requirement that inmates be immediately released from punitive segregation for seven (7) days after they have been held in punitive segregation for thirty (30) consecutive days, which was first granted by the Board in September 2015<sup>1</sup> and last renewed at the January 9, 2018 public meeting. This variance renewal is requested for six (6) months and would take effect on July 12, 2018, the date that the current renewal is set to expire.

Over the last three years the Department has fundamentally transformed its use of punitive segregation for adults (ages 22 and up). Adults in custody no longer serve punitive segregation time owed from a previous incarceration. Only serious, violent infractions are subject to full punitive segregation time, while those who commit less serious or non-violent infractions receive seven (7) hours of out-of-cell time each day. Most minor infractions no longer earn any punitive segregation time and, with very few exceptions, we have capped the maximum sentence to thirty (30) days. The overall use of punitive segregation has decreased by approximately seventy-seven percent (77%) in this time. These historic changes reflect the Department's shift in methodology and utilization of punitive segregation as a limited tool primarily used as an immediate response to serious, violent acts to ensure facility safety.

Today, the Department continues to pursue efforts to further reduce its population in punitive segregation through the expansion of programming that addresses root causes of violence, ongoing evaluation of sentencing guidelines and procedures, and the development of safe alternative housing options. However, in the unique circumstances where an individual commits a violent act within the seven (7) days of release or while housed in punitive segregation, the Department requires the flexibility to keep or return the individual to punitive segregation. Such applications are reserved for instances where an individual's placement in punitive segregation is necessary to protect other people

<sup>1</sup> The limited variance granted by the Board on September 8, 2015 was for a period of ninety (90) days.

from physical harm, including but not limited to, stabbings, slashings, assaults resulting in death or serious injury, sexual assaults, and escapes or attempted escapes.

The Chief of Department approves seven-day waivers after careful review and consideration of all alternative management options. Since the variance was first granted in September 2015, there have been a total of thirty-seven (37) requests submitted to the Chief, of which twenty-seven (27) were approved. The majority of requests, thirty-five (35), were based on incidents that occurred within the seven (7) day period following the individual's release from punitive segregation.<sup>2</sup> In compliance with the variance condition, all waivers are subject to the Chief of Department's careful review and written approval. The Department's conservative use of the waiver does not diminish its importance when a serious security issue arises. Historical practice further demonstrates the Department's ability to responsibly issue the waiver only in situations where its use is imperative for the safety of staff and those in custody.

The ability to safely, swiftly, and appropriately respond to violent acts is essential. In unique circumstances, the seven (7) day release override option is an indispensable security measure and must remain an option. In the limited circumstances described, the Department cannot achieve full compliance with the current provisions as set forth in §1-17(d)(2) at this time, as doing so would seriously compromise the safety and security of staff and individuals in Department custody. The Department continues to make a good faith effort to comply with the noted provision of the minimum standards within the previously prescribed time frame. However, while individuals continue to engage in persistently violent behavior during or immediately upon release from punitive segregation, the Department cannot fully comply without jeopardizing the safety and security of staff and individuals in custody. Since March 31, 2017, the Department has been advocating for the Board to move forward on restrictive housing rulemaking and the inclusion of the seven (7) day release override option, which, to date, has not yet begun. The Department continues to urge the Board to move forward in the advancement of restrictive housing rulemaking including this vital security tool.

The Department appreciates the Board's consideration of this six (6) month limited variance renewal, which would allow for the use of the seven (7) day release override option in the interim period.

Thank you for your consideration and attention to this matter.

Sincerely,



Cynthia Brann

cc: Martha King, Executive Director

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<sup>2</sup> In the variance renewal letter submitted to the Board on June 28, 2018, the number of waiver requests and approvals were miscalculated. The data has been corrected as reflected herein. No further revisions were made to the originally submitted variance renewal dated June 28, 2018.