



NEW YORK CITY DEPARTMENT OF CORRECTION

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January 2, 2019

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

RE: Continuing Variance Request from Minimum Standard §1-04(b)(2) “Single Occupancy” Wet Cells 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 §1-04(b)(2), “Single Occupancy” wet cells, for the purpose of continuing to operate the Specialized Juvenile Detention (“SJD”) facility/Horizon Juvenile Center (HJC), which was first granted by the Board on July 10, 2018. This continuing variance renewal is requested for six (6) months and would 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 (RTA) 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<sup>1</sup>. RTA also amended state Correction Law to add a new section, 500-p, which prohibits the City from holding youth under 18 in any facility located on Rikers Island after October 1, 2018. This population was removed from Rikers Island and is now housed off of Rikers Island in SJD facility (Horizon), which is 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 (DOC). Additionally, 17 year olds who do not yet fall under RTA are housed with the youth moved off Rikers (collectively “pre-RTA youth”).

The Department is seeking a continuing variance from Minimum Standard §1-04(b)(2) to allow the pre-RTA youths to be housed in single occupancy dry cells – that is, cells that do not contain either a toilet or a sink. In addition, the variance is needed so that the current pre-RTA population can be housed in a manner more consistent with nationally recognized best practices in juvenile detention, as RTA envisions.

For more than 20 years, juvenile justice systems across the country have moved in the direction of creating smaller and more home-like settings for youth in custody, in a deliberate attempt to move away from more stark, correctional environments resembling adult jails/prisons. Youth sleeping rooms at the

<sup>1</sup> 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.

Horizon Juvenile Center have followed suit and are equipped with a bed, a desk and shelves on which to place clothing. Youth are encouraged to decorate their rooms in appropriate ways in order to make the rooms more personalized, familiar and home-like. Adding toilets/sinks, as are common in adult jails and prisons, would be inconsistent with the City's alignment with recognized best practices. Furthermore, the youth are afforded more privacy than the wet cell allows. Additionally, the SCOC regulations in 9 NYCRR §7320.4, "Individual occupancy room," acknowledge that best practices for a juvenile setting is a dry room. The regulation requires "(c) At least one functioning toilet, sink and shower shall be available for every 6 youth contained within a living unit".

As per the requirements imposed as conditions on this variance:

1. With respect to youth locked in dry cells, housing until staff will escort residents of Horizon to the unoccupied housing area bathroom and will provide residents with drinking water within five (5) minutes of the request, absent extenuating circumstances.
2. Housing unit staff will document when a bathroom escort or drinking water is requested. Documentation will include the time of the request and the time escorting begins.
3. Horizon staff shall not retaliate against residents who request bathroom access or drinking water.
4. Notice of the specific terms and conditions of this Variance and the right to notify the Board of any related violations shall be provided to Horizon residents.

Currently when youth are locked in their rooms and wish to use the bathroom, they are able activate a light from within the room that is illuminated above the bedroom door. Staff respond to the light by opening the door and escorting the youth to the bathroom and back, allowing for an additional opportunity for staff to interact with and engage with the youth. In addition, youth seldom have to wait more than two to three minutes to be escorted by staff to the bathroom upon request. While this range of time can vary based on a host of factors, detention staff are typically very attentive to these requests by youth.

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 providing housing for our pre-RTA population that is consistent with the goals of Raise the Age.

Sincerely,



Cynthia Brann

cc: Martha King, Executive Director