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February 10, 2020

Jacqueline Sherman, Interim Chair  
Margaret Egan, Executive Director  
New York City Board of Correction  
One Centre Street  
New York, NY 10007

Re: Renewal of Limited Six (6) Month Variance Requests from Minimum Standard §1-04(b)(2), “Overcrowding,” Including Single Occupancy Wet Cells at Horizon Juvenile Center (HJC); Minimum Standard §1-08(f), “Law libraries” at HJC; Minimum Standard §3-06(e)(5), “Nursery program” at HJC; Minimum Standard §1-11, “Correspondence” at HJC; Minimum Standard §1-02 Regarding Comingling Young Adults (19-21 Years Old) with Adults (22 Years Old and Older); Minimum Standard § 1-16(c)(1)(ii) Regarding the Use of Enhanced Supervision Housing (ESH) for Young Adults (18 to 21 years old); and Minimum Standards Regarding the Department’s Use of Separation Status Housing

Dear Interim Chair Sherman, Board Members, and Ms. Egan:

Since 1995, Children’s Rights has been a national advocate for youth in state systems. We are also a member of the Department of Correction’s Adolescent and Young Adult Advisory Board and the New York City Jails Action Coalition. Our experience with adolescents and young adults in foster care and juvenile justice systems often brings us into contact with young adult and youth corrections policy, as our clients are disproportionately represented in young adult and juvenile correction facilities. We are concerned about the welfare of young adults and youth at Rikers and Horizon.

### **HORIZON VARIANCE REQUESTS**

The New York City Department of Correction (“the Department”) again seeks to renew four six-month limited variances related to each of the following BOC Minimum Standards: §1-04(b)(2) “Overcrowding”; §1-08(f) “Law Libraries”; §1-11 “Correspondence”; and §3-06(e)(5) “Nursery Program.” All four of these variance requests were considered at the January 14, 2020 Board of

Correction (the “Board”) public meeting when the Department requested a six (6) month variance from each of these standards.<sup>1</sup> The Board granted limited, one month variances.<sup>2</sup>

Because the Board will reconsider these variance requests on February 11, 2020, we are writing once again to urge the Board to deny these variance requests. Instead, we urge the Board to require the Department to comply with existing Minimum Standards.

We continue to note that three of the requested variances are based on inadequacies of the physical design and space limitations of Horizon itself. It is not clear what the Department or the Administration for Children’s Services (“ACS”) is considering for long-term solutions, which we view as critical to meeting their obligations to youth at Horizon. We testified about this issue in June 2019, November 2019, and again in January 2020, and still are not aware of concrete plans that will enable youth at Horizon to receive the services to which they are entitled under the Minimum Standards.

Regarding the requested variance from Minimum Standard §1-04(b)(2), the Department’s December 2019 audit reports continue to show that “[w]hile an DYFJ Overnight Bathroom Logbook was located each hall, no entries related to requests for access to bathrooms and/or drinking water were recorded on some of the audit dates and, as a result, it could not be determined through a logbook review whether any requests for access to the bathrooms and/or drinking water were made in this hall.”<sup>3</sup> Therefore, it is unclear if youth requested access and were denied or if no youth requested access.

We are heartened to see the corrective action that “[g]oing forward, ACS staff are directed to do an entry, in the event there were no requests during any given night, stating such” and that there is now an Operations Manager and Tour Commander on the night tour.<sup>4</sup> We hope this requirement is strictly implemented. Children’s Rights remains concerned, however, about the use of dry cells at all, and the dignity of residents having to ask to use the bathroom, particularly in the case of female residents.

Regarding the requested variance from Minimum Standard §1-08(f), we renew our request that the Board require the Department to specify its plans to provide an actual law library for

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<sup>1</sup> See November 7, 2019 Variance Requests for Renewal of Limited Six (6) Month Variance Requests from Minimum Standard §1-04(b)(2), “Overcrowding,” Including Single Occupancy Wet Cells at Horizon Juvenile Center (HJC); Minimum Standard §1-08(f), “Law libraries” at HJC; Minimum Standard §3-06(e)(5), “Nursery program” at HJC; and Minimum Standard §1-11, “Correspondence” at HJC.

<sup>2</sup> See Records of Variance Action for January 14, 2020 Public Meeting granting one month variances from Minimum Standard §1-04(b)(2), “Overcrowding,” Including Single Occupancy Wet Cells at Horizon Juvenile Center (HJC); Minimum Standard §1-08(f), “Law libraries” at HJC; Minimum Standard §3-06(e)(5), “Nursery program” at HJC; and Minimum Standard §1-11, “Correspondence” at HJC.

<sup>3</sup> See [https://www1.nyc.gov/assets/boc/downloads/pdf/Reports/DOC-Reports/2019\\_12\\_nycas\\_horizon\\_juvenile\\_center\\_dry\\_cell\\_monthly\\_audit\\_report\\_december\\_2019.pdf](https://www1.nyc.gov/assets/boc/downloads/pdf/Reports/DOC-Reports/2019_12_nycas_horizon_juvenile_center_dry_cell_monthly_audit_report_december_2019.pdf) at pp. 5, 6, 7.

<sup>4</sup> *Id.* at p. 5.

residents of Horizon. Additionally, we request that the Board require the Department to submit a December 2019 Law Library Services Audit Report.<sup>5</sup>

Regarding the requested variance from Minimum Standard §3-06(e)(5), we again echo the concerns raised by advocates at previous Board meetings. Regardless of whether it is “very improbable that a pregnant youth would give birth during [her] short stay” at Horizon, the Department should be prepared for this eventuality.<sup>6</sup> We are glad to see that “ACS has contracted with Children’s Village to put in place a wrap-around model of support,” but this does not address where the mother and baby will be housed.<sup>7</sup> Therefore, we urge the Board to deny this variance and require the Department to provide nursery program services at Horizon.

For all three of these requested variances, the proposed corrective actions seem designed as temporary fixes, and do not fully address the inadequacies of the physical design and space limitations of Horizon itself. It is not clear what the Department or ACS is considering for long-term solutions, which we view as critical to meeting the Department’s obligations to youth at Horizon.

Regarding the fourth requested variance, from Minimum Standard §1-11, the Department once again does not provide sufficiently specific criteria pursuant to which prohibitions on certain correspondents would be based, nor the rationale for such prohibitions. Children’s Rights believes there needs to be much greater clarity around this issue to the extent that it is beneficial to Horizon residents at all. Otherwise, the restrictions could very well end up being overbroad and punitive.

**CO-MINGLING VARIANCE REQUEST** from Minimum Standard §1-02

We urge the Board to deny this variance request. Instead, we ask the Board to require the Department to set a firm timeline for ending co-mingling and to provide access for all young adults to young adult housing, programming, and services. There is no evidence that the practice of co-mingling reduces violence.<sup>8</sup> As Children’s Rights has previously testified regarding this variance, there are more effective and lasting methods to reduce violence, including an increase in services and age-appropriate programming, as well as continued better training for officers.<sup>9</sup> Young adults in co-mingled housing units are effectively cut off from regular access to important programs and services. This could stunt the progress of those young adults housed with adults 22 years old and older.

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<sup>5</sup> The DOC December 2019 Horizon Juvenile Center Law Library Services Audit Report is not for the month of December, but rather a duplicate from the month of November. *See* <https://www1.nyc.gov/assets/boc/downloads/pdf/Reports/DOC-Reports/NYC-ACS--DOC-Horizon-Juvenile-Center-Law-Library-Monthly-Audit-Report-November-2019.pdf>.

<sup>6</sup> *See* November 7, 2019 Variance Requests for Renewal of Limited Six (6) Month Variance Requests from Minimum Standard §3-06(e)(5), “Nursery program” at HJC at p. 2.

<sup>7</sup> *Id.*

<sup>8</sup> *See, e.g.*, Eighth Report of the Nunez Independent Monitor, October 28, 2019, at p. 25 (“what is clear is that the Department does not have an effective strategy for managing this particularly volatile group of young inmates”).

<sup>9</sup> *See* Oct. 7, 2018 and July 9, 2019 testimonies submitted by Children’s Rights.

The Department claims it is “committed to affording all young adults opportunities to engage in programming and educational services.”<sup>10</sup> But it is not possible for all young adults to participate in available programming and services when they are not housed together at RNDC, the only placement option that has access to the Peace Center. We also urge the Board to ask why the Department maintains it can ensure the safety of 18-year olds housed separately, but relies on co-mingling 19- to 21-year olds to ensure their safety. And we remain concerned that young adults in co-mingled housing units are denied access to education in classroom settings with their peers.<sup>11</sup>

We urge the Board to shift the Department’s emphasis regarding young adult housing areas. These areas should not be used solely for “compliant” youth. They should be supportive, age appropriate settings in which Department staff can respond properly and effectively to predictable conflict and violence among detained young people.

**ENHANCED SUPERVISION HOUSING VARIANCE REQUEST** from Minimum Standard § 1-16(c)(1)(ii)

Since the Enhanced Supervision Housing (“ESH”) variance was first approved on October 11, 2016, the Board has extended the variance for 18- to 21-year olds seven times. ESH was introduced by the Department in response to the phasing out of punitive segregation, but placement in ESH is harmful and inappropriate for young adults. The social science and neurological research that guides best practices for working with older youth shows that young people under age 25 need both developmentally appropriate services and connections with community.<sup>12</sup> When young adults are placed in ESH, they have few opportunities to build lasting relationships with family and caring adults. Instead, these youth are isolated from beneficial contacts, especially the few existing normalizing activities available in detention.

Additionally, the variance fails to address many of the concerns raised in the Board’s July 2017 report, “An Assessment of Enhanced Supervision Housing for Young Adults,” such as the use of restraint desks in ESH, adolescent and young adult visitation restrictions, access to mental health services, and more. It is especially alarming that the Department insists on continuing to use restraint desks in ESH.

The December 2019 ESH audit report shows a vast majority of lock-out times to be seven hours or less; there are few notations that out-of-cell time was reduced due to the young adult’s choice.<sup>13</sup> But no one incarcerated in New York City’s jails should have less than 14 hours of out-of-cell time per day.<sup>14</sup> As we have testified in the past, excessive isolation is incompatible with

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<sup>10</sup> See Feb. 3, 2020 Limited Six (6) Month Variance Renewal Request to Board of correction Minimum Standards Section 1-02 Regarding Comingling Young Adults (19-21 Years Old) with Adults (22 Years Old and Older) at p. 2.

<sup>11</sup> See Dec. 16, 2019 Public Comment submitted by Children’s Rights.

<sup>12</sup> See Dec. 19, 2014 Public Comment submitted by Children’s Rights —*Older Youth Development: Insights from Child Welfare and Implications for New York City Department of Correction Policy and Practice.*

<sup>13</sup> <https://www1.nyc.gov/assets/boc/downloads/pdf/Reports/DOC-Reports/december-2019-doc-audit-report-ya-esh.pdf>.

<sup>14</sup> See Dec. 16, 2019 Public Comment submitted by Children’s Rights.

current research and policy for older youth. Because brain development is still occurring, adolescents and young adults are more vulnerable than older adults to the negative effects of isolation, including increased risk for mental illness or worsened mental illness; anxiety; rage; insomnia; self-mutilation; suicidal thoughts; and suicide. In addition to the immediate harm it presents, isolation can impede brain development and affect long-term cognitive and social abilities.<sup>15</sup>

We therefore urge the Board to deny this variance request. We instead request that the Board set a deadline for the discontinuance of the use of restraint desks and a deadline for the discontinuance of ESH for young adults at Rikers.

### **SEPARATION STATUS HOUSING VARIANCE REQUEST**

Separation status housing is punitive segregation. As we testified on October 22, 2019 and November 11, 2019, the Department's variance request does not include any mention of the treatment of young adults.<sup>16</sup> It includes no due process provisions. It does not specify timeframes regarding how long an incarcerated person can be held in this housing. It is essentially solitary confinement for young adults in violation of the Minimum Standards. It is a violation of the Young Adult Plan. Research shows that placing young adults in restrictive housing can cause significant neurological damage at this important developmental stage.<sup>17</sup> We also know that young adults placed in restrictive housing have difficulties accessing education and daily programming. They lack interactions with peers and other adults in their lives, which also causes them harm.

The Board's January 2020 Body Scanners and Separation Status Report found that "[p]eople placed in Separation Status were more likely to be Young adults and Black than the average daily population in DOC custody" and that "[o]f the 41 unique individuals placed in Separation Status, 34% (n=14) were young adults aged 18-21 years, compared to 9% (n=651) of the average daily population of people in DOC custody" from July to November 2019.<sup>18</sup> The Report also notes that "[t]he processes for placement and removal from Separation Status are regularly delayed and out of compliance with policy, leading to people in custody spending extended time in highly restrictive restraints and in transit to the unit."<sup>19</sup> It is unclear, based on this report, how long each young adult was held in Separation Status Housing, a critical piece of missing information.

In addition, the Report notes that the implementation of Separation Status was dangerously "chaotic":

DOC staff who have not completed the required radiation safety and body scanner operation training are operating body scanners, creating a risk of radiation exposure to staff and people in custody and the potential for misinterpretation in scans. Misinterpretation (false negatives and false positives) undermines the Department's

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<sup>15</sup> See Dec. 19, 2014 Public Comment submitted by Children's Rights.

<sup>16</sup> See Oct. 22, 2019 and Nov. 11, 2019 testimonies submitted by Children's Rights.

<sup>17</sup> See Dec. 19, 2014 Public Comment submitted by Children's Rights.

<sup>18</sup> See Jan. 2020 Body Scanners and Separation Status in New York City Jails Report at p. 39.

<sup>19</sup> *Id.* at p. 5.

ability to use scanners effectively as a tool to identify contraband and may lead to unnecessary placement in the Department's most restrictive housing area.<sup>20</sup>

We urge the Board to deny this variance request and to stop allowing the Department to create new forms of punitive segregation for young adults and other incarcerated persons. Separation Status Housing must be abolished. The use of body scanners must be discontinued.

**CONCLUSION**

We respectfully request that the Board deny all of the Department's variance requests today. As always, we urge the Board to require the Department to comply with the Minimum Standards as written, especially with regard to the Young Adult Plan.

Sincerely,



Daniele Gerard  
Staff Attorney



Meghan Kacsmar  
Paralegal

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<sup>20</sup> *Id.* at p. 4.