



June 8, 2020

Jennifer Jones Austin, Esq., Chair and Members
New York City Board of Correction
1 Centre Street, Room 2213
New York, NY 10007

Dear Chair Austin and Board Members:

The Children's Defense Fund-New York (CDF-NY) provides the following public comment concerning the issues raised in the Ninth Report of the Nunez Independent Monitor (hereinafter, "the Report"), which covered the period from July 1, 2019 to December 31, 2019.¹

While the Department of Corrections ("the Department") and the Administration for Children's Services ("ACS") have made some progress, there are still numerous areas of concern related to youth safety, access to education, behavior management and age-appropriate discipline response, in both Horizon and on Rikers Island, that the Board must address with both agencies.

Moreover, we call upon the Board to move forward with the Restrictive Housing Rulemaking process, responding to the concerns raised in dozens of public comments and testimony provided by formerly incarcerated people, service providers, public defenders, and advocates, including CDF-NY. Many of the Monitor's findings regarding the Department and conditions associated with young adults, require the Board to return to the wide-ranging rulemaking effort it began in 2017, which remains unfinished.

As we have identified for the Board in prior testimony and public comment, research on adolescents shows that a young person's brain development is not complete by the time he or she legally becomes an adult.² Rather, such development continues into a person's mid-twenties, characterized by a period called Emerging Adulthood.³ Our public comment below is based on this understanding and the obligations set forth by both the Board's rules and the Nunez settlement to meet young people's development needs and keep them safe. We respectfully offer this public comment with the hope that the Board continue to employ its oversight function to hold ACS and the Department accountable for the safety and well-being of all youth in detention.

¹ Steve J. Martin et al., *Ninth Report of the Nunez Independent Monitor* (2020).

² Annie E. Casey Foundation & Jim Casey Youth Opportunities Initiative, *The Road to Adulthood 5–11*, Available at: <https://www.aecf.org/m/resourcedoc/aecf-theroadtoadulthood-2017.pdf>.

³ *Id.* at 8–9.

Horizon Juvenile Center (“Horizon”)

Youth Safety

As long as the Board has oversight of Horizon, it is imperative for it to monitor youth safety and hold both ACS and the Department accountable for conditions in the facility. According to the most recent Monitor’s Report, the average use of force (“UOF”) at Horizon increased from 74.7 per 100 youth to 114.7 per 100 youth, since the prior six-month period.⁴ As ACS staff assumed new duties in the housing units, it reportedly failed to take adequate measures to prevent confrontational interactions with youth. For example, ACS reportedly failed to prepare complete and detailed incident reports, thereby making it difficult to recognize problems and patterns in the facility.⁵ The Monitor also found that ACS staff repeatedly showed low situational awareness and relied on reactive, rather than proactive, methods of responding to youth.⁶

The Monitor also found that Horizon staff had not established clear consequences or interventions to help youth who frequently display serious misconduct, and this inadequate response is an ongoing problem.⁷ The Monitor stated that the facility must employ strategies “incentivizing positive behavior, responding appropriately to negative behavior, and ensuring that staff develop constructive relationships with youth and are properly equipped with knowledge, skills, and support needed to create a safe facility.”⁸

It is important to note that the number of youth in detention has decreased substantially over the last few months, and more recent data from ACS indicates that incidents at Horizon have decreased since the period included in the Monitor’s Report.⁹ Incidents resulting in injury to youth at Horizon decreased from 55 during October–December 2019 to 25 during January–March 2020.¹⁰ Fights between youth at Horizon also decreased, from 33 to 12 during the same period.¹¹ As the transition to ACS control of the facility unfolds, it is essential that the Board obtain an update on current activities to mitigate violence and ensure youth safety, including updates on the issues raised by the Monitor related to behavior management.

Education

Young people are entitled to programming, education, and recreation, which are essential to their well-being and development, as well as to reducing conflict. Unfortunately, school engagement continues to be a significant problem.¹² In the second half of 2019, students were, on average, about fifty minutes late to school each day.¹³ Engaging youth in school and helping young

⁴ Steve J. Martin et al., *Ninth Report of the Nunez Independent Monitor* 254 (2020).

⁵ *Id.* at 255.

⁶ *Id.*

⁷ *Id.* at 256.

⁸ *Id.* at 260.

⁹ Administration for Children’s Services, *Quarterly Detention Incident Reports*, Available at: <https://www1.nyc.gov/assets/acs/pdf/data-analysis/2020/LL44DetentionQ2FY2020.pdf>; <https://www1.nyc.gov/assets/acs/pdf/data-analysis/2020/ll44detentionq3.pdf>

¹⁰ *Id.*

¹¹ Steve J. Martin et al., *Ninth Report of the Nunez Independent Monitor* 254 (2020) at 254.

¹² *Id.* at 265.

¹³ *Id.*

people move within the facility so that they can reach class on time are essential to addressing these delays and disruptions in education.

Robert N. Davoren Center (“RNDC”)

Youth Safety & Behavior Management

It has been nearly two years since 16- and 17-year-olds were removed from RNDC with many Department staff to Horizon.¹⁴ While these changes created predictable challenges for RNDC initially, the Monitor found that the facility continues to face significant barriers to youth safety, due to limited options for behavior management and inconsistent staffing assignments.¹⁵

Before the transition, in early 2018, the average use of force was 16.1 per 100 youth.¹⁶ The current rate is 54.8.¹⁷ Regarding youth-on-youth violence, the situation is even worse. In early 2018, the rate of violence among 18-year-olds was 21.3; whereas the current rate is 64.3.¹⁸ The Monitor recommends that the Department fully commits to steady staffing, improved unit oversight, and developing a long-overdue behavior management system.¹⁹

Regarding behavior management, despite being repeatedly identified for years as an essential element of ensuring safety for youth in the facilities, the Monitor has found again that the Department has only taken initial steps to establish a model for graduated responses to youth behavior and continues to struggle with housing-based approaches.²⁰ The Monitor found that the Department’s approach to its Structured Supportive Housing (“SSH”) system requires the most attention. Placement decisions for SSH units are unreliable.²¹ Once placed, the Monitor found that Behavior Support Plans, intended to set forth a plan to return to general population, do not identify specific, measurable, or observable goals for the youth in these units.²² Moreover, the Department continues to use the Levels program to respond to youth behavior, which is inconsistent and ineffective.²³ The absence of an effective system predictably contributes to violence involving young adults within the facilities.

As we recommended in our November public comment related to Rulemaking, it is urgently necessary that the Department establish a comprehensive plan that meets the requirements of the Proposed Rules immediately. Young people in the Department’s custody must be able to rely on a fair and transparent, individualized system of discipline and behavior management incentives, grounded in the principles set forth by the Board, including progressive sanctions, penalties that are proportionate, and responses to violence that are based on restorative justice.

¹⁴ *Id.* at 281.

¹⁵ *Id.* at 283-84.

¹⁶ *Id.* at 282.

¹⁷ *Id.*

¹⁸ *Id.* at 283.

¹⁹ *Id.* at 285, 288.

²⁰ *Id.* at 312, 316.

²¹ *Id.* at 314.

²² *Id.* at 313.

²³ *Id.* at 316.

Education

The Monitor found that only a small portion of the young adults at RNDC are enrolled in school, an even smaller portion go consistently, and only eighteen youth were participating in the School Honors Dorm by the end of the Monitoring Period.²⁴ Engaging youth in education, reducing barriers to movement and access, and investing in young adult units that reinforce young people's participation must continue to be a central part of the Department's plans for RNDC.

We appreciate the opportunity to raise these concerns with the Board, and urge you and your colleagues to engage ACS and the Department on their plans to address the Monitor's report and these long-standing deficiencies. We also urge the Board to return to its comprehensive Restrictive Housing Rulemaking for the Department, which is an essential step toward reducing violence and improving the safety and well-being of young adults in detention.

Thank you,



Julia L. Davis, Esq.
Director of Youth Justice and Child Welfare
Children's Defense Fund-New York

²⁴ *Id.* at 293.