



PROTECTING KIDS. PROVIDING HOPE.

September 11, 2020

Jennifer Jones Austin, 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 Request from Minimum Standard §1-02 Regarding Comingling Young Adults (19-21 Years Old) with Adults (22 Years Old and Older)

Dear Chair Jones Austin, 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 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.

The New York City Department of Correction (the Department) seeks to renew a six (6) month limited variance request from Minimum Standard §1-02, Classification of Prisoners. We are writing to request that the Board of Correction (the Board) deny this variance request. Instead, we urge 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.

In its variance request, the Department claims it “remains committed to affording all young adults with meaningful opportunities to engage in programming and educational services.”¹ But 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

¹ September 2, 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.

years old and older. It is not possible for all young adults to participate in available programming and services when they are not housed together at RNDC. For example, RNDC is the only placement option on the Island with access to the Peace Center.

Furthermore, the Department calls attention to the young adult population's share of violence and gang-affiliation to justify the "strategic determination"² of co-mingling of young adults with adults. Yet there is no evidence that the practice of co-mingling reduces violence. As Children's Rights has testified repeatedly over the years, there are more effective and lasting methods to reduce violence, including increasing services and age-appropriate programming, as well as continued better training for officers.

The Department's continued reliance on the Young Adult Enhanced Supervision Housing ("ESH") and the Secure Unit also presents a serious problem. ESH was introduced by the Department in response to the phasing out of punitive segregation, but placement in ESH and the Secure Unit 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.³ When young adults are placed in ESH and the Secure Unit, they are isolated from beneficial contacts, especially the few existing normalizing activities available in detention.

Once again, 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 wholly predictable issues that arise among detained young people. The Department has maintained that this is its goal since at least August 2014,⁴ and yet here we are again requesting that the Board deny the Department's variance request to continue co-mingling. 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.

Young Adults, *Nunez*, and Restrictive Housing Rulemaking

During the years that the Board has essentially been governing by variance, the Department's management of use of force on Rikers has not improved. The *Nunez* Monitor's two most recent reports show that use of force numbers are up: the Eighth *Nunez* report showed that use of force rates for 16- and 17-year olds and 18-year olds are significantly higher than those for their adult counterparts.⁵ The Monitor also voiced concern about the use of force on 19- to 21-year olds on Rikers.⁶

² *Id.* at p. 1.

³ 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.*

⁴ https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/pre-2017/Variance_Young%20Adult%20Housing%20August%202014.pdf

⁵ Eighth Report of the *Nunez* Independent Monitor, October 28, 2019, at p. 25; see also <https://thecity.nyc/2019/12/force-more-frequent-against-teens-at-juvenile-lockups.html>

⁶ Eighth Report of the *Nunez* Independent Monitor, October 28, 2019, at p. 25.

The Ninth *Nunez* report similarly found that the use of force rate among 18-year olds has “increased sharply [since the Consent Judgment] and has remained significantly higher than the early phases of monitoring”; “the average [use of force rate] among 18-year-olds is more than nine times higher than the average rate . . . among adults, which also remains at concerning levels.”⁷ We agree with the Monitor that the Department does not have an effective strategy for managing incarcerated young adults.⁸ With at least twice as many correctional officers on active duty as incarcerated persons on the Island, this seems to defy common sense.⁹

It does not appear that either the Board or the Department has a plan for allocating resources for management, officers, training, programming, and schools for addressing the needs of incarcerated young adults. In addition, there does not seem to be a comprehensive plan in the works for this vulnerable population after Rikers closes.

Children’s Rights remains deeply troubled about the lack of a plan, and calls on the Board and the Department to develop one that truly and immediately addresses the needs of incarcerated young adults.

Finally, it is our understanding that the Board may vote on restrictive housing rulemaking at the October Board meeting. We urge the Board and the Law Department to provide the text of the proposed rule 10 days in advance so that advocates and the public have a meaningful opportunity to review it before the meeting.

Sincerely,



Daniele Gerard
Staff Attorney



Tobin Kassa
Paralegal

⁷ Ninth Report of the *Nunez* Independent Monitor, May 29, 2020, at pp. 281-282.

⁸ Eighth Report of the *Nunez* Independent Monitor, October 28, 2019, at p. 25.

⁹ <https://www.cobanyc.org/correction-officers-benevolent-association-inc>; Daily Snapshot <http://52.71.132.68/nycjail/>