



PROTECTING KIDS. PROVIDING HOPE.

July 13, 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 One (1) Month Variance Request from Minimum Standard §1-02 Regarding Comingling Young Adults (19-21 Years Old) with Adults (22 Years Old and Older); Renewal of Limited Six (6) Month Variance Request from 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; Renewal of Continuing Variance Request 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.

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.

HORIZON VARIANCE REQUESTS

The New York City Department of Correction ("the Department") again seeks to renew four continuing 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 February 11, 2020 Board of

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

We refer the Board to our February 2020 letter specifying the reasons that these variances should have been denied each time the Department requested them. Three of the requested variances are based on inadequacies of the physical design and space limitations of Horizon itself. It is clear that neither the Department nor the Administration for Children’s Services (“ACS”) considered long-term solutions, which we viewed as critical to meeting their obligations to youth at Horizon. Now that the facility is due to be shuttered, however, it is way past time for any such inadequacies to be adequately remedied.

The Board indicates on its website that “the last pre-Raise the Age youth at Horizon turns 18 on July 26, 2020 and thus will age out. The Specialized Juvenile Detention Facility at Horizon will close on September 30. The current variance expires on August 15.” The Department notes in its July 7, 2020 requests for variances from BOC Minimum Standards that it is “extremely unlikely” that any new youth will be admitted between August 15 and September 30.

Although closing Horizon means that nothing will be done to remedy the inadequacies of the physical plant, this does not affect our calling on the Board to require the Department to comply at all times with standard protocol when it grants the variance from Minimum Standard §1-04(b)(2). The Department’s April 2020 audit report shows that “[w]hile an DYFJ Overnight Bathroom Logbook was located in each hall, Hall 2 did not have an entry for the audited date[s]. Therefore, the requests for access to bathrooms and/or drinking water 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.”² It is unclear if youth requested access and were denied, or if no youth requested access.

With the dwindling number of youth at Horizon, the Board should require the Department to meet youth’s requests for access to bathrooms and/or drinking water and properly record what occurs in every instance.

Surely, there is no reason to grant the fourth requested variance, from Minimum Standard §1-11, “Correspondence,” given the small number of youth incarcerated at Horizon during COVID-19. As always, the Department does not provide sufficiently specific criteria pursuant to which prohibitions on certain correspondents would be based. 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, which will be particularly harmful for youth who are increasingly isolated during the pandemic and for whom correspondence can be critical to maintain their connection with family and community.

¹ See Records of Variance Action for February 11, 2020 Public Meeting granting six-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.

² See

https://www1.nyc.gov/assets/boc/downloads/pdf/nyc_acs_horizon_juvenile_center_dry_cell_monthly_audit_report_april_2020.pdf at pp. 4, 5.

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

We urge the Board to deny this variance request. Again, 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.³ As Children’s Rights has testified repeatedly over the years, 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.⁴ 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.

In its variance request, the Department states that its “approach to the management of the young adult population ensures that appropriate housing placements, be it in a commingled or young-adult-only setting, are made on an individual basis with consideration for each young adult’s specific needs.”⁵ It is unclear, however, how this “approach” is determined. We believe that these vital housing decisions must be based on established protocols and evidence-based policy, rather than left to what appears to be the individual discretion of intake staff.

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.⁶

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.

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 eight 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

³ 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”).

⁴ See Oct. 7, 2018 and July 9, 2019 testimonies submitted by Children’s Rights.

⁵ See July 7, 2020 Limited One (1) 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.

⁶ See Dec. 16, 2019 Public Comment submitted by Children’s Rights.

community.⁷ 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 May 2020 ESH audit report shows the majority of lock-out times to be seven hours or less; there are a few notations that out-of-cell time was reduced due to the young adult’s choice.⁸ But no one incarcerated in New York City’s jails should have less than 14 hours of out-of-cell time per day.⁹ As we have testified over many years, excessive isolation is incompatible with 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.¹⁰

We therefore urge the Board to deny this variance request. We urge the Board to 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 REQUESTS

Separation status housing is punitive segregation. As we have testified repeatedly, the Department’s variance request does not include any mention of the treatment of young adults.¹¹ 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.¹² 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.

⁷ 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.*

⁸ https://www1.nyc.gov/assets/boc/downloads/pdf/2020_05_may_2020_doc_audit_report_ya_esh.pdf.

⁹ See Dec. 16, 2019 Public Comment submitted by Children’s Rights.

¹⁰ See Dec. 19, 2014 Public Comment submitted by Children’s Rights.

¹¹ See Oct. 22, 2019, Nov. 11, 2019, and Feb. 10, 2020 testimonies submitted by Children’s Rights.

¹² See Dec. 19, 2014 Public Comment submitted by Children’s Rights.

The Department's February 2020 response to the Board's recommendations does not address any of these issues.¹³ The response of Correctional Health Services categorically rules out mental health rounds and counseling in this new form of solitary confinement.¹⁴

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 2019.¹⁵ 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."¹⁶

It remains unclear how long young adults are held in Separation Status Housing, a critical piece of missing information.

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 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.

While the Board has granted repeated variances from the Minimum Standards, the Department's management of use of force on Rikers has not improved. The Nunez Monitor's Ninth Report shows that the "number and rate of use of force remains at an all-time high" since the consent judgment went into effect in 2015.¹⁷ The average use of force rate among 18-year olds is more than nine times higher than the average rate among adults.¹⁸ The average use of force rates for 19- to 21-year olds is also up considerably.¹⁹ The Monitor found that staff "continue to use excessive and unnecessary force at rates far beyond what is expected in a safe jail system."²⁰

¹³ https://www1.nyc.gov/assets/boc/downloads/pdf/Reports/final_doc_response_to_boc_findings_2_7_2020.pdf

¹⁴ https://www1.nyc.gov/assets/boc/downloads/pdf/Reports/sep_status_body_scanners_final_recommendations_chs_comments.pdf

¹⁵ See Jan. 2020 Body Scanners and Separation Status in New York City Jails Report at p. 39.

¹⁶ *Id.* at p. 5.

¹⁷ Ninth Report of the *Nunez* Independent Monitor, May 29, 2020, at pp. 3, 13.

¹⁸ *Id.* at p. 282.

¹⁹ *Id.* at p. 33.

²⁰ *Id.* at p. 40.

Children's Rights remains deeply concerned about the use of force on adolescents and young adults.

Sincerely,

A handwritten signature in black ink, appearing to read "Daniele Gerard". The signature is fluid and cursive, with a long horizontal stroke at the end.

Daniele Gerard
Staff Attorney

A handwritten signature in black ink, appearing to read "Tobin Kassa". The signature is cursive, with the first name "Tobin" written in a larger, more prominent script than the last name "Kassa".

Tobin Kassa
Paralegal