



Prisoners' Rights Project
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BY E-MAIL

Martha King, Executive Director
Acting Chair and Members
NYC Board of Correction
1 Centre St.
Room 2213
New York, NY 10007

Re: Department Of Correction (“DOC”) January 11 request for an “emergency variance” from Minimum Standard § 1-16(c)(1)(ii).

Dear Executive Director King, Acting Chair Cephas and Board Members:

On Tuesday, January 10, 2017, this Board held its scheduled public meeting. On the agenda was a request by DOC to continue a variance from Minimum Standard § 1-16(c)(1)(ii) that would permit them to house young adults between the ages of 19 and 21 in restrictive conditions in Enhanced Supervision Housing units. Conditions in the ESH are excessively harsh and harmful to our incarcerated youth.

At the outset of the public meeting that variance request was withdrawn by DOC and taken off the agenda by the Board. This mooted out public presentation and discussion of the variance request. Public comment was not provided in full and, the DOC Commissioner and DOC staff stood up and walked out of the Board meeting *en masse* when a Board member began a factual presentation of the extreme conditions she had witnessed on a recent inspection of the young adult ESH unit at OBCC. The presentation showed that the young people in the unit were extremely distressed and being held in full leg restraints, chained to desks, for the entire time they were permitted to be out of their cells.

On Wednesday, January 11, 2017, after business hours, DOC Counsel emailed this Board proclaiming an “emergency” need to continue the variance. That email contains no factual basis of any change in circumstances from the time of the public meeting on Tuesday to the time of the so-called “emergency.” In fact it asserts that this is the same request they have been making for months and that was on the agenda on Tuesday.

The DOC maneuver is illegal and outrageous. DOC is circumventing the Board's Standards which regulate the operation of the jails, the variance process and the requirement of open public meetings. It makes a sham of the concept of transparency, public accountability and the rule of law.

DOC regularly asserts that the Board needs to "trust" it to do the right thing. There can be no trust under the veil of secrecy and evasive maneuvers that DOC has injected into what is supposed to be a public process.¹ If the Department is committed to transparency, it must make requests openly and consider the advice it receives from all stakeholders. Trust is attained through fair play. If DOC instead resorts to gamesmanship such as this fictional "emergency", it is difficult to credit its assertions that it can be trusted to exercise discretion or due process inside the jails. This is not a one-way street.

DOC is placing the young population into the ESH, where they are subject to the harmful and humiliating use of restraints for excessive periods. The ESH was never designed for this population; rather, the Secure Unit was created to meet their needs. ESH is a punitive setting that is isolating and is being used for indefinite extended periods of confinement without full due process protections. DOC is attempting to normalize extreme limitations on mobility, on lockout time, on programming and on excessive, un-reviewed shackling as though these practices are acceptable and "non-punitive." The ESH process does not reflect concern for mental or physical disability, does not include medical staff and other experts on treatment and rehabilitative needs, does not reflect an individualized problem-solving approach to behavioral health and programmatic needs, or any intent to ensure that extreme measures are used for the shortest amount of time necessary. For these reasons, the young people in the ESH should be transferred to the Secure Unit or other lawful placement in a less restrictive and less punitive setting immediately.

This DOC attempt to circumvent Board oversight, public discourse, and avoid transparency must not be tolerated. The Board must not accept the DOC fiction of an "emergency" situation. The Board must deny this variance. We ask that the Board issue a notice of violation, and if the DOC fails to remove all young adults from ESH, take legal action to enforce the current Board regulations that were adopted pursuant to law through the exercise of the CAPA process.

Sincerely,

Sarah Kerr
Mary Lynne Werlwas
Prisoners' Rights Project
Legal Aid Society

¹ There have been numerous other 11th hour requests and changes over the past year including the June 30, 2016 request to extend punitive segregation for six months for individuals between the ages of 19 and 21. On June 28th the DOC had asserted that the goal of ending punitive segregation for this group by July 1, 2016 would be met.