



December 5, 2016

Derrick D. Cephas, Vice-Chair  
NYC Board of Correction  
1 Centre Street, Room 2213  
New York, NY 10007

Re: Request for a Limited Variance to BOC Minimum Standards § 1-17(d)(2) Punitive Segregation

Dear Mr. Cephas:

Pursuant to §1-15(f) of the New York City Board of Correction's ("Board") Minimum Standards, the New York City Department of Correction ("Department") requests the renewal of the six (6) month limited variance to §1-17(d)(2) of the Board's Minimum Standards (Punitive Segregation) to allow the Department, in highly exceptional circumstances presenting safety and security concerns, to waive the requirement that inmates be immediately released from punitive segregation for seven (7) days after they have been held in punitive segregation for thirty (30) consecutive days, which was first granted by the Board in September 2015<sup>1</sup> and last renewed at the June 14, 2016 public meeting. This variance renewal is requested for six (6) months and would take effect on December 17, 2016, the date upon which the current renewal is set to expire.

As we reach the end of 2016, the Department's punitive segregation approach is vastly different from what existed in 2014. We have recognized the importance of swift and certain consequences in the imposition of sentences, resulting in a more measured and meaningful application. Over the last two years, reforms have led to an overall 80% reduction in the use of punitive segregation.<sup>2</sup>

Generally, of those inmates who are sentenced to punitive segregation, most return to general population housing and remain there without incident. A small number of inmates continue to engage in violent incidents, endangering the safety of staff and inmates, following their release from punitive segregation. Where an inmate has committed a violent act within the seven (7) days of release or while confined in punitive segregation, the Department must continue to have the flexibility to keep the inmate in punitive segregation. From our initial request for a waiver of the seven (7) day release period, the Department has stated that this waiver would be narrowly applied to those inmates who commit violent or multiple infractions that would have qualified the inmates to pre-hearing detention had they not just served the maximum thirty (30) consecutive days in punitive segregation. Such infractions would be limited to those demonstrating that an inmate's removal from population is

<sup>1</sup> The limited variance granted by the Board on September 8, 2015 was for a period of ninety (90) days.

<sup>2</sup> Based on data from May 2014 to September 2016. (data correction)

necessary to protect other people from physical harm, including stabbing or slashing, assault resulting in death or serious injury, sexual assault, and escape or attempted escape.

Since the Board first granted the variance to permit the seven (7) day release override option, the Department has remained clear about our intentions and limited application of this waiver for what was contemplated to be a small pool of candidates who would meet the eligibility criteria for the Chief's consideration. Upon reflection, over a year later, the Department has utilized this waiver sparingly and necessitated by the immediacy of a critical safety concern. To date, there have been a total of twenty-six (26) requests submitted to the Chief, of which nineteen (19) were approved. In compliance with the variance condition, all waivers are subject to the Chief of the Department's review and written approval. The waiver's conservative use does not in any way minimize its continued vital importance. The Department continues to make a good faith effort to comply with noted provision of the minimum standards within the previously prescribed time frame but cannot do so without jeopardizing the safety and security of staff and inmates.

Comprehensive punitive segregation reforms have resulted in significant changes in correctional practice within the Department. There has been a complete transformation in both the usage and applicability of punitive segregation to inmates in DOC custody. As the Board is aware, the Department has continued our collaboration with the Vera Institute's Safe Alternatives to Segregation program to assess and develop alternatives to segregation that address the specific needs of the population. Vera's focus has been fostering the Department's current efforts by providing insight into broadening options for incentives and sanctions.

It remains essential that the Department have a range of tools to immediately and safely respond to violent acts. While we initially indicated that the Department would continue to seek variance renewals over the course of two (2) years to effectively establish appropriate secure housing alternatives for this population, it is clear that maintaining this security measure is indispensable and must remain permissible. To that end, we will work with the Board to incorporate this waiver option into future rulemaking.

The Department appreciates the Board's consideration of this six (6) month limited variance renewal, which would allow for the use of the seven (7) day release override option in the interim period.

Thank you for your consideration and attention to this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Joseph Ponte".

Joseph Ponte

cc: Martha King, Executive Director