



PROTECTING KIDS. PROVIDING HOPE.

November 11, 2019

Jacqueline Sherman, Interim Chair  
Michelle Ovesey, Acting Executive Director  
New York City Board of Correction  
One Centre Street  
New York, NY 10007

Re: Renewal of Limited Six (6) Month Variance Requests 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; Minimum Standard §1-11, "Correspondence" at HJC; Minimum Standards §1-05(b), Lock-in and §1-08(f), Access to Courts and Legal Services for the Secure Unit; Separation Status Housing variance requests

Dear Interim Chair Sherman, Board Members, and Ms. Ovesey:

Since 1995, Children's Rights has been a national advocate for youth in state systems. We are also a member of the Department of Correction's Adolescent and Young Adult Advisory Board and 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") seeks to renew four six-month limited 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." We are writing to request that the Board of Corrections (the "Board") deny these variance requests. Instead, we urge the Board to require the Department to comply with existing minimum standards.

Regarding the requested variance from Minimum Standard §1-04(b)(2), Children's Rights is concerned about the use of dry cells at all, and the dignity of residents having to ask to use the bathroom, particularly in the case of female residents.

Regarding the requested variance from Minimum Standard §1-08(f), we would like to request that the Board require the Department to specify its plans to provide an actual law library for residents of Horizon.

Regarding the requested variance from Minimum Standard §3-06(e)(5), we again echo the concerns raised by the Board at the July 2018 meeting. Regardless of whether it is "very improbable that a pregnant youth would give birth during her short stay" at Horizon, the Department should be prepared for this eventuality and provide nursery program services there.

For all three of these requested variances, the proposed corrective actions seem designed as temporary fixes, and do not fully address the inadequacies of the physical design and space limitations of Horizon itself. It is not clear what the Department is considering for long-term solutions, which we view as critical to meeting the Department's obligations to

youth at Horizon.

Regarding the requested variance from Minimum Standard §1-11, the Department does not provide sufficiently specific criteria pursuant to which prohibitions on certain correspondents would be based, nor the rationale for such prohibitions. 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.

### **SECURE UNIT VARIANCE REQUESTS**

The Department has also requested variance renewals regarding the "Lock-in" and "Access to Courts and Legal Services" minimum standards for the Secure Unit. These variances were first requested on May 10, 2016.

We remain concerned that young adults are spending too much time in their cells on the Secure Unit. As you know, with some exceptions, "No prisoner shall be required to remain confined to his or her cell" for more than eight to ten hours in a day. But young adults on the Secure Unit can spend 14 hours in their cells. This is too long for adults, and certainly too long for young adults. In addition, by not allowing the young adults in the Secure Unit to leave the unit to go to the law library, the Department confines them to the unit itself even when they are on lock-out.

We respectfully request that the Board demand that the Department comply with existing minimum standards §1-05(b) and §1-08(f) for the Secure Unit.

### **SEPARATION STATUS HOUSING VARIANCE REQUEST**

Separation status housing is punitive segregation. As we testified on October 22, the variance request does not include any mention of the treatment of young adults. 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 Board's 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.<sup>1</sup> 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. We have asked Mr. Stein to distribute to you the position paper we submitted to the Board in 2014; the relevant research is summarized there for all to see.

Finally, we would like to take note of the *Nunez* Monitor's recent report, which paints a scathing picture of the Department and its management of New York City jails. Use of force numbers are up; the use of force rate is the highest since the settlement agreement went into effect.<sup>2</sup> Children's Rights is particularly concerned about the use of force on adolescents and young adults. Use of force rates for 16- and 17-year olds and 18-year olds are significantly higher than those for their adult counterparts.<sup>3</sup> The Monitor also voiced concern about the use of force on 19- to 21-year olds on Rikers.<sup>4</sup> We agree with the Monitor that the Department does not have an effective strategy for managing incarcerated youth and young adults.

Sincerely,



Daniele Gerard  
Staff Attorney



Meghan Kacsmar  
Paralegal

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<sup>1</sup> See Dec. 19, 2014 Public Comment submitted by Children's Rights.

<sup>2</sup> Eighth Report of the Nunez Independent Monitor, October 28, 2019, at p. 3.

<sup>3</sup> Eighth Report of the Nunez Independent Monitor, October 28, 2019, at p. 25.

<sup>4</sup> *Id.*