



September 11, 2017

Via E-Mail

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

Re: Variance Request to Maintain the Secure Unit

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

The Children's Defense Fund-New York (CDF-NY) is writing in regard to the August 31 variance request of the Department of Correction that seeks to continue the operation of the Secure Unit. We urge the Board to continue to use these variance discussion opportunities to publicly seek further details from the Department on the operation of Secure, and closely monitor widening or subjective placement criteria, length of stay and reason for release, use of restraints, availability of lockout, and access to education.

We outline our concerns below and we thank you for your consideration of our comments in advance of the September public meeting of the Board.

I. Placement Criteria

The July and August variances for the maintenance of Secure list criteria different from what is written in the draft directive. As an explanation, the Department writes:

"The new criteria is geared to identify and address the behavioral issues of young adults who have begun to exhibit increasingly violent behavior or who have a past history of violence and have engaged in recent concerning violent acts such that immediate intervention is needed to prevent further escalation of violence."¹

We are concerned that the following criteria lacks clarity and will jeopardize the meaningfulness of the hearing process and the later ability of young adults to advance through the phases.

- #1 "Escalation of behavior in Second Chance or Transitional Restorative Unit (TRU)"

We would appreciate greater clarity on how "escalation of behavior" will be defined and assessed and how this category is different from any of the other criteria listed in the variance.

- #5 "Involvement in the organization and/or perpetuation of a violent or dangerous gang related incident that results in serious injury"

¹ New York City Department of Correction. (2017, August 31). Re: Limited Variance Renewal – Secure Unit – Minimum Standards §1-05(b) and §1-08(f). Available at <http://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2017/Sep-12-2017/DOC%20Six-month%20Limited%20Variance%20Renewal%20Request%20-%20Secure%20Unit%20for%20Young%20Adults%208.31.17.pdf>.

The category of “involvement” may trap young adults in a situation where placement criteria is difficult to refute during or after the placement review hearing when used in combination with confidential testimony or when the adjudication captain sentences a young adult to Secure in instances where the young adult is found not guilty. We would appreciate clarity on the variance’s use of “identified gang member” versus the directive’s use of “identified as an SRG member” and how this determination is made to substantiate initial placement and during the placement review hearing and appeals process, as laid out in the directive.

- #3 “Assault with no injury and a past history of slashing/stabbing or causing serious injury to anyone during their current incarceration”
And
- #4 “Repeated assaults”

We would appreciate a definition of “assault with no injury” and “assault” especially as the Department writes that Secure “enables the Department to intervene and engage with a young adult *before their violent behavior escalates* [emphasis added]”. We worry that placement criteria relying on prediction of future behavior will unjustly place young adults in harsh conditions, especially when considered in combination of a loose initial definition of assault.

Given that the placement criteria has changed significantly since the posting of the draft directive we ask that the Board limit placement criteria at this time and require the Department to release a revised Secure Unit directive for public comment.

II. Restraint Desks

The Department writes “From September 2016, when East River Academy (ERA) began providing educational services in the unit, through July 2017, twenty-one young adults enrolled and participated in school”. It was shared during the June public meeting of the Board that restraint desks with leg shackles are a condition for attending school for every young adult in the Secure Unit.² We ask that the Board explore the effect of restraint desks in classroom settings on student engagement, any student attendance measure in school, and the impact of school attendance or performance on length of stay.

The variance further describes that “Young adults’ behavior and actions within the unit will directly impact their progress through the phases”. The Secure Unit draft directive posted June 9, 2017 offers some examples of behavior that a young adult “would need to display to progress through the phases” including “comply with all the assigned program” and “attend DOE services if applicable.” We urge the Board to require the Department to limit this list of monitored behaviors that determine movement. We remain concerned that these criteria appear inflexible and will work to prevent young adults from progressing through the three phases and leaving the unit. We would appreciate additional information about the relationship between “the imposition of additional restrictions” and schooling, as well as school conditions such as student reports of barriers to attending school.

III. Length of Stay

According to the public DOC reports, covering 26 releases from November 1 through July 31, the average length of stay in Secure was 92.6 days and median length was 89 days, with a minimum of 1 and a maximum of 300.³ The Department’s variance includes that 13 young adults have completed all three phases of the Secure Unit. While the DOC reports beginning November 2016 only include 8 of those 13, of those 8 released who completed all three phases of Secure the average length of stay was 123.9 days, the median length of stay was 119.5 days, and the minimum was 65 and maximum was 208 – significantly more days than those released from the unit for other reasons.

² New York City Board of Correction. (2017). June 13, 2017 Public Meeting Minutes. Retrieved from <http://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2017/June-13-2017/june-13-2017-board-meeting-minutes.pdf>.

³ See Secure Unit Monthly Report <http://www1.nyc.gov/site/boc/reports/departement-of-correction-reports.page>.

We ask for reporting on the longest length of stay for all 40 who have been in Secure, rather than just on who exits from the unit. Because only 31% of those 26 reported releases from Secure completed three phases, we ask that the Board pursue greater transparency in criteria for movement and not allow people to be held in Secure for an unlimited period of time.

Thank you again for your consideration of these comments.

Sincerely,

Charlotte Pope
Youth Justice Policy Associate
Children's Defense Fund-New York