



NEW YORK CITY DEPARTMENT OF CORRECTION
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*The
City
of
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June 26, 2018

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

RE: Continuing Variance Request from Minimum Standard §1-08(f) "Law libraries" for Raise the Age Specialized Secure Detention Facilities and Specialized Juvenile Detention Facilities

Dear Mr. Cephas:

Pursuant to §1-15(c) of the New York City Board of Correction's ("Board") Minimum Standards, the New York City Department of Correction ("Department") requests a continuing variance from BOC Minimum Standard §1-08(f), "Law libraries," for the purpose of establishing Specialized Secure Detention ("SSD") facilities and Specialized Juvenile Detention ("SJD") facilities as required by New York State's Raise the Age legislation ("Raise the Age" or "RTA"). The Department asks that this variance take effect on the date the variance is approved by the Board.

In 2017, the Governor signed into law New York State's Raise the Age legislation, which amended and enacted various provisions of law to raise the age of criminal responsibility from 16 to 18. This legislation changes the way 16 and 17 year olds are prosecuted and detained. RTA created a new category of criminal defendant under the Criminal Procedure Law, called "Adolescent Offenders" ("AOs"), for 16- and 17-year-old offenders charged with felonies.¹ AOs will have their cases heard in a newly created "Youth Part" of the Supreme Court,² and, if detained prior to trial, will be held off of Rikers Island in SSD facilities, which are jointly licensed by the Office of Children and Family Services ("OCFS") and the State Commission on Correction ("SCOC"), and jointly operated by the New York City Administration for Children's Services ("ACS") and the New York City Department of Correction. RTA also amended state Correction Law to add a new section, 500-p, which prohibits the City from holding youth under 18 in a Rikers Island Correctional Facility or any facility located on Rikers Island after October 1, 2018 ("Rikers youth"). This population must be removed from Rikers Island and housed in an SJD facility, which, similar to an SSD, will also be jointly licensed by OCFS and SCOC and jointly operated by ACS and DOC.³

¹ This part of the law goes into effect for 16 year olds on October 1, 2018, and on October 1, 2019 for 17 year olds.

² Some adolescent offender cases originating in the Youth Part may thereafter be transferred to Family Court.

³ An SJD facility may be co-located with either an adult jail or an SSD facility.

The City has identified appropriate facilities in which the AOs and existing Rikers youth can be housed by October 1, 2018, and these facilities are currently being renovated in order to accommodate the new populations and comply with State regulations. Both SSD and SJD facilities are subject to regulations jointly issued by OCFS and SCOC. These regulations set forth specific requirements for the housing and supervision of youth that align with the rehabilitative spirit of Raise the Age. As of the date of this variance request, both SCOC and OCFS have issued regulations. Various City agencies involved in RTA implementation⁴ carefully reviewed the regulations and compared them to the Board's Minimum Standards to identify conflicts. The agencies' representatives have worked with the Board on this issue to encourage an open dialogue and determine the best path forward to resolving any conflicts, and to pursue an outcome that most benefits the young population affected.

There are two general categories of conflicts. The first category consists of BOC Minimum Standards that directly conflict with a State regulation regarding the same topic. For this category, the State regulation preempts the BOC Minimum Standard. The second category consists of Minimum Standards that have no corresponding State regulation. For this latter category, there are several Minimum Standards that cannot be complied with in the SSD and SJD facilities for a number of reasons, most prominently related to physical design and space, but also based on differing models between the adult and juvenile justice systems. One of these is Minimum Standard §1-08(f) for "Law libraries."

Good faith efforts have been made to comply with this provision of the Minimum Standards throughout RTA's planning and implementation process. Specifically, the City explored more than 70 potential sites to house the AOs and Rikers youth that would be able to meet the City's spacing needs and conform with the varied requirements of the State's regulations, Board Minimum Standards, as well as the requirements of the federal monitorships, such as Nunez, Brad H., Handberry, and Benjamin. Of the sites considered, an existing ACS juvenile detention facility, Horizon, located in the Bronx, is best equipped for use by the Rikers youth and AO populations since it is already functionally similar to an SSD/SJD and conforms, in both design and operation, to a juvenile justice model of custody.

The Department is seeking a continuing variance from Minimum Standard §1-08(f) to allow the Rikers youth and AO population to be housed in facilities that do not have a "properly equipped and staffed law library." The Department is seeking a variance from §1-08 in part because the physical plant of Horizon cannot accommodate a full law library: this change in design would require extensive reconstruction and additional space that is not available. I am informed that from a programmatic perspective, under the existing ACS juvenile detention model, law libraries are not provided in juvenile detention facilities because there is a concern that youth may engage in legal research that may lead them to file papers that incriminate them, or otherwise take legal action that is not in their best interest. I am further informed that juvenile detainees are instead encouraged to consult with their attorneys and that the primary focus at juvenile detention facilities is education, and therefore more space is given for this purpose.

Instead of full law library space as §1-08 contemplates, I am informed that an alternative option would be to establish a tablet or legal kiosk within Horizon's library that provides access to Lexis and also provide trained staff for assistance.

⁴ Following passage of RTA, the Mayor's Office of Criminal Justice ("MOCJ") started a number of task forces for RTA implementation that include representatives from MOCJ, the Law Department ("Law"), the Mayor's Office of Operations ("Operations"), DOC, ACS, the Department of Design and Construction ("DDC"), and Health and Hospitals Corporation ("H&H").

This would offer the incoming AO population and Rikers youth access with greater flexibility and fluidity based on nationally-adopted law library alternatives for correctional and juvenile justice facilities. I am informed that correctional and juvenile facilities across the country have moved in the direction of adopting LexisNexis law library solutions that can effectively meet the rights of incarcerated and detained populations, facility responsibilities, and legal requirements. In an attempt to create maximum flexibility, the youth will be provided with reasonable access to LexisNexis on tablets using the American Orison Data System (ADPS), such as the one currently used by DOC, during daytime hours that do not conflict with schooling, specialized programming, counseling/therapy sessions and other required daily activities. This will also serve to mitigate scheduling, so as not to interfere with youth participation in other engaging programming, and so that youth do not have to choose between activities. With respect to access to persons trained in legal matters who can serve as a resource to the youth in accessing and researching legal materials and documents, a legal coordinator will be available on an on-call basis, whereby youth can access legal coordination contemporaneously.

The Department appreciates the Board's consideration of this continuing variance request, which, if granted, will allow the Department, in conjunction with ACS, to continue to prepare for the housing needs of both the Rikers youth and the new AO population consistent with the goals of Raise the Age.

Sincerely,

A handwritten signature in cursive script that reads "Cynthia Brann".

Cynthia Brann

cc: Martha King, Executive Director