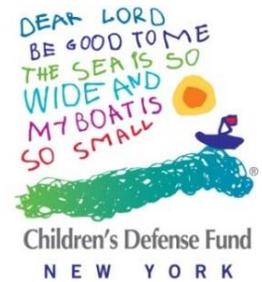


July 6, 2018

Via E-Mail

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



Re: Variance Requests Related to Comingling of Young Adults and Specialized Secure Detention Facilities Operated by the Department and the Administration for Children's Services

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

The Children's Defense Fund-New York (CDF-NY) writes to provide its positions on the Department of Correction's variance requests before the Board of Correction during its July 12, 2018 public meeting.

CDF-NY Remains Opposed to the Department's Variance Permitting Comingling of Young Adults With Older Adults (Minimum Standards Sec. 1-02(c)(1))

In 2015 the Board formally recognized that Young Adults in the City's jails have unique needs that should be met through separate housing and age-appropriate programming and services. The purpose of dedicated Young Adult housing units was to create environments better tailored to youths' needs, and to make delivery of age-appropriate programming more feasible operationally. The Minimum Standards codified the requirement "that housing for [young adults] must provide age-appropriate programming, and requires the Department to report on its efforts to develop such programming." Indeed, the Department spends \$19 million for programming for 16-21 year olds and has contracted with 50 providers to deliver the services these youth need.¹

Despite this, the Department continues to move away from keeping Young Adults aged 19-21 together. Its June 2018 variance request shows that *nearly all* (86%) of the Young Adult population are currently housed in a comingled setting.² Fewer than half (44%) of Young Adults were housed with older people in December 2017.³ The Department is going in the wrong direction.

While the reduction in violence that the Department describes in its variance request is laudable, the Board should not permit the Department to ignore its obligations to effectively serve all youth in the name of facility management—the Department must ensure safety *and* provide Young Adults the services to which they are entitled under the Board's rules.

¹ Presentation to the Board of Correction on the Young Adult Plan, June 13, 2017, available at: https://www1.nyc.gov/assets/doc/downloads/press-release/BOC_YA_presentation_n.pdf, at slide 17.

² Variance Request, dated June 28, 2018, available at: [https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2018/July-10-2018/NYC%20Department%20of%20Correction%20Variance%20Renewal%20Request%20-%20Co-mingling%20Young%20Adults%20\(19-21%20years%20old\)%20with%20Adults%206.28.18.pdf](https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2018/July-10-2018/NYC%20Department%20of%20Correction%20Variance%20Renewal%20Request%20-%20Co-mingling%20Young%20Adults%20(19-21%20years%20old)%20with%20Adults%206.28.18.pdf), at 2.

³ Variance Request, dated December 20, 2017, available at: [https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2018/January-9-2018/NYC%20Department%20of%20Correction%20-%20Six%20Month%20Limited%20Variance%20Renewal%20Request%20Letter%20-%20Co-mingling%20Young%20Adults%20\(19-21%20years%20old\)%20with%20Adults%2012.20.17.pdf](https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2018/January-9-2018/NYC%20Department%20of%20Correction%20-%20Six%20Month%20Limited%20Variance%20Renewal%20Request%20Letter%20-%20Co-mingling%20Young%20Adults%20(19-21%20years%20old)%20with%20Adults%2012.20.17.pdf), at 2.

It is obvious that the Department's current approach is not effective at ensuring Young Adults have meaningful access to programming and services. Existing variance conditions limit detailed program reporting data to GMDC, however information about programming in comingled units shows very low levels of participation in "classes."⁴ The low level of program participation among Young Adults in comingled units confirms our fear that the Department cannot effectively engage comingled Young Adults in the age-appropriate services that it has invested in creating.

Predictably, placing Young Adults in settings with older people results in fewer youth engaging in services. The effect of having groups of youth participating in programming and services together reinforces the value of these opportunities, encouraging participation as a norm in the unit. Research in youth development has established that young people's sense of community, the social norms, resources and settings in which youth are placed, have enormous impact on engagement in pro-social activities.⁵ To meet the requirement that programming be age-appropriate, as required by the Minimum Standards, it must reflect the developmental needs of Young Adults and be delivered in a manner that is consistent with successful engagement and participation. The setting in which these resources are made available is critical.

In 2017, the Department stated that Young Adults placed in comingled units in AMKC received "some elements of GMDC programming but not the entire package."⁶ The Department reported that it would attempt to move Young Adults who express interest in attending school and other programming back to Young Adult-only settings in GMDC. Despite these described plans, there is no evidence that the Department is actually moving youth who show an interest in participation into Young Adult housing units.

The Department's June 2018 variance request states that the Department plans to house "the majority of young adults in one facility" following the transfer of 16 and 17 year old youth off of Rikers Island on October 1.⁷ However, the Department's variance states that it intends to use both RNDC and GRVC for this population. The Department's own data shows that Young Adults are currently scattered over nine different facilities on Rikers Island. We are concerned with the Department's ability to provide services and programming in so many different settings and the potential for disruption that moves create.

Rikers Facility	May: Young Adult Population	June: Young Adult Population	May to June Population Change
AMKC	18%	18%	-0%
EMTC	12%	15%	+3%
GMDC	39%	21%	-18%
GRVC	4%	17%	+12%
NIC	1%	2%	+1%
OBCC	15%	13%	-1%
RMSC	6%	6%	+0%
RNDC	4%	8%	+4%
WF	0.2%	1.4%	+1.2%

⁴ Young Adult Housing Monthly Progress Report, June 2018, available at: https://www1.nyc.gov/assets/boc/downloads/pdf/Reports/DOC-Reports/2018_06_June_Young_Adult_Progress_Report.pdf, at 5.

⁵ See generally, Jeffrey A. Butts, Gordon Bazemore, Aundra Saa Meroe, *Positive Youth Justice: Framing Justice Interventions Using the Concepts of Positive Youth Development*, available at: <https://positiveyouthjustice.files.wordpress.com/2013/08/pyj2010.pdf>, at 16-17.

⁶ Board of Correction, Public Meeting Minutes, January 10, 2017, available at: <https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2017/Jan-10-2017/January-10-2017-Board-Meeting-Minutes.pdf>, at 5.

⁷ Variance Request, dated June 28, 2018, available at: [https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2018/July-10-2018/NYC%20Department%20of%20Correction%20Variance%20Renewal%20Request%20-%20Co-mingling%20Young%20Adults%20\(19-21%20years%20old\)%20with%20Adults%206.28.18.pdf](https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2018/July-10-2018/NYC%20Department%20of%20Correction%20Variance%20Renewal%20Request%20-%20Co-mingling%20Young%20Adults%20(19-21%20years%20old)%20with%20Adults%206.28.18.pdf), at 2.

In addition to our opposition to the variance, we request that the Department provide details on the policies and practices that it uses for first determining and later following-up on Young Adults' interest in school and programming.⁸ We further ask that the Department be required to demonstrate its efforts to engage Young Adults in these activities.

CDF-NY Does Not Oppose the Variance Related to Single Occupancy / Wet Cells in Specialized Secure Detention Facilities (Minimum Standards Sec. 1-04(b)(2)) With the Addition of a Necessary Condition and Related Reporting

The Department's variance request states that youth locked in their rooms at the future SSD facility (Horizon) can activate a light to which staff respond by opening the door and escorting the youth to the bathroom, and that the staff response happens within "a range of time [that] can vary based on a host of factors" but "staff are typically attentive to these requests by youth."⁹ We are concerned that without an explicit time period within which to respond, a youth's requests may be ignored or staff may delay their response. We request that the variance include language stating that "youth shall have immediate access to toilets, no longer than 5 minutes following the request."¹⁰

The Department should also be required to report upon its compliance with the obligation to provide access to toilets within 5 minutes of request. The Board should assign dedicated field staff with expertise in adolescent behavior to monitor the SSD facility, and to include youth's access to bathrooms as part of the Board's ongoing monitoring activity.

CDF-NY Does Not Oppose the Variance Related to Law Library in Specialized Secure Detention Facilities (Minimum Standards Sec. 1-08(f)) With the Addition of a Necessary Condition

The Department's variance request includes the provision that a "legal coordinator would be available on an on-call basis, whereby youth can access legal coordination contemporaneously."¹¹ It is not clear how this would work when multiple youth contact the legal coordinator simultaneously. To ensure timely access for youth, the variance should include language requiring that the legal coordinator must be available within 24 hours of a youth's request.

CDF-NY Does Not Oppose the Variance Related to Correspondence in Specialized Secure Detention Facilities (Minimum Standards Sec. 1-11) With the Addition of a Necessary Condition

Best practice in juvenile detention recognizes narrow conditions when correspondence with youth may be restricted, and requires that a "facility develops and implements written policies, procedures, and actual practices to ensure that staff, youth, and families understand any limitations on

⁸ Presentation to the Board of Correction on the Young Adult Plan, June 13, 2017, available at: https://www1.nyc.gov/assets/doc/downloads/press-release/BOC_YA_presentation_n.pdf.

⁹ Variance Request dated June 26, 2018, available at: <https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2018/July-10-2018/DOC%20Variance%20from%20BOC%20Minimum%20Standard%20-%20Single%20Occupancy%20Cells.pdf>, at 3.

¹⁰ This comports with best practices for juvenile detention facilities, as set forth in the Annie E. Casey Foundation, Juvenile Detention Alternatives Initiative, Juvenile Detention Facility Assessment 2014 Update, available at: <http://www.aecf.org/m/resourcedoc/aecf-juvenile-detention-facility-assessment-2014.pdf#page=103>, at 161.

¹¹ Variance Request dated June 26, 2018, available at: <https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2018/July-10-2018/DOC%20Variance%20from%20BOC%20Minimum%20Standard%20-%20Law%20Library.pdf>, at 2-3.

persons with whom youth may correspond.”¹² Any restrictions on correspondence should be transparent and based on actual risk to youth’s wellbeing.

The Department’s variance should include language requiring that case management staff working in the SSD facility review the list of prohibited correspondents with youth so that the youth understands which individuals are on the list and why, and that the list be subject to subsequent review with the youth every 90 days. This process would parallel practice mandated under state Office of Children and Family Services regulations for SSD requiring case managers to work with youth to develop and periodically review a list of approved visitors.¹³

CDF-NY Does Not Oppose the Variance Related to Telephone Calls (Minimum Standards Sec. 1-10) With the Condition that it be Granted for 3 Months Instead of 6 Months

The Department seeks a six month variance, delaying compliance until March 1, 2019. While there are understandable operational challenges to changing current policy and practice to ensure that telephone systems and case management staff are ready to facilitate calls from as many as 100 youth on a daily basis, we are concerned about the amount of time necessary to come into compliance with the Minimum Standards. We request that the Board consider granting a three month variance.

CDF-NY Opposes the Variance Related to the Nursery Program in Specialized Secure Detention Facilities (Minimum Standards Sec. 3-06(e)(5)) Unless It Includes a Requirement That the Department of Correction and Administration for Children’s Services Maintain Appropriate Alternative Placements for Pregnant and Parenting Adolescent Girls

Pregnant and parenting youth remanded to a SSD facility must be evaluated on a case-by-case basis to determine the most appropriate setting that supports their wellbeing, including their ability to bond with and effectively parent their infant child. The current variance request refers to an assessment under NY Corr. Law Sec. 611, which permits the Department to keep mothers with children in city correctional settings where there has been a determination that such a setting is “desirable for the welfare of such child.” However, without such a facility within Horizon, this would necessarily result in pregnant or parenting youth being separated from their infants regardless of what determination is made.

The Board should not approve the variance unless a condition is added that requires the Department and the Administration for Children’s Services to ensure that the agencies maintain appropriate placements outside of the SSD facility for pregnant and parenting girls where these youth could be placed without being separated from their children.

Thank you for your consideration.

Sincerely,

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

Julia L. Davis
Director of Youth Justice and Child Welfare
Children’s Defense Fund-New York

¹² Annie E. Casey Foundation, Juvenile Detention Facility Assessment, 2014, available at: <http://www.aecf.org/m/resourcedoc/aecf-juvenile-detention-facility-assessment-2014.pdf#page=9>, at 128.

¹³ See NY 9 NYCRR Sec. 3.26(a)(5).