



NEW YORK CITY DEPARTMENT OF CORRECTION

Cynthia Brann, Commissioner
Office of the Commissioner
75-20 Astoria Boulevard, Suite 305
East Elmhurst, New York. 11370

718 • 546 • 0890
Fax 718 • 278 • 6022

November 7th, 2019

Jacqueline Sherman, Interim Chair
NYC Board of Correction
1 Centre Street, Room 2213
New York, NY 10007

RE: Renewal of Limited Six (6) Month Variance Request from Minimum Standard §1-04(b)(2), “Overcrowding,” Including Single Occupancy Wet Cells at the Specialized Juvenile Detention Facilities (SJD)/Horizon Juvenile Center (HJC)

Dear Ms. Sherman:

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 six (6) month renewal to the limited variance from BOC Minimum Standard §1-04(b)(2), “Overcrowding,” which requires each single occupancy cell to contain a flush toilet and a wash basin with drinking water, for the purpose of establishing the specialized juvenile detention facility at Horizon Juvenile Center (“Horizon”). This limited variance renewal would take effect on January 8, 2020, the date that the current variance is set to expire.

In 2017, the Governor signed into law New York State’s Raise the Age (RTA) legislation, which amended and enacted various provisions of law to raise the age of criminal responsibility from 16 to 18. This legislation has also changed the way 16 and 17 year olds are prosecuted and detained.¹ RTA 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 was removed from Rikers Island and is now housed off of Rikers Island at Horizon SJD, which is 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 (“Department”). Additionally, 17 year olds who do not yet fall under RTA are housed with the youth moved off Rikers (collectively “pre-RTA youth”).

The Department is seeking a limited variance from Minimum Standard §1-04(b)(2) to allow pre-RTA youth to be housed in single occupancy dry cells – that is, cells that do not contain either a toilet or a sink. Additionally, the Department is seeking a variance from §1-04(b)(2) in part because the physical plant of Horizon cannot accommodate individual wet cells: this change in design would require extensive reconstruction and additional space that is not available. Furthermore, the variance is needed so that the current pre-RTA youth population can be housed in a manner more consistent with nationally recognized best practices in juvenile detention, as RTA envisions.

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

For more than 20 years, juvenile justice systems across the country have moved in the direction of creating smaller and more home-like settings for youth in custody. This has been a purposeful effort to afford young offenders with an environment that differs from the more stark correctional spaces frequently found in adult jails and prisons. Youth sleeping rooms at Horizon's SJD have followed suit and are equipped with a bed, a desk, and shelves on which to place clothing. Youth are also encouraged to decorate their rooms in appropriate ways in order to make it more personalized, familiar, and home-like. Adding toilets and sinks, are common practice in adult jails and prisons, but is inconsistent with the City's alignment to follow juvenile justice best practices.

As per the requirements of the existing variance, Horizon SJD residents will be escorted to the unoccupied housing area bathroom and provided access to drinking water within (5) minutes of the request, absent extenuating circumstances. Currently, when SJD residents are locked in their rooms and wish to use the bathroom or access drinking water, they are able to activate an indicator light from within the room that is illuminated above the bedroom door. Horizon staff respond to the light by opening the door and escorting the youth to the bathroom and back. The range of time in which staff respond to requests can vary. However, of the response times recorded and audited by the Department between July 2019 and September 2019, staff responded to requests to access the bathroom and/or drinking water within five (5) minutes over ninety-nine (99) percent of the time. In addition, the current variance conditions also require housing unit staff to document when a bathroom escort or drinking water is requested. All staff are trained to record information regarding access to the bathroom and/or drinking water and work diligently to meet the needs of residents.

Other conditions on this variance, both of which the Department fully supports, include:

1. Horizon staff shall not retaliate against residents who request bathroom access or drinking water.
2. Notice of the specific terms and conditions of this variance and the right to notify the Board of any related violations shall be provided to Horizon SJD residents.

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 provide Horizon SJD residents with their housing needs consistent with the goals of Raise the Age.

Thank you for your consideration and attention to this matter.

Sincerely,



Cynthia Brann

cc: Michelle Ovesey, Acting Executive Director & General Counsel