



NEW YORK CITY DEPARTMENT OF CORRECTION

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

718 • 546 • 0708  
Fax 718 • 278 • 6022

July 6, 2021

Jennifer Jones Austin, Chair  
NYC Board of Correction  
1 Centre Street, Room 2213  
New York, NY 10007

RE: Limited Variance Renewal Request to BOC Minimum Standards §6-28(g) regarding the Non-Individualized Use of Restraints in Punitive Segregation Housing

Dear Chair Jones Austin,

Pursuant to §1-15(f) of the New York City Board of Correction's ("Board") Minimum Standards, the New York City Department of Correction ("Department") requests a variance from BOC Minimum Standards §6-28(g) "Restraints" for the purpose of providing out-of-cell time to individuals in punitive segregation housing<sup>1</sup> in a safe and secure manner until the Department implements the Board's restrictive housing rulemaking and the Risk Management and Accountability System ("RMAS"). The Department requests this renewal to take effect on July 9, 2021 and remain in effect until November 1, 2021.

Upon the effective date of the Board's restrictive housing rulemaking, the Department plans to fully comply with the intended drafting of Minimum Standards §6-28(g) "Restraints" in its application to the operation of Enhanced Supervision Housing ("ESH") Level 1 and the use of restraint desks. As of July 9, 2021 and until RMAS is fully implemented, adults in ESH Level 1 will receive reviews every seven days and will advance to a less restrictive level or unit in accordance with the narrow conditions enumerated in the Board's rulemaking.<sup>2</sup>

The Department understands the applicable section of the rules, as written, also apply to the operation of punitive segregation housing, which is the most restrictive form of housing currently utilized only for adults who commit Grade I violent infractions, such as slashings, stabbings, and serious assaults causing serious injuries and bodily harm. Individuals housed in punitive segregation housing currently receive two daily hours of recreation, one hour for showering, and an additional hour of congregate out-of-cell programming or TV time. Until such a time that RMAS can be implemented, however, the provision of daily congregate programming or TV time necessitates the use of restraints in order to prevent serious conflict among congregating participants.

<sup>1</sup> Board Minimum Standards consider the term "punitive segregation" to apply equally to the Restrictive Housing Unit ("RHU") and Punitive Segregation II ("PSII"). The term does not apply to Enhanced Supervision Housing ("ESH").

<sup>2</sup> Adults currently receive thirty-day reviews in ESH Level 1. The Department eliminated the use of ESH Level 1 for young adults (ages 18-21) in April 2021.

The Department is fully committed to eliminating punitive segregation housing in lieu of the RMAS model by November 1, 2021 and fully supports that important transition. However, the Department is unable to significantly reconsider the operation of punitive segregation housing while simultaneously implementing the Board's restrictive housing rulemaking, including the RMAS model and its comprehensive due process, infrastructure, programming, staff training, and other important components. Absent significant infrastructure changes to the punitive segregation housing units, which cannot be completed simultaneously with the related RMAS infrastructure work, the Department is unable to offer the one hour of congregate programming/TV time in punitive segregation without the limited use of restraints.

The Department is committed to utilizing an individualized approach to the behavioral management of all individuals in custody. However, in consideration of the approaching RMAS implementation deadline, as well as the infrastructure limitations in the current punitive segregation housing areas, and the serious risk of violence among individuals in punitive segregation housing if placed in a congregate setting without the use of restraints, the Department is unable to comply with §6-28(g) "Restraints" of the Board's restrictive housing rulemaking in specific application to the operation of punitive segregation housing and the provision of congregate out-of-cell time. The Department appreciates the Board's ongoing collaboration during this transition period and their consideration of this limited variance renewal, which would expire on November 1, 2021 when punitive segregation housing will be replaced by the RMAS model.

Sincerely,

A handwritten signature in blue ink, appearing to read "Vincent Schiraldi". The signature is fluid and cursive, with the first name "Vincent" being larger and more prominent than the last name "Schiraldi".

Vincent Schiraldi

cc: Margaret Egan, Executive Director