



November 14, 2016

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

**Re: Young Adult Strategy Plan and Related Variances**

Dear Executive Director King, Chair Brezenoff, and Board Members:

The Children's Defense Fund – New York (CDF-NY) is writing in regard to three variance requests to be considered at the Board's November 15, 2016 public meeting:

- (1) The October 7 and November 4, 2016 continuing variance request relating to the West Facility;
- (2) The November 7, 2016 six-month limited variance request relating to the Secure Unit; and
- (3) The November 7, 2016 six-month limited variance request relating to the seven-day waiver.

We urge the Board and the Department to prevent the expansion of restrictive housing, and to limit and monitor the use of currently existing restrictive housing for the young adult population in particular. Similarly to what we have written before, without a more comprehensive explanation for this new direction of the Young Adult Plan – which has most recently incorporated the use of the West Facility<sup>1</sup> as well as the establishment of a new Enhanced Supervision Housing Unit (ESH)<sup>2</sup> – we cannot support the continued growth of restrictive housing options, specifically the opening of a second Secure Unit.

Variance Request (1) Relating to the West Facility  
Continuing Variance Request to BOC Minimum Standards 1-07 (Practice of Religion) and 1-08 (Access to courts and legal services, including law library)

We thank the Board for the detailed September 29, 2016 letter revealing the operation of the West Facility as a restrictive administrative segregation unit, and for publicly announcing "Inmates currently housing at West Facility – not for medical isolation purposes or as punishment for an infraction – are locked in their cells 23 hours a day."<sup>3</sup> We are concerned that the Department's October 7, 2016 variance request does not address lock-in time aside from the statement, "To avoid any misconception of this variance: the Department would not be placing these inmates in any punitive segregation setting or similar 23 hour lock-in status."<sup>4</sup> We insist that the Board call on the Department to respond to this contradiction. The Department has provided no further details about lock-out time, and we want to emphasize that the continued operation of West that provides less than 14 hours of daily lock-out time would violate Minimum Standard 1-05.

<sup>1</sup> Board of Correction City of New York, "Re: Notice of Violation of Minimum Standards at West Facility," *Author*, September 29, 2016, <http://www1.nyc.gov/assets/boc/downloads/pdf/News/2016.09.29%20-%20Letters%20from%20BOC%20to%20DOC%20re%20West%20Facility%20Violations.pdf>.

<sup>2</sup> Board of Correction City of New York, "Record of Variance Action," *Author*, October 11, 2016, <http://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/October-11-2016/post/2016.10.17%20-%20Record%20of%20Variance%20Action%20ESH%20%2818%29.pdf>.

<sup>3</sup> Op. Cit. "Re: Notice of Violation"

<sup>4</sup> New York City Department of Correction, "Re: Supplemental information related to variance request from Minimum Standard §1-07 ("Religion") and §1-08 ("Access to Courts and Legal Services)," *Author*, November 4, 2016, <http://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/November-2016/Letter%20responding%20to%20questions%20on%20Individual%20Safety%20Status%20-%2020161104.pdf>.

It was shared during the October 11, 2016 public Board meeting that there were, at that time, three young adults housed in the West Facility (as well as three young adults housed in NIC),<sup>5</sup> including an 18 year old who “can’t get school,”<sup>6</sup> and the October 15, 2016 Young Adult Census lists two young adults in the West Facility.<sup>7</sup> State law guarantees a young person’s right to attend school until the age of 21 unless they have already received a diploma, and we believe that cell study is no substitute for education. Any placement of high school eligible youth must not affect the education of any of those who are still completing their education.

We appreciate that the Board agreed not to consider the request for a continuing variance during the October meeting, and we urge the Board to object to the continuing placement of young adults in restrictive housing units that expand the punitive placement options of the Young Adult Strategy Plan. We cannot support a continuing variance for the operation of the West Facility as a restrictive housing unit in what was intended to be a contagious disease isolation unit, and we insist, along with many other advocates, that all young people and people with serious mental illness be removed from this Facility.

Finally, considering the Minimum Standard 1-08 (Access to courts and legal services) continues to be the subject of variance requests, including the below request maintaining the Secure Unit, we recommend that the Board evaluate the efficacy of kiosks. The Secure Unit variance request letter states, “As we have experienced in other units, adequate services can be provided within the unit by setting up law library kiosks and typewriters in the area.” We encourage the Board to inquire about the definition of “adequate” and any evidence to support that claim.

Variance Request (2) Relating to the Secure Unit  
Limited Variance Request to BOC Minimum Standards 1-05(b) (Lock-in) and 1-08(f)  
(Access to courts and legal services, including law library)

According to the Department’s most recent “Monthly Report,” covering the period of October 1 to October 31, there were nine young adults in the Secure Unit.<sup>8</sup> We remain concerned that while held in the first phase of the Secure Unit each young adult must demonstrate “consistent satisfactory behavior”<sup>9</sup> for a minimum of twenty-eight days in order to be considered for movement to a less restrictive environment. Because “young adults’ behavior and actions within the unit will directly impact their progress through the phases,”<sup>10</sup> people can potentially be housed within Phase I indefinitely.

The Department’s explanation for the absence of a maximum placement period, provided during the May 10, 2016 public Board meeting, was “It’s determined on the individual by the treatment team in a combined effort by DOC, H&H and other people who are coming in to deal with that particular person’s issues.”<sup>11</sup> A blanket 28-day review for all young adults does not align with the “individualized” focus of the received “orientation and program plan” and does not allow for young adults to be housed in the least restrictive alternative. At that time, “therapeutic” was repeatedly used to describe the Secure Unit, while at the same time, a representative of the Department shared “I think that most of us don’t like the physical plan...”<sup>12</sup> The Secure Unit, a highly restrictive, cage-based housing area with only ten hours of lock-out per day, is at odds with a “therapeutic” approach. We agree with a member of the Board that “It is a clearly punitive unit if we have a Board rule that says we have 14 hours a day out of your cell and then if you commit an infraction, which is the only way you get into this unit, you can be kept potentially forever for failure to participate in the

<sup>5</sup> NYC Board of Correction, “2016.10.11 NYC Board of Correction Meeting,” YouTube video, 2:54:01, October 13, 2016, <https://youtu.be/k0rAO4dQc30?t=10441>.

<sup>6</sup> NYC Board of Correction, “2016.10.11 NYC Board of Correction Meeting,” YouTube video, 3:05:58, October 13, 2016, <https://youtu.be/k0rAO4dQc30?t=11158>.

<sup>7</sup> NYC Department of Correction, “Young Adult Census (Facility/Housing Unit) – October 15, 2016,” *Author*, November 2016, [http://www1.nyc.gov/assets/boc/downloads/pdf/young\\_adult\\_census\\_by\\_facilityhousing\\_unit\\_10.15.2016.pdf](http://www1.nyc.gov/assets/boc/downloads/pdf/young_adult_census_by_facilityhousing_unit_10.15.2016.pdf).

<sup>8</sup> NYC Department of Correction, “Monthly Report: October 2016 (Covering the period of October 1 – October 31),” *Author*, November 7, 2016, [http://www1.nyc.gov/assets/boc/downloads/pdf/variance\\_conditions\\_116c1ii\\_monthly\\_report\\_october\\_2016.pdf](http://www1.nyc.gov/assets/boc/downloads/pdf/variance_conditions_116c1ii_monthly_report_october_2016.pdf).

<sup>9</sup> New York City Department of Correction, [Six (6) month limited variance], *Author*, April 27, 2016,

<http://www1.nyc.gov/assets/boc/downloads/pdf/Limited%20Variance%20Request%20-%20Establishment%20of%20Secure%20Unit%20for%20Young%20Adults%204.27.16.pdf>.

<sup>10</sup> IBID

<sup>11</sup> NYC Board of Correction, “2016.05.10 NYC Board of Correction Meeting,” YouTube video, 1:21:38, May 11, 2016, <https://youtu.be/YnUoRF1J0Kk?t=5498>.

<sup>12</sup> NYC Board of Correction, “2016.07.12 NYC Board of Correction Meeting,” YouTube video, 56:57, July 14, 2016, [https://youtu.be/PKZsA8\\_mLwQ?t=3417](https://youtu.be/PKZsA8_mLwQ?t=3417).

program.”<sup>13</sup> An amendment to allow for the gradual expansion of lock-out time beyond the set ten hours in the “Phase I” 28-day period was discussed during that meeting but was ultimately not considered, with the explanation that the amendment would be revisited at a later date pending “additional analysis.”<sup>14</sup>

We ask that the Board not allow for people to be held in the Secure Unit for an unlimited period of time, and seek additional clarity on how the evaluative processes with “Support Teams” have been carried out and how they will proceed in the future. We request clarity on why 14 hours of lock-out is not possible in Phase I, why Phase I must be 28 days, and why the model must allow for the indefinite placement of people in the unit. These are particularly critical if Secure is to go into rulemaking.

We recognize that according to the October 2016 “DOC Young Adult Restrictive Housing Monthly Report,” one person was moved from Secure to ESH for “repeated assaults; possession of a weapon.”<sup>15</sup> According to the Department’s November 7 request letter, “It is anticipated that the addition of ESH as a housing option for all young adults will serve to address noted gaps in the overall housing strategy” and “Each of the young adult housing options and the interplay among them must be considered as we move forward.”<sup>16</sup> We would appreciate greater clarity on the relationship between Secure and ESH, as well as what exactly is “the interplay among them.” In the Secure variance request, the Department writes, “The current Secure Unit is located at GRVC with plans for a second unit to be established within the same facility.” We ask for what reasons and to what end will the Secure Unit be expanded, and will this replace the demand for ESH, a unit with seven-hour lockout. Alternatives should be explored and utilized without depending on the expansion of the use of punitive, restrictive housing units.

In their November 7, 2016 request letter, the Department writes, “The Department has made a good faith effort to comply with the noted provisions of the minimum standards within the six (6) months prescribed in the original variance but we cannot do so as additional time is needed for further unit assessment.”<sup>17</sup> It has not been made clear that the Department has made a good faith effort to comply, or that the Department intends to move beyond the ten hours per day out-of-cell time or the provision of law library services. Because of these many concerns, we ask, if this variance is considered on November 15, that a condition be added to halt the establishment of a second Secure Unit.

Variance Request (3) Relating to the seven-day waiver  
Limited Variance Request to BOC Minimum Standard 1-17(d)(2) (Limitations on the use of punitive segregation)

According to the September 13, 2016 Board Report, “Punitive Segregation Overrides: Quarterly Analysis,” an analysis of the seven day waivers will be released in December 2016.<sup>18</sup> We ask that the Board delay consideration of the variance until after the opportunity to share the Board’s findings. The Department is seeking to continue the use of seven day waivers, first granted by the Board in September 2015 and last approved at the June 14, 2016 public meeting. In their June 3, 2016 request letter regarding the seven day waiver, the Department wrote, “In the Department’s November 10, 2015 limited variance letter to the Board, we indicated it would take approximately two years to effectively establish appropriate secure housing alternatives for this population. In the interim, the Department will continue to seek renewals of this limited variance.”<sup>19</sup> Now, in the November 7, 2016 request letter, the Department writes, “While we initially indicated that the Department would continue to seek variance renewals over the course of two years to effectively

<sup>13</sup> NYC Board of Correction, “2016.05.10 NYC Board of Correction Meeting,” YouTube video, 1:43:22, May 11, 2016, <https://youtu.be/YnUoRF1J0Kk?t=6202>.

<sup>14</sup> NYC Board of Correction, “2016.05.10 NYC Board of Correction Meeting,” YouTube video, 1:51:46, May 11, 2016, <https://youtu.be/YnUoRF1J0Kk?t=6706>.

<sup>15</sup> Op. Cit. “Monthly Report: October 2016 (Covering the period of October 1 – October 31)”

<sup>16</sup> New York City Department of Correction, [Six (6) month limited variance renewal], *Author*, November 7, 2016, <http://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/November-2016/DOC%20Six-month%20Limited%20Variance%20Renewal%20Request%20-%20Secure%20Unit%20for%20Young%20Adults%2011-7-16.pdf>.

<sup>17</sup> IBID

<sup>18</sup> NYC Board of Correction, “Punitive Segregation Overrides: Quarterly Analysis, April 1, 2016 – June 30, 2016,” *Author*, September 13, 2016, <http://www1.nyc.gov/assets/boc/downloads/pdf/Reports/BOC-Reports/PSEG-Override/2016.09.13%20-%20BOC.PSEGOVERRIDE.pdf>.

<sup>19</sup> New York City Department of Correction, “Re: Request for a Limited Variance to BOC Minimum Standards §1-17(d)(2) Punitive Segregation,” *Author*, June 3, 2016, <http://www1.nyc.gov/assets/boc/downloads/pdf/DOC%20Variance%20Renewal-%20Waiver%20of%207day%20Release%20from%20PSEG-%20Limited%20%206%20month%20Variance%20Request%20Letter%206.3.16.pdf>.

establish appropriate secure housing alternatives for this population, it is clear that maintaining this security measure is indispensable and must remain permissible. To that end, we will work with the Board to incorporate this waiver option into future rulemaking.”<sup>20</sup> We urge the Board to seek clarification on the “indispensable” nature of the waiver, and require the Department to prove that less restrictive options were attempted prior to resorting to the waiver.

Criteria for the waiver, according to the most recent variance request, consists of “stabbing or slashing, assault resulting in death or serious injury, sexual assault, and escape or attempted escape.”<sup>21</sup> As of the June 16, 2016 Board meeting there were 21 requests for the seven-day waiver submitted since September 2015, impacting 19 individuals<sup>22</sup> – “six were for slashing incidents against another inmate, seven for assault on staff, two for possession of a weapon, one for significant property damage.”<sup>23</sup> Requirements imposed as conditions on the variance from June 17<sup>th</sup> include “Each waiver request must specify the reason that a less restrictive housing setting is not a safe option and the Chief of Department must specify his reason for granting the waiver.”<sup>24</sup> We ask that Board go further and increase lock-out time for those denied the seven-day respite from punitive segregation (as has been suggested by members of the Board), monitor the criteria relied upon for granting the seven-day waiver, and require more comprehensive reporting on the consecutive length of stay for those individuals who are impacted by the waiver.

The Department should provide the Board with evidence of how the override improves conditions and impacts individuals subjected to extended, consecutive stays in punitive segregation. We want to emphasize that this reform was put in place to “ensure the rights of inmates are not unduly burdened” as punitive segregation “presents a serious and unacceptable threat to the physical and mental health of certain categories of inmates.”<sup>25</sup>

Thank you for consideration of these comments. We are eager to participate in this process moving forward.

Sincerely,

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<sup>20</sup> Op. Cit. “Re: Request for a Limited Variance to BOC Minimum Standards §1-17(d)(2) Punitive Segregation”

<sup>21</sup> IBID

<sup>22</sup> NYC Board of Correction, “2016.06.14 NYC Board of Correction Meeting,” YouTube video, 1:50:40, June 16, 2016, <https://www.youtube.com/watch?v=flg4Tlyr2cM&feature=youtu.be&t=6685>.

<sup>23</sup> NYC Board of Correction, “2016.06.14 NYC Board of Correction Meeting,” YouTube video, 1:51:20, June 16, 2016, <https://youtu.be/flg4Tlyr2cM?t=6685>.

<sup>24</sup> Board of Correction City of New York, “Record of Variance Action,” *Author*, June 17, 2016, [http://www1.nyc.gov/assets/boc/downloads/pdf/2016.06.14%20-%20post%20Record%20of%20Variance%20Action%20-%2017\(d\)\(2\)%20\(Punitive%20Segregation\).pdf](http://www1.nyc.gov/assets/boc/downloads/pdf/2016.06.14%20-%20post%20Record%20of%20Variance%20Action%20-%2017(d)(2)%20(Punitive%20Segregation).pdf).

<sup>25</sup> New York City Board of Correction, “Notice of Adoption of Rules,” *Author*, January 2015, [http://www1.nyc.gov/assets/boc/downloads/pdf/boc\\_rules\\_governing\\_correctional\\_facilities\\_fr.pdf](http://www1.nyc.gov/assets/boc/downloads/pdf/boc_rules_governing_correctional_facilities_fr.pdf).