



NEW YORK CITY DEPARTMENT OF CORRECTION  
Joseph Ponte, Commissioner

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Stanley Brezenoff, Chair  
NYC Board of Correction  
1 Centre Street, Room 2213  
New York, NY 10007

Re: Continuing Variance Request to BOC Minimum Standards Regarding Provision of Congregate Services to Inmates Requiring Safety Separation: Section 1-07 and Section 1-08

Dear Mr. Brezenoff:

This letter is submitted as a request for a continuing variance from provisions of §1-07 “Religion” and §1-08 “Access to Courts and Legal Services” of the New York City Board of Correction’s Minimum Standards. For the small population of inmates who cannot, for safety reasons, be broadly mingled with other inmates, the New York City Department of Correction (“Department”) seeks to provide services in an alternative manner, sufficient to meet the intent of the above-mentioned sections and ensuring the safety of staff and inmates.

This small population of inmates includes two categories: (i) those with particularly violent histories who must be mingled as little as possible for the safety of others; and (ii) those in protective custody who must be mingled as little as possible for their own safety. This population was the subject of the Board’s September 29, 2016 letter regarding the West Facility.

The first set of inmates for whom the Department is requesting a variance includes some of the most violent in the Department’s custody. As the New York City Board of Correction (“Board”) stated in their letter, these are some of the Department’s most violent inmates who are primarily of enhanced restraint or administrative segregation status and who were previously housed in numerous other housing settings that proved inadequate to prevent them from engaging in further violence.

The second set of inmates for whom the Department is requesting a variance includes those who require extensive protective custody. Most of the Department’s protective custody inmates are housed in general population-like housing units throughout our jails. There are some inmates in custody, however, against whom the threat is so violent or imminent that they must be separated from all inmates, including other protective custody inmates, in order to keep them safe. These inmates must be housed in a way that limits their interaction with all other inmates.

To best ensure the safety of all staff and inmates, the Department seeks variances from two sections of the Minimum Standards.

The first request relates to access to congregate religious services. These inmates are afforded religious services, though rarely in a congregate setting. Section 1-07(c) requires that “all prisoners be permitted to congregate for the purpose of religious worship and other religious activities,” but §1-07(b)(1) further clarifies that inmates are only entitled to practice in a way that “does not constitute a clear and present danger to the

safety or security of a facility.” Section 1-07(j)(2) allows the Department to limit the exercise of religious beliefs (e.g., attend religious services) “based on specific acts committed by the prisoner during the exercise of his or her religion.” The Department cannot maintain full compliance with §1-07(c) without risking the safety and security of the facility, therefore, the Department seeks a variance to provide religious services in a non-congregate setting when it is not safe to co-mingle inmates in the area. Religious services will be provided via rounds by various religious providers on a daily basis. Congregate religious services will be offered when the facility determines that it can do so safely.

The second variance relates to access to law library services. As it has done for other violent or otherwise challenging populations (i.e. those in Enhanced Supervision Housing and in the Secure Unit), the Department seeks to provide legal research services through a kiosk inside a housing unit, instead of transporting inmates to a traditional law library setting. The Department cannot maintain full compliance with §1-08(f) without risking the safety and security of the inmates and staff within the facility, so the Department seeks a variance to provide law library services through a kiosk. Inmates will have access to the kiosks daily and receive assistance from a law library aide or coordinator upon request.

If an inmate must be separated from others – either for his/her own safety or for the safety of others – then that inmate cannot be permitted regular access to other inmates during services. Rather than eliminate those services, the Department is committed to providing them in a safer, more secure setting. 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.

Within sixty days, the Department will implement a due process procedure to ensure that all inmates for whom services are provided in these alternative manners meet the criteria and receive written notification, including the written notifications required by §1-07(j)(2) and §1-08(j)(2). This due process procedure will include (i) written notification specifying reasons for placement in the unit; (ii) an opportunity to challenge the placement at a hearing at which the inmate may call witnesses and present documents; (iii) the assignment of a hearing facilitator if necessary; (iv) a written decision (v) periodic placement reviews every ninety days; and (vi) in-person interviews every six months. The Department needs sixty days in order to develop the requisite forms and associated paperwork needed for due process. In addition, no inmates designated as Severely Mentally Ill (“SMI”) will have their services provided in such manner, unless there are identified extreme safety and security concerns, with any such determination being made in full coordination with H+H.

As suggested in the Board’s September 29, 2016 letter, the Department has conducted a review of each inmate in this population and determined that they are all appropriately included. Modification of the provision of services has been recommended by the Operations Security Intelligence Unit (OSIU) and has been approved by the Bureau Chief of Security. Upon finalization of the due process forms, the Department will serve these inmates with notification and adjudicate them.

The Department appreciates the Board’s consideration of these variance requests. We look forward to discussing this issue further, and as appropriate, will seek longer-term rule-making to incorporate these management approaches into the Minimum Standards.

Sincerely,



Joseph Ponte

cc: Martha King, Executive Director