

June 13, 2019

To Whom It May Concern:

My name is Winston Nguyen, and I was incarcerated on Riker's Island at the Otis Bantum Correctional Center from January 16, 2019 to May 8, 2019.

I would like to share my concerns regarding the following amendments to the Inmate Rulebook:

- 1) The definition of "sexually explicit material" proposed to be added in section 1-03(b) is overbroad when it states, "'Sexually explicit material' is any printed or displayed material that shows the frontal and or rear nudity of any person, including but not limited to: the fully exposed female breast(s) and/or genitalia of any gender..." A *National Geographic* magazine that contains images of a bare-chested woman should not be considered "sexually explicit material" but it would fall into the proposed definition. Similarly, the inclusion of material that shows "sexual excitement" could be construed to include a cartoon wolf with its eyes comically bulging out of their sockets. This definition is not narrowly drawn enough to achieve its stated purpose of protecting against sexual harassment.
- 2) The proposed amendments to section 1-03(c)(23), specifically subparagraph 122.11, which states, "All contact between inmates is prohibited, including kissing, embracing, and hand-holding," is also not drawn narrowly enough to achieve its stated purpose of "preventing, detecting, and responding to prison rape." Not all physical contact is rape. Not all physical contact leads to rape.

Making all forms of physical contact between inmates a disciplinary offense will directly conflict with RCNY Title 40 section 1-07(b)(1) and (c)(1), which state, "Prisoners are entitled to exercise their religious beliefs in any manner that does not constitute a clear and present danger to the safety or security of a facility" and "Consistent with the requirements of subdivision (a) of this section, all prisoners shall be permitted to congregate for the purpose of religious worship and other religious activities..." For example, in my housing unit, men would gather every night in a prayer circle, during which time they would hold hands in prayer. This form of religious communion is commonplace and practiced comparably and on a daily basis by billions of people who hold hands and say grace before dinner or exchange handshakes or embraces during the passing of the Peace. To issue a blanket prohibition on all inmate contact, irrespective of context, is to impinge upon inmates' religious rights and the minimum standards provided in Title 40.

Moreover, "expand[ing] and clarify[ing] existing sex offenses by prohibiting... kissing, embracing, and hand-holding by inmates" appears blatantly homophobic and discriminatory. Embracing and holding hands are not sex offenses, and to include them in this category when discussing same-sex populations is not only overbroad, but offensively bigoted.

- 3) While the Department is taking the opportunity to amend what items are considered contraband, I would encourage it to clarify items like spoons and forks, which are currently technically considered contraband. Inmates are allowed to purchase items such as oatmeal and

ramen noodles from commissary, but the only utensils available to eat such items must be taken from the mess hall. There is no opportunity to purchase these utensils in commissary, nor are they distributed in the housing units.

The Department should also clarify the permissible items list to be more explicit about items such as "pencils" (are colored pencils considered "pencils" and therefore permissible?).

It should also develop a due process and system of appeal for the removal of things considered contraband. For example, the Programs Department at OBCC distributed colored pencils to inmates in order for them to participate in an art project. When a search team came through the unit, those colored pencils and the art projects were considered contraband and removed. Except for clothing, contraband is not usually vouchered, it is immediately thrown away, and there is no opportunity for an inmate to appeal to a higher authority than the CO doing the search about whether an item is actually contraband. An inmate should be able to ask for property considered contraband to be set aside for appeal.

- 4) The term "food warmer" in section 1-03(c)(6) subparagraph 105.25 is inaccurate. Inmates do not have food warmers. Electric hot pots that heat water are provided in housing areas.

If there is a concern about creating a fire, health, or safety hazard by using the electric hot pot as a cooking device, I urge the Department to consider giving inmates access to a microwave to heat their food in a manner similar to NYS prison facilities.

- 5) The explanation of the amendment to section 1-03(c)(17) states that it is meant to "provide a penalty of restitution without reference to a particular cost if inmate ID is tampered with or destroyed," but new language in subparagraph 115.12 stating "Inmates shall be charged restitution for a new Department ID" is in a section discussing the loss of Department ID, not the tampering with or destruction of Department ID. Subparagraph 115.13 simply states, "Inmates shall not intentionally tamper with or destroy their Department ID" with no mention of restitution. The stated goal of the amendment and the language of the amendment do not achieve the same result: are inmates to be charged restitution for losing their Department IDs or for tampering with or destroying them?

Furthermore, "charging restitution without reference to a particular cost" is dangerously overbroad. The amount being replaced in the rule is \$6.00. When I entered OBCC in January, the cost of replacing an ID was \$25.00. By May, the new cost was \$35.00. These amounts are given without explanation and without regulation or oversight. A cost should be specifically referenced or fixed to prevent financial abuse of inmates.

- 6) Section 1-04(a)(3)(v) provides additional categories for inmates to qualify for a hearing facilitator and an explanation of what the hearing facilitator may assist with. I encourage the Department to consider making hearing facilitators available to all inmates. I am a graduate of Columbia University, and I can honestly say I would not be able to navigate the Trial Board procedures effectively, given the resources available while incarcerated, lack of knowledge of

the system, and the wide range of possible actions that could be taken. For example, how would I be able to obtain evidence or written statements when I am not allowed to move freely outside my housing unit? English-speaking, literate people with sight and hearing would still need assistance gathering evidence, understanding procedures, and filing appeals, etc.

- 7) Section 1-04(a)(3)(vi) also provides for an interpreter. When a non-English-speaking person appears before a Trial Board, the interpreter provided is usually a CO pulled out of the hallway and asked to interpret. The Rules should be amended to provide for a neutral, third-party interpreter who is trained in interpreting in the language the inmate speaks. For example, I understand the Spanish words for "assault" and "spit on" are fairly similar, and an untrained interpreter could easily misunderstand or misrepresent what someone is saying. Furthermore, there is an inherent conflict of interest in asking a corrections officer to interpret for an inmate at a Trial Board hearing.

Thank you for your consideration of my concerns. Please feel free to contact me if I can be of any further assistance in this process.

Sincerely,

Winston Nguyen