



February 13, 2017

Martha King, Executive Director
Acting Chair and Members
New York City Board of Correction
1 Centre Street
New York, NY 10007

Re: Six Month Limited Variance Request to BOC Minimum Standard 1-16(c)(1)(ii)

Dear Executive Director King, Acting Chair Cephas and Board Members:

The Children's Defense Fund - New York (CDF-NY) writes to express our alarm for the Department of Correction's use of emergency variance requests through the month of January as well as share continuing concerns with the Young Adult Plan's Enhanced Supervision Housing (ESH) Model. We seek to raise these concerns in advance of the February Board meeting that will consider the Department's February 9, 2017 six-month limited variance renewal request to allow for the placement of 19-21 year olds in ESH. We were dismayed that the Department's withdrawal of a comparable limited variance from the agenda of the Board's January 10, 2016 public meeting was followed by the submission of an emergency variance the next day and for many days after.

CDF-NY appreciates the Board's detailed violation notice, and we agree that "if DOC believed that its inability to house young adults in ESH would create an emergency situation, it should have stated this in its December 27, 2016 request for a variance renewal, and it should not have withdrawn its variance request prior to the January 10, 2017 public meeting."¹ Young adults should have been removed from ESH immediately when the prior variance expired on January 11, 2017, and should be transferred to a less restrictive and less punitive setting immediately.

We understand that an active variance allows the Department to house 18 year olds in ESH until April 11, 2017,² however, not until the January Board meeting did the mention of confining young adults to restraint desks become public. Conditions in ESH, including restraint desks, are extremely restrictive, harmful, and place dramatic limitations on already limited lockout time. We encourage the Board to require the Department to report actual minimum, median and average number of lockout hours utilized by young adults in ESH Level 1 and the ESH Entry Unit as well as the minimum, median and average number of hours spent in restraint desks daily.

The withdrawal of the variance in January prevented a full public presentation and discussion of the Young Adult Plan's ESH Model, and our questions over the past several months have remained unanswered despite the Department's many requests and reports to the Board. We outline our concerns below and appreciate the Board's consideration of our comments.

¹ Board of Correction City of New York. (2017, January 20). Re: Notice of Violation of Minimum Standards. New York, NY: Author. Retrieved from http://www1.nyc.gov/assets/boc/downloads/pdf/99910-0674_2017-01-20%2010-13-30.pdf.

² Board of Correction City of New York (2016, October 11). Record of Variance Action. New York, NY: Author. Retrieved from <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>.

Placement Criteria, Expansion, and Length of Stay

We have concerns with the current operation of the adult ESH that should not be replicated in the Young Adult Plan's ESH Model, including the range of criteria utilized for placement. The criteria discussed publicly by DOC in October 2016 for ESH was "stabbing, slashing, serious injury to staff, or serious injury to their peers"³ and would "provide DOC with a housing option for 18 year olds who, because of past violence could not be safely housed in Secure or TRU."⁴ However, the February variance request claims, "Young adults who have not engaged in a recent violent incident may be eligible for placement in ESH Level 2 based on the criteria set forth in minimum standards 1-16(b)," which includes many broad pieces such as "been identified as a leader of a gang," "been found in possession of a scalpel," and "repeated acts of arson." We ask the Board to place restrictions on entry to ESH so as to not cast such a broad net. The announced end of punitive segregation for the young adult population must not be accompanied by the expansion of alternative restrictive housing options.

According to the February variance letter, "thirty-six of the forty-two young adults who have been approved by the Chief of the Department for placement have committed a slashing and/or stabbing."⁵ We suggest that the Board seek clarity on:

- The date each incident took place;
- How many of those forty-two entered the Entry Unit;
- How many of those forty-two entered ESH Level 1;
- How many of those forty-two entered ESH Level 2 or other levels;
- The current population of the Entry Unit, Level 1, 2, 3 and 4;
- The length of time young adults can remain in any one level or the whole ESH Model;
- Whether anyone has transitioned out of the model;
- Where young adults are eligible to be housed upon exit;
- The maximum allowable capacity of each ESH level and the whole ESH model; and
- What is expected at the end of the requested six-month variance.

It was emphasized by the DOC in October that the ESH model was for a small population of young adults. As of December 9, the ESH model housed twenty-six 18-21 year olds. As of February 2, the ESH model has housed forty-two 18-21 year olds. We are concerned that ESH is expanding without a cap on population or clarity about its operations. If the Board does choose to vote on this variance we encourage the Board to limit the expansion of the ESH model and require a clear explanation of who can be and who has been housed there, including how they can leave and where they can be moved.

Access to Education and Transition to the Least Restrictive Setting

We are further concerned by the combination of limited mobility with the absence of a clear pathway for transitioning out of ESH. According to the February variance request letter "ESH fulfills an overarching Departmental commitment: a unit where young adults' can safely participate and engage in programming and education and where they can be motivated to engage in prosocial behavior" and "All inmates placed in ESH can advance through each level with consistent productive program participation and good behavior."⁶ However, it was shared in January by a member of the Board that there was a severe shortage of school seats in ESH. Specifically in the circumstance shared, young adults in Level 1 "did not want to" progress to Level 2 because the eight available seats were first offered to those in Level 1,

³ NYC Board of Correction, "2016.10.11 NYC Board of Correction Meeting," Posted [October 13, 2016], YouTube video, See 2:35:08 <https://youtu.be/k0rAO4dQc30?t=9308>.

⁴ New York City Board of Correction. (2016). October 11, 2016 – Public Meeting Minutes. New York, NY: Author. Retrieved from <http://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/October-11-2016/post/FINAL-Board%20of%20Correction%20Minutes%20Oct.%202016%20.pdf>.

⁵ New York City Department of Correction. (2017, February 9). Re: Six (6) Month Limited Variance Renewal Request to BOC Minimum Standards. New York, NY: Author. Retrieved from <http://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2017/Feb-14-2017/NYC%20Department%20of%20Correction%20Variance%20Renewal%20Application%20-%20Use%20of%20ESH%20for%20Young%20Adults%202%209%2017.pdf>.

⁶ IBID

leaving interested young adults in Level 2 without the option to attend school.⁷ We appreciate the Board's attention to educational access and we ask that the DOC be required to demonstrate their efforts to remedy the situation, encourage school participation, and remove barriers or disincentives—including restraint desks—to participation in programming.

If the Board does choose to vote on the six-month request, we ask that the length of the variance be limited to allow for consistent public presentations on the Young Adult Model. We also ask that thorough conditions be added to the variance:

- Restrict the expansion of the unit and place a cap on the population;
- Restrict placement criteria beyond what is set in minimum standards 1-16(b);
- Mandate thorough reporting on the unit's criteria for placement and criteria for release;
- Require reporting of the minimum, maximum, median and average length of stay in the Entry Unit, Level 1, 2, 3 and 4, and complete Young Adult Plan ESH Model;
- Require time restrictions for placement in the Entry Unit, Level 1, and Level 2, and complete Young Adult ESH Model; and
- Provide an additional opportunity for public comment on the Directives for the Entry Unit, and the four levels of YA ESH.

Thank you for your consideration.

Sincerely,

Charlotte Pope
Youth Justice Policy Associate

⁷ NYC Board of Correction, "2017.01.10 NYC BOC Meeting final," Posted [January 12, 2017], YouTube video, See <https://youtu.be/1fDeLzwCeD8?t=6833>.