



NEW YORK CITY DEPARTMENT OF CORRECTION
Cynthia Brann, Commissioner

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

RE: Limited Six (6) Month Variance Renewal Request to BOC Minimum Standards Section 1-16(c)(1)(ii) Regarding the Use of Enhanced Supervision Housing (ESH) for Young Adults (18 to 21 years old)

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 six (6) month limited variance renewal from Board Minimum Standards §1-16(c)(1)(ii), which requires that young adults (ages 18-21) be excluded from placement in Enhanced Supervision Housing ("ESH"). The Department requests this renewal to take effect November 20, 2020, the date upon which the current variance is set to expire.

The Department shares the Board and the Mayor's goals and values in developing a safer and more humane corrections system in New York City and is committed to meaningful collaboration in the pursuit of that goal. The elimination of punitive segregation for young adults and the creation of young adult ESH housing as a behavioral intervention in 2016 were two early innovations undertaken by the Department and the Board that exemplify this commitment. Since June 2020, the Department has engaged in the Mayor and Board's working group to produce recommendations to safely eliminate punitive segregation. Further, the Department recently engaged Board members and Board staff in collaborative discussions regarding proposed young adult ESH level progression criteria intended to underscore the vital importance of programming participation and meaningful engagement in Individualized Support Plans (ISPs), which are tailored to the specific individual needs of each young adult and established in collaboration with each young adult who enters ESH housing.

ESH is an alternative housing option for the few young adults in Department custody who engage in egregious acts of violence or persistent violent behavior that harms staff or other individuals in the Department's care. Presently, ESH is the only housing option available to the Department for a young person whose behavior rises to such a degree that their movement and interaction with others requires close monitoring in a highly structured environment. A critical component of ESH's design is that it allows for a higher-level of security, while also ensuring that young adults are afforded the opportunity to meaningfully engage in evidence-based congregate programming that supports self-development and pro-social behavior by addressing their individual risks and corresponding needs.

ESH is comprised of three distinct levels, with each level providing gradually more privileges. A young adult can only be placed in the most restrictive level, ESH Level 1, if they recently participated in defined severe acts of violence or attempted violence, such as a stabbing or slashing, or an assault that causes serious injury to a staff member or another person in custody. The Chief of the Department personally reviews each request to house a young adult in ESH Level 1, as well as the supporting evidence and documentation, and approves or denies each request in writing in order to ensure that the unit's stringent placement criteria are met and that no suitable less-restrictive housing options exist for the safe and productive management and engagement of the young adult.

Level 1 affords each young adult a minimum of seven (7) hours of daily out-of-cell time and three (3) additional hours if the young adult elects to attend school, during which time a restraint desk is utilized to ensure all participants, educators, program providers, and staff feel safe. The desks ensure that young adults in Level 1 feel secure in their surroundings. This allows young adults to focus on the programming and educational services being afforded, in a setting among peers who have exhibited similar violent behavior, without the associated stress or distraction of concerns for their own safety.

Young adults who engage in persistent violence, but who have not recently engaged in egregiously violent behavior, are not eligible for placement in ESH Level 1. Young adults meeting this criterion may be considered for direct placement into the less restrictive ESH Level 2. The criteria for placement in ESH Level 2 is based on the conditions set forth in the Board's Minimum Standards under 1-16(b) and current variance conditions. ESH Levels 2 and 3 do not utilize restraint desks during lock-out times.

Each young adult's progress through the ESH level system is reviewed by a multidisciplinary review team comprised of social service providers, program staff, uniform facility leadership, and uniform staff who work closely with the young adults. Young adults are engaged directly in meaningful discussions regarding their behavior, including the underlying causes of their behavior, during the review process. Based on the multidisciplinary review team's assessment of the young adult's behavior during the review period, the young adult may be recommended to advance, to regress, or to stay at the current level until the next review. Based on current variance conditions, young adults progress automatically to a less restrictive ESH level or back to general population at each review unless they have engaged in violent, aggressive, or disruptive behavior during the preceding review period or credible intelligence suggests that the young adult would engage in such behavior in a less restrictive level. Reviews in Level 1 are conducted every seven (7) days, while reviews for individuals in Levels 2 and 3 are conducted every twenty-one (21) days. Each review determination is shared with the individual in custody and includes justification for advancement, regression, or no movement.

The Department has worked in collaboration with Board members and Board Staff over the past several months to develop new criteria for movement through ESH, which include consideration of the critical importance of program participation. In accordance with the current requirements for progression, which only consider non-violent behavior and compliance with rules, many young adults do not participate in programming while in ESH. This significantly diminishes the effectiveness and purpose of the unit, which aims to utilize comprehensive ISPs and counseling to address the root problematic behaviors and the causes of such behaviors that led to each young adult's placement in the unit. Without properly incentivizing program participation by establishing it as an imperative component of the unit, programming will continue to be underutilized and the opportunity the unit presents for interrupting violent and harmful behavior patterns will be lost on many of the young adults who pass through the unit.

The proposed additional criteria would allow the multidisciplinary support team to consider program participation when determining advancement to a less restrictive level. In order to make this consideration as objective and transparent as possible, the Department will continue to work with each young adult upon placement in the unit in order to identify their various risks and needs and to develop Individualized Support Plans that support each individual young adult in their behavioral, social, and educational development. Each ISP will include clearly outlined requirements and objectives that will be determined by the Support Team.

If the Support Team determines that the young adult has willfully chosen not to participate in the programming outlined in their ISP, they may choose to recommend continued placement in the young adult's current level.¹ Conversely, if the young adult has committed a violent act, or willfully disregarded rules and regulations in a manner or with persistence that threatens safety and security, such that they might be otherwise recommended to remain in their current level, the Support Team can additionally take into consideration the young adult's program participation and instead recommend advancement.

Developing safe and supportive housing for young adults who engage in the most egregious and persistent violence while in Department custody remains a challenge. Finding a balance between security concerns, the need to respond swiftly and appropriately to egregious acts of violence, and the need to afford effective and consistent programming has proven exceedingly difficult and we appreciate the Board's collaboration in the continued development of ESH while we await the implementation of restrictive housing rulemaking. The Department understands that isolation and containment is not an effective form of violence prevention, and that meaningful participation in individually tailored programming that addresses root causes of violence is the process by which behavioral change takes hold. The Department is seeking this variance amendment in order to align the ESH structure with best practices regarding meaningful behavioral change and supportive housing for a challenging young adult population.

As stated above, the Department takes great care in determining whether ESH is an appropriate placement for each young adult and utilizes safe alternative housing whenever possible. The average daily population in ESH has steadily declined during the Department's operation of the unit.² Since the start of the current variance period, there has been an average of only seven (7) young adults housed in ESH on any given day, with only one (1) young adult in ESH Level 1.³ As of October 15th, 2020, there were three (3) young adults housed in ESH – one (1) in Level 2, and two (2) in Level 3. No young adults were in ESH Level 1. Since January 1, 2020, there have been thirty-four (34) new young adult placements in ESH.⁴ Of those thirty-four (34) young adults, twenty-four (24) were initially placed in Level 1 following a recent qualifying event: twelve (12) based primarily on a slashing or stabbing, nine (9) based primarily on an assault on staff or person in DOC custody, and three (3) based primarily on both a slashing or stabbing and an assault on staff or person in DOC custody. Ten (10) young adults were initially placed in ESH Level 2, based on a qualifying event that occurred while in custody within the last year, such as a slashing or stabbing, possession of a dangerous article, or an assault on a staff member or another person in DOC custody. The Department's declining young adult ESH population demonstrates our commitment to utilizing the housing option as a last resort, only when necessary, and only when precipitated by egregiously violent or persistently violent qualifying acts.

Since May 2019, the Department has partnered with community-based service providers such as Elite Learners, The Foundation for the Advancement and Rehabilitation of the Marginalized (FARM), and Society of Illustrators to further bolster the critical programming provided to young people in ESH. Through these important partnerships, young adults receive additional targeted programming that ranges from mentorship focused on anger management, conflict resolution, and peer mediation, to programs on art history and the development of young adults' personal history through illustrations.

In response to the COVID-19 pandemic, a continued effort has been made to maintain meaningful programming and educational services within ESH units. In early March of this year, in-person programming was suspended across all Department facilities as a critical measure for the safety of all those who live and work in Department facilities. As a temporary measure to supplement this change, self-guided programming packets with workbooks and evidence-based worksheets are distributed regularly to all those in ESH. Worksheet topics include Youth Communication, which is a series of true stories written by young adults

¹ The Department proposes the consideration of a young adult's ISP in review determinations for advancement to Level 3 and general population housing only. Per discussion with the Board, the Department will not consider ISP participation during reviews for young adults currently in Level 1.

² In 2017 the ADP for young adults in ESH was 33 with 11 young adults in Level 1 on any given day. In 2018, the numbers reduced to 24 and 7, respectively. In 2019, there were approximately nineteen (19) young adults in ESH on any given day, with three (3) young adults in ESH Level 1.

³ Data accurate through October 15, 2020.

⁴ Ibid.

that cover a myriad of topics including the positive impact young adults can have in their community, overcoming challenges and setting goals, and dealing with negative stereotypes. In-person programming services such as individualized counseling and social services are additionally available to young adults in ESH by request through a service request slip system and can also be requested when program counselors are in the units.

Throughout the development of young adult ESH, the provision of targeted programming has remained a priority. While in ESH, young adults may participate in programming designed to increase pro-social behavior by fostering rehabilitation, addressing the core causes of violence, and minimizing idleness. Programming in ESH includes result-driven best practices and evidence-based behavioral interventions such as dialectical behavioral therapy, leadership development, and interpersonal skill development. With the new proposed variance conditions that incorporate programming participation into progression criteria, we expect to see elevated engagement rates in the coming months after implementation. The Department will continue to innovate and provide those in our care and custody with the critical services and support they need during these unprecedented times.

In addition to Department programming, the Department continues to partner with the Department of Education (“DOE”) to deliver educational services to young adults no matter where they are housed within DOC facilities. On March 13, 2020 the DOE suspended in-person education as a result of the COVID-19 pandemic. In anticipation of the new school year DOC Educational Services Unit conducted outreach and recruitment efforts to encourage young adults to enroll in DOE educational services. Additionally, the Department distributed informational flyers that have reminders on how to utilize DOE’s support hotline. Students enrolled in ESH commenced the school year with remote learning through educational packets prepared by the DOE on September 21, 2020.

The Department appreciates the Board’s ongoing partnership in the development and reform of ESH. In submitting this letter, we ask for the Board’s consideration of this six (6) month limited variance renewal request to permit the continued use of ESH for young adults, along with the additional advancement criteria, which prioritizes program participation within the unit and aligns the model with the Department’s vision for rehabilitative and supportive housing in a safe environment. The requested variance duration will allow us to meaningfully evaluate the impact of new progression criteria. We look forward to continuing to work with the Board in order to ensure safe and appropriate housing for everyone in the Department’s care.

Sincerely,



Cynthia Brann

cc: Margaret Egan, Executive Director