



NEW YORK CITY DEPARTMENT OF CORRECTION
Cynthia Brann, Commissioner

Office of the Commissioner
75-20 Astoria Blvd., Suite 305
East Elmhurst, NY 11370

718 o 546 o 0708
Fax 718 o 278 o 6022

July 7, 2020

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 August 19, 2020, the date upon which the current variance is set to expire.

The Department and Board have had a long and successful partnership in our shared goal to reduce negative impacts of incarceration and support positive outcomes for those in Department custody. The working group that was recently announced by the Mayor and Board, which will make recommendations on how we can develop safe alternatives to the use of punitive segregation in the New York City jail system, is an important next step in our commitment to develop a safer and more humane correctional system in New York City. The elimination of punitive segregation for young adults and the creation of young adult ESH housing as a behavioral intervention in 2016 are two early innovations undertaken by the Department and the Board that exemplify this commitment. Beginning on June 29, 2020, the Department is now excluding individuals with several key medical conditions from being placed into any form of restrictive housing, including ESH.

Prior to these innovative reforms, between 2012 and 2014, there were approximately 200 young adults (15% of the young adult population) in punitive segregation on any given day. Initial reforms reduced the use of punitive segregation for young adults by more than half, with approximately 80 young adults (7% of the young adult population) in punitive segregation on any given day in 2015. In 2016, punitive segregation was eliminated for all young adults in Department custody. ESH was designed to be an alternative housing option for the few young adults in Department custody who engage in egregiously violent or persistently violent

behavior that harms staff or other individuals in the Department's care. When a young person's behavior rises to such a degree, their movement and interaction with others requires close monitoring in a highly structured environment in order to ensure everyone's safety and wellbeing. They also require comprehensive support services. The design of ESH allows for a higher level of security, while most crucially ensuring that young adults are afforded the opportunity to engage in programming that supports the self-development and pro-social behavior that is so critical to their rehabilitation and eventual return to general population housing.

ESH is comprised of three distinct levels, with gradually fewer restrictions and a clearly defined pathway for movement through the levels and back to general population housing. The different levels within the unit incentivize program participation and non-violent, pro-social behavior. The level system additionally provides for a smoother transition back into general population. A young adult can only be placed in the most restrictive level, ESH Level 1, if they have recently participated in the most 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 placement of a young adult in ESH Level 1 is a serious matter subject to serious consideration and care. 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 such requests in writing in order to ensure that the unit's stringent placement criteria are met and that no other suitable less-restrictive housing exists for the young adult.

Service provisions, program offerings, incentives, and security measures within the ESH level structure are intentionally tailored to support the most imperative needs of the young people in each level, while ensuring incentives exist to encourage programming engagement and progression through ESH levels back to general population. 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, allowing them to focus on the activities at hand and gain imperative social skills in a setting among peers who have similar challenges without the associated stress or distraction of concerns for their own safety.

Young adults who have engaged in persistent violence, but who have not recently engaged in egregiously violent behavior, are not eligible for placement in ESH Level 1. Such young adults, however, may be considered for direct placement into the less-restrictive ESH Level 2. 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 uniformed staff, social service providers, and program staff. The young adult himself is also engaged in meaningful discussion regarding his behavior, and the underlying causes of his behavior, as well as his progress as it relates to his individualized support plan during the review process. Based on the team's assessment of the young adult's behavior during the review period and engagement during the review process, 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 currently 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 fifteen (15) days, while reviews for individuals in Levels 2 and 3 are conducted every twenty-one (21) days.

The review determination periods are in compliance with the Board's related variance conditions. Each review determination by the multidisciplinary review team is shared with the individual in custody and includes justification for advancement, regression, or no movement.

The average daily population in ESH has steadily declined during the Department's operation of the unit.¹ So far this calendar year, there has been an average of approximately fourteen (14) young adults housed in ESH on any given day, with five (5) young adults in ESH Level 1. As of June 19, 2020, there were fourteen (14) young adults housed in ESH – three (3) in Level 1, nine (9) in Level 2, and two (2) in Level 3. Since January 1, 2020 there have been twenty-seven (27) new young adult placements in ESH.² Of those twenty-seven (27) young adults, twenty-two (22) were initially placed in Level 1, following a recent qualifying event: fourteen (14) based primarily on a slashing or stabbing, and eight (8) based primarily on an assault on staff or person in DOC custody. Five (5) young adults were initially placed in ESH Level 2, based on a qualifying event which occurred 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.² The Department's declining young adult ESH population demonstrates the Department's commitment to utilizing the housing intervention only when necessary and only when precipitated by egregiously violent or persistently violent qualifying acts.

The Department's use of ESH allows for the targeted provision of programming and educational services to young adults in Department custody with the highest propensity for violence. 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 provision in ESH is tailored to the needs of each young person and includes promising practices and evidence-based behavioral interventions such as, but not limited to, dialectical behavioral therapy, leadership development, and interpersonal skill development.

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 provide critical programming to young people in ESH. Through these important partnerships, young adults in ESH receive targeted programming that ranges from mentorship focused on anger management, conflict resolution, and peer mediation, to art programs on art history and the creation of young adults' personal stories through illustrations.

In response to the COVID-19 pandemic, all efforts have been made to maintain intensive programming and educational services within ESH units. In early March, as discussed with the Board, 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 loss, self-guided programming packets with workbooks and worksheets are distributed regularly to all those in ESH. Individualized counseling and social services are additionally available to young adults in ESH by request through a service slip system. 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.

¹ 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.

² Data accurate as of June 8, 2020.

Ensuring all young adults in Department custody have an opportunity to advance their education is a priority for the Department in our partnership with the East River Academy (“ERA”) and the Department of Education (“DOE”). The Department is unwavering in this commitment no matter where the young adult is housed. Since September 2010, the ERA has served as the primary provider of educational services for those in Department custody. To date, ten (10) young adults have received their high school diploma while in ESH. As a result of the COVID-19 pandemic, on March 13, 2020, East River Academy suspended in-person education within the unit. At the time that services were suspended, eight (8) young adults were enrolled in school in ESH. Since the suspension, personalized educational packets have been delivered to enrolled students on a weekly basis since March 21st.

Since the inception of ESH, both the Department and the Board have made important contributions to the operations and programmatic structure of the unit. Significant changes have included narrowed placement criteria, more frequent reviews in an interactive review format, and additional efforts to incentivize participation in recreation. These changes foster a culture of fairness and transparency and have ensured that ESH housing areas are only used when necessary. The Department appreciates the Board’s ongoing partnership in the evolution of this program and its consideration of this six (6) month limited variance renewal request to permit the continued use of ESH for young adults in Department custody. We look forward to continuing to work with the Board in order to ensure safe housing alternatives to punitive segregation are incorporated into the Board’s proposed restrictive housing rulemaking and to ensure safe and appropriate housing for everyone in the Department’s care.

Sincerely,

A handwritten signature in blue ink that reads "Cynthia Brann". The signature is fluid and cursive, with the first name "Cynthia" being larger and more prominent than the last name "Brann".

Cynthia Brann

cc: Margaret Egan, Executive Director