



PROTECTING KIDS. PROVIDING HOPE.

February 9, 2021

Jennifer Jones Austin, Chair
Margaret Egan, Executive Director
New York City Board of Correction
One Centre Street
New York, NY 10007

Re: Renewal of Limited Six (6) Month Variance Requests from Minimum Standard § 1-16(c)(1)(ii) Regarding the Use of Enhanced Supervision Housing (ESH) for Young Adults (18 to 21 years old and Minimum Standards §1-05(b) “Lock-in” and §1-08(f) “Access to Courts and Legal Services”

Dear Chair Jones Austin, Board Members, and Ms. Egan:

Since 1995, Children’s Rights has been a national advocate for youth in state systems. We are also a member of the New York City Jails Action Coalition. Our experience with adolescents and young adults in foster care and juvenile justice systems often brings us into contact with young adult and youth corrections policy, as our clients are disproportionately represented in young adult and juvenile correction facilities. We are concerned about the welfare of young adults and youth at Rikers.

Once again, we call on the Board to deny these variance requests.

ENHANCED SUPERVISION HOUSING VARIANCE REQUEST

Enhanced Supervision Housing, ESH, was introduced by the Department in response to the phasing out of punitive segregation, but as we have repeatedly testified, placement in ESH is equally harmful and inappropriate for young adults. The social science and neurological research that guides best practices for working with older youth shows that young people under age 25 need both developmentally appropriate services and connections with community.¹ They should not be locked in their cells for more than 10 hours at a time or shackled to a desk with so-called workbooks in place of instruction and programming.

The December 2020 ESH audit report, the most recent, shows the majority of lock-out times to be seven hours or less, and that lock-out times could not be determined for some audit dates because they were not recorded or the log book was missing; there are a few notations that out-of-cell time was reduced due to the young adult’s

¹ See Dec. 19, 2014 Public Comment submitted by Children’s Rights —*Older Youth Development: Insights from Child Welfare and Implications for New York City Department of Correction Policy and Practice*.

choice.² But no one incarcerated in New York City's jails should have less than 14 hours of out-of-cell time per day.³ As we have testified over many years, excessive isolation is especially incompatible with current research and policy for older youth.

In addition, on many of the audit days, law library kiosks and typewriters were either inoperable or not available.

The Board should deny this variance request. We urge the Board to require the Department to discontinue the use of ESH and restraint desks for young adults at Rikers.

SECURE UNIT VARIANCE REQUESTS from Minimum Standards §1-05(b) and §1-08(f)

Children's Rights has similar issues with Secure Unit as with ESH. First, the Department seeks to incentivize progression from one level to the next in Secure Unit in part by limiting the amount of time young adults are allowed out of cell. Second, the Department reports that young adults spent an average of 65 total days in Secure Unit in 2020; this is just punitive segregation by another name.⁴

It would be both more humane and effective for the Department to focus staff energy, programming, and resources to "advance [young adults'] behavioral goals and personal growth,"⁵ before they get to Secure Unit in the first place.

CONCLUSION

We respectfully request that the Board deny the Department's variance requests. The proposed variances rely on euphemistically named housing placements that are, in fact, punitive segregation.

Children's Rights is concerned that after more than a year since the first draft rule was released for public comment, restrictive housing rulemaking abolishing solitary confinement is yet again not on the Board's meeting agenda. Nor has the rule been published, and advocates have not seen the current version. When the Board does consider restrictive housing rulemaking, we call on you to abolish separation status housing, ESH, and Secure Unit. Once again, we also urge you to require the Department to develop the truly meaningful programming that all young people on Rikers so desperately need and deserve.

Sincerely,



Daniele Gerard
Senior Staff Attorney



Tobin Kassa
Paralegal

² <https://www1.nyc.gov/assets/boc/downloads/pdf/doc-audit-report-ya-esh-202012.pdf>

³ See Dec. 16, 2019 Public Comment submitted by Children's Rights.

⁴ See Feb. 4, 2021 Limited Six (6) Month Variance Renewal Request to Board of Correction Minimum Standards §1-05(b) and §1-08(f) regarding the use of Secure Unit.

⁵ *Id.*