



NEW YORK CITY DEPARTMENT OF CORRECTION
Cynthia Brann, Commissioner

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

718 • 546 • 0890
Fax 718 • 278 • 6022

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Derrick D. Cephas, Chair
NYC Board of Correction
1 Centre Street, Room 2213
New York, NY 10007

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

Dear Chair Cephas:

Pursuant to §1-15(f) of the New York City Board of Correction's ("Board") Minimum Standards, the Department requests a six (6) month renewal to the limited variance from BOC Minimum Standards §1-16(c)(1)(ii) which requires that "as of January 1, 2016, inmates ages 18 through 21, provided that sufficient resources are made available to the Department for necessary staffing and implementation of necessary alternative programming" be excluded from placement in Enhanced Supervision Housing (ESH). The Department seeks this variance renewal to be effective on February 17, 2019, the date upon which the current variance is set to expire.

The Department's recent history is reflective of progressive reforms and fundamental changes to correctional management practice. The Department and the Board share the same overall objectives, to operate a system that is safe, humane and produces positive outcomes. Our goal is continual improvement on these objectives, which means our work may never, and likely should never, be finished. The evolution of the elimination of punitive segregation and inclusion of ESH housing for young adults is an illustration of our effort at continual progress.

During 2012-2014, prior to the determination to eliminate punitive segregation for young adults, there were approximately 200 young adults (15% of the young adult population) in punitive segregation on any given day. In 2015, we fundamentally transformed the structure of punitive segregation with the creation of a specific, tiered, and proportional sentencing grid. Prior to 2015, punitive segregation had been the only response to all infractions, with sentences of 90 days administered for relatively minor infractions such as tobacco possession. Following the reforms, punitive segregation focuses specifically on violent Grade I infractions and sentence durations are directly proportional to the specific act committed. Further, there is a maximum punitive segregation sentence of 60 days for serious assaults on staff and a maximum of 30 days for other serious, violent offenses. Individuals are released from punitive segregation for at least seven days before returning to punitive segregation and cannot serve more than 60 days in a six month period, unless the individual commits an egregious infraction that warrants an override during his time out. Such overrides are considered by the Chief of the Department and only approved when the alternative would place inmates and staff in direct danger. As a result of these reforms, the use of punitive segregation for young adults during 2015 was reduced by half, with only approximately 80 young adults (7% of the young

adult population) in punitive segregation on any given day. In 2016, segregation was eliminated for all inmates ages 21 and under.

At the same time that punitive segregation was eliminated for young adults, ESH was identified as a necessary housing option in order to safely house a limited number of violent young adults in both a structured and secure setting that managed their contact with other inmates and staff, but also provided for the delivery of enhanced programming. The type of programming offered focuses on facilitating rehabilitation, addressing the core causes of violence, and minimizing idleness. Within ESH, there are three levels with each one having a more tailored environment for the young adults to facilitate the easing of their return to general population. A young adult can only be placed in Level 1, the most restrictive level, if they have recently participated in an actual or attempted stabbing or slashing, or engaged in activity that caused serious injury to an officer, another person in custody, or any other person. Level 1 affords seven hours of lock-out time (three additional hours if they elect to attend school), during which time a restraint desk is utilized that enables the provision of school, programming and socialization with peers while also ensuring safety. Young adults who have not recently engaged in violent activities are not eligible for ESH Level 1 and therefore, may be considered for direct placement into ESH Level 2 based on the criteria set forth in the Minimum Standards under 1-16(b). Levels 2 and 3 do not utilize the restraint desk during lock-out time. Further, in January 2019, the Department began providing a separate school session for young adults in Levels 2 and 3, that does not include young adults in Level 1, which means there is no longer a need to restrain young adults in Levels 2 and 3 in the desks during school.

In 2017, there were approximately 32 young adults (3% of the young adult population) in ESH on any given day, with approximately 11 (1% of the young adult population) in the Level 1, the most restrictive. The numbers reduced in 2018, to 22 and 10, respectively, but because of the reduction in the number of young adults in custody, they continued to represent the same percentages of the young adult population. Since November 17, 2018, when the most recent variance renewal took effect, twenty-nine (29)¹ young adults were initially placed in ESH. Of those young adults, eight (8) were initially placed in Level 1 based on a recent qualifying event: five (5) based on a slashing or stabbing and three (3) for engaging in an activity that caused serious injury to staff or an inmate. Twenty-one (21) young adults were initially placed in ESH Level 2, nineteen (19) based on an activity that caused serious injury to staff or an inmate and two (2) based on slashing and stabbing within the preceding year. This tiered housing configuration in ESH ensures safety, security and separation without the use of punitive segregation.

A discussion about ESH as a tool for managing the most violent young adults cannot be complete without including a review of educational services. The East River Academy continues to provide educational services to the young adults housed in ESH. As more thoroughly outlined in the Department's October 2018 and February 2019 Young Adult Plan Updates, the Department remains resolute in our commitment to engaging with young adults during their time in our custody in promotion of the importance of education and the opportunities available to them. In 2018, there were seventy-two (72) young adults housed in ESH. Of those 72, 36 were enrolled in at East River Academy while housed in ESH during the 2018/2019 academic year. Of those thirty-six (36) young adults, five (5) were enrolled in school before, during, and after being housed in ESH. In addition, nine (9) young adults continued with their education classes following transfer out of the ESH program. Fourteen (14) individuals were enrolled solely while in ESH and eight (8) individuals were enrolled prior to and during their placement in the ESH program.² In order to enhance the facilitation of educational courses for all young adults in ESH, the Department opened a second YA ESH school at the beginning of 2019.

The participation and buy-in of staff is critical to the successful implementation of any initiative in our system. Eliminating the use of punitive segregation for young adults was a dramatic change in policy for our staff and did not happen overnight. It has taken a lot of training and readjusting for staff to reach a

¹ These numbers are current as of January 31, 2019.

² Educational service data was provided to the Department by DOE and is current as of January 10, 2019.

level of confidence and comfort that this new way of operating the system can work. Officers who work in our jails need and deserve to have confidence that this administration can keep them safe. Right now, that means continuing to include ESH, including the use of desks in Level 1, for managing the most violent young adults in our custody. While refinement has been made to the placement criteria for the levels of ESH and to the length and dynamic of periodic reviews, in the current moment ESH – including the use of restraint desks in Level 1 – is the tool we have that allows us to afford the greatest measure of safety when managing and engaging with our most violent young adults. We remain open to considering other models and welcome suggestions, but at this time we have not identified an alternative that will be as effective at maintaining everyone’s safety.

We have appreciated the Board’s support during this period of significant, ground-breaking reform, including the urging of important changes to the operation of ESH such as narrowed placement criteria, more frequent reviews and the presence and participation of the young adult in their periodic review. The review is an integral part of ESH as it gauges the young adult’s long-term rehabilitation, program engagement, and adherence to the housing unit rules. The shortened review periods have enhanced the overall process, allowing for more frequent and meaningful engagement between staff and the young adults in which young adults receive valuable feedback and positive recognition for milestones reached. The increased frequency of the reviews also facilitates the opportunity for young adult’s to advance more expeditiously through the ESH Levels. These changes support a culture of fairness and transparency and ensure that these restrictive housing units are only used when and with whom they are truly necessary.

The Department has made a good faith effort to fully comply with the applicable provisions of the Minimum Standards. However, we are unable to do so at this juncture. The Department maintains the position that the Board consider the inclusion of ESH as a housing option for young adults in the advancement of restrictive housing rulemaking. Ensuring the availability of ESH as an alternative housing option for the management of the most violent young adults in the Department’s custody ensures the safety of their peers and facility staff.

The Department appreciates the Board’s consideration of this six (6) month limited variance renewal to permit the continued use of ESH for young adults (18 to 21 years old). We look forward to further collaboration with the Board towards the advancement of related restrictive housing rulemaking.

Sincerely,



Cynthia Brann

cc: Martha King, Executive Director