



NEW YORK CITY DEPARTMENT OF CORRECTION
Cynthia Brann, Commissioner

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March 16, 2021

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 March 17, 2021, the date upon which the Board is set to next convene.

Per recent discussion with the Board, the Department is requesting this variance to afford the continued operation of young adult ESH pursuant to the November 10, 2020 Record of Variance Action permitting the operation of young adult ESH Levels 1, 2 and 3 until April 15, 2021, at which time the Department will eliminate the operation of young adult ESH Level 1 with the use of restraint desks and continue operations of young adult ESH Levels 2 and 3 only.

The Department appreciates the Board's continued partnership in the development of a safer and more humane correctional system that seeks to enhance and support positive outcomes for all those in the Department's care. Following the elimination of punitive segregation for young adults, the Department worked closely with the Board to develop and refine alternative housing options for young adults in custody who perpetrate violent and dangerous behavior, including young adult ESH. Per recent thoughtful discussions with the Board, the Department has expressed how it is prepared to build upon its history of restrictive housing reforms in order to eliminate the need for ESH Level 1, including the non-individualized use of restraint desks for young adults, by April 15, 2021. The elimination of ESH Level 1 for young adults will be possible because the Chief of Department has developed and refined a thoughtful and deliberate system of conducting an individual assessment of each young adult who engages in serious violence while in custody in order to determine the most appropriate, least restrictive, housing option.¹ The Chief of the Department will continue to consider the involved young adult's individual circumstances, including such

¹ The Department's use of young adult ESH Level 1 is limited as an immediate response for young adults who engage in serious acts of violence, including slashings/stabbings, and serious assaults on other individuals in custody or staff resulting in injury. As of the date of this letter, only six (6) young adults (or approximately 1% of young adults in custody) are housed in ESH Level 1 based on a qualifying incident.

factors as age, custody status, potential SRG status, past violent acts, any separation orders that might be in effect, and their health or mental health needs. Further, the Chief will consider the unique circumstances surrounding the precipitating incident and assess factors that motivated the violence, including the way the act was carried out, and the safety of the young adult in a prospective new setting. Finally, any housing assignment will also be informed by the Chief's assessment of current Departmental circumstances, including available housing, staffing levels, and the current placement of other persistently violent or gang affiliated individuals.

Above all, the Chief's assessment will consider the safety of the young adult and those around him, including other young adults and individuals in custody and members of staff. With consideration for the many factors described above, the Chief will determine an appropriate housing setting from an array of general population existing special housing types, including but not limited to the Secure Unit, ESH Level 2 in compliance with current ESH variance conditions, alternative young adult only general population housing, and commingled housing at the Robert N. Davoren Center ("RNDC") in compliance with the Department's current commingling variance. Any determination to commingle a young adult will additionally be made by the Department's Senior Deputy Commissioner, and in full compliance with the Department's current commingling variance which notably involves the creation of an individual programming plan. Any young adult placed in general population housing at the North Infirmary Command ("NIC") based on their involvement in incidents pursuant to the existing young adult ESH criteria for placement in ESH Level 1 will be housed in young adult only housing with a minimum of fourteen (14) hours daily lockout, be provided an Individual Support Plan (ISP), and receive twenty-one (21) day periodic reviews for placement into alternative housing.

In order to properly support this landmark elimination of ESH Level 1 for young adults, the Department must have in place sufficient suitable available housing that maintains appropriate physical separation for young adults from each other and staff, as necessary, immediately following their involvement in serious violence. The housing options must also support housing young adults with their peers in young adult only settings whenever possible. The Department had been working, in alignment with the Board's November 2020 young adult ESH variance conditions, to identify and dedicate sufficient additional young adult housing unit options by April 15, 2021, in order to support the elimination of ESH Level 1 and the use of restraint desks for young adults by that date. The Department is on track to implement the elimination of ESH Level 1 no later than that date. Until that date, however, the Department is seeking the continuation of the terms of the young adult ESH variance, including ESH Level 1 which uses restraint desks, in order to ensure the safety of staff and young adults in custody.

As always, the Department is committed to continuing the programmatic engagement of all young adults in the Department's custody, whether they are housed in ESH or another housing type. All young adults in ESH, including young adults housed in ESH Level 1 prior to April 15, 2021, will continue to be engaged in the process of completing their Individual Support Plans (ISPs) in order to guide their progress through ESH and back to general population housing and to reinforce the benefits of targeted programming. In-person services such as individualized counseling and social services will additionally continue to be available to young adults in all levels of ESH by request through a service request slip system and can also be requested when program counselors are in the units to provide in-person engagement.

The Department continues to partner with the Department of Education ("DOE") to deliver educational services to young adults regardless of where they are housed within Department facilities. On March 13, 2020 the DOE suspended in-person education as a result of the COVID-19 pandemic. Prior to the start of the current school year, the Department's 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 current school year on September 21, 2020 with remote learning through educational packets prepared by the DOE.

The Department appreciates the Board's partnership in the ongoing development 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 Level 1 until April 15, 2021 and the continued use of only ESH Levels 2 and 3 for young adults while the Department awaits the final approval and implementation of the Board's restrictive housing rulemaking. 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,

A handwritten signature in blue ink that reads "Cynthia Brann". The signature is written in a cursive, flowing style.

Cynthia Brann

cc: Margaret Egan, Executive Director