



NEW YORK CITY DEPARTMENT OF CORRECTION
Cynthia Brann, Commissioner

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November 5, 2018

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 Mr. 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 November 17, 2018, 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. This period of development resulted in the implementation of specialized housing that accounted for the need for distinct approaches to housing, programming and care for adolescents, young adults, and the mentally ill in our custody. This management philosophy extended to the supervision of persistently violent individuals, which led to the establishment of ESH. ESH was designed to limit and closely manage violent individuals' contact with others within a secure, structured setting, with enhanced programming geared towards rehabilitation, addressing the root causes of violence, and minimizing idleness. It is predicated on a model and commitment to maximizing continuous engagement in an attempt to change behavior. During this transformative period, the Department also reevaluated its use of punitive segregation, which prior to 2014, was the primary custody management tool for individuals who engaged in violent behavior. ESH was an essential component of punitive segregation reform in ensuring that those individuals with the highest propensity for violence could be safely managed in a constructive way. ESH served to address the housing gap for inmates released from punitive segregation who were not appropriate or ready for general population. ESH was also instrumental in the elimination of punitive segregation for the young adult population, as it has served as an integral housing option for a small subset of the young adults who engage in persistent violent behavior that threatens the safety of their peers and overall facility security. Approximately four percent (4%) of the total young adult population are housed in ESH at any given time¹.

¹ On November 1, 2018, thirty-one (31) young adults were housed in either the young adult exclusive or blended units co-mingled with adults (22 years old or older).

The reforms of the past few years continue with the understanding that progress is ever evolving, and that we are continually learning and improving operations, and refining our methodology in the management of the diverse populations in our custody. ESH stands as an example of these principles. During 2018, the Department effectuated a number of key operational changes inclusive of the establishment of a Multi-Disciplinary Review Team, shortened review periods, and expansion of ESH young adult exclusive units with the opening of an ESH Level 2 unit moving towards a more comprehensive system for young adults within ESH. ESH-eligible young adults are considered for placement in ESH Level 1 or Level 2, depending on the severity and immediacy or pattern of behavior. Young adults (18 to 21 years old) who have recently committed and/or participated in an actual or attempted slashing or stabbing or engagement in activity that caused serious injury to an officer, another inmate, or any other individual may be considered for placement in ESH Level 1. Young adults who have not engaged in a recent violent incident and are not eligible for Level 1 may be considered for direct placement in ESH Level 2 based on the criteria set forth in the Minimum Standards under 1-16(b).² In those circumstances, the placement is based on the young adult's actions or activities occurring within the preceding year. It is important to note that young adults considered for placement in Level 2 would not be placed based solely on gang related criteria. Young adults (19 to 21 years old) are considered for placement in either a young adult exclusive unit or in a blended unit comingled with adults (22 years old and older) dependent on the young adult's needs. This balanced custody management approach is founded upon the understanding that, while there are overarching needs related to all young adults, individualized needs must be considered when determining the most appropriated housing options, not solely based on age. While the ESH level system is geared to facilitate positive behavioral changes and progression to less restrictive units, it was acknowledged that criteria be established for regression for those who continue to engage in violent or aggressive behavior while in a less restrictive unit. For example, if a young adult commits a slashing while in Level 2, he could be placed in the more restrictive ESH Level 1 unit in response. During the time since the last variance renewal took effect³, fifty-four (54) young adults were initially placed in ESH⁴. Of those young adults, eleven (11) were initially placed in Level 1 based on a recent qualifying event: five (5) based on a slashing or stabbing and six (6) for engaging in activity that caused serious injury to staff or an inmate. Forty-three (43) young adults were initially placed in ESH Level 2 based on their actions and activities within the preceding year. In comparison to the prior variance period, while overall initial placements in ESH has increased, initial placement in Level 1 has declined⁵. We remain committed to housing young adults in the least restrictive housing possible while maintaining facility safety and encouraging rehabilitation.

Following the adjudication process and placement within ESH Level 1 or Level 2, dependent on the individual's level at entry, the reviews serve an important role in evaluating an individual's behavior, progress and areas where further improvement is needed. Currently, all individuals in ESH receive 30-day reviews, with the exception of young adults in Level 1 who receive 15-day reviews. From May to August 30, 2018, fifty-seven

² Minimum Standards 1-16(b) sets forth the criteria for placement in ESH:

(b) Policy. An inmate may be confined in ESH if the inmate presents a significant threat to the safety and security of the facility if housed elsewhere. Such a determination shall only be supported by a finding that one of the following has occurred: (1) the inmate has been identified as a leader of a gang and has demonstrated active involvement in the organization or perpetration of violent or dangerous gang-related activity; (2) the inmate has demonstrated active involvement as an organizer or perpetrator of a gang-related assault; (3) the inmate has committed a slashing or stabbing, has committed repeated assaults, has seriously injured another inmate, visitor, or employee, or has rioted or actively participated in inmate disturbances while in Department custody or otherwise incarcerated; (4) the inmate has been found in possession of a scalpel or a weapon that poses a level of danger similar to or greater than that of a scalpel while in Department custody or otherwise incarcerated; (5) the inmate has engaged in serious or persistent violence; or (6) the inmate, while in Department custody or otherwise incarcerated, has engaged in repeated activity or behavior of a gravity and degree of danger similar to the acts described in paragraphs (1) through (5) of this subdivision, and such activity or behavior has a direct, identifiable and adverse impact on the safety and security of the facility, such as repeated acts of arson. Provided, however, that, where the Department is permitted to consider an inmate's activity occurring or actions committed at a time when the inmate was incarcerated, such activity or actions must have occurred within the preceding five (5) years. Where the Department is permitted to consider an inmate's activity occurring or actions committed at a time when the inmate was not incarcerated, such activity or actions must have occurred within the preceding two (2) years.

³ The data reflects the period of May 17, 2018 to October 31, 2018.

⁴ Young adults are initially placed in ESH based on the approval of the Chief of the Department or designee. All initial placement's are subject to an adjudication hearing.

⁵ As stated in the Department's April 13th variance renewal request letter, "Since November 2017, the month in which the most recent variance renewal took effect, thirty-four (34) young adults were initially placed in ESH. Of those young adults, twenty-four (24) were initially placed in Level 1 based on a recent qualifying event: sixteen (16) based on a slashing or stabbing and eight (8) for engaging in activity that caused serious injury to staff or an inmate. Ten (10) young adults were initially placed in ESH Level 2, based on their actions and activities within the preceding year."

(57) reviews were conducted for young adults housed in ESH. The reviews are conducted in a setting that fosters engagement and open discussion between the young adult and the review team, which is comprised of support staff inclusive of social services, program staff, and other observers along with uniform staff (e.g. Assistant Bureau Chief, Deputy Warden of ESH, Captains, and Correction Officers). This review structure is maintained for all young adults whether they are housed in a young adult exclusive or blended unit co-mingled with adults (22 years old and older) ESH unit. The shortened review periods has enhanced the overall process, allowing for more frequent meaningful engagement between staff and the young adults in which young adults receive valuable feedback and recognition for milestones reached. The increased frequency of the reviews also facilitates the opportunity for young adult's to advance more expeditiously through the levels.

Enhancements in communication has been extended beyond the review structure to overall staff communication. Since June 2018, a new weekly multi-division meeting was established in which daily operational matters and issues requiring discussion and alignment are addressed serving to improve overall information sharing and unit decision-making. Staff training has also been a key factor of effective communication strategies. The Department is exploring targeted training for staff working with the young adult population that would encompass widely accepted evidenced-based practices. This proposed training called Effective Communication/Motivational Strategies (ECMS), to be offered by a consultant, is a five (5) day learning experience designed to integrate specific knowledge (social learning theory, what works research, stages of change, and motivational interviewing) within a conceptual framework within which DOC staff is already familiar. ECMS would combine theory discussion with a practice of specific communications skills and techniques that reduce resistance to change. It is anticipated that this training will commence in Spring 2019 with the initial roll-out to YA ESH staff.

From the inception of ESH, programming was identified as a core component in the advancement of rehabilitative change. In 2018, programming has included credible messenger workshops, creative writing, musical expression, and theatrical performances. S.M.A.R.T. a specialized model of adult re-entry training and daily skill building modules that focus on healthy relationships, life skills and job readiness was also launched in some of the blended housing units. Throughout the evolution of ESH, programmatic adjustments have been implemented, inclusive of the use of educational tablets. Educational tablets were initially utilized in the young adult exclusive unit and have been expanded to some blended units. Educational tablets have served as a beneficial addition in the provision of programming and further expansion to all ESH units is being contemplated. Tablet content has also been developed to address root causes of violence, to modify behavior, and increase critical thinking skills. In July 2018, tablet options incorporated podcasts related to stepping away from criminal and/or gang lifestyles.

Education provides a strong foundation that can inspire positive change. As more comprehensively discussed in the Department's October 2018 Young Adult Plan Update, the Department remains steadfast in our commitment to engaging with young adult's during their time in our custody in promotion of the importance of education and the opportunities available to them. East River Academy continues to provide educational services for all young adults housed in ESH. As of November 1, 2018, of the thirty-one (31) young adults, housed in either the young adult exclusive or blended units co-mingled with adults (22 years old or older), fourteen (14) are currently enrolled in school and have the potential to obtain their High School Equivalency. During the 2017 school year, three (3) young adults completed and passed the Test Assessing Secondary Completion (TASC). In the current school year, seven (7) young adults took the TASC exam, with five (5) passing and acquiring their High School Equivalency. This data is very promising as it illustrates that young adults have a strong interest in self-improvement and learning, which will prepare them for successful release to general population and ultimately to the community.

The Department has made a good faith effort to fully comply with the applicable provisions of the Minimum Standards within the prescribed six (6) month period, however, we are unable to do so at this juncture. ESH is a vital housing option for the management of the most violent young adults. 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. Since March 31, 2017, the Department has been advocating for the Board to

enter into restrictive housing rulemaking. For the safety of all staff and inmates, the Department continues to urge the Board to include this essential housing option as part of restrictive housing rulemaking. In the time since the Board granted the last six (6) month limited variance renewal, as detailed herein, the Department has diligently worked to advance new initiatives that enhance peer engagement, programmatic opportunities for personal development, instituted a 15-day review process for young adults in Level 1 and expanded ESH Young Adult Exclusive units to include a Level 2 unit. Since the establishment of ESH, the Department recognized that continual assessment and review would be critical. The Department has maintained that perspective, and based on lessons learned, has refined parameters in advancement of the unit objectives.

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