

New York City Department of Correction

Young Adult ESH Compliance Audit – May 2020

Pursuant to the six (6) month limited variance granted by the NYC Board of Correction on February 11, 2020 allowing for the continued use of Enhanced Supervision Housing (ESH) for young adults (18 to 21 years old), the related variance conditions require a monthly audit on compliance with the following provisions of the Board's Minimum Standards:

- § 1-05(b) (Lock-in), specifically, the number of out-of-cell hours per young adult;
- § 1-08(f) (Access to Courts and Legal Services, including Law Library);
- § 1-06 (Recreation);
- § 1-02(c)(2) (Classification), specifically, the number of programming hours offered to each young adult and the number of hours each young adult participated in programming; and
- Education services, specifically the number of young adults brought to school and, for each young adult, the time each young adult was brought to school and the time each young adult was taken out of school.

Audit Parameters

The audit is conducted through a manual review of housing area logbooks and programming attendance data on four (4) randomly selected dates from each month. The scope of the audit encompasses only those housing units within ESH in which young adults are housed within the audit period. During this audit period, young adults were housed in up to five (5) ESH housing areas.

This audit report covers the following four (4) dates in the month of May 2020:

- May 6
- May 12
- May 20
- May 28

In addition, on-site inspections of the ESH unit kiosks and typewriters were conducted on four (4) randomly selected dates:

- May 8
- May 15
- May 21
- May 29

§1-05(b) Lock-in

A manual review of housing area logbooks was performed to determine whether seven (7) or fourteen (14) hours of out-of-cell time was afforded to the young adults based on their housing level. This audit report also provides individualized data related to each young adult's out-of-cell time during the reporting period.

§1-08(f) Access to Courts and Legal Services, including Law Library

A manual review of Law Library Logbooks was conducted to determine whether Law Library services were afforded. In addition to the logbook review, on-site inspections were conducted to determine if the kiosks and typewriters located within the various young adult ESH housing areas were operational.

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§1-06 – Recreation

A manual review of housing area logbooks was conducted to determine whether one (1) hour of outdoor recreation was afforded.

§ 1-02(c)(2) (Classification), Provision of Programming

A manual review of programming attendance data was conducted to determine the number of programming hours offered to each young adult and the number of hours each young adult participated in programming.

Education

A manual review of education attendance data was conducted to determine the number of young adults brought to school and, for each young adult, the time each young adult was brought to school and the time each young adult was taken out of school.

Audit Findings

§1-05(b) Lock-in

All young adults in ESH are housed in single occupancy cells within their respective housing area. Each ESH housing area consists of multiple single occupancy cells located on two (2) tiers – the lower tier and the upper tier. Young adults in Level I and Level II are afforded seven (7) hours of lock-out time each day. Young adults in Level III are afforded fourteen (14) hours of lock-out time, and are all afforded lock-out during both the am and pm hours, regardless of the tier in which they are housed. On any given day, a young adult may be out to court or transferred in or out of the ESH Unit. These young adults may not be included in the out-of-cell time reporting. The data in the report reflects the young adults present in the unit for the institutional lock-outs on each audit date. On all four (4) dates audited, institutional lock-out and lock-in were consistently recorded in the Lock-In/Out Logbook for each of the levels.

Level I

Listed below is individualized data related to each young adult's total out-of-cell time in Level I, based on a manual review of the Lock-In/Out Logbook, for the dates audited. The out-of-cell time is the hours each day that a young adult chooses to be out of his cell during institutional lock-out periods.

May 6, 2020

There were two (2) young adults in Level I; their out-of-cell times on this audit date were:

1. 5 hours 45 minutes (Upper Tier)

On this audit date, one (1) Lower Tier young adult refused all afforded out-of-cell time.

May 12, 2020

There were five (5) young adults in Level I; their out-of-cell times on this audit date were:

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1. 2 hours 15 minutes (Lower Tier)
2. 4 hours 17 minutes (Upper Tier)
3. 4 hours 17 minutes (Upper Tier)

On this audit date, two (2) Lower Tier young adults refused all afforded out-of-cell time.

May 20, 2020

There were eight (8) young adults in Level I; their out-of-cell times on this audit date were:

1. 5 hours (Upper Tier)
2. 2 hours 15 minutes; young adult refused the majority of afforded out-of-cell time (Lower Tier)
3. 1 hour 15 minutes; young adult refused the majority of afforded out-of-cell time (Lower Tier)
4. 5 hours (Upper Tier)
5. 5 hours 15 minutes (Upper Tier)
6. 5 hours (Upper Tier)

On this audit date, two (2) Lower Tier young adults refused all afforded out-of-cell time.

May 28, 2020

There were nine (9) young adults in Level I; their out-of-cell times on this audit date were:

1. 1 hour; young adult refused the majority of afforded out-of-cell time (Upper Tier)
2. 3 hours 15 minutes; young adult refused the majority of afforded out-of-cell time (Lower Tier)
3. 1 hour; young adult refused the majority of afforded out-of-cell time (Upper Tier)
4. 5 hours 15 minutes (Upper Tier)
5. 3 hours 15 minutes; young adult refused the majority of afforded out-of-cell time (Lower Tier)
6. 5 hours 15 minutes (Upper Tier)

On this audit date, three (3) Lower Tier young adults refused all afforded out-of-cell time.

Level II

Listed below is individualized data related to each young adult's total out-of-cell time in Level II, based on a manual review of the Lock-In/Out Logbook, for the audit dates. The out-of-cell time is the hours each day that a young adult chooses to be out of his cell during institutional lock-out periods.

May 6, 2020

There were ten (10) young adults in Level II; their out-of-cell times on this audit date were:

1. 4 hours 30 minutes (Upper Tier)

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2. 7 hours 18 minutes (Lower Tier)
3. 6 hours 30 minutes (Upper Tier)
4. 7 hours 30 minutes (Lower Tier)
5. 7 hours 30 minutes (Lower Tier)
6. 7 hours 30 minutes (Lower Tier)
7. 7 hours 25 minutes (Lower Tier)
8. 7 hours 15 minutes (Lower Tier)
9. 7 hours 25 minutes (Lower Tier)
10. 7 hours 30 minutes (Lower Tier)

May 12, 2020

There were eleven (11) young adults in Level II; their out-of-cell times on this audit date were:

1. 3 hours 35 minutes (Upper Tier)
2. 7 hours 30 minutes (Lower Tier)
3. 6 hours 35 minutes (Upper Tier)
4. 7 hours 22 minutes (Lower Tier)
5. 7 hours 22 minutes (Lower Tier)
6. 7 hours 50 minutes (Lower Tier)
7. 7 hours 50 minutes (Lower Tier)
8. 7 hours 50 minutes (Lower Tier)
9. 7 hours 50 minutes (Lower Tier)
10. 7 hours 15 minutes (Lower Tier)

On this audit date, one (1) Upper Tier young adult refused all afforded out-of-cell time.

May 20, 2020

There were eight (8) young adults in Level II; their out-of-cell times on this audit date were:

1. 3 hours 15 minutes; young adult refused the majority of afforded out-of-cell time (Upper Tier)
2. 3 hours; young adult refused the majority of afforded out-of-cell time (Lower Tier)
3. 5 hours 10 minutes (Lower Tier)
4. 4 hours 25 minutes (Lower Tier)
5. 6 hours (Lower Tier)
6. 7 hours (Lower Tier)
7. 7 hours (Lower Tier)

On this audit date, one (1) Upper Tier young adult refused all afforded out-of-cell time.

May 28, 2020

There were seven (7) young adults in Level II; their out-of-cell times on this audit date were:

1. 4 hours 25 minutes (Upper Tier)
2. 7 hours (Lower Tier)
3. 7 hours (Lower Tier)

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4. 7 hours (Lower Tier)
5. 1 hour; young adult refused the majority of afforded out-of-cell time (Lower Tier)
6. 7 hours (Lower Tier)

On this audit date, the out-of-cell time and tier for one (1) young adult could not be determined.

Level III

Listed below is individualized data related to each young adult's total out-of-cell time in Level III, based on a manual review of the Lock-In/Out Logbook, for the audit dates. The out-of-cell time is the hours each day that a young adult chooses to be out of his cell during institutional lock-out periods.

May 6, 2020

There was one (1) young adult in Level III; his out-of-cell time on this audit date was 6 hours; young adult refused the majority of afforded out-of-cell time (Lower Tier)

May 12, 2020

There were no young adults in Level III on this audit date.

May 20, 2020

There were two (2) young adults in Level III; their out-of-cell times on this audit date were:

1. 8 hours 17 minutes (Lower Tier)
2. 8 hours 15 minutes (Lower Tier)

May 28, 2020

There were three (3) young adults in Level III; their out-of-cell times on this audit date were:

1. 12 hours 22 minutes (Lower Tier)
2. 11 hours 20 minutes (Lower Tier)
3. 12 hours 20 minutes (Lower Tier)

§1-08(f) Access to Courts and Legal Services, including Law Library

Law Library Coordinator

In ESH, there are four (4) Law Library Coordinators assigned to areas in which young adults were housed.¹ A manual review of the Law Library Logbooks indicated that the Law Library

¹ To facilitate the provision of Law Library services, within their assigned areas, Law Library Coordinators provide services to all individuals regardless of whether it is during the individual's lock-out period.

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Coordinators were in these areas to provide assistance on all the four (4) days audited – May 6, 12, 20 and 28, 2020.²

The audit was able to verify by auditing available records that the duration of each Law Library Coordinator's time, in ESH areas during the dates audited, was in compliance with the provisions of the Minimum Standards i.e., a minimum of two (2) hours.

Listed below is a total count of young adults housed in ESH, for each date audited, and the total number of young adults that were assisted by the Law Library Coordinators.

May 6, 2020

There were thirteen (13) young adults in ESH on this audit date, out of which one (1) young adult requested and were provided Law Library services.

May 12, 2020

There were sixteen (16) young adults in ESH on this audit date, out of which three (3) young adults requested and were provided Law Library services.

May 20, 2020

There were eighteen (18) young adults in ESH on this audit date, out of which three (3) young adults requested and were provided Law Library services.

May 28, 2020

There were nineteen (19) young adults in ESH on this audit date, out of which four (4) young adults requested and were provided Law Library services.

Kiosks and Typewriters

At this time, the Law Library equipment is not available for regular use. All Law Library services are being afforded and fulfilled by the Legal Coordinators through request slips. Listed below are the numbers of kiosks and typewriters in each ESH housing area, including the status of their operability for the dates audited:

May 8, 2020

On this audit date, all the housing areas (A-E) had operable kiosks.

May 15, 2020

On this audit date, all the housing areas (A-D) had operable kiosks.

² This is evidenced by the Law Library Coordinators signing in and out of the Law Library Logbook on each of the audit dates.

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May 21, 2020

On this audit date, all the housing areas (A-D) had operable kiosks.

May 29, 2020

On this audit date, all housing areas (A-D) had operable kiosks and one housing area (C) had a functional typewriter.

§1-06 – Recreation

All young adults in ESH are afforded a minimum of one (1) hour of recreation per day, seven (7) days per week in the outdoor recreation area, except in inclement weather when the indoor recreation area is used.

The audit reviewed recreational data for each of the four (4) audit dates – May 6, 12, 20 and 28, 2020 – to ascertain the total number of young adults that participated in recreation.

May 6, 2020

There were thirteen (13) young adults in ESH on this audit date. Please note the following:

- One (1) young adult participated in twenty-five (25) minutes of recreation.
- Twelve (12) young adults refused to participate in afforded recreation.

May 12, 2020

There were sixteen (16) young adults in ESH on this audit date. Please note the following:

- Three (3) young adults participated in one (1) hour of recreation.
- Two (2) young adults participated in forty (40) minutes of recreation.
- Eleven (11) young adults refused to participate in recreation.

May 20, 2020

There were eighteen (18) young adults in ESH on this audit date. Please note the following:

- Seven (7) young adults participated in one (1) hour of recreation.
- Two (2) young adults participated in forty-four (44) minutes of recreation.
- Seven (7) young adults refused to participate in afforded recreation.
- Staff did not record the recreation completion time for two (2) young adults in either the Mandated Services Logbook or in the housing area logbook.

May 28, 2020

There were nineteen (19) young adults in ESH on this audit date. Please note the following:

- Two (2) young adults participated in one (1) hour and fifteen (15) minutes of recreation.
- One (1) young adult participated in one (1) hour and five (5) minutes of recreation.

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- Sixteen (16) young adults refused to participate in afforded recreation.

§ 1-02(c)(2) (Classification), Provision of Programming

Young adults in ESH are placed in housing units exclusively with other young adults (18 to 21 years old). Young adults who are 19 to 21 years old can also be commingled in units with adults (22 years old and older). In the commingled housing areas, the provision of programming is provided to each tier separately through two programming sessions. The hours of programming afforded may vary by tier within a housing area. In the young adult exclusive housing areas within ESH, tablets are intended to be utilized in the provision of programming and offered to young adults regardless of whether it is during the individual's lock-out period. Programs Division is in the process of rolling out the provision of tablets over the coming months. In addition, in the young adult exclusive housing areas, on days when support programming staff are present, young adults may request individualized counseling while other programming components are being held. The Department also provides to young adults self-guided programming packages that include activity packets, interactive journaling, and worksheets.

The audit reviewed programming attendance data on each of the four (4) dates audited to ascertain the number of programming hours offered to each young adult and the number of hours each young adult participated in programming. Program participation hours are based on the number of hours each young adult chooses to participate in programming. The data reflects the young adults present in the housing area during programming on each audit date.

Please note that on any given day, a young adult may be out to court or transferred in or out of the ESH Unit. These young adults may not be included in the programming reporting. It is important to note that young adults returning from court during programming hours are offered the opportunity to participate in programming upon their return.

Listed below are the numbers of programming hours offered and participated based on housing areas and their assigned levels.

May 6, 2020

- ❖ A: Level II
 - Tier 1 was offered between five (5) to fifteen (15) minutes of programming in the morning session. Two (2) young adults participated in programming, however, the participation times could not be determined.
 - Tier 2: One (1) young adult was housed on the tier where programming was not scheduled in the afternoon session on this audit date.
- ❖ B: Level II – One (1) young adult refused to participate in afforded self-guided programming.
- ❖ C: Level II – In-person programming did not occur in the unit on this audit date due to social distancing, personnel, and operational considerations related to the coronavirus.
- ❖ D: Level I – In-person programming did not occur in the unit on this audit date due to social distancing, personnel, and operational considerations related to the coronavirus.

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- ❖ E: Level III – In-person programming did not occur in the unit on this audit date due to social distancing, personnel, and operational considerations related to the coronavirus.

May 12, 2020

- ❖ A: Level II
 - Tier 1: The three (3) young adults housed in this area were offered between five (5) to fifteen (15) minutes of programming in the morning session.
 - Two (2) young adults participated in individual counseling and refused self-guided based programming. The participation times for individual counseling could not be determined.
 - One (1) young adult was offered self-guided based programming materials.
 - Tier 2: One (1) young adult was housed on the tier where programming was not scheduled in the afternoon session on this audit date.
- ❖ B: Level II – In-person programming did not occur in the unit on this audit date due to social distancing, personnel, and operational considerations related to the coronavirus.
- ❖ C: Level II – In-person programming did not occur in the unit on this audit date due to social distancing, personnel, and operational considerations related to the coronavirus.
- ❖ D: Level I
 - Thirty-five (35) minutes of individual counseling were offered.
 - Two (2) young adults refused individual counseling.
 - One (1) young adult participated in individual counseling however, the young adult participation time could not be determined.
 - For the remaining two (2) young adults:
 1. Young adult participation: 5 minutes
 2. Young adult participation: 15 minutes

May 20, 2020

- ❖ A: Level II
 - Tier 1: The two (2) young adults housed in this area were offered between five (5) to fifteen (15) minutes of programming in the morning session. The participation times could not be determined.
Tier 2: One (1) young adult was housed on the tier where programming was not scheduled in the afternoon session on this audit date.
- ❖ B: Level II – In-person programming did not occur in the unit on this audit date due to social distancing, personnel, and operational considerations related to the coronavirus.
- ❖ C: Level I – In-person programming did not occur in the unit on this audit date due to social distancing, personnel, and operational considerations related to the coronavirus.
- ❖ D: Level III – In-person programming did not occur in the unit on this audit date due to social distancing, personnel, and operational considerations related to the coronavirus.

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May 28, 2020

- ❖ A: Level II
 - Tier 1: The one (1) young adult housed on this tier was offered between five (5) to fifteen (15) minutes of programming in the morning session. This young adult was out to recreation during afforded programming.
 - Tier 2: In-person programming did not occur in the unit on this audit date due to social distancing, personnel, and operational considerations related to the coronavirus.
- ❖ B: Level II – No programming was scheduled on this audit date.
- ❖ C: Level I – In-person programming did not occur in the unit on this audit date due to social distancing, personnel, and operational considerations related to the coronavirus.
- ❖ D: Level III – In-person programming did not occur in the unit on this audit date due to social distancing, personnel, and operational considerations related to the coronavirus.

Education

In-person educational services were suspended due to social distancing, personnel, and operational considerations related to the coronavirus. The NYC Department of Education provided an alternative method for the provision of educational services, by providing alternative educational learning material to the two (2) young adults that were enrolled in school on two out of four of the dates audited.

May 6, 2020

On this audit date, no in-person educational services were scheduled due to social distancing, personnel, and operational considerations related to the coronavirus.

May 12, 2020

On this audit date, no in-person educational services were scheduled due to social distancing, personnel, and operational considerations related to the coronavirus.

May 20, 2020

One (1) young adult was enrolled in school and was provided the alternative educational learning material. This one (1) young adult did not return the completed alternative educational learning material to the DOE staff.

May 28, 2020

Two (2) young adults were enrolled in school and were provided the alternative educational learning material.

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- One (1) young adult was provided the alternative educational learning material. This one (1) young adult did not return the completed alternative educational learning material to the DOE staff.
- One (1) young adult refused to accept the alternative educational learning material.

Audit Recommendations

Recommendations for the ESH Audit Report are reported quarterly rather than monthly per an agreement with the Board of Correction. The ESH Audit Report covering the month of February 2020 was the last ESH Audit Report which indicated recommendations. A quarterly period has transpired since that last audit report with recommendations, and recommendations are therefore included in this audit report.

The following recommendations were indicated in the ESH Audit Report covering the month of February. The status of the efforts to implement each of the recommendations listed below are indicated after each recommendation.

Law Library

- To facilitate the maintenance and operation of the kiosks and typewriters in the housing areas, the facility Warden or designee should re-instruct designated facility staff, and the Director of Law Libraries should re-instruct law library staff, to verify on a daily basis that all typewriters and kiosks are operational. When a typewriter or kiosk is identified as in need of repair, the facility administration in coordination with the Director of Law Libraries should ensure that repairs or replacements are conducted in a timely manner.

Status of implementation:

- The Director of Law Libraries re-issued written instructions to all Law Library Coordinators directing them to inspect daily the kiosks and typewriters to ensure their operability and record their findings in the Law Library Logbook. In the event that any kiosk is inoperable, the Law Library Coordinator shall call the appropriate vendor to have the kiosk serviced. In the event that any typewriter is inoperable, the Law Library Coordinator shall call the facility's storehouse and request that the typewriter be replaced. The Law Library Coordinator shall document the above corrective actions in the Law Library Logbook.
- The facility re-issued ESH Memorandum 06/20, entitled ESH Law Library Kiosk/Typewriters Maintenance and Operations, which requires the housing area staff and designated Law Library Officers to inspect daily the kiosks and typewriters to verify their operability. In the event that any typewriter or kiosk is identified to be in need of repair or has been tampered with, the aforementioned housing area staff and Law Library Officer shall immediately notify their supervisor. Supervisors have been instructed to immediately notify the Deputy Warden of ESH and the respective Law Library Coordinator of any inoperable or tampered with kiosk or typewriter. The Deputy Warden and/or Law Library Coordinator will initiate repair and/or replacement of the equipment.

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- The Director of Law Libraries should continue to remind each Law Library Coordinator to record his or her signature in the housing area logbook, to document his or her entry into and exit from each housing area.

Status of implementation:

- The Director of Law Libraries re-issued written instructions to all Law Library Coordinators, directing them to record their arrival and departures times in each housing area logbook in ESH.

Programs

- Programming was not afforded on February 12, 2020 in one (1) housing area, because the program counselor had an unplanned absence. The Programs Division should identify alternative staff within the facility or from other facilities to serve as an alternate counselor and cover gaps in staffing in the event there is an unplanned absence.

Status of implementation:

- Program Services will be assigning program counselors to unit teams. When a program counselor has an unplanned absence, a member of the unit team will replace this counselor.

The findings in the ESH Audit Report covering May 2020 require the following three (3) audit recommendations:

Law Library

- To facilitate the maintenance and operation of the kiosks and typewriters in the housing areas, the facility Warden or designee should re-instruct designated facility staff, and the Director of Law Libraries should re-instruct law library staff, to verify on a daily basis that all typewriters and kiosks are operational. When a typewriter or kiosk is identified as in need of repair, the facility administration in coordination with the Director of Law Libraries should ensure that repairs or replacements are conducted in a timely manner.

Recreation

- Designated supervisory staff should regularly review the housing area logbook to determine whether custody staff have recorded all required information, particularly the recreation commencement times and completion times. When deficiencies are identified, the designated supervisory staff shall counsel the relevant custody staff person and instruct him or her to record all required information.

Programming

- The Program Unit Supervisor should instruct all counselors to record, in the ESH Daily Programming Tier Sign-In Sheet, the commencement and completion times for each individual counseling session.