



NEW YORK CITY DEPARTMENT OF CORRECTION

Cynthia Brann, Commissioner
Office of the Commissioner
75-20 Astoria Boulevard, Suite 305
East Elmhurst, New York. 11370

718 • 546 • 0890
Fax 718 • 278 • 6022

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

RE: Limited Variance Renewal – Secure Unit – Minimum Standards §1-05(b) and §1-08(f)

Dear Mr. Cephas;

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 BOC Minimum Standards §1-05(b) “Lock-in” and §1-08(f) “Access to Courts and Legal Services” for the purpose of maintaining the use of the Secure Unit. The Department seeks that this variance take effect on November 21, 2017, the date upon which the underlying variance is set to expire.

Three years ago, the Department made a commitment to implementing sweeping reforms to correctional management practices that accounted for the diverse populations in our custody and their unique needs. Recognizing that existing correctional practice was not aligned with the developmental needs of young adults (18 to 21 years old), the Department set out to institute a Young Adult Strategy that once established would serve to replace punitive segregation for that population. In the time since, punitive segregation has been eliminated for all inmates under twenty-two (22) years of age and an alternative housing structure that utilizes a combination of incentives and disciplinary sanctions in the promotion of positive behavioral changes was adopted for the young adult population.

The Young Adult housing continuum consists of Second Chance, Transitional Restorative Unit (TRU), Secure Unit, and Enhanced Supervision Housing (ESH). Placement in any one of these housing options is based on specific criteria that accounts for the severity and persistence of the young adult’s violent behavior. The criteria for placement in Secure Unit has been subject to refinements and is geared to identify and address the behavioral issues of young adults who have begun to exhibit increasingly violent behavior or have a past history of violence and have engaged in recent concerning violent acts such that immediate intervention is needed to prevent further escalation of violence. The Secure Unit is uniquely situated within the housing continuum as it is a housing option for two categories of violent young adults: those whose history of violent behavior may not rise to the level of consideration for placement in ESH but require the structure and programmatic/therapeutic offering specific to the unit and those who have advanced from the ESH Entry unit. Young adults transitioning from the ESH Entry unit are afforded incremental increases in out-of-cell time from seven (7) hours while in ESH to ten (10) hours in Secure Unit Phase I while continuing therapeutic engagement. With consistent positive behavioral changes, young adults can progress through all three phases with increased out-of-cell time from ten (10) hours in Phase I, to twelve (12) hours in Phase II, and to fourteen (14) hours per day of lock-out in Phase III. To date, a total of forty-five (45) young adults have been placed in the unit, four (4) of whom

had a repeat placement. Fifteen (15) young adults have completed all three (3) phases. Currently, there are eight (8) young adults housed in the Secure Unit.

The Secure Unit is structured to facilitate enhanced safety and security while fostering an environment where young adults can obtain skills for positive change. Art and violence-intervention programs continue to play an important role engaging with young adults through creative expression and critical thinking. Education plays a pivotal role in changing the lives of young adults. The East River Academy (ERA) began providing educational services in the unit in September 2016. Early on, the Department observed increased young adult enrollment and consistent participation in educational services. ERA resumed educational services on September 11, 2017. Currently, four (4) young adults have enrolled in school while in Secure Unit. In compliance with the variance conditions, restraints desks are only utilized in Secure Unit when security concerns deem their use necessary in order to protect the safety of young adults attending school. The Department has demonstrated its ability to invoke this safety measure sparingly and only when supported by tangible evidence. The most recent instance that restraint desks were used in Secure Unit was September 14, 2017. While the Department is encouraged by the successful provision of school without the restraint desk, there exists the need to maintain their use as an option to ensure the safety of young adults should security concerns arise in the future.

Enhanced staffing ratios of trained and dedicated staff, both uniform and non-uniform, engage with the young adults in furtherance of positive behavioral changes and encourage achievement of their individualized goals. During weekly Support Team meetings, individualized needs are discussed in an effort to identify areas of progress and areas where additional improvement is needed. It is within this structured and supportive setting that young adults have the opportunity to shift their path in a positive impactful way. There have been notable benefits for both the young adults who have been placed in the unit and more generally to overall safety and security evidenced through an evaluation of Use of Force (UOF) and fights data.¹

The requested variance renewal is related to two provisions of the Minimum Standards: 1-05 “Lock-in” and 1-08(f) “Access to Courts and Legal Services – Law Libraries”.

1-05 “Lock-in”

Young adults placed in the Secure Unit are some of the most challenging within this population, as evidenced by the severity of their violent and/or assaultive behavior. The Department is seeking a variance renewal to §1-05 to allow for the use of ten (10) hours a day out-of-cell time within the Secure Unit. Restricting young adults to ten (10) hours a day of out-of-cell time is a critical management tool to ensure safe operation of the unit and provide necessary incentives for progression, when combined with the other programmatic and therapeutic offerings. This incentivized behavioral approach establishes defined parameters and a structure in which young adults understand the positive and negative ramifications of their actions. This lock-out period coincides with the hours in which facility staffing is at optimal levels to respond to any security issues that may arise. Enabling the Department to limit young adults’ afforded lock-out time provides a safe and critical incentive tool that allows for incrementally increasing the amount of out-of-cell time over the course of the phases. The unit lock-out afforded

¹ There is a noted decline of 17% in rates of Use of Force (UOF) and 52% in rates of Fights during placement in comparison to the period preceding placement. Rates of UOF are 44% lower in the post-placement period compared to the pre-placement period; rates of fights are 50% lower.

incrementally increases from ten (10) hours in Phase I, to twelve (12) hours in Phase II, and to fourteen (14) hours per day of lock-out in Phase III.

1-08(f) – “Law Libraries”

In the Secure Unit, all mandated services and programming are conducted in the unit. The Department is also seeking a variance renewal to §1-08(f) to allow for the continued provision of legal services and materials through alternative access, in the unit, that permits effective legal research while addressing safety and security concerns. Law library services are provided within the unit through the use of law library kiosks and typewriters in the area. A law library coordinator is also assigned to the unit to assist young adults in the provision of law library related services. This variance renewal is necessary as the Department cannot otherwise effectively control, especially directly after an incident, continued violent activity in the law libraries or; gang communication from being conducted, or protect other young adults and staff from those who would capitalize on potential opportunities to perpetuate additional violence.

The Department has made a good faith effort to comply with the noted provisions of the Minimum Standards within the two (2) months prescribed but cannot do so at this juncture. With the Board’s advancement of restrictive housing rulemaking, the Department has engaged in ongoing discussions with the Board requesting that the anticipated new Minimum Standards include the Secure Unit. To that end, on March 31, 2017, the Department submitted a letter to the Board regarding the advancement of restrictive housing rulemaking and proposed subject matter for their consideration. Discussions have continued towards the establishment of new Minimum Standards that will serve to provide for comprehensive restrictive housing inclusive of the Secure Unit. On June 9, 2017, pursuant to the variance conditions, the Department submitted to the Board a written plan for complying and reporting on the Minimum Standards provisions §§1-05(b)(Lock-in) and 1-08(f) (Access to courts and legal services, including law library). The audit plan was formally instituted in July. To date, the Department has submitted to the Board audit reports for the months of July, August, and September 2017.

The Department urges the Board to move forward in the advancement of restrictive housing rulemaking. The Department continues to assess the Secure Unit and make necessary modifications, including the physical space, which we recognize is not optimal. However, generally, the Secure Unit has been successful. In the interim period, it is critical that the Department maintain operation of Secure Unit. The Secure Unit remains an important housing option for violent young adults within the current housing continuum.

The Department appreciates the Board’s consideration of this six (6) month limited variance renewal, which would allow for the reduction of out-of-cell time afforded to a minimum of ten (10) hours per day and the provision of law library services within Secure Unit. We look forward to continuing to work with the Board towards the advancement of restrictive housing rulemaking.

Sincerely,



Cynthia Brann

cc: Martha King, Executive Director