



NEW YORK CITY DEPARTMENT OF CORRECTION

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April 13, 2018

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

RE: Six (6) Month Limited Variance Renewal Request – Secure Unit – BOC 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 May 22, 2018, the date upon which the underlying variance is set to expire.

The Department has worked to establish transformative changes to correctional practice for the diverse populations in our custody. Our focus for the young adult population, has been and continues to be, to implement reforms that are specifically geared towards their unique needs. As previously stated, following the unprecedented elimination of punitive segregation for all inmates under twenty-two (22) years of age, the Department has worked to create an alternative housing structure that combines incentives and disciplinary sanctions in promotion of positive behavioral changes. Innovative correctional housing solutions must always be positioned upon a foundation of safety and security.

The Young Adult housing continuum that exists today 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 a young adult’s violent behavior. These housing units are maintained for a small group of the young adult population whose aggressive and/or violent behavior necessitates that they be housed separately from general population. The objective of the Secure Unit is to identify young adults who 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 in conjunction with ESH affords the Department the necessary flexibility to determine the most suitable and appropriate placement based on the young adult’s behavioral challenges and overarching safety and security needs. The Secure Unit is a housing option for violent young adults 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. Additionally, the Secure Unit may be a suitable housing option for young adults previously housed in ESH whose behavior necessitates a structured setting in which to continue therapeutic engagement.

With consistent positive behavioral changes, young adults can progress through all three phases of the Secure Unit 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 fifty-four (54) young adults have been placed in the unit, six (6) of whom had a repeat placement. Twenty-one (21) young adults have completed all three (3) phases. Currently, there are four (4) young adults housed in the Secure Unit.

When the Department first contemplated establishing custody management geared to address the needs of the young adult population; we aspired to provide young adults with the opportunity to gain the skills needed for positive change that would facilitate their successful re-entry back to the community and minimize the likelihood of re-incarceration. While more time is needed to determine whether such goals will be fully accomplished, the Secure Unit has exhibited positive findings towards that aim. Young adults are actively engaging in educational services within the Secure Unit. In September 2016, the East River Academy (ERA) began providing educational services in the unit. Early on, the Department observed increased young adult enrollment and consistent participation in educational services. Consistent educational engagement has remained. Currently, three (3) of the four (4) young adults are enrolled in school and exhibiting positive behavioral changes. The Department is seeking additional supportive educational services for these young adults through the provision of tutoring. Most recently, an Ivy League university offered a college level course to young adults in the unit. Two (2) young adults participated in this exceptional educational opportunity to course completion. These young adults' achievement illustrates the potential for young adults in our custody to attain higher education. Additionally, art and violence-intervention programs continue to play an important role in engaging young adults through creative expression and critical thinking.

In compliance with the variance conditions, program 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 program desks were used in Secure Unit was September 14, 2017. While the Department is encouraged by the successful provision of school without the program 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, have also played a pivotal role in encouraging young adults to achieve their individualized goals. The weekly Support Team meetings provide a forum in which individualized needs are fostered, marked improvements are highlighted and behavioral issues are discussed in a constructive manner. It is within this structured and supportive setting that young adults have the opportunity to shift their path in a positive way and advance through the phases. 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 analysis 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 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.

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. The unit lock-out afforded 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. 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 prevent 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 six (6) months prescribed but cannot do so at this juncture. The Secure Unit remains an important housing option for violent young adults. Since March 31, 2017, the Department has been advocating for the Board to enter into restrictive housing rulemaking, which, to date, has not yet begun. 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. Pursuant to the variance granted by the Board on November 14, 2017 and related variance conditions, the audit was expanded to include Minimum Standards provisions §1-06 (Recreation) and §(1-02(c)(2) (Classification)- the number of programming hours offered to each young adult and the number of hours each young adult participated in programming.

The Secure Unit is an important housing unit for violent young adults and has had a beneficial impact on the young adults who have advanced through its structured process. The Department urges the Board to move forward in the advancement of restrictive housing rulemaking. During this interim period, the Department seeks this variance renewal to maintain operation of the Secure Unit.

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,

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

Cynthia Brann

cc: Martha King, Executive Director