



NEW YORK CITY DEPARTMENT OF CORRECTION
Cynthia Brann, Commissioner

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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 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 May 16, 2018, the date upon which the current variance is set to expire.

In 2015, the Department developed a new housing model, ESH, established to address growing safety and security issues among a small but violent inmate population. ESH was designed to limit violent inmates' contact with other inmates within a secure, structured setting with enhanced programming geared towards facilitating rehabilitation, addressing the root causes of violence, and minimizing idleness. It is predicated on a model and commitment to maximizing continuous engagement with inmates in an attempt to change behavior. Three years later, ESH has undergone numerous modifications geared to advance the core principles of the unit: facilitate self awareness and positive behavioral changes, within a procedural justice construct. ESH today, incorporates a level structure in which inmates may progress from Level 1 or Level 2, dependent upon their individual level upon entry, to Level 3 followed by successful reintegration into general population. To foster each individual's level progression, in 2018, the Department instituted a Multi-Disciplinary Review Team and a shortened review period of thirty (30) instead of forty-five (45) days. This new review template involves the inmate as an active participant which cultivates dynamic communication, including affirmations, feedback, and objective reporting on incidents and logbook entries. The reviews serve an integral purpose in gauging an inmate's long term rehabilitation, program engagement, and adherence to unit rules. A comparable review structure is maintained for young adults housed in the ESH young adult exclusive unit. Young adults housed in the young adult exclusive unit are also provided with a comprehensive orientation process, implemented in 2017, which includes a discussion of the goals and opportunities available within the unit. In the coming months, ESH will also introduce an enhanced orientation for all inmates within three (3) days of ESH placement coupled with a ten-day check-in to assess the inmate's short-term behavioral progress.

The Department is committed to continually assessing the ESH model and instituting further enhancements in the promotion of safety, engagement and rehabilitation for the most violent inmates in our custody. As the

ESH model has evolved so too has the Department's use of ESH for the housing of young adults (18 to 21 years old). Young adults in ESH may be housed in the young adult exclusive unit or a blended unit co-mingled with adults¹. These options provide the flexibility to determine which type of housing unit is most suitable for each young adult. For the young adult population, in the post-punitive segregation era, ESH plays a key role in addressing the needs of a small subset of the population, approximately four percent (4%), who engage in persistent violent behavior that threatens the safety of their peers and overall facility security. ESH has been instrumental as a housing option for young adults within this category. Through on-going discussions with the Board, the types of behavior warranting consideration for placement in ESH was more narrowly tailored to address the specific needs of the most problematic, violent young adults in DOC custody.

The young adults considered for placement in ESH are based on a limited range of circumstances. 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 the ESH Level 1. Young adults (19 to 21 years old) 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 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. Since November 2017, the month in which the most recent variance renewal took effect, thirty-four (34) young adults were initially placed in ESH³. 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.

A fundamental component of the ESH model is the provision of rehabilitative programming. The Department has made significant strides in providing violent and problematic young adults the opportunity to engage with their peers in a secure setting, with the inclusion of program desks for those in Level 1 housing units. As stated previously, this new programming method reduces isolation and encourages pro-social behavior. Since the end of December 2017, young adults in the ESH young adult exclusive unit are receiving five (5) hours of

¹ Blended units are units where young adults (19 to 21 years old) are housed with adults (22 years old and older). Eighteen year olds are not co-mingled with adults.

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 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.

programming, in addition to their time in school.⁴ These young adults have also been provided with educational tablets containing a range of content such as TED Talks, meditation, and self-help programming. The combination of Program Counselor facilitated and technology-based programming and access to traditional educational services reflects the Department's efforts to expand the scope and format of programming afforded to young adults in ESH. Based on the initial positive feedback regarding the use of educational tablets, further expansion to blended ESH units is being considered.

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, which, to date, has not yet begun. For the safety of all staff and inmates, the Department urges the Board to move forward in the advancement of restrictive housing rulemaking and the inclusion of this essential housing option. 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, and a new review process in which all ESH inmates are directly involved in the process. From the inception of ESH, the Department recognized that continual assessment and review would be critical. The Department has maintained that perspective, and based on lesson 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

⁴ Facility lockdowns, young adults engaging in disruptive behavior and other related issues may affect total programming hours offered. It is important to note that while all young adults are afforded the opportunity to attend school, some may choose not to participate.