



NEW YORK CITY DEPARTMENT OF CORRECTION

Cynthia Brann, Commissioner

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May 4, 2020

Jennifer Jones Austin, Esq., 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 Chair Jones Austin,

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 for this variance to take effect on May 24, 2020, the date upon which the current variance is set to expire.

The Department led the nation on the path toward progressive restrictive housing practices through the historic elimination of punitive segregation for young adults in 2016. The Department subsequently developed a continuum of safe housing options to address both the immediate security concerns and the behavioral health needs of young adults who commit violent acts while in Department custody. Addressing the behavioral health needs of violent young adults is an imperative in the Department’s provision of care and an integral component of any meaningful housing intervention for this age cohort. Simultaneously, the Department requires safe housing options to ensure security following a violent act in order to mitigate the potential for retaliatory acts of violence. With consideration for these dual priorities, the Secure Unit was created in 2016 and has evolved over time in order to ensure the least restrictive means of achieving positive behavior and safety outcomes. In short, the Department’s operation of the Secure Unit makes our facilities and our communities safer through a structured and individualized rehabilitative approach.

The Secure Unit, which was developed in partnership with the Board, is structured to ensure enhanced safety and security for young adults who engage in persistent violent behavior, while simultaneously offering programs which foster positive behavior change. The restrictions in the unit are designed to provide incentives for programming and educational engagement, and careful consideration is given when determining whether or not a young person is appropriate for placement in the unit. Programming and education are optional for young people in the Department’s custody. The Department’s ability to impose structured and meaningful restrictions in Secure Unit is critical to the

Department's ability to incentivize and engage young people in potentially life-changing programs and educational services.

Young adults placed in the Secure Unit have typically committed a seriously violent act, such as an assault with injury, an assault while using a weapon, or another act of a similar gravity. In this way, the Secure Unit provides the Department a safe housing option for young adults whose history of violent behavior may not reach the level required for placement in Enhanced Supervision Housing, but still requires a high level of security in tandem with intensive programmatic and therapeutic offerings.

Progression of young adults through the three phases of the Secure Unit is managed and evaluated by a multi-disciplinary support team who remain in close communication with the young person throughout their time in the program. This team is comprised of a Deputy Warden, Unit Manager (Assistant Deputy Warden), Area Supervisor (Captain), steady Correction Officer, Program Counselor, mental health provider (when applicable), and other relevant service providers. The team meets on a weekly basis with every young adult in Secure Unit to discuss individualized needs and goals for positive behavior change in addition to their eventual progression back to general population. The goals for each young adult are developed, with the support of a program coordinator, during the Secure Unit orientation and are then detailed in the young adult's individualized support plan (ISP). These weekly discussions encourage individuals to refrain from engaging in violent or disruptive behavior and keep young adults informed of their progress through the unit. Trained and dedicated staff members, both uniform and non-uniform, are knowledgeable of the young adults in the unit and work with them to further advance their behavioral goals and personal growth.

The Secure Unit maintains a multi-phase structure in which young adults are placed upon entry into Phase I¹ and progress through all three phases ending in Phase III, the least restrictive phase. Phase I allows for a minimum of ten (10) hours of daily out of cell time, Phase II allows for twelve (12) hours, and Phase III allows for fourteen (14) hours. Accounting for all three (3) phases, young adults spend an average of sixty-five (65) days in Secure Unit.² As an additional incentive for progression, commissary spending limits also increase with each phase. In accordance with the current variance conditions, phase progression is entirely dependent on whether the young adult engaged in violent, aggressive, or disruptive behavior during the preceding review period. Young adults who do not participate in such negative behavior are automatically advanced to the subsequent less-restrictive phase. However, young adults who engage in a disruptive incident during a review period may still be recommended for phase advancement in consideration of their programming engagement and a holistic assessment of their behavior during the review period. As of April 10, 2020, there were eighteen (18) young adults housed in the Secure Unit. Since its creation in 2016, a total of one hundred and sixty-eight (168) young adults have been placed in the unit.

Programming and educational services are central elements of the design and everyday operations of the Secure Unit. Typically, programming such as anger management, dialectical behavior therapy, and creative arts along with educational instruction are provided in the unit throughout the week. The Department is now working to continue providing these critical services in a manner consistent with COVID-19 social distancing guidelines. Additionally, Law Library and Counseling Services continue to be provided to young adults in the Secure Unit. Program Counselors continue to provide one-on-one

¹ The vast majority of Young Adults who enter Secure do so through Phase I, there are, however, a small number of Young Adults who enter at Phase III as a stepdown from ESH Level II.

² As reported in the March 2020 Young Adult ESH and Secure Unit Monthly Report.

counseling as needed, along with structured recreation and individualized self-guided materials, based on each of the young adult's individual needs, as determined by the Support Team.

Prior to the suspension of in-person educational services at Department facilities by the East River Academy ("ERA"), there were four (4) young adults enrolled in educational services within Secure. Shortly after the suspension of in-person educational services, the Secure Unit instructor assembled individualized remote learning packages for each student. Each package contained learning materials for 18-days along with a personalized note from the teacher to each student. The Department, along with our ERA partners, continue to emphasize the importance of education during this time and we remain committed to ensuring educational services are provided in Secure Unit, and elsewhere in Department facilities, in a manner that maximizes learning opportunities while ensuring everyone's health and safety.

In addition to the distribution of remote learning packets, the Department recently distributed tablets to all young adults at the George R. Vierno Center, including all young adults in the Secure Unit. Department tablets include hours of supplemental educational and programming instruction across a variety of subjects, 1,500 publications covering all reading levels, law library resources, religious texts, radio programs, and a collection of movies and games.

The requested variance renewal pertains to two (2) provisions of the Minimum Standards: 1-05 "Lock-in" and 1-08(f) "Access to Courts and Legal Services – Law Libraries."

1-05(b) "Lock-in"

As stated herein, the Secure Unit is operated through a multi-phase structure in which young adults can advance through three phases from ten (10) hours of daily-out-of-cell time in Phase I, to twelve (12) hours in Phase II, and to fourteen (14) hours in Phase III. The Department is seeking a variance renewal to §1-05 to allow for a minimum of ten (10) hours a day out-of-cell time within the unit. Providing young adults a minimum of ten (10) hours of daily out-of-cell time is a critical management tool which provides the necessary incentives for young adults to work towards progression through the phases.

1-08(f) – "Law Libraries"

The Department is 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, which permits effective legal research while addressing safety and security concerns. Law library services are afforded inside the housing unit through the use of four (4) typewriters and four (4) kiosks. A law library coordinator is also assigned to the unit to assist young adults in the provision of law library related services. The variance renewal remains necessary as any movement outside of the unit leaves the opportunity for continued violence and/or gang related communication on the part of the young adults in the unit.

The young adult housing continuum developed by the Department ensures a tailored approach to rehabilitating and managing the behaviors of young adults that perpetrate persistent violence towards others while in DOC custody. The Secure Unit is a critical piece of that continuum. In order to effectively operate the unit, the Department cannot at this time comply with the above mentioned Minimum Standards. The Department appreciates the Board's consideration of this six (6) month

limited variance renewal, which would allow the Department to continue the safe operation of this proven housing area model.

Sincerely,

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

Cynthia Brann

cc: Margaret Egan, Executive Director of the Board of Correction