



January 13, 2017

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

RE: Emergency Variance Application to BOC Minimum Standards: Use of Enhanced Supervision Housing for the Young Adults (19 to 21 years old) Section 1-16(c)(1)(ii)

Dear Mr. Cephas:

The New York City Department of Correction (“Department”) is submitting this emergency variance application pursuant to §1-15(c)(1) and §1-15(c)(3) of the New York City Board of Correction’s (“Board”) minimum standards from §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).<sup>1</sup> The Department sought and was granted a limited variance to the minimum standards provision referenced above which expired on January 11, 2017.<sup>2</sup> The availability of ESH units to house certain 19-21 year old inmates is a necessary tool for the Department to manage its most difficult Young Adult inmates. Each 19-21 year old inmate in ESH is being held there after appropriate process and a specific approval by the Chief of Department, as described below. The expiration of this limited variance, which would necessitate excluding even those most difficult to manage and violent inmates from ESH, has created an emergency situation. In light of the critical safety function served by the ESH unit, including for the limited number of 19-21 year olds housed there, it would be impossible for the Department to comply with §1-16(c)(1)(ii) in a manner which is safe for the Department’s entire young adult population.

As set forth in the Department’s December 27, 2016 six (6) month variance renewal request, the Department made a good faith effort to comply with the minimum standards, but cannot do so at this time.<sup>3</sup> In eliminating punitive segregation for young adults between the ages of 18-21, the Department has made incredible strides in improving the overall conditions of young adults’ incarcerations. In April 2014, an average of 140 young adults were housed in punitive segregation, where they were spending 23 hours per day locked in their cells, with limited programming

<sup>1</sup> While the Minimum Standards provision §1-16(c)(1)(ii) is applicable to 18 to 21 year olds, the emergency variance request is exclusively for inmates ages 19 to 21 years old. A separate six (6) month limited variance for 18 year-olds was sought and granted by the Board on October 11, 2016 and is in effect until April 11, 2017. (Available at: <http://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/October-11-2016/post/2016.10.17%20-%20Record%20of%20Variance%20Action%20ESH%20%2818%29.pdf>)

<sup>2</sup> The initial variance for use of ESH with 19-21 year olds for a 3-month period expiring in October 2016, was sought and granted in July 2016. (Available at: <http://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/July-2016/post-records/POST%20Record%20of%20Variance%20Action%201-16%28c%29%281%29%28ii%29.pdf>) A renewal variance extending for another 3-month period expiring in January 2017 was sought and granted in October 2016. (Available at: <http://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/October-11-2016/post/2016.10.17%20-%20Record%20of%20Variance%20Action%20-%20ESH%20%2819-21%29.pdf>)

<sup>3</sup> Available at: <http://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2017/Jan-10-2017/NYC%20Department%20of%20Correction%20Variance%20Renewal%20Request%20-%20Use%20of%20ESH%20for%20Young%20Adults%20122716.pdf>

and limited ability to fully address the root causes of their violent actions. Currently, the Department houses fewer than 30 young adults in any form of restrictive housing, during which these young adults are in their cells for no more than 14-17 hours and receive extensive programming and expanded educational opportunities. The Department is not aware of any other adult correctional facility that has eliminated punitive segregation with 23-hour lock-down for 18-21 year-olds. As a result, this is a model that continues to be developed and refined.

An underlying tenet of the Department's Young Adult Plan, and its plan to end the use of punitive segregation for this population, was the necessary creation of appropriate, safe housing alternatives for the most violent. The Department initially developed a tiered response protocol utilizing three (3) alternatives to punitive segregation: Second Chance, Transitional Restorative Unit, and the Secure Unit.<sup>4</sup> Each housing option provides progressively more therapeutic and more structured housing options geared towards incentivizing positive behavior with heightened programming, inmate engagement, and staffing. The initial plan also called for a centralized housing construct whereby young adults would be housed within one facility, George Motchan Detention Center (GMDC). Pronounced spikes in violence occurring in June 2016, as noted in the Department's June 30, 2016 letter to the Board,<sup>5</sup> resulted in both immediate and long-term appraisal of the plan. Additionally, the Department acknowledged that maintaining only one (1) facility for the housing of young adults (GMDC) was not suitable for the overall management of this population.

The Department engaged in a comprehensive survey of our young adult management plan and contemplated further critical enhancements. While the original plan was to use Secure Unit as the most restrictive alternative to punitive segregation for young adults, as the use of the Secure Unit evolved<sup>6</sup> the Department discovered that using Secure Unit for placement following a violent act by a young adult has been disruptive, and unsafe, exposing young adults, as well as staff, to an unreasonable risk of harm. The higher out-of-cell time in Secure Unit can only be safely supervised once our officers and leadership have a clear understanding of the needs and background of each particular inmate. Ultimately, the events discussed prompted the need to reevaluate all viable housing options for the Department's long-term comprehensive young adult strategy, including the availability of ESH as a housing option for young adults. Preliminary findings indicated that additional housing options were integral to the successful adoption of the young adult strategy.

In assessing ESH, we identified notable reductions in violence and infractions due to its incentivized programming structure. In fact, there was an approximate fifty percent (50%) reduction in violent infractions for inmates that advanced through this phased programming model. Additionally, when young adults are co-mingled with adults they are involved in fewer violent incidents than their counterparts housed by themselves in GMDC. It was apparent that the successes achieved in ESH, coupled with the noted reduction in incidents when young adults and adults are comingled, necessitated exploration of ESH as a housing tool that could serve to address a noted deficiency. The Department believed that ESH, as an established unit with enhanced programming – geared towards facilitating rehabilitation, addressing the root causes of violence, and minimizing idleness – could act as a valuable tool in managing certain problematic young adults.

Therefore, in July 2016, the Department sought and was granted a limited 3-month variance to allow for young adults to be placed in ESH, and providing for the co-mingling of inmates ages 19 to 21 years old with adults (22 years old and older) within ESH. Every young adult's placement in ESH is subject to strict conditions. Each

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<sup>4</sup> The Secure Unit is a non-punitive housing unit with three levels for selected young adults ages 18-21 that is used to ensure the safe and secure management of young adults who demonstrate a persistent history of violent and/or assaultive behaviors directed towards staff, the public, or other young adults or whose violent actions result in a serious injury to others. In the first level inmates are afforded 10 hours of out-of-cell time, with no physical separation during certain non programmatic activity.

<sup>5</sup> Available at: <http://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/July-2016/DOC%20Six%20Month%20Variance%20Requests%20Letter%20-%20Elimination%20of%20Punitive%20Segregation%20for%2019-21%20year%20olds%20and%20Housing%20Separately%20and%20Apart%206.30.16.pdf>

<sup>6</sup> Secure Unit has evolved into a small, carefully constructed community setting in which programming plays a central role as a potential solution to certain young adults' lack of impulse control and violent actions. We have witnessed stability and progress in the Secure Unit, based in part on the lower frequency of change in the inmates held there, which gives all inmates an opportunity to adjust to its programmatic approach.

request for approval of a young adult's placement in ESH must be in writing and specify the reasons why a less restrictive housing setting is not a safe option. The Chief of Department must also specify his reason for approving the request. The request for approval and the Chief's approval thereof is also immediately sent to the inmate who is the subject of the request, NYC Health + Hospitals, and the Board. Every inmate placed in ESH has the ability to appeal their placement. Finally, the Department formally reviews the placement status of all ESH inmates every 45 days.

The use of ESH as a housing option for the young adults (19-21 years old) proved to be beneficial, and the Department sought and was granted an additional 3-month variance on October 11, 2016, as well as a six-month variance permitting the use of ESH for 18-year olds.<sup>7</sup>

In or about October 2016, however, the Department experienced seven slashings in a little over a week within its Administrative Segregation housing units and housing units dedicated to enhanced restraint inmates at the Otis Bantum Correctional Center (OBCC). As more fully set forth in the Department's November 2, 2016 emergency variance request,<sup>8</sup> the Department had an extended lock-down period to quell the violence and address the situation. The plan to end the lock-down, as communicated in the Department's letter, provided that the Department would convert the enhanced restraint housing units into ESH units that specifically housed the inmates who qualified for placement in ESH. However, before making this conversion, the Department needed to redesign the new ESH housing areas in a way that would permit safe programming, incentivize positive behavior and specifically address the serious safety concerns that they presented, including the risk of harm to staff and inmates. The Department's letter explicitly noted that it would be installing restraint desks in that unit. Inmates in these Administrative Segregation housing units and housing units with enhanced restraint inmates possessed weapons like razors and scalpels and presented serious safety concerns, including concerns that they would engage in slashing and stabbing incidents. As a result, we sought more time to procure restraint desks for these new ESH units in order to safely program these inmates and incentivize positive behavior. The Board received numerous communications about the Department's plans, was aware of its plans and use of the restraint desks in the ESH units.

As the Board is aware, the use of restraint desks<sup>9</sup> has been an important component of the Department's unprecedented plan to end punitive segregation for all young adults, including those who have committed serious infractions including stabbings, slashings, and other serious assaults against inmates or staff. In or about the Summer of 2016, when the Board granted the Department a variance that established the Secure Unit (as well as a variance extending the time to end punitive segregation for young adults), there were discussions with the Board regarding plans to provide young adult programming and educational opportunities utilizing restraint desks for safety. The Department began using restraint desks<sup>10</sup> in the Secure Unit in June 2016, during therapeutic, educational and programming sessions in a classroom setting. Use of the restraint desks permits the safe, secure and productive instruction of potentially disruptive inmates, and supports the goal of behavior modification and transition to a lower level of supervision. In or about the summer of 2016, the Department also introduced the use of restraint desks in young adult punitive segregation units, as the Department was nearing the end of its transition out of the use of punitive segregation. The final phases of this transition included increasing the traditional number

<sup>7</sup> Available at: <http://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/October-11-2016/post/2016.10.17%20-%20Record%20of%20Variance%20Action%20-%20ESH%20%2819-21%29.pdf> and <http://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/October-11-2016/post/2016.10.17%20-%20Record%20of%20Variance%20Action%20ESH%20%2818%29.pdf>

<sup>8</sup> Available at: <http://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/November-2016/DOC%20Emergency%20Variance%20OBCC%20-%202016%2011%2002.pdf>

<sup>9</sup> Restraint desks are commonly used in many other jurisdictions, including in corrections in New York, Washington, Massachusetts, Colorado, and California, and are considered an improvement over more restrictive methods of controlling inmate behavior, such as in-cell time.

<sup>10</sup> Department policy defines a restraint desk as "A security restraining device consisting of a school-type desk surface and a chair that are bolted to the floor. The floor level locking device secures ankle restraints; the locking device is operated with a waist level handle and padlocked during use. The desks are designed to secure potentially disruptive inmates during therapeutic, educational, programming, and/or recreational sessions in a classroom setting." In accordance with Department policy governing the use of restraints, inmates will not be kept in a restraint desk for more than four (4) continuous hours without the approval of a Deputy Warden or above.

of out-of-cell time hours for punitive segregation and affording additional hours of programming. The restraint desks supported this transition, allowing for increased access and participation in programming for young adults in a classroom environment that promoted safety.

In November 2016, the Department introduced restraint desks in a newly created ESH Level 1, with inmates placed in restraint desks during lock-out times<sup>11</sup> other than outdoor recreation time, including during therapeutic, educational and programmatic activity. Inmates are afforded an opportunity every hour for a break from the restraint desk for another permissible purpose (e.g., use the bathroom, place a phone call, return to their cell, or take a shower). It also allows for co-mingling and socialization and engagement in a way that isolation in a cell for up to 23 hours does not. Use of restraint desks is appropriately limited to only those young adults who have been adjudicated as Enhanced Restraint Status (i.e., inmates who have been found in possession of a weapon or have used a weapon, and for which movement within and outside of a facility occurs in enhanced restraints (leg irons, waist chains, security mitts)) and who also are adjudicated for ESH Level 1 placement. The inmates are afforded proper notice and an opportunity to appeal their placement. Further, the Department formally reviews the placement status of ESH Level 1 inmates every 45 days.

The limited current use of ESH for young adults allows the Secure Units to operate with more stability – a crucial element to the successful progress of young adults in these units. It also allows the young adults, both those in Secure Unit and ESH, to adapt to the programmatic approach to addressing their needs. The ability to place demonstrably violent young adults in ESH is necessary to the safe and successful housing of all young adults. Since ESH Level 1 opened in November 2016 for young adults, 2 have been moved out to the next less restrictive Level.

It is important to note that prior to opening ESH Level 1, an analysis of the number of use of force incidents in the Enhanced Restraint and Administrative Segregation units over an 18-month period was conducted and revealed that those units averaged 7.5-8 uses of force per month. During this 18-month period, there was a total of 22 slashings.

Since we started ESH Level 1 for this population (many of the same inmates were moved from Enhanced Restraint and Administrative Segregation units to the ESH Level 1 over a little more than 3 months ago, use of force decreased to an average of 4 per month and there have been 0 slashings or stabbings. Young adults represent 30% of the violence and 10% of the population. However, violence overall for young adults involved in Use of Force is down slightly more than 50% from our peak of 800 this summer which concentrated in GMDC. The reduction in use of force and slashings is particularly compelling in light of the following stabbing and slashing statistics in 2015 and 2016:

<b>Stabbings/Slashings CY2015</b>	<b>Stabbings/Slashings CY 2016</b>
131	155
<b>Stabbing/Slashings CY2015 by Young Adults</b>	<b>Stabbing/Slashings CY2016 by Young Adults</b>
67 ((19-21 year olds = 55); (18 year olds = 12))	81 ((19-21 year olds = 63); (18 year olds = 18))

The incentives associated with the different ESH levels have resulted in improved inmate management and more positive outcomes. For example, the introduction of additional incentive-based ESH housing was followed by decreases in rates of violent and non-violent infractions across lower-level, more restrictive ESH housing units (permitting 7 hours out-of cell-time) by up to 62 %.

The Department has repeatedly affirmed that safely ending punitive segregation for 18-21 year olds requires appropriate, safe alternatives in place to house those young adults who engage in serious and/or persistent violent behavior. During the past six months of use, ESH has been invaluable to the success of the elimination of punitive segregation. It would be extremely dangerous to eliminate the Department’s ability to house young adults in ESH,

<sup>11</sup> Inmates in ESH Level 1 are afforded 7 hours of out-of-cell time.

the only available housing option that provides this level of security, separation, and control for this population and without which the safety of young adults will be in jeopardy.

The Department acknowledges that comprehensive evaluation of ESH is necessary to further demonstrate the effectiveness of ESH as an element of the overall management of young adults in its custody; this evaluation is currently under way, and, as we have indicated to the Board, our current anecdotal and early statistical evidence indicates that the availability of ESH for Young Adults is having positive effects on both those Young Adults and others in our custody. For example, many of our young adults in ESH Level 1 are participating in programming for the first time and have stated that it is because they feel safe. However, thorough evaluation will require additional time. During this evaluation, we anticipate refinements will be incorporated to the relevant policies.<sup>12</sup> The Department will share its young adult ESH policy with the Board, and also advise the Board of substantive operational changes, with the ultimate goal being to collaborate with the Board to advance rulemaking. The Department makes every effort to avoid emergency variance requests, but withdrawing the variance renewal request from the agenda at the January 10 meeting has led to an inevitable and critical situation to be addressed by this emergency variance request. In light of the current emergency facing the Department, we are writing to request your earliest possible attention to this matter.

Despite our best efforts, we are unable to achieve full compliance with the above noted provisions of the minimum standards at this time. The Department requests that the Board consider this emergency variance application immediately and grant the emergency variance for the maximum period permitted, thirty (30) days, or until the date of the next scheduled Board meeting, whichever is earlier.

If you have any additional questions or concerns, please contact Heidi Grossman at (718) 546-0955.

Thank you for your attention.

Sincerely,

Joseph Ponte

cc: Martha King, Executive Director

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<sup>12</sup> The Department has consulted with the Nunez Monitor and worked collaboratively on development of department policies (including young adult housing and restraints policies), and expects to continue to do so as appropriate in the future.