

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

July 10, 2017

RE: The Department of Correction's July 7, 2017 Renewed Variance Requests Seeking to Continue Placing Young Adults in Enhanced Supervision Units and Comingling Young Adults with Older Inmates (Minimum Standards Section 1-02(c)(1) and Section 1-16(c)(1)(ii))

Dear Mr. Cephas:

I write to you as a member of the Jails Action Coalition. When the Board promulgated Minimum Standards Sections 1-02(c)(1) and 1-16(c)(1)(ii), it recognized the consensus that young adults are different from older inmates. As I testified before the Board in December 2014, and as many others impressed upon you and your fellow board members, young adults in our City jails have increased vulnerabilities. They also have unique needs for developmentally-appropriate environments, services and treatments that respond to their age. Sections 1-02(c)(1) and 1-16(c)(1)(ii) recognized and codified these critical differences between young adults and older incarcerated people, requiring the Department to house young adults separately and apart from older inmates, to serve them with necessary programming, and to exclude them from placement in Enhanced Supervision Housing (ESH).

Despite this, the Department has sought and obtained variances since the fall of 2016 to retreat from the approach the Board embraced, placing 18-21 year olds in ESH, and comingling 19-21 year olds with older inmates in the general population and in ESH. The Department comes before you again to renew its requests and continue this course. While the decreases in violence that the Department has reported are laudable, I write to respectfully share my concerns about these variance requests and their impact on young adults' access to services and programming, and their being housed with older inmates.

**The Lack of Data Showing Rates of Actual Utilization of Mandatory Services, Education and Programming Among Young Adults in ESH Raises Concerns About the Appropriateness of ESH for Youth 18-21.**

According to the Department, the purpose of ESH is not merely to reduce violence; “[t]he success of [its] rehabilitative and educational efforts for the young adults, particularly those in the most restrictive housing units such as ... ESH, is dependent upon establishing an atmosphere conducive to learning and engagement.”<sup>1</sup> Despite its promise to “continue to monitor and track metrics and trends related to ... utilization of programming and educational services,”<sup>2</sup> the

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<sup>1</sup> Feb. 9, 2017 DOC Request for Variance Renewal, at 4.

<sup>2</sup> *Id.* at 5.

Department has not provided data demonstrating compliance with the Minimum Standards governing access to mandated services, nor complete information about actual program participation.<sup>3</sup>

No information about the actual provision of health and mental health services to young adults in ESH was included in the Department's evaluation report.<sup>4</sup>

While the Department reported the total number of mandated services "provided" to young adults within ESH, such raw counts<sup>5</sup> are difficult to interpret and do not show whether these services were delivered to all youth placed in ESH in compliance with the Minimum Standards. For example, according to the Department, older youth in ESH are entitled to 3 hours of DOE educational services per day, 5 days per week.<sup>6</sup> However, the Department has not indicated what number and proportion of youth in ESH go to school daily, and whether they receive the full 3 hours to which they are entitled.<sup>7</sup>

Regarding age-appropriate programming, the Department reports the number of "offerings" (undefined in the report).<sup>8</sup> The program percentages included in the Department's report (*see* "Programs" table on page 37) are not explained. This does not provide sufficient information to determine whether youth in ESH are actually engaging with and receiving the programming intended for them.

This lack of information is concerning as the Department has stated that ESH is not a punitive housing unit, but intended to function as a therapeutic setting appropriate to meet the needs of young adults. Based on the Department's intake reporting, most of the youth placed in ESH had not obtained a high school diploma or equivalency (20/25), most had a history of substance use (17/22), and more than a quarter (6/22) reported a history of trauma.<sup>9</sup> Nearly two-thirds of young adults placed in ESH had mental health conditions requiring treatment (based on *Brad H.* settlement criteria).<sup>10</sup>

Considering the needs of the youth placed in ESH, as well as the restrictive nature of the setting, reliably monitoring and ensuring that all youth are obtaining services and care is critical. This is especially important because the Department has acknowledged that lockdowns have disrupted access to services in the unit.<sup>11</sup> And, the Department does not have the means to measure whether it is meeting the Minimum Standards for lock-in/lock-out times for young adults placed in ESH.<sup>12</sup> The

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<sup>3</sup> June 2017, DOC Evaluation of Enhanced Supervision Housing for Young Adults, at 4 and 22.

<sup>4</sup> *Id.* at 22, fn. 14.

<sup>5</sup> June 2017, DOC Evaluation of Enhanced Supervision Housing for Young Adults, at 22 and 38 (Minimum Standards and Services "Service Requests" Table).

<sup>6</sup> Feb. 14, 2017, DOC Young Adults in Enhanced Supervision Housing, at 2 and 7 (referring to 3 hours of DOE educational services and 4 hours of DOC programming available daily).

<sup>7</sup> The Department reports that "27 inmates were involved with schooling", *see* June 2017, DOC Evaluation of Enhanced Supervision Housing for Young Adults, at 22.

<sup>8</sup> June 2017, DOC Evaluation of Enhanced Supervision Housing for Young Adults, at 22 (referring to programming "offered"). Data on actual participation for youth comingled with older inmates is available for only 2 programs: IDOLS and Counseling/"Cage your Rage", *see id.* at 23. Without clear definitions of what "participated" or "offerings" mean in this context, it is impossible to interpret these data.

<sup>9</sup> *Id.* at 20.

<sup>10</sup> *Id.* at 15.

<sup>11</sup> *Id.* at 20, 22, 23.

<sup>12</sup> *Id.* at 33.

absence of information assuring the Board that young adults in ESH are actually receiving the mandated services in compliance with the Minimum Standards, and engaging in evidence-based programming, compromises the Board's ability to make an informed judgment about the Department's variance requests permitting young adults to be placed in ESH.

**Comingling of 19-21 Year Olds With Older Incarcerated People in General Population and ESH Raises Concerns About Implementing the Young Adult Reform Plan and Delivering Age-Appropriate Programming Required by the Minimum Standards.**

The purpose of dedicated young adult housing units was to create environments better tailored to youths' needs, staffed with officers trained to supervise older youth, and to make delivery of age-appropriate programming more feasible operationally. According to the Department, currently half of young adults are housed in a comingled setting.<sup>13</sup> The comingling of young adults with older inmates poses risks to creating and maintaining the kind of developmentally-appropriate settings that young adults need, and making it potentially difficult to deliver the programming and services to which they are entitled under the Minimum Standards Section 1-02(c)(2).

These concerns are only amplified in the ESH setting, where the Department now houses young adults with older "highly violent inmates."<sup>14</sup> This raises serious concerns about the ability of the Department to protect young adults, engage youth in programming and promote positive social development. Notably, the Department's report indicates that the rates of violence among young adults in ESH has not universally decreased. Some violent incidents and infractions have increased among young adults placed in ESH (including mixed-age units).<sup>15</sup> This suggests that co-mingling young adults with older inmates in ESH may not have the same violence prevention effect that it does in other housing units.

Further, the Department has not reported on how comingling has impacted its ability to engage youth in targeted youth-centered programming and deliver mandated services like education in all mixed-aged housing units. The Department's Presentation to the Board on the Young Adult Plan does not address this issue. The variance renewal request simply states that "[w]ithin comingled units young adults are receiving programming through our adult programming division."<sup>16</sup> The lack of information assuring the Board that young adults placed with older inmates throughout the jails are actually receiving the mandated services in compliance with the Minimum Standards, and engaging in evidence-based programming, undermines the Board's ability to make a fully-informed decision about the Department's comingling request.

I appreciate your consideration of these concerns.

Respectfully submitted,

Julia L. Davis, Esq.  
Member of Jails Action Coalition

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<sup>13</sup> July 3, 2017 DOC Variance Renewal Request, at 2.

<sup>14</sup> June 2017, DOC Evaluation of Enhanced Supervision Housing for Young Adults, at 24.

<sup>15</sup> See *id.* (Rates of Use of Force (Minor Injury) increased among Young Adults while in ESH, as did the rates of Violent Infractions. The data include "all young adults housed in ESH during the assessment period regardless of whether they were housed exclusively with young adults or co-mingled with adults." *Id.* at 7.)

<sup>16</sup> July 3, 2017 DOC Variance Renewal Request, at 2.