



April 19, 2021

Chair Jennifer Jones Austin
Executive Director Margaret Egan
Members of the Board of Correction
1 Centre Street, Room 2213
New York, NY 10007
Sent via email

Re: Proposed Restrictive Housing Rule (2021)

Dear Chair Jones Austin, Members of the Board, and Executive Director Egan:

Girls for Gender Equity (GGE) respectfully submits the following written comment in response to the 2021 proposed restrictive housing rule. GGE writes as an organization committed to challenging structural forces; including racism, sexism, transphobia, homophobia, and economic inequity, which constrict the freedom, full expression, and rights of girls and gender-expansive youth of color.

We further submit this in solidarity with those who have spoken as solitary survivors and those parents, siblings, and family members and friends of those who have survived solitary along with those we have lost to solitary. We are startled by the information shared during the April 14th public hearing that a person detained on Rikers was told by the Law Library that they must FOIL for the rule and instead relied on outside support to access it – encountering significant obstacles before ultimately delivering testimony before the Board.

We join others in expressing our disappointment with the creation of “solitary confinement by another name” through the proposed establishment of the Risk Management Accountability System (“RMAS”). The City is yet again creating a new kind of punitive segregation in the aftermath of the creation of “ESH,” “Young Adult ESH,” and “Secure.” Having visited Secure in person – a terrifying environment of cages and indoor fencing – the following comment strongly urges the Board to amend this rule so as to not continue to subject people to the same tortuous systems in other forms. RMAS falls far short of abolishing solitary confinement and following through on the Mayor’s promise made nine months ago.

This rulemaking reflects years of work to shift responses away from isolation and deprivation. Unfortunately, what we read today codifies the punitive measures that have emerged over the past few years, like ESH - a confinement system perpetuated by endless variances.

GGE also joins youth justice advocates in raising concerns with the abandonment of the young adult plan, a focus laid out in restrictive housing rulemaking over the past five years that is now defunct.

At the time of this letter, the total population of youth in city jail systems has jumped 12% since March 2020; with great urgency, we call on the Board to end, not replace, solitary confinement; the following recommendations intend to reduce the harm of incarceration:

Progression (§ 6-13); Periodic Review of Placement (§ 6-14); Extensions (§ 6-15)

The rules allow people to be held indefinitely in RMAS “Level 1” based on a broad and vague standard of “there is a specific documented intelligence that the person will engage in violence if they progress.” Also, time spent in Level 2 can be prolonged if “there is evidence that the person has consistently and willfully refused to participate in programming.” We disagree that in those cases, as the Board writes, “the burden is on the Department to demonstrate, through robust documentation, that a person should not progress.” Nothing in the language protects against subjectivity here.

This diverges from the 30 and 60-day limits under current rules for punitive segregation, introducing a new restrictive environment where people will be vulnerable to vague claims of hypothetical scenarios put forward by the Department. The proposed rule lacks specificity and allows the DOC to make arbitrary decisions; there is no accountability and there are no protections.

The rule states that “DOC plans to expand the structurally restrictive housing units at North Infirmary Command (NIC)” as the design for level one – with NIC known already for brutal conditions – and describes the Secure unit at GRVC for Level 2. Though we await the Department’s “renderings,” photos obtained via FOIL shared by a speaker during the April 14th public hearing showed cages inside other cages, with a thin corridor parallel to the cages. The proposal includes that “the Mayor’s Office has committed to funding a formal evaluation of the process by a third-party auditor and contracted independent auditor after 3 months, 6 months, and annually thereafter.” We do not believe that it is a responsible use of public funds as we fundamentally believe RMAS should not exist. Similarly, we reject the proposal that “DOC staff assigned to RMAS units shall receive special training designed to address the unique characteristics of these units and the people in custody who are housed in these units.” (Training (§ 6-19)

Due Process (Placement Criteria (§ 6-10))

Throughout this rulemaking defenders have raised the need to strengthen due process protections. We urge the Board to build in access to counsel, rather than stopping at written notice. As is, people are coming up against potentially baseless allegations that there is impending violence sometime in the unknown future.

It has been raised before the Board that young adults often face rearrest while being detained in jail, often for responding to circumstances having to do with their survival, that then prolongs their detention and exposes young people to other collateral consequences. Disciplinary due process, as is, does not adequately parse out those instances where investigations could lead to subsequent criminal prosecution or other significant collateral consequences in addition to any resulting restrictive housing placement.

Individual Behavior Support Plan (§ 6-12) & Programming (§ 6-20)

We question the implementation of a written behavior support plan that outlines program expectations and services to facilitate the person's reintegration into housing in the general population led by DOC, especially considering a legacy of DOC-facilitated compromised access to programs. Further, the rule mandates an undefined level of participation in programming in order to progress through levels. There is no clear definition of participation which means DOC will be making that determination, using that determination to prevent an individual from progressing out of that unit.

The rule outlines that "DOC shall also [e]nsure that young adults are offered and are able to access three hours of educational services per day." Without any definitions, programming can mean a worksheet to be completed isolated in a cell, with the DOC then determining participation. Based on past efforts at transparency by the Board, programming could simply involve program staff briefly speaking with a person at a cell door. Further, because of the nature of isolation, people will have to rely on DOC staff for everything – including a history of staffing mismanagement that leads to compromised access to health services.

In January of 2015 the Board revised the minimum standards with the reasoning that a new housing cohort for 18-21 year-olds would ultimately provide for "age-appropriate" programming and services,¹ explicitly including a revision that "provides that housing for [young adults] must provide age-appropriate programming, and requires the Department to report on its efforts to develop such programming."² The new rule makes no mention of how programming will be

¹ New York City Board of Correction. (2015, January). Open Meeting. Available at [http://www1.nyc.gov/assets/boc/downloads/pdf/BOCMinutes%20\(1.13.15\).pdf](http://www1.nyc.gov/assets/boc/downloads/pdf/BOCMinutes%20(1.13.15).pdf).

² New York City Board of Correction. (2015, January). Notice of Adoption of Rules. Available at http://www1.nyc.gov/assets/boc/downloads/pdf/boc_rules_governing_correctional_facilities_fr.pdf.

facilitated between Levels 1 and 2. Based on the photographs, it is our understanding that people will be confined to the cell and cage and program staff will only access the slim corridor.

Exclusions (§ 6-09)

The proposed rules have very limited designations of people who are excluded from placement in RMAS. The isolation of adolescents, under any and all names, should be ended in NYC jails.

The reforms that were adopted in 2015 were intended to protect young adults, including by excluding young adults from ESH. The new rules propose to expose young adults to extremely restrictive cages within cages – potentially for unlimited periods of time. The Board must not pursue this for young adults. We support advocates who have called for the Board to bring together the young adult advisory board. The Board should reinstitute the committee and provide transparency to the provision of services and programming for young people.

Conclusion

RMAS does not protect against the harms of isolated confinement and does not resemble the process as started. This is dangerous and counterproductive and will not address the purported violence alleged as justification for the creation of these units.

We urge the final rules to address every housing assignment that is restrictive in nature, and that the Department not have the continued ability to create unregulated solitary by a different name.

Thank you again for the opportunity to review and submit comments on the proposed rule.

Sincerely,



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