

Good afternoon, Chairperson Parker and members of the Committee. My name is Raymond Ngu and I am the Legal Director of Open City Advocates; we are a legal services organization that represents youth committed to DYRS.

The proposed regulations completely upend the Community Status Review Hearing (CSRH) process and transform it from an imperfect, but tolerable system to one that virtually guarantees that the agency will be able to re-incarcerate any committed youth at any time by disregarding important procedural due process protections. From start to finish, the proposed rules are designed to allow DYRS multiple bites at the apple. But due process is not just some lofty ideal that the agency should strive to abide by if it can; these hearings concern a youth's liberty and we should all take seriously the obligation to safeguard that fundamental right.

I'll start with the expanded criteria for initiating a CSRH. Under current rules, DYRS can only initiate a hearing if a youth is charged with certain offenses or if they have violated the terms of their Community Placement Agreement (CPA) which sets out their supervision conditions. Under the proposed rule, the agency is permitted to initiate hearings, not only for alleged CPA violations, but also if a youth is "unsuccessfully discharged from placement" or "the behavior of the youth poses a risk to public safety."^[1] These terms are either undefined or so broad as to be entirely within the agency's discretion. Because of that, they essentially allow DYRS to initiate a hearing whenever they want, even if a youth has not violated any conditions of supervision they have agreed to abide by.

Then, the DYRS Deputy Director decides whether the youth will be securely detained pending the hearing, a decision currently made by an impartial administrative law judge or hearing officer.

Next, the proposal puts the ultimate decision making authority about placement squarely in the agency's hands. Under current rules, a group made up of a hearing officer and two panel members decide both whether a CPA violation has occurred and whether a youth's level of restrictiveness should be raised. DYRS proposes to eliminate this structure and consolidate authority within the agency; the Deputy Director, who was not present at the hearing, would be the sole decisionmaker about a youth's level of restrictiveness after a hearing. Youth and their attorneys will no longer have a full evidentiary hearing about what their level should be; instead, they will be limited to a written statement that the new rules allow the Deputy Director to completely disregard when making the placement decision.

Finally, after all this, the proposal newly gives DYRS the ability to appeal an unfavorable decision to the DYRS Director or even D.C. Superior Court. This is the final way in which DYRS is trying to ensure that it can incarcerate a child regardless of due process violations.

To summarize, if the new rules go into effect, this is how attorneys will have to explain the process to clients: if DYRS no longer wants you in the community, they can initiate a CSRH even if you haven't violated any condition of your supervision and the Deputy Director will decide whether you should be detained at YSC until your hearing; then a DYRS-appointed Hearing Officer will determine if you pose a risk to public safety for which there is very little criteria or guidance; if so, the Deputy Director, the same person who approved initiating the CSRH and your detention at YSC, will decide what your new placement will be; and, if DYRS isn't happy with any part of that process, they can appeal it to the DYRS Director who can also raise your level of restrictiveness on appeal. In short, this process essentially gives the Director the ability to determine the outcome in all cases.

We know from adolescent development research that youth are far more likely to buy into and abide by a process that they feel is fair. In tipping the scales so significantly, the agency has not only undermined actual due process, but has created a system under which no youth will feel like they have a fair chance to succeed and thus will be less likely to want to engage in DYRS' rehabilitative services.

We have submitted for the record the detailed public comment that was jointly signed by twenty DC-based organizations and individuals who work on behalf of court-involved youth and related populations, all of whom oppose the new regulations as proposed. We strongly urge DYRS to withdraw the rule changes, or delay finalization, in order to consult with youth, families, and advocates to ensure a process that is fair and conforms to the due process protections that all youth deserve.

[1] "A determination based on available information that a youth poses a risk of significant harm to themselves or others, or to property."