

Grantees with ESA Grant Conditions at <https://www.epa.gov/npdes-permits/environmentally-sensitive-area-esa-grant-condition-waiver-program-region-2>, in accordance with N.J.A.C. 7-15-4.4(g).

Pursuant to N.J.A.C. 7:15-4.4(h)1 and 2, the Department considered the land uses allowed in adopted zoning ordinances, future land uses shown in adopted municipal and county master plans, and other local land use objectives. The Denville Township Planning Board approved the preliminary and final major site plan Application No. PSP/FSP/18-04 for the proposed project on January 9, 2019. Morris County has not taken a position on the project as of the date of this notice.

This notice is to inform the public that a plan amendment has been proposed for the Northeast WQM Plan. All information related to this plan and the proposed amendment is located at:

New Jersey Department of Environmental Protection
Division of Watershed Protection & Restoration
Bureau of NJPDES Stormwater Permitting and Water Quality Management
Water Quality Management Planning Program
PO Box 420, Mail Code 501-02A
501 East State Street
Trenton, New Jersey 08625-0420

The Department's file is available for inspection between 9:00 A.M. and 4:00 P.M., Monday through Friday, upon request. An appointment to inspect the file must be arranged by calling the Bureau of NJPDES Stormwater Permitting & Water Quality Management at (609) 633-7021.

Interested persons may submit written comments on the proposed amendment to the Department at the address cited above or at the email: wqmp_publiccomments@dep.nj.gov. Comments should reference Program Interest No. 435442, Activity No. AMD210006 and must be submitted within 30 days of the date of this public notice.

Interested persons may request, in writing, that the Department hold a nonadversarial public hearing on the amendment or extend the public comment period specified in this notice. Such requests should reference Program Interest No. 435442, Activity No. AMD210006 and must demonstrate sufficient public interest for the public hearing or extension of the comment period, as defined at N.J.A.C. 7-1D-5.2(d). The request must be submitted within 30 days of the date of this notice to the Department address cited above. Should the Department decide to hold a public hearing, additional notice will be published in a future issue of the New Jersey Register and the comment period will be extended to 15 days after the public hearing. All comments submitted prior to the close of the comment period shall be considered by the Department before making a final decision on the proposed amendment.

Sewer service is not guaranteed should this amendment be adopted as it represents only one part of the permit process and other issues may need to be addressed. Inclusion in the SSA as a result of the approval of this amendment does not eliminate the need to obtain all necessary permits, approvals, or certifications required by any Federal, State, county, or municipal review agency with jurisdiction over this project/activity.

HUMAN SERVICES

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Notice of Public Meeting Invitation to Attend

New Jersey Drug Utilization Review Board (NJ DURB)

Quarterly Meetings for 2023

Take notice that the Department of Human Services, Division of Medical Assistance and Health Services (DMAHS), has scheduled a series of public meetings of the New Jersey Drug Utilization Review Board (NJ DURB) and invites the public to participate.

The dates and times of the meetings are listed below:

Wednesday, January 25, 2023	11:00 A.M. - 12:00 P.M.
Wednesday, April 19, 2023	11:00 A.M. - 12:00 P.M.
Wednesday, July 19, 2023	11:00 A.M. - 12:00 P.M.
Wednesday, October 18, 2023	11:00 A.M. - 12:00 P.M.

Take further notice that the 2023 meetings of the NJ DURB are being planned as virtual meetings.

Prior to each meeting, the necessary access information for the virtual meetings will be posted on <https://nj.gov/humanservices/dmahs/boards/durb/>. Please call (609) 588-2739 if you have any questions.

If you are deaf or hard of hearing, interpreter services are available at your request. Please let DMAHS know at least two weeks prior to the date of the meeting if you would like an interpreter provided. Please contact DMAHS at (609) 588-2600 for more information.

CORRECTIONS

(b)

STATE PAROLE BOARD

Notice of Action on Petition for Rulemaking N.J.A.C. 10A:71-2.2, 3.11, and 3.20

Petitioner, Michael R. Noveck, Assistant Deputy Public Defender, on behalf of Public Defender Joseph E. Krakora and the Office of the Public Defender (OPD).

Take notice that on September 13, 2022, the State Parole Board (SPB) received a petition for rulemaking from the above-captioned petitioner. A notice acknowledging receipt of the petition and summarizing the suggested rule changes at N.J.A.C. 10A:71-2.2, 3.11, and 3.20 was submitted to the Office of Administrative Law for publication in the New Jersey Register. The SPB certifies that the petition was duly considered at its meeting on October 26, 2022, and determined the following:

The OPD requested modifications that account for the psychological and neuroscientific research regarding brain development and maturity for emerging adults and particularly those who have been incarcerated prior to age 25. In conformance with this research and New Jersey law regarding the mitigating factors of youth and increasing maturity of emerging adults, the OPD specifically requested that the SPB modify its consideration of serious disciplinary infractions committed during one's early adult years, N.J.A.C. 10A:71-3.11(b)7, as well as its use of "[s]ubsequent growth and increased maturity of [an] inmate during incarceration" as a factor in parole decisions, N.J.A.C. 10A:71-3.11(b)24, to ensure that a person's youth is not inappropriately considered as an aggravating factor. The OPD references *State v. Rivera*, 249 N.J. 285 (2021) ("Youth may be considered only as a mitigating factor in sentencing and cannot support an aggravating factor."); and N.J.S.A. 2C:44-1b(14) (providing for mitigating factor at sentencing where defendant "was under 26 years of age at the time of the commission of the offense").

Regarding the SPB's consideration of "serious" disciplinary infractions, the SPB noted that the OPD requested that the SPB decline to consider an incarcerated person's commission of serious infractions if the infractions occurred prior to the person's age of maturity. Specifically, the OPD requested that the regulation be amended to provide that "the Board shall not consider as an aggravating factor the incarcerated person's failure to demonstrate growth and maturity prior to the age of maturity (at least 25 years old, or older for a person whose incarceration commenced prior to the person's twenty-first birthday)."

The OPD's request is primarily based on *State v. Rivera*, 249 N.J. 285 (2021). In *Rivera*, the State Supreme Court (Court) explained that the trial court made an impermissible presumption that the defendant, who had no prior criminal record, would have engaged in other criminal conduct but did not have the opportunity to do so because of youth. Further, the Court explained that the presumption that a defendant's youth may have prevented the defendant from having a criminal record cannot support a finding of aggravating factor three—the risk of re-offense. The Court

concluded that a criminal defendant's youth may be considered only as a mitigating factor in sentencing and cannot support an aggravating factor.

The SPB notes that *Rivera* is a criminal case and it does not directly apply to parole decisions. Even so, the OPD suggests that the SPB could impermissibly apply N.J.A.C. 10A:71-3.11(b)24 to determine that the person's lack of subsequent growth and increased maturity is an aggravating factor demonstrated not by their past actions, but by: (1) their youthful immaturity in committing the offense; and (2) their lack of opportunity to engage in similar acts due to their youth. The OPD does not identify any case in which the SPB conducted such an analysis: that is, that the SPB denied parole due to the person's youthful immaturity in committing the offense, or because of the lack of opportunity to engage in other similar acts due to their youth. Rather, the determination of subsequent growth and maturity has been based upon factors, such as the incarcerated person's prison record, including disciplinary record and program participation during incarceration following their conviction, professional evaluations, and the incarcerated person's presentation at parole hearings.

While the SPB does not believe that *Rivera* applies, recent case law suggests that the SPB cannot deny parole based on the commission of remote disciplinary infractions, whether serious or less serious (*Eugene Berta v. New Jersey State Parole Board*, 473 N.J. Super. 284 (App. Div. 2022)). Though the temporal remoteness of infractions may not reasonably be deemed to suggest a likelihood of reoffending, if an incarcerated person continues to commit infractions through the course of the incarceration, the SPB believes that it can continue to consider the person's infraction history as a factor in a parole release decision, as it demonstrates that the person has an ongoing problem complying with rules.

The SPB does not read *Rivera* and *Berta* to require the SPB to amend the New Jersey Administrative Code as requested by the OPD. Though the SPB should give lesser weight to disciplinary infractions that are remote in time, this goes to the weight of the SPB's consideration, not to whether those infractions should be considered at all. Nor is there any indication that, in considering subsequent growth and maturity, the SPB would consider the incarcerated person's failure to demonstrate growth and maturity prior to the age of maturity, rather than during their incarceration following their conviction.

Additionally, the SPB notes that the proposed rule preventing consideration of early disciplinary infractions appears to be inconsistent with other factors that the SPB is to consider. The SPB properly considers factors, such as the circumstances of the underlying offense(s), as well as an incarcerated person's offense record. It is illogical for the SPB to decline to consider disciplinary infractions committed by an offender at a young age, yet consider acts that precede those infractions, such as the circumstances of the underlying offense(s) and the juvenile offense record.

Based on the above, the SPB is of the opinion that there does not exist a need to modify its rules addressing consideration of disciplinary infractions committed during an incarcerated person's early adult years, or the use of subsequent growth and increased maturity as a factor to ensure youth is not an aggravating factor. Accordingly, the SPB determined to deny the suggested changes.

Second, the OPD requests that the SPB include a new mitigating factor in its parole decisions that accounts for the advanced age of a person eligible for parole, in light of the "overwhelming evidence" demonstrating the lack of recidivism for older persons. The OPD references *Acoli v. N.J. State Parole Board*, 250 N.J. 431 (2022) (a potential parolee's "advanced age ... is [a] highly relevant factor" for the Parole Board to consider); *State v. Comer*, 249 N.J. 359 (2022) (discussing the "age-crime curve" showing that prevalence of crime "drop[s] precipitously" as people age out of adolescence); and *Berta v. N.J. State Parole Board*, 473 N.J. Super. 284 (2022) ("[W]e instruct the Board to account specifically for Berta's age ... in determining whether - and, if need be, explaining why - the preponderance of the evidence establishes a substantial likelihood that he will re-offend.").

The SPB notes that there is recent case law to suggest that an incarcerated person's advanced age must be considered in certain applicable cases. The OPD refers to *Acoli* and *Berta* to suggest that the SPB amend its rules to include advanced age as a factor. In *Acoli*, the

Court held that the SPB should have considered *Acoli's* advanced age—79 at the time of his hearing—as a highly relevant factor in its determination. The Court cited several studies that have shown that that, as individuals age, their propensity to commit crime decreases and, in particular, that elderly individuals released from prison tend to recidivate at extremely low rates. The Court also referenced statistics that found recidivism rates were very low for inmates released at age 65 or older. Subsequently, in *Berta* the Appellate Division also instructed the SPB to account specifically for Berta's age (71), in determining whether the preponderance of the evidence establishes a substantial likelihood that he will re-offend.

The SPB does not read *Acoli* and *Berta* to require the SPB to amend the New Jersey Administrative Code (N.J.A.C. 10A:71-3.11(b)) to include advanced age as a mitigating factor to be considered at a parole hearing. The SPB's rules provide for a "catch-all" factor that reflects that the SPB should consider all relevant factors, thereby making it unnecessary to include advanced age as an additional factor. Even though *Acoli* and *Berta* have made it clear that the SPB must consider an incarcerated person's advanced age when making a parole release decision in certain cases, the decisions do not give clear guidance when "advanced age" must be considered. The Court in *Acoli* referenced statistics for inmates released at age 65 and this may suggest that age must be considered as a factor for inmates age 65 or above. Parole release decisions, of course, remain individualized assessments and an incarcerated person's age is not necessarily a determinative factor in a parole release decision.

Though recognizing that advanced age must be considered as a factor in certain cases, the SPB is of the opinion that the SPB is not required to amend its rules to include advanced age as a mitigating factor. Accordingly, the SPB determined to deny the suggested rule change.

Finally, the OPD requests that the SPB modify its rule regarding the withholding of psychological and substance abuse reports from a person who is eligible for parole. The OPD notes that currently the SPB's rules contain a blanket designation of confidentiality over all such records, see N.J.A.C. 10A:71-2.2(a)1 and 2, which are withheld from the person seeking parole, see N.J.A.C. 10A:71-2.2(c). The OPD states that the rule was designed to prevent disclosure of an incarcerated person's confidential medical information to the public, but it has since inappropriately been modified to prevent the person from accessing their own records. The OPD states that this treatment is contrary to Appellate Division precedent requiring a case-by-case analysis and justification regarding the withholding of relevant materials from the parole applicant. The OPD references *Thompson v. N.J. State Parole Board*, 210 N.J. Super. 107 (App. Div. 1986) (requiring "good faith determinations, made pursuant to [reasonable] standards, whether file materials are to be withheld" from person seeking parole); and *N.J. State Parole Board v. Cestari*, 224 N.J. Super. 534 (App. Div. 1988) (concluding that "there is no current reason for [appellant's] psychological report to remain confidential").

The SPB notes that the OPD contends that the SPB should revise its rules because current rules that restrict an inmate's access to their own mental-health records cannot be squared with the Appellate Division's decision in *Thompson v. N.J. State Parole Bd.*, 210 N.J. Super. 107 (App. Div. 1986). In *Thompson*, the court examined whether a pro se inmate had a due process right to disclosure of adverse confidential materials, including a psychological report that the SPB considered in denying the inmate parole. The court found that the SPB rule withholding adverse confidential documents, when read in conjunction with the Department of Corrections Standard 281 defining mental health records as confidential, was facially valid. Although the regulation analyzed in *Thompson* has since been amended, the SPB believes that the current form remains consistent with *Thompson*.

In *Thompson*, the court held that an SPB rule or policy that flatly prohibited an inmate access to parole files would not be sustainable. However, the court recognized the need for confidentiality of certain records within the file, specifically records concerning the inmate's mental health treatment. The court noted that there is no jurisdiction to the court's knowledge that has adopted a flat rule of disclosure and that instead every reported case preserves an exception for necessary confidentiality because of the widely recognized security and discipline

problems encountered in the operation of a penal institution, the fear of loss of valuable information from the public and from prison employees who must contemplate continued close contact with the prisoner, and the fear of the revelation of diagnostic materials that may interfere with therapeutic goals.

The Department of Corrections, at N.J.A.C. 10A-22-2.7(d), provides for the availability and/or confidentiality of an inmate's mental health records. Disclosure of certain records to an inmate that would compromise the safety, security, or the orderly operation of the facility is prohibited without a court order or a consent protective agreement. As recognized in *Thompson*, this approach does not offend due process as the safe operation of a prison must be considered in determining the extent of legal process due a prisoner in the consideration of parole release. The Court in *Thompson* understood that evaluations are among those materials that could cause a very real risk to institutional security and their disclosure should be avoided if it would interfere with prisoner rehabilitation and relationships with therapists.

The SPB does not believe that it violates due process by withholding mental health evaluations from an incarcerated person. The SPB does note in the incarcerated person's file the basis for the withholding of a mental health evaluation from the incarcerated person and said basis is available for review by the Appellate Division. The SPB does release mental health evaluations as directed pursuant to a court order and does release mental health evaluations pursuant to a consent protective order/agreement as contemplated in *Thompson*. In appeal matters, counsel receiving a mental health evaluation under a consent protective order/agreement may provide the mental health evaluation to the Appellate Division in a confidential appendix for the court's review and has the opportunity to raise arguments regarding its contents before the court. The Appellate Division has followed the process set out in *Thompson* when addressing the issue of the release of a mental health evaluation. Following that process, the courts have provided, and withheld, mental health evaluations reflecting the case-by-case analysis contemplated in *Thompson*.

Based on the above, the SPB does not believe that it is necessary to amend its rules (N.J.A.C. 10A-71-2.2 and 3.20) regarding the confidentiality of mental health evaluations. The SPB believes its existing regulations comply with *Thompson* and, in practice, the procedures outlined in *Thompson* have been followed. Accordingly, the SPB has determined to deny the suggested rule changes.

In accordance with the provisions at N.J.S.A. 52:14B-4(f) and N.J.A.C. 130-4.2, the SPB has mailed a copy of this notice of action on the petition for rulemaking to the petitioner.

LABOR AND WORKFORCE DEVELOPMENT

(a)

OFFICE OF THE COMMISSIONER Notice of Availability of Grant Funds

Take notice that, in compliance with N.J.S.A. 52:14-34.4 et seq., the Department of Labor and Workforce Development (the Department) regularly publishes on its website at <http://lwd.dol.state.nj.us/labor> all notices of fund availability pertaining to Federal or State grant funds that may be awarded by the Department. The notices of fund availability may be found on the Department's website under the heading "Public Notices" and the subheading "Notice of Availability of Grant Program Funds."

(b)

DIVISION OF ACCOUNTING

Public Notice of Rates for Board and Room, Meals, and Lodging Furnished by Employers in Addition to, or in Lieu of, Money Wages During Calendar Year 2023

Take notice that, in accordance with N.J.A.C. 12-16-4.8, the Department of Labor and Workforce Development hereby publishes notice of the following rates for board and room, meals, and lodging furnished by employers in addition to, or in lieu of, money wages during calendar year 2023:

Full board and room, weekly	\$276.60
Lodging, per week	\$118.60
Meals, per day	\$31.60

If less than three meals per day, individual meals shall be valued as follows:

Breakfast	\$9.50
Lunch	\$9.50
Dinner	\$12.60

These amounts are used when the employer does not assign value to such payments for unemployment and temporary disability insurance purposes only. They have no bearing on the New Jersey Wage and Hour Laws or rules or the Federal Fair Labor Standards Act (FLSA) and regulations. Rates for board and room, meals, and lodging under the New Jersey Wage and Hour Laws or rules may be found at N.J.A.C. 12-56-8, 13, and 14. Pursuant to the FLSA, these rates may be found at 29 U.S.C. §§ 201 et seq. and 29 CFR Part 531.

OTHER AGENCIES

(c)

ECONOMIC DEVELOPMENT AUTHORITY Online Posting of Notices of Funding Availability for Grant Programs, Challenges, and Other Opportunities

Take notice that, in compliance with N.J.S.A. 52:14-34.4 et seq., the New Jersey Economic Development Authority (Authority) regularly publishes notices of funding availability for grant programs, challenges, and other opportunities on its website at <https://www.njeda.com/public-information/> under the heading "Notice(s) of Funding Availability."

For information about a specific grant program, see the applicable notice of funding availability posted online or call the Authority's toll-free number at 844-965-1125.

(d)

ECONOMIC DEVELOPMENT AUTHORITY COMMISSION ON SCIENCE INNOVATION AND TECHNOLOGY Online Posting of Notices of Funding Availability for Grant Programs, Challenges, and Other Opportunities

Take notice that, in compliance with N.J.S.A. 52:14-34.4 et seq., the New Jersey Economic Development Authority (Authority), on behalf of the Commission on Science Innovation and Technology, regularly publishes notices of funding availability for grant programs, challenges, and other opportunities on its website at <https://www.njeda.com/public-information/> under the heading "Notice(s) of Funding Availability."