



**NEW YORK CITY
BOARD OF CORRECTION**

November 12, 2019 PUBLIC MEETING MINUTES

MEMBERS PRESENT

Jacqueline Sherman, Interim Chair
Stanley Richards, Vice-Chair
Robert L. Cohen, M.D.
Florentino Hernandez
Jennifer Jones Austin, Esq.
James Perrino
Michael J. Regan
Steven M. Safyer, M.D.

Michele M. Ovesey, Acting Executive Director

DEPARTMENT OF CORRECTION (DOC)

Cynthia Brann, Commissioner
Hazel Jennings, Chief of Department
Brenda Cooke, Chief of Staff
Heidi Grossman, Deputy Commissioner for Legal Matters/General Counsel
Lisa Richardson, Deputy General Counsel
Peter Thorne, Deputy Commissioner of Public Information
Dana Wax, Deputy Chief of Staff
Kenneth Stukes, Bureau Chief of Security
Marshall Volk, Assistant Commissioner of the Nunez Compliant Unit
Steven Kaiser, Executive Director of Policy and Intergovernmental Affairs
Fabrice Armand, Director of Strategic Partnerships and Community Engagement
Francis Torres, Assistant Commissioner of Education and Youth Advocacy Services
Nancy Li, Policy Analyst
Latima Johnson, Press Officer

NYC HEALTH + HOSPITALS (H+H)-CORRECTIONAL HEALTH SERVICES (CHS)

Patsy Yang, DrPH, Senior Vice President
Benjamin Farber, Chief of Staff
George Axelrod, MD, Director of Health Information & Risk Management
Giselle Cordero, Deputy Dir. of Communications and Public Affairs

OTHERS IN ATTENDANCE

Charles Parkins, Administration for Children's Services (ACS)
Zandra Graham, ACS
Tim Roche, ACS
Max Cantarero, ACS
Marisa Kaufman, ACS
Sara Hemmeter, ACS

Joan Tannenbaum, ACS
Nora Daniel, ACS
Keith Zobel, NYS Commission of Correction (SCOC)
Allen Riley, SCOC
Jennifer Parish, Urban Justice Center (UJC)
Alex Abell, UJC
Victoria Phillips, UJC/Jails Action Coalition (JAC)
Kayla Simpson, Legal Aid Society Prisoners' Rights Project (LAS)
Kelsey De Avila, Brooklyn Defender Services (BDS)
Simone Spirig, BDS
Irene Cedano, BDS
Gina Farinaccio, BDS
Claudia F., BDS
Julia Davis, Children's Defense Fund
Daniele Gerard, Children's Rights
Mark Mack, Correction Officers' Benevolent Association (COBA)
Marc Steier, COBA
Kim Joyce, NYC Law Department
Christopher Boyle, New York County Defenders Services
Wendell Walters, Osborne Association
Frances Geteles, Asylum Network of Physicians for Human Rights (PHR) and NY Campaign for Alternatives to Isolated Confinement (CAIC)
Scott Paltrowitz, CAIC
Vidal Guzman, Just Leadership USA
Brandon Holmes, Just Leadership USA
Marvin Mayfield, Just Leadership USA
Eileen Grench, THE CITY
Alex Parker, Local 371
Courtney Gross, Spectrum New NY1
Nicole Nmec, Independent

Approval of October 22 and October 31, 2019 Minutes

The Interim Chair asked for a motion to approve the draft minutes of the Board's October 22 and October 31, 2019 meetings. After the item was moved and seconded, the minutes were unanimously approved (Interim Chair Sherman, Vice-Chair Richards, and Members Cohen, Hernandez, Perrino, and Regan).

Announcements and Updates

The Interim Chair announced that the public comment period on the proposed restrictive housing rules would be extended from December 2, 2019 to January 3, 2020. The Board scheduled a public hearing on the proposed rules for December 2, 2019 at 9:00AM at 125 Worth Street, and was also looking to schedule a second hearing during the evening on another date. The Board is also working with the Department of Correction ("DOC" or "Department") to post flyers in the jails announcing the proposed rules, explaining how to access a copy of the proposed rule package, and how to submit comment. The flyers will be posted in each jail's staff locker room, law library, visiting area, and clinic. The Department will keep a copy of the proposed rule package in each jail's law library and Deputy Warden of Administration's office. Additionally, if a person in custody calls the Board and requests a copy of the proposed rule package, the Board will mail the person a copy. The Board also created a dedicated voicemail box for anyone, including people in custody, to leave public comment.

Public Comment on Variance Requests

The Board heard public comment on the Department's eight (8) variance requests regarding Separation Status, the Secure Unit, Thanksgiving Day Visiting, PSEG Seven-Day Waivers, and

Raise-the-Age/Horizon. Public comment was heard from Daniele Gerard (Children's Rights), Kayla Simpson (LAS), Victoria Phillips (UJC/JAC), and Frances Geteles (PHR/CAIC). The public comments are available here: <https://youtu.be/uAh82A5UE4Q?t=995>.

Separation Status Variance Request

► Introduction

Acting Executive Director, Michele M. Ovesey ("Acting ED Ovesey") and Interim Chair Sherman provided the following update on the Department's use of body scanners and Separation Status:

In July 2019, the Department began using body scanners on people in custody to identify contraband. A body scanner is a security tool that utilizes a low dose of ionizing radiation to conduct full body scans capable of detecting objects placed on, attached to, or secreted within a person's body. If DOC identifies contraband on a body scan (i.e., a positive scan) or a person refuses a body scan, DOC places the person in Separation Status. The Department keeps people in Separation Status until they receive a negative body scan or post bail and are released from custody. Separation Status currently involves 24-hour lock-in, except for the offer of a daily shower.

Correctional Health Services ("CHS") conducts daily medical rounds on the Separation Status Unit. DOC and CHS are mitigating some potential health risks of Separation Status placement by requiring a ratio of one correction officer to one person in custody, and uninterrupted supervision of each person in this Status. Since July 15, 2019, there have been 40 placements into Separation Status. Twenty-three (23) or 57.5% of these placements were for one day or less; 14 or 35% were for two days; and three (3) or approximately 7.5% were for three (3) days. Weapons were recovered from five (5) or 13% of the first 38 placements in Separation Status. Four (4) of these recoveries were from people whose placement in separation status was due to a positive scan and one (1) recovery was from a person whose placement was due to a refusal to scan.

The Department submitted a variance request for the September 2019 public meeting but withdrew it before a vote; the Department then re-submitted the request for the October 2019 public meeting. At the October meeting, the variance request was tabled pending the Department's reconsideration of whether its operation of Separation Status was the least restrictive means necessary to accomplish the shared goal of safety for staff and people in custody. Since October 22, the Board and the Department have made progress addressing each party's concerns, efforts which are reflected in the Board's proposed variance conditions to be discussed today. Although the Department's request was for a six-month variance, the Board said it was now prepared to consider approval of a three-month variance; at the January 2020 public meeting, the Board will present the results of an initial review of Separation Status, which will inform discussions regarding the variance when it must be renewed.

► DOC Presentation

Kenneth Stukes, DOC Bureau Chief of Security ("Bureau Chief Stukes"), requested a six-month limited variance from Minimum Standards § 1-03(c-d,j) (Personal Hygiene); § 1-04(b)(2-3) (Single Occupancy, including storage and desk space); § 1-05(a-c) (Lock-In); § 1-06 (Recreation); § 1-07(c) (Religion); § 1-08(f)(4) (Law Library Access); § 1-08(g)(2-4) (Legal Documents and Supplies Access); § 1-09 (c-d, f) (Visiting); § 1-11(c-d) (Correspondence); § 1-12(d) (Incoming Packages); § 1-13(a-c) (Publications); and § 1-14(a-b) (Access to Media), for the purpose of maintaining safety and security when individuals in custody are known or reasonably believed to have dangerous contraband secreted on or within their bodies. Hazel Jennings, DOC Chief of Department ("Chief Jennings"), added that DOC's number one concern is safety for all – staff, people in custody, and visitors.

► Board Discussion

Dr. Cohen said the variance and conditions agreed upon by the Board and the Department are not the least restrictive means necessary to maintain safety in the jails. Furthermore, the variance and conditions do not limit the amount of time someone can be in Separation Status, and DOC has expressed that it needs the capacity to keep people in this status for as long as necessary. He added that DOC has not committed to providing scans to people in Separation Status upon request or on a daily basis. Dr. Cohen asserted this variance is an attempt to create a punitive system that DOC believes will result in people surrendering their weapons. He urged the Board to vote against this variance, as the Separation Status unit inconsistent with the Board's approach to restrictive housing.

Member Hernandez said we must balance striving for humane treatment of people in custody with ensuring safety in the jails. He believes the body scanners are an effective tool, as people have surrendered weapons after receiving positive scans. He will support this variance today with the Board's conditions.

Member Perrino reflected on his experience traveling out of state for training before he became a Warden. In speaking to corrections staff from many different states, he realized the frequency of slashings and stabbings in NYC jails was unique from other jurisdictions. He believes that if a body scan reveals a person is in possession of a weapon, that person must be isolated until 1) they surrender the weapon or 2) they prove they are not in possession of a weapon. He clarified that he does not fully support isolation, but he is very concerned about safety in the jails. Member Perrino committed to continue closely reviewing Separation Status practices going forward.

Vice-Chair Richards said that Separation Status is isolation, and members of the Board do not believe the current practices or proposed variance conditions are ideal. However, DOC has been operating the Separation Status unit since July 2019 without Board oversight, and this variance with conditions would at least bring needed oversight and accountability to ensure that Separation Status is used as infrequently as possible. Vice-Chair Richards encouraged DOC to continue exploring ways to manage this practice without deprivation and punishment, and he looks forward to working with DOC to make this practice the least restrictive possible. Chief Jennings replied that DOC does not want to use Separation Status or isolation housing but, unlike other jurisdictions, it deals with the prevalence of weapons, slashings and stabbings. She looks forward to working with the Board in upcoming months and reviewing other ways to manage this issue.

► **Board Vote on Conditions**

Acting ED Ovesey read out loud the following nine (9) proposed conditions to the variance:

1. All newly admitted people in custody shall receive a medical and mental health intake, per Minimum Standard § 3-04, prior to body scan.

After Interim Chair Sherman called a roll call vote, the Board approved the condition with six (6) votes in favor (Interim Chair Sherman, Vice-Chair Richards and Members Cohen, Hernandez, Perrino, and Safyer) and one (1) abstention (Member Regan).

2. The Department shall place a person in Separation Status only if the person: (i) has a positive body scan; or (ii) refuses a body scan.

After Interim Chair Sherman called a roll call vote, the Board approved the condition with six (6) votes in favor (Interim Chair Sherman, Vice-Chair Richards and Members Cohen, Hernandez, Perrino, and Safyer) and one (1) abstention (Member Regan).

3. The Department shall:
 - (a) House people in Separation Status within four (4) hours of a positive scan or refusal to scan, absent extenuating circumstances, which shall be documented and communicated to the Board in each instance;
 - (b) Notify CHS of each person placed into and/or released from Separation Status upon the conclusion of each tour. Each notification is to include a notification to Pharmacy and individual-specific information (i.e., Name and Book and Case number). For people released from Separation Status, DOC shall provide CHS with the person's new housing location;
 - (c) CHS shall provide daily medical rounds to people housed in Separation Status and shall have the authority to determine if any person should be removed for clinical evaluation or treatment;
 - (d) Institute one (1) Correction Officer to one (1) person in custody observation ("1-to-1 observation") of each person throughout placement in Separation Status and fully document such observation;
 - (e) By the next business day, notify the Board in writing of any instances in which an individual is denied the opportunity to receive a daily scan and provide the reasons for such denial;
 - (f) Provide opportunities for regular visiting and attorney visiting by a secure video conferencing system that the Department shall have in place starting December 1, 2019;
 - (g) The Department shall consult with the Office of Court Administration on producing people in Separation Status to court and shall produce any person the Court orders to be present. If the Court requests that the person not be produced, the Department shall, to the extent possible, enable the person to participate in his court proceeding through a secure video-conferencing system.

After Interim Chair Sherman called a roll call vote, the Board approved the condition with six (6) votes in favor (Interim Chair Sherman, Vice-Chair Richards and Members Cohen, Hernandez, Perrino, and Safyer) and one (1) abstention (Member Regan).

4. When a person remains in Separation Status for 72 hours, the Chief of Department, the Bureau Chief of Security, and the GRVC Warden ("Committee") shall meet to develop a plan for moving the person out of Separation Status. The Committee shall meet and develop a plan every 72 hours until the person is moved out of Separation Status. The Department shall provide each written plan to the Board within one business day of the Committee's meeting.

After Interim Chair Sherman called a roll call vote, the Board approved the condition with five (5) votes in favor (Interim Chair Sherman, Vice-Chair Richards and Members Hernandez, Perrino, and Safyer), one (1) vote in opposition (Member Cohen), and one (1) abstention (Member Regan).

5. Upon request, loose-leaf legal materials shall be provided to people in Separation Status. This shall include legal mail and Law Library requests. The Department may institute limits on the number of loose-leaf pages a person may have in the person's cell at any given time.

After Interim Chair Sherman called a roll call vote, the Board approved the condition with five (5) votes in favor (Interim Chair Sherman, Vice-Chair Richards and Members Hernandez, Perrino, and Safyer), one (1) vote in opposition (Member Cohen), and one (1) abstention (Member Regan).

6. When a person remains in Separation Status for 48 hours, the Department shall begin to afford one hour per day of indoor recreation. Recreation will be provided on the housing unit in a closed space but outside of the person's assigned cell. Recreation space shall include appropriate recreation equipment.

After Interim Chair Sherman called a roll call vote, the Board approved the condition with five (5) votes in favor (Interim Chair Sherman, Vice-Chair Richards and Members Hernandez, Perrino, and Safyer), one (1) vote in opposition (Member Cohen), and one (1) abstention (Member Regan).

7. The Department shall not limit the number or duration of confidential calls to attorneys, the Board of Correction, the Department of Investigation, or any other monitoring body.

After Interim Chair Sherman called a roll call vote, the Board approved the condition with six (6) votes in favor (Interim Chair Sherman, Vice-Chair Richards and Members Cohen, Hernandez, Perrino, and Safyer) and one (1) abstention (Member Regan).

8. Signs shall be posted at intake to advise individuals in custody that they can (i) make complaints about body scanners/body scanning to DOC's Office of Constituent and Grievance Service (OCGS) or 311; and (ii) upon release from DOC custody, request the total accumulated radiation exposure from all body scans of that person conducted during the incarceration.

After Interim Chair Sherman called a roll call vote, the Board approved the condition with six (6) votes in favor (Interim Chair Sherman, Vice-Chair Richards and Members Cohen, Hernandez, Perrino, and Safyer) and one (1) abstention (Member Regan).

9. By the next business day of a person's placement in and release from Separation Status, the Department shall provide the Board access to all supporting documentation related to the person's placement and release. The Department shall provide the Board with a monthly public report on the implementation of Separation Status. The requirements for the notification and report are outlined in Appendix A hereto.

After Interim Chair Sherman called a roll call vote, the Board approved the condition with five (5) votes in favor (Interim Chair Sherman, Vice-Chair Richards and Members Hernandez, Perrino, and Safyer), one (1) vote in opposition (Member Cohen), and one (1) abstention (Member Regan).

► **Board Vote on Conditions Proposed by Dr. Cohen**

Dr. Cohen read out loud the following three (3) additional conditions proposed to the variance:

1. The Department shall offer a daily opportunity to body scan to each person in Separation Status.

Chief Jennings said the Department's current policy is to offer a body scan to individuals in Separation Status once every seven (7) days. However, in practice the Department has allowed people to scan every day, and this will remain its practice if not its written policy. The Department expressed security concerns surrounding this condition and requested to discuss it further with the Board at a later time.

After Interim Chair Sherman called a roll call vote, the Board approved the condition with six (6) votes in favor (Vice-Chair Richards and Members Cohen, Hernandez, Jones Austin, Perrino, and Safyer) and one (1) abstention (Member Regan). Interim Chair Sherman was present but did not participate in this vote.

2. The Department shall provide daily recreation, per Minimum Standard § 1-06(f) (recreation for people in the Contagious Disease Unit ("CDU")).

Chief Jennings clarified that people in the CDU are not taken out for recreation. She then specified that people are offered recreation after 48 hours of placement in Separation Status. Thus far, no

one has been in this status after 48 hours, so DOC considers this timeframe to be the greatest safety risk. DOC's Commissioner, Cynthia Brann, said DOC has considered providing recreation in a closed space with one-on-one supervision. She added the Department's primary objective is safety, and if everyone in Separation Status receives all the rights and privileges afforded to general population, there will be no incentive to relinquish the weapon.

Interim Chair Sherman called a roll call vote and the Board opposed the condition with six (6) votes in opposition (Interim Chair Sherman, Vice-Chair Richards and Members Hernandez, Jones Austin, Perrino, and Safyer), one (1) vote in favor (Member Cohen), and one (1) abstention (Member Regan).

3. The Department shall provide books, magazines, and newspapers. The Department may limit the number of books, magazines, and/or newspapers that a person may have in cell at any one time.¹

Chief Jennings said DOC will agree to providing newspapers and law library related items, but it will not provide hard cover books to people in Separation Status due to safety concerns. The proposed condition was revised accordingly.

Interim Chair Sherman called a roll call vote and the Board approved the condition with seven (7) votes in favor (Interim Chair Sherman, Vice-Chair Richards and Members Cohen, Hernandez, Jones Austin, Perrino, and Safyer), and one (1) abstention (Member Regan).

► Board Vote on Variance

Interim Chair Sherman called for a motion to vote on the variance with the conditions. After Vice-Chair Richards moved and Member Jones Austin seconded, the Board approved a three-month variance with conditions, with six (6) votes in favor (Interim Chair Sherman, Vice-Chair Richards and Members Hernandez, Jones Austin, Perrino, and Safyer), one (1) opposed (Member Cohen), and one (1) abstention (Member Regan).²

Secure Unit Variance Request

► Introduction

Acting ED Ovesey provided background on the variance request as follows:

The Department requested a variance to allow it to reduce out-of-cell time to a minimum of ten (10) hours per day in the Secure Unit, and allow for alternative access to legal services and materials in the unit. The Board first granted this variance request in May 2016 and has renewed it every six months since then. The Board's proposed rule on restrictive housing incorporates the variance and some of its conditions. If passed, the new rule would eliminate the need for this variance going forward.

The Department developed the Secure Unit as an alternative to punitive segregation for young adults. Per Department policy, the unit is for young adults who have a history of persistent violent and/or assaultive behavior and/or whose assaultive behavior results in a serious injury to staff, the public, or other young adults.

¹ This condition was revised as follows: The Department shall provide access to newspapers. The Department may limit the number of newspapers that a person may have in cell at any one time.

² The final record of variance is available at:

<https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2019/November/Post-Meeting/2019.11%20-%20Record%20of%20Variance%20Action%20-%20Separation%20Status%20final.pdf>

- As of November 7, 2019, there were 12 young adults in the unit – three (3) young adults in each of the unit's four (4) quadrants.
- The number of young adults in Secure peaked at 21 in February 2019. In the subsequent months, the Secure census fell to nine (9) young adults in April, before steadily increasing from April to August 2019.
- Of the young adults who left the Secure unit before September 1, 2019, the average length of stay was 67 days. This is slightly longer than the average length of stay for young adults in Enhanced Supervision Housing (ESH).
- From March 2019 through August 2019, there were 51 exits from Secure, up from 31 in the previous six-month reporting period. Thirty-three (33%) of exits were due to the young adult completing all phases of Secure; 29% were due to being discharged from custody; 24% were transferred out for health or security reasons; and the remaining 14% were for various other reasons.
- DOC has not used restraint desks in Secure in over two (2) years, since September 14, 2017.

► **DOC Presentation**

Chief Stukes requested a six-month limited variance renewal from Minimum Standard § 1-05(b) (Lock-in) and §1-08(f) (Access to Courts and Legal Services) to maintain use of the Secure Unit.

► **Board Discussion**

Member Perrino commended DOC on refraining from using restraint desks in Secure for two years.

► **Board Vote**

Interim Chair Sherman called for a motion to vote on the existing conditions. After Vice-Chair Richards moved and Member Perrino seconded, the Board unanimously approved the existing conditions, 8-0 (Interim Chair Sherman, Vice-Chair Richards and Members Cohen, Hernandez, Jones Austin, Perrino, Regan, and Safyer).

Interim Chair Sherman called for a motion to vote on the variance with the conditions. After the item was moved and seconded, the Board unanimously approved the existing conditions, 8-0 (Interim Chair Sherman, Vice-Chair Richards and Members Cohen, Hernandez, Jones Austin, Perrino, Regan, and Safyer).³

Thanksgiving Day Visiting Variance Request

► **DOC Presentation**

Chief Jennings requested a variance from Minimum Standard § 1-09(c)(1)(i) to allow visits on Thanksgiving Day to be conducted on a day schedule, rather than an evening schedule. The Department believes this one-day modification that has been approved for many years will enhance opportunities for visitors to see their loved ones during the holiday.

► **Board Vote**

Interim Chair Sherman called for a motion to vote on the variance. After the item was moved and seconded, the Board unanimously approved the variance, 8-0 (Interim Chair Sherman, Vice-Chair Richards and Members Cohen, Hernandez, Jones Austin, Perrino, Regan, and Safyer).⁴

³ The final record of variance is available at:
<https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2019/November/Post-Meeting/2019.11%20-%20Record%20of%20Variance%20Action%20Secure.pdf>

⁴ The final record of variance is available at:
<https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2019/November/Post-Meeting/2019.11%20-%20Final%20DRAFT%20Record%20of%20Variance%20Action-Thanksgiving.pdf>

PSEG Seven-Day Waiver Variance Request

► Introduction

Interim Chair Sherman provided background on the Punitive Segregation (“PSEG”) Seven-Day Waiver variance request as follows:

In September 2015, the Board first granted a variance from Minimum Standard § 1-17(d)(2) to allow the Department, in highly exceptional circumstances presenting safety and security concerns, to waive the requirement that people in custody be immediately released from PSEG for seven days after they have been held in PSEG for 30 consecutive days. The Board has renewed this variance multiple times, each time on the condition that the Chief of Department must approve each waiver and state why placement in a less restrictive setting is not a safe option. As with the Secure Unit variance, the Board’s proposed rulemaking on restrictive housing incorporates this variance and its condition. The rule’s enactment would eliminate the need for this variance.

The Board last granted this variance renewal on July 9, 2019, and it is set to expire on January 9, 2020 – five days before the Board’s January 14, 2020 meeting. To avoid the variance lapsing for those five days, Interim Chair Sherman asked the Board to grant a one-week variance renewal. The Board will have a more substantive discussion of this variance at the January 2020 meeting.

► DOC Presentation

Chief Jennings requested a one-week variance from Minimum Standard § 1-17(d)(2) to waive the requirement that people be released from PSEG for seven days, after they have been held in PSEG for 30 consecutive days.

► Board Vote

Interim Chair Sherman called for a motion to vote on the variance. After Dr. Safyer moved the item and Member Perrino seconded, the Board approved the variance with seven (7) votes in favor (Interim Chair Sherman, Vice-Chair Richards and Members Hernandez, Jones Austin, Perrino, Regan, and Safyer) and one (1) vote in opposition (Member Cohen).⁵

Raise-the-Age Variance Requests

► Introduction

As with the PSEG 7-day waiver variance, Interim Chair Sherman asked the Board to consider a one-week extension to the four (4) Raise-the-Age (“RTA”) variances to avoid lapses in the variances prior to the next meeting. The Board will have a substantive discussion and consider longer-term variances at the January 2020 meeting. These variances relate to the DOC and ACS’s joint operation of the Horizon Juvenile Detention Facility, where RTA-youth are currently housed. Interim Chair Sherman stated that these variances excuse DOC and the Administration for Children’s Services (“ACS”) from certain Minimum Standard sections, including the requirements to have wet cells (cells with a sink and toilet); to have a properly equipped and staffed law library; and to have necessary child care and a nursery program for people who give birth while in custody. The variances also allow DOC/ACS to limit youth’s correspondence to permitted individuals on a preapproved list.

► ACS Presentation

⁵ The final record of variance is available at:

<https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2019/November/Post-Meeting/2019.11%20-%20Record%20of%20Variance%20Action%20-%20Seven%20Day%20Waivers%20FINAL.pdf>

Charles Parkins, ACS Deputy Associate Commissioner of Detention Services at the Division of Youth and Family Justice presented as follows:

i. Variance from Minimum Standard § 1-08(f) (Law Library)
ACS and DOC provide daily access to legal research via LexisNexis-enabled tablets and assistance from an onsite legal coordinator at the Horizon Juvenile Detention Center. Youth complete a law library request form to work on tablets or to have individualized sessions with the legal coordinator. The legal coordinator provides four (4) hours of law library services Monday through Friday, and services are offered in the dining hall, residence halls, and classrooms after school hours. Residents can access the tablets for a minimum of two (2) hours per day, seven (7) days per week.

ii. Variance from Minimum Standard § 3-06(e)(5) (Nursery)
ACS procured Children's Village Inwood House to provide portable, wraparound parenting services to pregnant and parenting youth at Horizon. These services include a nurse/family partnership, parent coaching, a fatherhood program, and teen sexuality education and consultation. Since October 2018, there have been 20 female youth detained at Horizon, including four (4) who were transferred from Rikers. There have been three (3) confirmed pregnant youth admitted to Horizon, all of whom were discharged from custody long before their due dates. Currently, no female youth are detained at Horizon. If a pre-RTA youth is admitted to Horizon on a violation or a warrant, and she is pregnant, ACS will use the individualized assessment and case planning protocol discussed in detail at the September 2019 public Board meeting.

iii. Variance from Minimum Standard § 1-11 (Correspondence)
There is one (1) mailbox on the first floor near the cafeteria and three (3) mailboxes on the second floor near the main staircase. The mailboxes are clearly labeled, and ACS case managers check them daily. ACS has a list of individuals with whom mail correspondence is prohibited or restricted based on the safety and security of the youth, the facility, and/or consistent with existing court orders. Correspondence is never read by staff unless youth request reading assistance. Correspondence is opened in front of youth to inspect for inappropriate content (e.g., staples, pornography). There is no restriction on the amount of correspondence or language used.

iv. Variance from Minimum Standard § 1-04(b)(2) (Dry Cells)
ACS staff escort youth to the bathroom during lock-in hours and document this in logbooks. A recent audit reflects that ACS has been logging bathroom requests and meeting its five-minute requirement of responding to requests. However, on some audit dates in some residence halls, no entries were recorded for access to the bathroom or drinking water. As a result, it could not be determined through a log book review whether any requests were made on these dates. Going forward, if there are no requests on a given night, ACS staff will record this in the logbook.

► Board Vote

Interim Chair Sherman called for a motion to vote on the one-week variance with existing conditions. After the item was moved and seconded, the Board unanimously approved the variance, 8-0 (Interim Chair Sherman, Vice-Chair Richards and Members Cohen, Hernandez, Jones Austin, Perrino, Regan, and Safyer).⁶

⁶ The final records of variance are available at:

https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2019/November/Post-Meeting/2019.11%20-%20FINAL%20Variance%20Action_Dry%20Cells.pdf;

https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2019/November/Post-Meeting/2019.11%20-%20FINAL%20Variance%20Action_Law-Library.pdf;

https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2019/November/Post-Meeting/2019.11%20-%20FINAL%20Variance%20Action_Correspondence.pdf; and

DOC and ACS Updates on Horizon Juvenile Center

William Barnes, DOC Acting Assistant Chief, presented as follows:

Horizon currently has 40 residents, three (3) of whom were a part of the original cohort of youth transferred from Rikers Island to Horizon in accordance with RTA. Since October 1, 2019, there have been 12 new admissions to Horizon. DOC has been transitioning out of the facility as a part of the City's plan for ACS to fully operate Horizon. DOC and ACS expect to finalize this operational transition by the end of 2019. DOC plans to have approximately 30 officers remain at Horizon to operate several security posts until the Rikers Island youth have been discharged. Additionally, DOC's Transportation Division will provide security and transportation for all court appearances until the Rikers Island youth have been discharged.

DOC Update on Eighth Nunez Independent Monitor Report

► DOC Presentation

Lisa Richardson, DOC Deputy General Counsel and Marshall Volk, DOC Assistant Commissioner of the *Nunez* Compliance Unit ("AC Volk"), addressed the eighth *Nunez* Independent Monitor's Report as follows:

During the past four years, DOC has made efforts to achieve substantial compliance that have resulted in an overall compliance rate of 85%. This includes compliance with development and promulgation of the new Use of Force ("UOF") Directive and corresponding disciplinary guidelines; prompt medical attention following UOF incidents; completion of UOF reports in a timely manner; development of a new case management system, proper classification of UOF incidents, and tracking of violence related data; development of an anonymous misconduct reporting system for staff; installation and maintenance of over 1,000 stationary surveillance cameras; implementation of hand held video usage for documenting UOF incidents; improved staff recruitment and selection process; development and deployment of new training curricula; new staffing requirements pertaining to 16-18-year-olds; and ensuring that housing areas are not exclusively staffed with probationary staff, where feasible.

The latest Monitor's report makes clear there are no easy solutions and DOC needs to work hard to reduce violence and inappropriate UOFs. The eighth Monitor's report detailed 15 areas of non-compliance which fell within two (2) broad categories: 1) UOF investigations and accountability and 2) safety and supervision of 18-year-olds in custody. DOC has been working closely with the Monitoring Team to develop new initiatives and solutions in these areas.

With respect to UOF investigations and accountability, DOC's Investigations Division has been significantly impacted by changes dictated by the *Nunez* Consent Judgement. The requirement that a preliminary review be completed prior to a larger investigation has resulted in a 633% increase in combined workload per investigator (from 15 investigations per investigator in 2015 to 110 investigations per investigator today). DOC is working to implement a new investigative structure in January 2020 by adding 62 staffing lines to the Investigations and Trials Divisions and centralizing all investigations within a single team. DOC will continue implementing its Transfer of Learning initiative to ensure that staff engage in appropriate UOF techniques, when necessary.

DOC is exploring the Norwegian model of dynamic security in response to the Monitor's concerns about the supervision of 18-year-olds. This model emphasizes de-escalation skills and the idea that treating people humanely is a fundamental component of creating safer facilities. DOC's plan

<https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2019/November/Post-Meeting/2019.11%20-%20RTA%20Nursery%20Variance.pdf>

involves more structure within housing areas for people in custody, more staff engagement to proactively address concerns before they escalate, and steady staffing to allow staff to develop positive relationships with people in custody. RNDC has already developed steady staffing for many of its housing areas. Based on an audit for September 2019, 68% of young adult housing areas had the same officer working at least four (4) days per week. Additionally, when staff were out for reasons outside of the facility's control (e.g., out sick or out for training) about 90% of housing areas had steady staff.

► **Board Discussion**

Member Perrino asked how UOF incidents are identified and categorized. AC Volk explained that incidents are broken down to show what precipitated the UOF (e.g., inmate fight, refusal of direct orders, etc.). AC Volk added that UOF has a broad definition and sometimes a UOF is intended to prevent harm. DOC's internal audits show that 80% of UOF incidents either have no inmate injuries associated with the incident, or the inmate injuries were the result of another factor (e.g., an inmate fight). Member Perrino said DOC is on the right track with prioritizing steady staff. He expressed that UOFs are perceived negatively and the public should know that UOFs can prevent people in custody from hurting each other.

Vice-Chair Richards said the eighth Monitor's report presented significant concerns, and DOC's response today was inconsistent with the overall negative report. He urged DOC to review and address these issues, and said that the officers highlighted in this report who engage in inappropriate activity are overshadowing the good work other officers do every day.

Member Jones Austin said if DOC glosses over some of the glaring concerns presented in the Monitor's report, it gives the Board less confidence that DOC will act on these issues. She said it was hard to receive DOC's presentation today as being sincere and believe that DOC is intent on making the necessary reforms.

Dr. Cohen said he would like the Board to discuss this matter again in a few months and would like the Department's leadership to provide a presentation, instead of the Department's lawyers. Interim Chair Sherman said the Board will request a further update on the Monitor's report and initiate a more substantive discussion at an upcoming public Board meeting.

Executive Session and Public Comment

► **Executive Session**

The Interim Chair announced the Board would go into Executive Session to interview candidates for the Board's Executive Director position. After the item was moved and seconded, the Board unanimously voted to enter the Executive Session by a vote of 8-0 (Interim Chair Sherman, Vice-Chair Richards, and Members Cohen, Hernandez, Jones Austin, Perrino, Regan, and Safyer).

► **Public Comment**

Following the Executive Session, the Board heard public comment from Kayla Simpson (LAS),⁷ Victoria Phillips (UJC/JAC), and Julia Davis (Children's Defense Fund). The public comments are available here: <https://youtu.be/uAh82A5UE4Q?t=14968>.

Following public comment, Interim Chair Sherman adjourned the meeting.

⁷ In response to Ms. Simpson's public comment, Dr. Cohen said it was outrageous for the Department to not have senior leadership address the eighth *Nunez* Monitor's Report today. He noted that violence in NYC jails is an epidemic, and it has increased substantially in last three months since the report was issued.