



**NEW YORK CITY
BOARD OF CORRECTION**

July 11, 2017 Public Meeting Minutes

MEMBERS PRESENT

Derrick D. Cephas, Esq., Acting Chair
Stanley Richards, Acting Vice Chair
Gerard W. Bryant, Ph.D
Robert L. Cohen, M.D
Honorable Bryanne Hamill
Jennifer Jones Austin, Esq.
Steven M. Safyer, M.D.

Martha W. King, Executive Director

MEMBERS ABSENT

James Perrino
Michael Regan

DEPARTMENT OF CORRECTION (DOC)

Cynthia Brann, Acting Commissioner
Angel Villalona, Acting First Deputy Commissioner
Mark Strange, Acting Senior Deputy Commissioner
Hazel Jennings, Acting Chief of Department
Jeff Thamkittikasem, Chief of Staff
Winette Saunders-Halyard, Dep. Comm. of Youthful Offender & Young Adult Programming
Peter Thorne, Deputy Commissioner of Public Information
James Walsh, Deputy Commissioner of Adult Programming & Community Partnerships
Dr. Nicole Adams-Flores, Deputy Commissioner of Health Affairs
Francis Torres, Assistant Commissioner of Education and Youth Advisory Services
Kwame Patterson, Assistant Commissioner of Public Information
Heidi Grossman, Deputy Commissioner for Legal Matters/General Counsel
Brenda Cooke, Deputy General Counsel
Danielle Leidner, Director for Intergovernmental Affairs
Yolanda Canty, Bureau Chief
Marisa Alberti, Policy Analyst
Jonathan Foo, Research Analyst
James Boyd, Director of Constituent Services
Meekaelle Copeland, Admin. Director of Social Services
Carleen McLaughlin, Director of Legislative Affairs and Special Projects
Dina Montes, Press Officer
Giovanna Espinal, Intern

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

Elizabeth Ford, M.D., Chief of Psychiatry, CHS
Elizabeth Ward, Senior Director of Operations, CHS
George Axelrod, Chief Risk Officer, CHS
Nancy Arias, Senior Director of Nursing, H+H
Dr. Ross MacDonald, Chief of Services, Medicine, CHS
Patsy Yang, DrPH, Senior Vice President, CHS
Benjamin Farber, Director of Planning and Analysis, CHS
Patrick Alberts, Esq., Senior Director of Policy and Planning, CHS
Levi Fishman, Director of Public Affairs, CHS
Carlos Castellanos, Director of Operations, CHS
Ashley Smith, Assistant Director of Policy & Planning, CHS
Lucia Caltagirone, Associate Counsel, H+H
Nadia Oryema, Psychiatry Resident, CHS

OTHERS IN ATTENDANCE

Alex Abell, Urban Justice Center (UJC)
Hannah Ahn, Brooklyn Defender Services (BDS)
Roxanne Bailey, Legal Aid Society (LAS)
Melissa Barosy, Connelly, McLaughlin & Woloz
Reuven Blau, NY Daily News
Maya Brown, Children's Rights (CR)
Angel Castro, Correction Officers' Benevolent Association (COBA)
Albert Craig, COBA
Mark Cranston, COBA
Sarita Daftary, JustLeaderShipUSA
Shiva Darshan, New York University
Kelsey De Avila, BDS
Cynthia Diaz, NYS Commission of Correction (NYSCOC)
Hagir Elzin, BDS
Catherine Frizell, CR/Jails Action Coalition (JAC)
Shannon Hak, Independent Budget Office
E. Hanks, COBA
Milo Inglehart, Sylvia Rivera Law Project (SRLP)
Ashley Iodice, NYC Law Department
Kimberly Joyce, NYC Law Department
Sara Kerr, LAS
Mik Kinkead, SRLP
Tanya Krupat, Osbourne Association
Rakesh Lahoti, COBA
Jin Lee, NY City Council
Simone Lee, Nunez Monitoring Team
Dori Lewis, LAS
Elizabeth Mayers, JAC
Heather McCarthy, LAS
Clara O'Brien, LAS
Jennifer Parish, UJC/JAC
Victoria Phillips, UJC/JAC
Malita Picasso, BDS
Charlotte Pope, Children's Defense Fund – NY (CDF-NY)
Grace Kelly Price, JAC

Marc Steier, COBA
Elizabeth Wolozin, LAS

Introductory Remarks, Announcements, and Updates

Acting Chair Cephas commenced the meeting by asking Executive Director (ED) King to provide an update on several Board items. ED King announced that the public meeting was being broadcast live on the internet for the first time. This meeting and all future public meetings will stream live on the Board's homepage at nyc.gov/boc, and recordings will be available on the Board's YouTube channel immediately after the meeting. ED King also announced that Health + Hospitals (H+H) rescinded a variance request it had submitted in March 2017 regarding which staff may order clinical seclusion, as H+H believes the variance is no longer needed.

ED King stated that the Department's first semi-annual report required by the Board's new Standards on the elimination of sexual abuse and sexual harassment is due August 1, 2017. The Board will address implementation and compliance with the new Standards at the September meeting. Finally, ED King reminded the public that the Board does not have a meeting scheduled for August and that the next meeting will take place on September 12.

Acting Chair Cephas welcomed Cynthia Brann to her first Board meeting as Acting Commissioner of DOC.

Approval of June 2017 Minutes

The Acting Chair asked for a motion to approve the June 13, 2017 meeting minutes. Upon the item being moved and seconded, the minutes were unanimously approved by all Members present (Acting Chair Cephas, Acting Vice-Chair Richards, and Members Bryant, Cohen, Hamill, Jones Austin, and Safyer).

Variance Requests and Public Comment

► The Variance Requests

Acting Chair Cephas announced that the Board would be voting on the following seven requests for variances: (1) permitting the Department (DOC), in highly exceptional circumstances presenting safety and security concerns, to waive the requirement that a person be immediately released from punitive segregation ("PSEG") for seven (7) days after he has been held in punitive segregation for 30 consecutive days; (2) allowing DOC to house 19 to 21-year-olds with people ages 22 and older; (3) permitting the Department to house 18 to 21-year-olds in Enhanced Supervision Housing ("ESH"); (4) allowing DOC to provide young adults housed in Secure Units ("Secure") with a minimum lock-out time of 10 hours per day and access to law library services by means of a law library kiosk and typewriters in Secure; (5) permitting H+H psychiatrists to see and evaluate stable adult patients on psychotropic medication in general population at least every 28 days, rather than every 14 days; (6) allowing H+H to use either IGRA or TST for tuberculosis screening, and to exempt from repeat screening incarcerated individuals who have a documented negative test in the six months prior to their admission; and (7) permitting H+H to provide the Department with specific diagnoses related only to injuries sustained by prisoners while in correctional custody; the reporting of diagnoses unrelated to an injury remains prohibited.

Thereafter, Acting Chair Cephas invited public comment on the variance requests.

► Public Comment

The Board heard public comment from Sara Kerr (LAS), Elizabeth Mayers (JAC), Kelsey De Avila (BDS), Jennifer Parish (UJC/JAC), Elizabeth Wolozin (LAS), Al Craig (COBA), Alex Abell (UJC), Catherine Frizell (CR/JAC), and Maya Brown (CR).¹

Following public comment, Member Hamill disclosed that she was recently elected to the Board of Directors for Children’s Rights (“CR”). CR is primarily focused on advocacy concerning child welfare and the foster care system. Judge Hamill informed the New York City Conflicts of Interest Board of her appointment, and emphasized that she will not be discussing with CR staff any matters related to the Board of Correction (BOC) (including juvenile justice).

Member Hamill also thanked the public for their comments today, noting that the proposed variances were made public on Friday and, hence, there was little time to submit written comments. She encouraged the public to submit written comments during the rulemaking process on restrictive housing.

DOC Request for Renewal of 7-Day Waiver Variance

► Introduction

Acting Chair Cephas stated that on September 8, 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 a person be immediately released from punitive segregation for seven (7) days after he or she has been held in punitive segregation for 30 consecutive days. The Board last renewed this variance on January 10, 2017, and it expired on July 10, 2017.

The Acting Chair noted that since September 2015, the Department has used this variance sparingly. The Chief of Department has granted 22 waivers and denied eight (8) requests for waivers. No one individual has received more than one waiver. Since the Board last granted the variance in January 2017, the Chief has granted four (4) waivers and denied one (1) request. Board staff had published an analysis of the 30 waiver requests on the BOC website.

Acting Chair Cephas stated that DOC seeks a six-month renewal of this variance. The Department also has requested that the Board amend the Minimum Standards to incorporate this variance permanently. The Acting Chair said the Board would vote on the variance request today and consider proposed amendments to the Standards as part of its ongoing rulemaking process on restrictive housing (“rulemaking process”). He then asked DOC to present both its variance request and its report to the Board on its efforts to reform PSEG and create therapeutic alternatives to it. This report was required by the Board’s January 2017 variance.

► DOC Presentation

As an introduction to the Department’s four (4) variance requests, Chief of Staff Jeff Thamkittikasem described DOC’s recent efforts to make reforms aimed at reducing the use of PSEG, developing alternatives to it, and developing alternative programs to better inform and engage people in DOC custody. He said the Department has sought guidance from other jurisdictions, and is now focused on addressing violent and problematic populations

¹ The public comments are available at: <https://www.youtube.com/watch?v=WjefhjiTad4&t=10676s>.

while also working with other agencies, such as H+H, to address mental health needs of people incarcerated in the City's jails. Mr. Thamkittikasem noted that some of DOC's variance requests represent the Department's effort to refine program models or strategies that had not worked in practice. DOC views rulemaking on restrictive housing as an opportunity to have in-depth discussions with the Board and the public about lessons learned.

The Chief of Staff stated that the Department has seen significant returns from its reform efforts, including a reduction of punitive segregation from over 600 to 110 people. DOC also has seen a reduction in the number of people in housing programs that were established as alternatives to PSEG. He noted that while these alternative programs have restrictive features, they are less restrictive than PSEG, and are focused on rehabilitation as opposed to punishment. He said less than 2 percent of the jail population is in ESH. Of the people housed there, 34 are young adults, seven (7) of whom are in the ESH Entry Unit, and eight (8) of whom are in ESH Level 1. Restraint desks are used in the Entry Unit and Level 1. Mr. Thamkittikasem said restraint desks are used sparingly. The one exception, he said, is the use of restraint desks whenever young adults in ESH attend school. This is primarily because young adults from various ESH levels attend school together and students who might pose a safety risk to others cannot be physically separated. Hence, he stated that restraint desks are used to maintain the safety and security of all students and staff.

Mr. Thamkittikasem said that DOC has shown great progress in enhancing and advancing alternatives to PSEG for adolescents and young adults, such as Secure, the Transition Repair Unit (TRU), and the Second Chance Housing Unit (SCHU). This includes adding progressively less-restrictive levels to ESH to reward good behavior through, among other things, increased out-of-cell time, commissary spending, and other incentives. He noted that the physical structure of Secure has not turned out as intended. For this and other reasons, the Department has focused on adjusting the criteria for placement in Secure and housing the most violent young adults in ESH.

The Chief of Staff explained that DOC seeks to renew all four variances for six (6) months. This would avoid frequent revisiting of the issues underlying the variances and allow the Department to address these issues in depth during the rulemaking process.

Upon concluding his introductory remarks, Mr. Thamkittikasem addressed DOC's first variance request to renew the seven (7) day waiver for six (6) months. He reiterated that the Department has used this waiver sparingly and has maintained good documentation of its use.

► **Board Discussion**

Acting Chair Cephas called for a motion to vote on the variance. Vice-Chair Richards moved the item and Member Bryant seconded it.

The Acting Chair stated that while he had initially opposed six-month variances, he now realizes that a lesser period (e.g., three months) often does not allow for sufficient implementation and assessment of an alternative policy or procedure. Vice-Chair Richards agreed and said the Board should resolve these issues through rulemaking. A six-month period would allow the Board's rulemaking committee sufficient time to decide whether to codify the waiver in its Standards.

Member Cohen voiced his opposition to the variance because DOC neither needs nor uses the waiver, and there are other housing options for holding people during the 7-day waiting period. Member Hamill noted that while the Board is required to provide the public with an opportunity to comment on proposed variances, the public was given insufficient notice of the YA-ESH and Secure variances (which were released on the Friday before today's meeting). She agreed that there was value in having six month variances, but only if there is sufficient notice to the community.

► **Board Vote on Variance with Condition**

ED King read out loud the existing condition to this variance, which requires the Chief of Department to approve all waivers in writing and state why placement in a less restrictive setting is not a safe option. The Chief must specify her reason for granting or denying the request. Immediately after the Chief's decision is made on a request, the Department shall send the request and decision to the Board.

Acting Chair Cephas conducted a roll call vote of all members present, and the Board voted 6-1 to renew the variance with the existing condition for six (6) months. (Acting Chair Cephas, Vice-Chair Richards, and Members Bryant, Hamill, Jones Austin, and Safyer voted in favor; Member Cohen voted in opposition).²

DOC Request for Renewal of Young Adult Co-Mingling Variance

► **Introduction**

Acting Chair Cephas stated that on September 8, 2015, the Board first granted a variance from Minimum Standard § 1-02(c)(1) to allow the Department to house people ages 19-21 with people 22 years and older. The Board last renewed this variance on January 13, 2017, and it is set to expire on July 13, 2017. Section 1-02 is intended to reduce violence by segregating developmentally distinct age groups, provide age-appropriate rehabilitative opportunities, and conform the Board's Minimum Standards to the requirements of New York State law and the federal Prison Rape Elimination Act (PREA).

The Acting Chair explained that DOC first requested this variance in September 2015 to allow for more time to house all young adults in GMDC. As the Department started to increase the number of young adults in GMDC, the incidence of violence increased. This led the Department to rethink its housing strategy for young adults. While 18-year-olds are currently housed with young adults ages 19-21 in young-adult-only units, approximately 70 percent of young adults ages 19-21 are housed with adults.

Acting Chair Cephas stated that DOC seeks a six-month renewal of this variance allowing for the co-mingling of 19 to 21-year-olds with adults. The Department also requests that the Board amend its Minimum Standards to incorporate this variance permanently. The Acting Chair said the Board would vote on the variance request today and review proposed amendments as part of the rulemaking process. He then invited DOC to present its variance request and any updates to its young adult housing plan since its June meeting update.

² The Record of Variance Action is available at:
<http://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2017/July-11-2017/post/2017.07.11%20-%20Record%20of%20Variance%20Action%20-%207%20day%20waiver%20final.pdf>.

► DOC Presentation

Mr. Thamkittikasem stated that DOC intends to house the majority of young adults in GMDC and provide them with young-adult specific programming. However, the facility is down 500 beds and 15 units due to ongoing sewer and fire safety maintenance; consequently, less than 50 percent of young adults are currently housed there. The Department is working to complete that maintenance work as soon as possible. Further, while DOC staff has adjusted to the new housing models, the Department continues to see some advantage in housing young adults who do not want to participate in young adult programming in blended units (i.e., with adults) in other facilities. The Chief of Staff stated that mingling with adults has a calming effect on younger inmates, and noted that the benefits of co-mingling were cited in the *Nunez* Monitor's report. Overall, DOC has seen a reduction in violence in the young adult population over the past year, including violence per capita at GMDC. Mr. Thamkittikasem reported that the violence rates in co-mingled housing are generally lower, and that these rates tend to increase when young adults are concentrated in one facility. That said, DOC remains committed to housing a majority of young adults in GMDC once the maintenance work has been completed.

► Board Discussion

Member Hamill provided historical background to the Department's variance request. The Board's Minimum Standards require young adults (i.e., 18-21) to be housed separately from adults (i.e., 22 and over). She explained that the Board created the young adult cohort based on its agreement with Commissioner Ponte that this population should be treated as distinct from adults because, as research and neuroscience have confirmed, young adults' brains are still developing. The Board also created this age cohort to align its Standards with the federal PREA standards, that were adopted by New York State.³ Judge Hamill noted, however, that the comingling of 18-year-olds with 19 to 21-year-olds has not been accomplished and asked whether this was because the *Nunez* Consent Judgment imposes certain data collection requirements on DOC concerning 18-year-olds that are not applicable to young adults ages 19 to 21. DC Saunders responded that *Nunez* requirements are not the basis for this exclusion.

In response to Judge Hamill's further inquiry, DC Saunders and the Chief of Staff confirmed that young adults who do not want to go to school or participate in programming are prioritized for placement in blended units as opposed to GMDC. DOC ensures that the staff working in these blended units have appropriate training for working with young adults. For example, Safe Crisis Management training has been expanded across facilities. Member Hamill asked what percentage of the young adult population would be housed at GMDC once the maintenance work is done. DC Saunders responded that the Department would like to house as many young adults as possible at GMDC, but does not want to force programming on young adults who are not interested in it, as this would create a distraction for those who wish to participate.

► Board Vote on Variance with Condition

ED King read out loud a proposed condition on the variance requiring the Department to provide the Board with a monthly census showing in which housing units and jails 18 to 21-year-olds are housed, and to continue providing the Board with a monthly progress report on its implementation of the Young Adult Plan and implementation of alternatives to punitive segregation (i.e., Second Chance, TRU and Secure Units).

³ Federal PREA Standard § 115.14 (incorporated in BOC Minimum Standard § 5-05) states that inmates under the age of 18 shall not be housed with inmates 18 years of age or older. The *Nunez* Consent Judgment defines "young inmates" as persons under the age of 19 years old (Section III(33)).

Acting Chair Cephas called for a motion to vote on this condition. After the item was moved and seconded, the Acting Chair conducted a roll call vote of all members present, and the Board voted 7-0 to approve the condition. (Acting Chair Cephas, Vice-Chair Richards and Members Bryant, Cohen, Hamill, Jones Austin, and Safyer). Thereafter, the Board voted 7-0 to approve renewal of the variance with the condition (Acting Chair Cephas, Vice-Chair Richards, and Members Bryant, Cohen, Hamill, Jones Austin, and Safyer).⁴

DOC Request for Young Adult ESH Variance

► Introduction

Acting Chair Cephas stated that on July 12, 2016, the Board granted variances from Minimum Standards §§ 1-05(b) and 1-08(f) to allow the Department to house 19 to 21-year-olds in ESH. In October 2016, the Board granted a variance allowing DOC to house 18-year-olds in ESH. The Board last renewed these variances in February 2017, both of which are due to expire on August 14, 2017.

The Department now requests that the Board approve a six-month renewal of the variance allowing for placement of 18 to 21-year-olds in ESH. This variance would take effect on August 14, 2017. DOC has also requested that the Board amend the Minimum Standards to incorporate this variance on a permanent basis. The Department explains that the Secure Unit and ESH have become its primary housing options for the management of young adults who have acted violently.

Acting Chair Cephas stated that the Board would vote on the variance request today and review proposed amendments to its Standards as part of the rulemaking process. Prior to the vote, the Acting Chair asked the Department to present its assessment of ESH for young adults (“YA-ESH”) and its variance request. The Acting Chair noted that this assessment is required by the Board’s February 2017 variance, expressed his appreciation for DOC’s efforts in collecting and analyzing data about YA-ESH, and said DOC’s assessment as well as future ones would allow the Board and the Department to make better-informed plans and decisions.

Acting Chair Cephas said that after DOC presented its assessment, the Board’s Deputy Executive Director of Research (“DED”), Emily Turner, would present highlights of Board staff’s assessment of YA-ESH. ED King stated that DED Turner would summarize the assessment utilizing a power point, which is on BOC’s website, and the full report would be published shortly.

After a motion to vote on the variance was made and seconded, the Board Members present voted 7-0 in favor of the motion (Acting Chair Cephas, Acting Vice-Chair Richards, and Members Bryant, Cohen, Hamill, and Jones Austin). Thereafter, Acting Chair Cephas invited the Department to present its YA-ESH assessment and its variance request.

► DOC’s YA-ESH Assessment

Mr. Thamkittikasem stated that only a small number of the current young adult population — approximately 34 of 986 — are in ESH. Of these 34, eight or nine are in the Entry Unit, seven or eight are in ESH Level 1 (“Level 1”), and the remainder are in ESH Level 2 (“Level 2”). He reported that the Department has adhered to its commitment to house in the Entry

⁴ The Record of Variance Action is available at:
<http://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2017/July-11-2017/post/2017.07.11%20-%20Record%20of%20Variance%20Action%20ESH-18-21%20%20final.pdf>.

Unit only young adults who have recently participated in an actual or attempted slashing or stabbing, or have engaged in activity that caused serious injury to an officer, another person in custody, or any other person.

Of the 31 young adults now attending school in ESH, only nine had previously attended school when housed elsewhere. Moreover, 56 percent of ESH students demonstrated meaningful gains in math and 61 percent demonstrated meaningful gains in reading on the TABE exam.

Mr. Thamkittikasem stated that while violence within YA-ESH areas remains of concern, there has been a lessening of violence in GMDC and other housing areas where young adults (who are now in ESH) had previously been housed. Finally, the Chief of Staff noted that the Department's use of restraint desks — which are used in other jurisdictions such as Washington State — has shown some level of success. DOC recognizes the need to conduct its own research on the impact of restraint desks in reducing violence and will focus on this going forward.

► Board Discussion

In response to questions from Judge Hamill, the Chief of Staff confirmed that currently, there is one ESH unit solely for young adults, i.e., the Entry Unit, where young people ages 18-21 are placed for assessment purposes. While there, they are in full restraints whenever they are out of cell or up to seven (7) hours per day. Individuals ages 19-21 who leave the Entry Unit but remain within ESH are placed in units with adults ages 22 and older.

Judge Hamill asked the Department what the Entry Unit assessment consists of. In response, DC Saunders described its various components: (1) a profile of the young adult is developed at intake based on self-reported information (e.g., triggers, family supports, strengths); (2) an environmental assessment, which includes information and intelligence garnered by DOC's Central Intelligence Bureau (CIB) about the goings-on in the Entry Unit during the young adult's stay there; (3) completion of a juvenile relational inquiry tool to determine who in the young adult's family can be called upon to support the young adult during his stay in ESH; (4) a substance use disorder screening which is used to refer young adults with this disorder to H+H; (5) an assessment of the youth's program participation; in this regard, DC Saunders noted that the rate of program participation in the Entry Unit has ranged from 81 to 85 percent; and (6) a TABE assessment to determine the young adult's educational level and curriculum.

In response to Judge Hamill's inquiry, DC Saunders said that DOC uses the information gleaned from the assessment to develop programming for the young person, identify family members who can participate in interventions, and enhance one-on-one sessions with the individual. The information is also used to determine where the person will be placed upon completing 30 days in the Entry Unit: in Level 1, a less restrictive ESH Level, or Secure.

Judge Hamill remarked that when she recommended to her colleagues on the Board that DOC be granted a variance to operate YA-ESH, the Department made no mention of placing young people in restraint desks for 30 days while in the Entry Unit and potentially another 30 days while in Level 1. Moreover, since there is no Level 1 dedicated solely to young adults, these young people are commingled with adults. Judge Hamill recalled that when the Board was considering rulemaking on ESH, Commissioner Ponte said ESH would be for the most "hardened prisoners." She questioned why young adults could not be assessed in Level 1 and the Entry Unit eliminated altogether. In her view, the placement of

young adults in restraint desks for nearly two months was “barbaric” and amounted to “punishment.” Finally, she took issue with the Department’s questioning of young adults about the acts that resulted in their placement in the Entry Unit. Since they are in custody they cannot be questioned in the absence of their counsel. In response, DC Saunders said that DOC does not question young people about their alleged crimes.

In response to questions from Member Jones Austin, DC Saunders said that the average time to complete an Entry Level assessment is 28 to 30 days. Given that the Entry Level is the same as Level 1 in terms of services offered, restraints, and lock-out time, Member Jones Austin asked why DOC could not perform the assessment at Level 1 and determine at that stage an individual’s next placement (e.g., remain in Level I, progress to Level 2). The Chief of Staff responded that this potentially could be done, but the Entry Unit, unlike Level 1, is equipped with the full complement of a support team. However, he said DOC would be open to considering this change as part of rulemaking on restrictive housing.

Upon further inquiry from Member Jones Austin, DC Saunders stated that since the program’s inception to date, 23 people have progressed to less restrictive levels of ESH (18 young adults progressed from Level 1 to Level 2; two progressed from Level 2 to Level 3; three moved on from Level 3; and two went to Secure). However, 10 of the 23 young adults had committed a violent act at Level 2 which resulted in their re-placement in Level 1. Member Jones Austin asked what in the assessment makes DOC determine to move a young adult to Level 1 as opposed to Level 2. DC Saunders responded that the individual’s behavior in the Entry Unit determines his next placement. For example, DOC considers whether a young adult has committed a violent act or refused to adhere to DOC rules, and whether there is intelligence that he is planning an attack on staff or another young adult.

► Board’s YA-ESH Assessment

DED Turner commenced her presentation by thanking her research team — Andrea Hernandez, Nashla Rivas-Salas, Jim Bennett, and Chai Park — for their work in putting together the Board’s assessment of YA-ESH as well as the Board’s monitoring staff’s assistance in this effort. DED Turner stated that the research team reviewed all young adult placements from September 2016 through March 2017 and analyzed all available data sources and policies regarding the young adult population. The team also conducted extended observations of YA-ESH units to better understand how policies were being implemented for this population. Because YA-ESH is relatively new and policies are evolving, the Board’s assessment is descriptive in nature and focuses on process rather than outcomes. As the Board noted in its response to the Department’s evaluation proposal, BOC believes it is too early, and too few young adults have been placed in ESH, to draw conclusions about individual or system-level outcomes such as violence reduction. However, in terms of due process and the Board’s descriptive analysis of the YA population, BOC’s findings are largely consistent with what the Department report.

DED Turner stated that the Board’s assessment examines some topics beyond what was addressed in DOC’s evaluation. The assessment also found that many of the recommendations made in BOC’s report on adult ESH, presented in April 2017, are equally applicable to YA-ESH. She said that the Board is encouraged by the Department’s efforts to develop specific policies and a model tailored to the young adult population as well as its adoption of a more multi-disciplinary approach toward management. The Board is also encouraged by DOC’s recent steps toward developing better systems for tracking, monitoring, and evaluating ESH. However, despite this progress, BOC has a variety of concerns about YA-ESH such as lock downs, the lock-out schedule, operational issues

relating to staffing and management, and safety concerns. Many young adults are spending nearly all day locked in their cells rather than out of cell for the seven hours provided under ESH Minimum Standards. Most young adults placed in ESH are shackled to desks during lock out. Participation in programming, recreation, and mental health services is very low, particularly in ESH blended units; nearly all young adults have non-contact visit restrictions imposed for the duration of their incarceration; and very few have progressed to less restrictive housing. There have been slashings and other acts of serious violence in units where restraint desks are used, which warrant further investigation. Following these remarks, DED Turner presented a power point summary of Board staff's findings and recommendations.⁵

► Member Cohen's Remarks

Member Cohen commenced his remarks by thanking DED Turner and Board staff for a "terrific" presentation. He echoed concerns raised in the staff assessment about lock downs, the lock-out schedule, operational issues relating to staffing and management, and safety concerns. He expanded upon the following additional concerns: (1) the six-month average length of stay in YA-ESH is too long; (2) recreation is consistently under-staffed, resulting in lack of timely daily recreation for young adults; moreover, recreation for people in the Entry Unit and Level 1 occurs in individual metal cages that lack any kind of exercise equipment; (3) there is no classroom for education; rather, classes take place in an open area, which includes a canine whose barking is distracting to teachers and students. Additionally, about one-third of school time is lost because there is insufficient security staff to escort young adults to the school area.

► DOC's Response to Member Cohen's Remarks

Acting Chair Cephas and Acting Vice-Chair Richards asked the Department to respond to Member Cohen's remarks as well as DED Turner's presentation. Mr. Thamkittikasem focused on what he characterized as "issues" with the presentation of information in Board staff's assessment. He emphasized that only about 17 out of a total population of 986 young adults are currently housed in the Entry Unit and Level 1. Further, he believed that the Department's broad-based efforts with respect to all young adults and adolescents were lost in the Board staff's presentation. He said that DOC has increased programming hours for these populations from less than 45 minutes to five hours per day, and increased daily education from three to five hours. The Department has also made great strides in eliminating punitive segregation for young people ages 16-21.

The Chief of Staff recognized that despite these achievements, significant issues remain such as continued incidents of violence in YA-ESH. The Department continues to assess YA-ESH in terms of violence prevention, programming effectiveness, and operational efficiencies, and will continue to make changes to achieve improvements in these areas.

⁵ The power point presentation is available at:
http://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2017/July-11-2017/YAESH-07.10.%202017_Presentation_ET%20Notes_.pdf. The full report is available at:
http://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2017/July-11-2017/YAESH-07.10.%202017_Presentation_ET%20Notes_.pdf.

In response to Acting Chair Cephas' request, Mr. Thamkittikasem said the Department would provide a written response to BOC staff's assessment by the September Board meeting.

► **Proposed Conditions on YA-ESH Variance**

(1) General Discussion

Prior to discussion of specific conditions on the Department's YA-ESH variance request, DOC and various Board members made the following remarks:

(a) Department Chief of Staff

Mr. Thamkittikasem stated that the Department is committed to (1) utilizing a young adult's Entry Unit ("EU") assessment to meet his programming needs after he leaves the EU; (2) adhering to criteria for placement in the EU; namely, the recent commission of an actual or attempted slashing, stabbing, or serious assault; (3) presuming that a young adults who is placed in the EU will be moved to Level 2 or other less restrictive housing unless he has engaged in another violent act while in the EU or there is credible intelligence that he is planning to act violently; however, this presumption would not apply to young adults who have been placed in the EU more than once; (4) changing the placement criteria for the Secure Unit so that young adults who are less violent than those housed in ESH are placed in Secure; (5) refraining from using restraint desks during school for young adults housed in Secure unless warranted to ensure the safety and security of others; and (5) creating and improving a continuum of alternatives to punitive segregation for young adults.

(b) Board Members

Member Hamill reiterated that the Board's initial approval of a variance to operate YA-ESH was intended only as a stopgap measure while the Department built out and expanded the Secure Unit. She stated that according to the Board staff's assessment, YA-ESH is "abysmally failing" young adults and is not tailored to their needs.

Member Cohen stated that over half of the young adults in ESH were shackled to restraint desks for extended periods of time — an unsafe practice that the Board never voted to approve. Moreover, this practice has not stopped the violence in YA-ESH and has caused young adults to remain in their cells during lock-out because they fear for their safety. Acting Vice-Chair Richards shared Dr. Cohen's concerns about restraint desks, but stated that the issue should be addressed through rulemaking on restrictive housing.

Member Bryant praised DOC for implementing this continuum of alternatives, which is creative and the first of its kind in the nation. He said the Board and the Department needed to work together to solve safety and security issues so that young adults in ESH could engage in school and other programming.

Acting Chair Cephas concluded the discussion by stating that the Members' remarks concerned a broader set of issues that are best resolved in the rulemaking process. He then asked ED King to read out loud proposed conditions to the variance.

► Votes on Proposed Conditions

(1) First Condition (Approval of Placements and Restraint Desk Use)

This proposed condition requires approval or disapproval by the Chief of Department, or designee, of each placement in YA-ESH and the use of a restraint desk in connection with each such placement.⁶ The approval or disapproval must be in writing and include the specific reasons therefor. The request for approval and the Chief's or designee's approval or disapproval of each placement and restraint desk use must be sent within 24 hours to the person who is the subject of the request, NYC Health + Hospitals, and the Board.

Acting Chair Cephas called for a motion to vote on the proposed condition. Member Jones Austin moved the item and Acting Vice-Chair Richards seconded it. Acting Chair Cephas then conducted a roll call vote of all members present, and the Board voted 5-2 to approve the condition (Acting Chair Cephas, Acting Vice-Chair Richards, and Members Bryant, Jones Austin, and Safyer voted in favor; Members Cohen and Hamill voted in opposition).

(2) Second Condition (Placement Criteria for Entry Unit)

This proposed condition provides that a young adult can be placed in a restraint desk during out-of-cell time only if the person has recently committed and/or participated in an actual or attempted slashing or stabbing, or engaged in activity that caused serious injury to an officer, another person in custody, or any other person and provided that the use of a restraint desk is the least restrictive option necessary for the safety of others.

Acting Chair Cephas called for a motion to vote on the proposed condition. After the item was duly moved and seconded, the Acting Chair then conducted a roll call vote of all members present, and the Board voted 5-2 to approve the condition. (Acting Chair Cephas, Acting Vice-Chair Richards, and Members Bryant, Jones Austin, and Safyer voted in favor; Members Cohen and Hamill voted in opposition).

(3) Third Condition (Monthly Public Reporting)

This condition requires the Department to provide the Board with a monthly public report on the foregoing conditions, which must include certain enumerated data about the YA-ESH population.

Acting Chair Cephas called for a motion to vote on the proposed condition. Member Jones Austin moved the item and Member Bryant seconded it. Thereafter, the Acting Chair conducted a roll call vote of all members present, and the Board voted 7-0 to approve the condition (Acting Chair Cephas, Acting Vice-Chair Richards, and Members Cohen, Bryant, Hamill, Jones Austin, and Safyer).

(4) Fourth Condition (Documentation Considered in ESH Placement Decisions)

This condition requires the Department, on at least a monthly basis, to provide the Board access to all documentation considered in each ESH placement and review decision for young adults.

Acting Chair Cephas called for a motion to vote on the proposed condition. Member Jones Austin moved the item and Member Bryant seconded it. Thereafter, the Acting Chair

⁶ This condition and all other conditions approved by the Board (including limitation of the variance to three months) are listed in the Record of Variance Action, available at: <http://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2017/July-11-2017/post/2017.07.11%20-%20Record%20of%20Variance%20Action%20ESH-18-21%20%20final.pdf>.

conducted a roll call vote of all members present, and the Board voted 7-0 to approve the condition (Acting Chair Cephas, Acting Vice-Chair Richards, and Members Cohen, Bryant, Hamill, Jones Austin, and Safyer).

(5) Fifth Condition (DOC Update of YA-ESH Evaluation)

This condition requires the Department, by December 28, 2017, to submit an update to its June 2017 evaluation of YA-ESH, which will focus on outcomes and include progress updates on the issues DOC and the Board identified in the initial report.

Acting Chair Cephas called for a motion to vote on the proposed condition. After the item was duly moved and seconded, the Acting Chair conducted a roll call vote of all members present, and the Board voted 7-0 to approve the condition (Acting Chair Cephas, Acting Vice-Chair Richards, and Members Cohen, Bryant, Hamill, Jones Austin, and Safyer).

• **Condition (Three-Month Limitation on Variance)**⁷

Member Cohen moved that the variance be limited to three (3) instead of six (6) months. Member Hamill seconded the motion. Acting Chair Cephas conducted a roll call vote of all members present, and the Board voted 7-0 to approve a three-month variance, to commence August 15, 2017 and end November 15, 2017 (Acting Chair Cephas, Acting Vice-Chair Richards, and Members Cohen, Bryant, Hamill, Jones Austin, and Safyer).⁸

(6) Sixth Condition (Advancement to Unit without Desk Restraints)

This condition requires that after a maximum of 30 days in the ESH Entry Unit, a young adult shall advance to a unit without mandatory desk restraints during out-of-cell time unless (1) he has been placed in the ESH Entry Unit more than once; and/or (2) he has engaged in disruptive, violent, or aggressive behavior while in the ESH Entry Unit; and/or (3) there is credible intelligence that he may engage in additional violence in an ESH Level 2 or Secure Unit. In those cases, the young adult will be moved to ESH Level 1 after 30 days in the ESH Entry Unit.

Acting Chair Cephas called for a motion to vote on the proposed condition. Member Hamill moved the item and Member Safyer seconded it. The Acting Chair then conducted a roll call vote of all members present, and the Board voted 7-0 to approve the condition (Acting Chair Cephas, Acting Vice-Chair Richards, and Members Cohen, Bryant, Hamill, Jones Austin, and Safyer).

⁷ The Record of Variance Action reflects six numbered conditions, matching the six enumerated conditions above. In addition to those six, the Board also discussed this condition relating to three-month duration for the variance, raised by Member Cohen. This condition was noted separately on the Record of Variance Action; for purposes of consistency, this condition is not enumerated here and appears next to a bullet.

⁸ Given the Board's limitation of the variance to three (3) months, Member Cohen withdrew his proposed condition limiting a young adult's stay in the Entry Unit to seven (7) days, with the expectation that the Board and the Department would fully discuss this issue in the event DOC seeks renewal of the variance in three months' time. Given the Board's approval of the second condition (circumstances under which young adults in ESH can be placed in restraint desks), Member Cohen also withdrew his proposed condition eliminating shackling of young adults in ESH except when they are transported in and out of the unit and prohibiting their placement in two point restraints. Member Cohen said he would raise the restraints issue at the next Board meeting.

(7) Seventh Condition (One-Year Lookback)

The seventh condition provides that where the Department is permitted to consider a young adult's activity occurring or actions committed at a time prior to the instant incident, such activity or actions must have occurred within the preceding year.

Acting Chair Cephas called for a motion to vote on the proposed condition. After the item was duly moved and seconded, the Acting Chair conducted a roll call vote of all members present, and the Board voted 7-0 to approve the condition (Acting Chair Cephas, Acting Vice-Chair Richards, and Members Cohen, Bryant, Hamill, Jones Austin, and Safyer).

► Voting on the Variance with Conditions

Acting Vice-Chair Richards⁹ called for a motion on the variance with conditions. Member Jones Austin moved the item, and Member Bryant seconded it. Acting Vice-Chair Richards then conducted a roll call vote of all members present, and the Board voted 5-2 to renew the variance with conditions (Acting Chair Cephas, Vice-Chair Richards, Member Bryant, Member Jones Austin, and Member Safyer voted in favor. Members Hamill and Cohen voted in opposition).

H+H Variances Requests

► Introduction

Acting Vice-Chair Richards invited H+H to present on its variance requests.

George Axelrod, Chief Risk Officer of Correctional Health Services (CHS), said that these longstanding variances speak for themselves, and asked that the Board renew them. By way of background, the first variance allows psychiatrists to see and evaluate stable adult patients on psychotropic medication in general population at least every 28 days, rather than every 14 days; the second variance allows CHS to use either IGRA or TST for tuberculosis screening, and to exempt incarcerated persons who have a documented negative test in the six months prior to their admission from repeat screening; and the third variance allows CHS to provide the Department of Correction with specific diagnoses related only to injuries sustained by prisoners while in correctional custody.

► Voting

Acting Vice-Chair Richards called for a motion to vote on the three variances. Member Hamill moved the item and Member Cohen seconded it. The Acting Vice-Chair then conducted a roll call vote of all members present on each variance.

The Board voted 6-0 to approve the variance for tuberculosis screening. (Vice-Chair Richards and Members Cohen, Bryant, Hamill, Jones Austin, and Safyer.¹⁰

The Board voted 6-0 to approve the variance for evaluating patients in general population on psychotropic medication (Acting Vice-Chair Richards and Members Bryant, Cohen, Hamill, Jones Austin, and Safyer.¹¹

⁹ The final vote on this ESH variance with conditions occurred later in the meeting, because after voting on the conditions, Acting Chair Cephaus had to leave the room for a period of time, at which time Acting Vice Chair Richards took over the business of the meeting.

¹⁰ The Record of Variance Action is available at:

<http://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2017/July-11-2017/post/2017.01.10%20-%20Record%20of%20Variance%20Action%20-%203-04%28b%29%282%29%28v%29%28a%29%20POST%20final.pdf>

The Board voted 5-0 to approve the variance regarding sharing information related to injuries sustained by inmates while in correctional custody (Acting-Vice Chair Richards and Members Bryant, Cohen, Hamill, Jones Austin, and Safyer).¹²

DOC Request for Secure Unit Variance¹³

Vice Chair Richards indicated that the Board would vote to renew the Secure Unit variance with existing conditions until September 13, 2017, one day after the next public meeting. The variance allows the Department to provide young adults (ages 18 through 21) housed in Secure Units with a minimum lock-out time of ten (10) hours per day and access to law library services by means of a law library kiosk and typewriters in the Secure Units. A fuller description of the variance, as well as existing conditions are set forth in the Record of Variance Action on the Board's website.¹⁴

Member Jones Austin moved for a vote on the variance with existing conditions, and Member Bryant seconded the motion. Vice Chair then Richards conducted a roll call vote of all members present, and the Board voted 5-0 to renew the variance with existing conditions. (Acting Chair Cephas, Vice Chair Richards, Member Bryant, Member Jones Austin, and Member Cohen. Member Hamill and Member Safyer did not participate in the vote, as they had left the meeting before the vote took place).

Additional Public Comment

The Board heard public comment from Al Craig (COBA), Caitlin Hickey (LAS), Victoria Phillips (UJC/JAC), Grace Kelly Price (JAC), and Clara O'Brien (LAS). The public comments are available at: <https://www.youtube.com/watch?v=WjefhjiTad4&t=10676s>.

Following public comment, Acting Vice-Chair Richards adjourned the meeting.

¹¹ The Record of Variance Action is available at:

<http://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2017/July-11-2017/post/2017.07.11%20-%20Record%20of%20Variance%20Action%20-%202-05%28b%29%282%29%28i%29%20post%20psychotropic%20medication%20post%20final.pdf>.

¹²The Record of Variance action is available at:

<http://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2017/July-11-2017/post/2017.07.11%20-%20Record%20of%20Variance%20Action%20-%203-08%28c%29%283%29%20Final.pdf>.

¹⁴ The Record of Variance Action is available at:

<http://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2017/July-11-2017/post/2017.07.11%20-%20Record%20of%20Variance%20Action%20%28Secure%29%20final.pdf>.