



NEW YORK CITY
BOARD OF CORRECTION

February 14, 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.
Jennifer Jones Austin, Esq.
James Perrino
Michael Regan
Steven M. Safyer, M.D.

Honorable Bryanne Hamill: Absent

Martha W. King, Executive Director

DEPARTMENT OF CORRECTION

Joseph Ponte, Commissioner
Martin Murphy, Chief of Department
Jeff Thamkittikasem, Chief of Staff
Heidi Grossman, Esq., Deputy Commissioner of Legal Matters/General Counsel
Timothy Farrell, Deputy Commissioner
Winette Saunders, Deputy Commissioner
Peter Thorne, Deputy Commissioner
Charles Daniels, Senior Deputy Commissioner
Yolanda Canty, Assistant Chief
Hazel Jennings, Bureau Chief of Criminal Justice
Turhan Gumusdere, Bureau Chief of Security
Rabiah Gaynor, Executive Director of Health Affairs
Phil Terwiel, Acting Assistant Commissioner, Adult Programs
James Walsh, Deputy Commissioner of Adult Programming
Shirvahna Gobin, Assistant Commissioner for Strategic Planning
Benjamin Seebaugh, Staff Analyst
Annie DiCaterino, Strategic Planning
Kwame Patterson, Assistant Commissioner of Public Information
Brenda Cooke, Deputy General Counsel
Wesley Bauman, Assistant General Counsel

Marlene Santana, Community Coordinator
Elizabeth Seibold, Press Officer
Marisa Alberti, Policy Analyst
America Canas, Senior Policy Analyst
Janet Amaro, Project Manager Analyst
James Boyd, Director of Constituent Services
Eve Kessler, Director of Public Affairs
Meekaella Copeland, Admin. Director of Social Services
Mackenzie Dancho, Research Analyst
Luigi Ottaviano, Acting Deputy Warden
Louis Molina, Captain

NYC HEALTH + HOSPITALS-CORRECTIONAL HEALTH SERVICES

Homer Venters, M.D., Chief Medical Officer for Correctional Health Services (“CHS”)
Dr. Elizabeth Ward, Senior Director, CHS
Susan Miller, Senior Associate Director of Policy and Planning, CHS
Ross MacDonald, M.D., Chief of Services, Medicine, CHS
Patrick Alberts, Senior Director of Policy and Planning
Levi Fishman, Associate Director of Public Affairs
Carlos Castellanos, Director of Operations
Abdul Madison, Operations
Ashley Smith, Assistant Director, Policy & Planning
George Strachan, Director of Employment Safety & Workplace Violence Prevention
Lucia Caltagirone, Associate Counsel
Nathaniel Dickey, Special Assistant
Ashley Smith, Assistant Director, Policy & Planning
Lipi Roy, M.D., MPH, Chief of Addiction Medicine
Othaniel Santiago, Staff

OTHERS IN ATTENDANCE

Alex Abell, Urban Justice Center
Jennifer Parish, Urban Justice Center/Jail Action Coalition (JAC)
Kate Axelrod, Osborne Association
Lorna Woodham, Osbourne Association
Tanya Krupat, Osborne Association
Melissa Barosy, Connelly, McLaughlin & Woloz
Erica Bond, Office of the Mayor
Eduardo Castro, Office of the Mayor
Chelsey Davis, Office of the Mayor
Albert Craig, Correctional Officers’ Benevolent Association (COBA)
Marc Steier, COBA
Mark Cranston, Middlesex County Department of Correction
Elizabeth DeWolf, Policy Associate at CUNY
Dennis Gonzales, Monitorship
Shannon Hakn, Independent Budget Office
Kymane Hutchinson, JAC
Grace Price, JAC
Emily Kenyon, Sylvia Rivera Law Project
Sarah Kerr, Legal Aid Society Prisoners’ Rights Project (LAS)
Victoria Law, Independent
Laura Limuli, BOC Director of Research, Emeritus

Nick Mariuacci, Department of Education
Shaniel McKinney, Public
Valentina Morales, Mental Hygiene Legal Services
Gloria Pazimino, Press
Charlotte Pope, Children's Defense Fund –NY (CDF-NY)
Kathleen Rubenstein, Law Department
Steve Riester, NYC Council, Finance Division
Jeff Barrett, Student
Lydia Brown, Autistic Hoya

Public Remarks of Acting Chair Cephas

Acting Chair Cephas presided over the meeting. He introduced and welcomed James Perrino as the new Mayoral appointee to the Board. Member Perrino has a distinguished career of 27 years at the Department of Correction (“Department” or “DOC”) where he led reform efforts regarding adolescents and young adults placed in DOC custody.

Approval of January 2017 Minutes

The Acting Chair asked for a motion to approve the January 10, 2017 minutes. Member Jones Austin moved and Member Bryant seconded the item. The minutes were approved unanimously (Acting Chair Cephas, Acting Vice-Chair Richards, and Members Bryant, Cohen, Jones Austin, Perrino, Regan, and Safyer).

Correctional Health Services (CHS) Update

Dr. Patsy Yang provided an update on CHS' 2016 transition from Corizon to NYC Health + Hospitals (H+H) as the direct health care provider in all NYC jail facilities. CHS hired approximately 85 percent of Corizon staff, and made key improvements in four key areas: workforce and organizational structure; jail safety; leveraging H+H services during and post incarceration; and expanded service delivery.

Member Cohen congratulated H+H/CHS on its successful transition and its impressive accomplishments. He noted that what H+H/CHS is doing in terms of access to health care is not what other jail systems in the country are doing.

In response to a question from Member Safyer, Dr. Yang said that 145 inmates had enrolled in MetroPlus. She noted that CHS ensures inmates receive health care post-release through referral to Gotham Health Care Centers located throughout New York City.

CHS Access Report: January 2017

Patrick Alberts, Senior Director of Policy and Planning at H+H, presented the CHS Access Report for the period April 2016 to January 2017 (available [here](#)). The Report shows data about access to services across several categories — sick call, health visits, mental health visits, and on- and off-Island specialty encounters. During this period, approximately 80% of scheduled health encounters were seen while the percent of mental health encounters seen hovered around 70%. The cancellation rate for on- and off-Island specialty clinic encounters declined by 10%. DOC's Deputy Commissioner of Health Affairs, Dr. Nichole Adam-Flores, stated that DOC and H+H have decided to develop a joint strategic plan for improving inmates' access to health and mental health care services both on and off the Island.

Member Cohen voiced concern about the low production rates for mental health appointments and the slow rate of improvement in production over the period covered by the Report. He also

inquired whether H+H has knowledge of the names of individuals on sick call. DC Adams-Flores said that DOC provides the sick call lists for every housing unit to health staff. Dr. Homer Venters explained that sometimes not all of the housing units submit their lists to clinic staff. Acting Chair Cephas remarked that this paper-based system should be replaced with an automated process. Dr. Venters responded that H+H has explored the possibility of placing kiosks in the housing areas, but it would be extremely difficult given physical plant issues.

BOC's Executive Director, Martha King ("ED King"), asked Mr. Alberts when H+H and DOC would present their joint strategic action plan to the Board. He responded that they would present a status report at the March 2017 Board meeting on progress toward development of the plan, which he estimated would take several months to complete.

Public Comment on DOC Variance Requests

The Board heard public comment on DOC's two variance requests concerning the use of Enhanced Supervised Housing (ESH) for young adults from: Mark Cranston (Special Adviser to COBA),¹ Marc Steier (Director of Legal Affairs, COBA), Albert Craig (First City Wide Trustee, COBA), Sarah Kerr (Legal Aid Society, Prisoners' Rights Project), Jennifer Parish (Director of Criminal Justice Advocacy at the Urban Justice Center Mental Health Project and Jails Action Coalition (JAC) member), and Kelsey De Avila (Brooklyn Defender Services (BDS)). These comments are available [here](#).

Body Scanners

One of the public commenters, Marc Steier (COBA's Director of Legal Affairs) stated that if the Department used body scanners to uncover hidden weapons, such as scalpels, it would not have to put anyone in the ESH Entry Unit or any other ESH unit. He said that the Department had stopped using body scanners because it did not have the technicians to operate them. He disagreed with the Department's contention that state law prohibited it from using these scanners and asked the Board to inquire into DOC's interpretation of state law. In response, Heidi Grossman, DOC's Deputy Commissioner of Legal Matters and General Counsel, stated that the New York Public Health Law permits the use of body scanners for diagnostic but not security purposes and that the Department is seeking legislation that would permit their use by DOC. Member Regan commented that this was a big issue and asked that the Board's counsel and the Department's outside counsel review this matter. During the Department's presentation on the Young Adult Plan and ESH Housing for Young Adults (see below), Commissioner Ponte noted DOC's support for a bill to be submitted to the Assembly that would permit the use of body scanners in the jails.

Young Adult Plan/ESH for Young Adults

► Reduction in Use of PSEG/Establishment of Alternative Housing Models

After welcoming Member Perrino to the Board, Commissioner Ponte delivered a PowerPoint presentation on ESH housing for young adults (available [here](#)). He compared where the Department had been and where it is today in the use of punitive segregation (PSEG). Today, just over one percent of the jail population is in PSEG as compared to 4.4 percent nationally. DOC's drastic reduction in the use of PSEG compares very well to the national rate in terms of using PSEG only for those who absolutely require it.

¹ Prior to hearing public comment from Mark Cranston, Member Regan disclosed that Mr. Cranston is his cousin and that in the 16 years that Mr. Regan has served as a Board member, he has disclosed this fact many times.

Commissioner Ponte spoke about the Department's establishment of various behavior modification models to address violence that aim to keep staff and young adults, as well as other special populations, safe. He emphasized that while ESH and other new housing models are not a perfect solution, safety must be, and is, of paramount concern to the Department. If DOC does not have sufficient safety and security measures — such as restraint desks — in place, the Department will be unable to change the behavior of very violent individuals. Behavioral change does not result from a 15-minute conversation or happen in a week or 30 days. It takes a lot of work by a lot of people. Time is needed to obtain and assess information about the individual to determine why that person engages in violent behavior in order to help them change.

► *Use of Restraint Desks in ESH Entry Unit/ESH Level 1*

Chief of Staff Jeff Thamkittikasem stated that the Department instituted the ESH Entry Level with restraint desks in response to increased acts of violence. He noted that young adults are placed there after recently committing a slashing or stabbing. Restraint desks are necessary to provide congregate out-of-cell programming while keeping violent inmates safe from each other and ensuring the safety of officers who work in the unit. To highlight the challenges that DOC faces in curtailing these acts of violence, Chief Murphy showed a brief video depicting a slashing incident by high custody general population inmates in the GRVC Law Library. The two perpetrators, a young adult and an adult, slashed an adult inmate on his face and back. Chief Murphy noted what appeared to be movement by inmates to hide a weapon in their anal cavity. Although the inmates were searched, no weapons were found.

Mr. Thamkittikasem stated that the Department's statistical analysis showed that inmates involved in a major incident (e.g., serious assault on an officer, serious injury to inmate, or slashing/stabbing) are more than 11 times more likely than general population high-classification inmates to be involved in another major incident. He noted that violent incidents have occurred in the ESH Entry Unit and ESH Level 1. Mr. Thamkittikasem concluded that restraint desks currently are the most effective tool DOC has at its disposal to provide education and other programming in a safe and secure environment.

Later in the meeting, Mr. Thamkittikasem stated that the Department has looked at other jurisdictions (e.g., Washington State, New York, California) that have established restrictive housing units with restraint desks as an alternative to long-term punitive segregation. DOC has put the Board in touch with people who have studied these alternative program models. Member Jones Austin asked the Department to describe what the restraint desks look like and to what extent young adults are restrained in them. Chief Murphy showed a brief video of an inmate being placed in and out of a restraint desk. He said while in the desk, the inmate's arms and hands are free so that he can participate in education and other programming. The inmate can also move his feet and stand up while in the desk.

► *Recent Lock-Down of ESH*

Member Cohen asked Chief Murphy why inmates were unable to receive showers, phone calls or visits during a recent lockdown of ESH units for several days. The Chief responded that the units were locked down in response to violent incidents that had taken place. He confirmed Member Bryant's statement that a lock-down ranging from several days to two weeks is a routine correctional response to violent incidents until the facility can ensure the safety and security of all inmates and staff. Commissioner Ponte added that during the lock-down, significant issues came to light that required physical modifications and training of staff.

► *Education and Other Programming for Young Adults in ESH*

Deputy Commissioner Winette Saunders stated that young adults account for approximately 12 percent of the jail population but are responsible for about 30 percent of violent incidents. Consequently, heightened safety efforts must be taken to provide education and other programming to young adults in ESH. DC Saunders said that on February 13, DOC added a second educational service track in ESH. In addition to three hours of education per day, the Department also offers four hours of daily programming such as dialectical behavioral therapy (DBT), creative arts, youth communication, and interactive journaling. This is an evolving process and DOC always looks to expand programming that has proven effective.

In response to Member Cohen's inquiry, DC Saunders explained that the classroom space in the ESH Entry Unit is being expanded to accommodate more students. She noted that prior to expansion, the classroom had eight (8) restraint desks but only six (6) people chose to attend school. Over the last several weeks, approximately 20 young adults have signed up for school. Member Jones Austin asked what explained the increased interest in education. DC Saunders responded that a survey of young adults in ESH revealed that they felt safer in a classroom where all students are restrained.

Nick Marinacci, the NYC Department of Education's (DOE) Senior Executive Director of Youth Justice Education and Treatment Programs for NYC Alternative Schools Districts, stated that the young adults in ESH are the most educationally challenged of the 18-21 year old population in the City's jails. This age group is not required to attend school; they can opt out of attending school on any given day. Fifty (50) percent of ESH students have disabilities — prior to their incarceration, they were special education students in public school. Eighty-nine (89) percent of them had dropped out of school prior to their arrest and incarceration, and their average age is 20.5, i.e., they can attend school until the end of the school year in which they turn 21. Forty-four (44) percent of the young adults attend school in ESH, which means they attend school a little less than half the time. This attendance rate is higher than that of young adults not housed in units that utilize restraint desks for classroom instruction. (Later in the meeting, DC Saunders explained that the attendance rate for young adults in General Population is 33 percent). Executive Director Marinacci said that while it is too early to measure the long-term effects of restraint desks in educational settings, DOE believes that restraint desks have led to a slight increase in ESH school attendance. He noted that education in this setting is better than individual cell study or computer-based instruction that many jurisdictions are moving toward. Since many of the students have special education needs, they require an in-person teacher to help them work through the material.

In response to Member Cohen's inquiry about the sufficiency of special educational staffing for the young adults in ESH, Executive Director Marinacci explained that DOE is working on adding a paraprofessional to the teaching staff. Mr. Marinacci also said that 21 young adults have signed up for school but do not attend every day. Given the number of students who attend school on any given day, the expansion of the classroom space to 10 to 12 restraint desks will be sufficient to meet demand. DC Saunders noted that in addition to DOE instruction, undergraduate and graduate students from local universities such as Columbia, NYU and St. Johns provide one-on-one tutoring to young adults in ESH to assist them in obtaining a high school equivalency diploma.

Variance Requests Regarding the Use of ESH for Young Adults

► *Background*

Acting Chair Cephas stated that on July 12, 2016, the Board first granted a variance from Minimum Standards § 1-16(c)(1)(ii) to allow the Department to house 19 to 21 year olds in ESH. The Board renewed the variance on October 11, 2016, and it expired on January 11, 2017. DOC subsequently declared some daily emergencies noting that these emergencies prevented it from complying with § 1-16(c)(1)(ii). On January 20, 2017, the Board sent the Department a Notice of Violation of Minimum Standards, stating that DOC had not demonstrated an emergency situation and therefore its continued operation of ESH for young adults ages 19 to 21 was in violation of Minimum Standards.

Acting Chair Cephas said that since the January Board meeting, many Board members had visited ESH units for young adults and further discussed with Department leadership and Board staff the young people housed there. Additionally, the Board has provided significant comment on DOC's new draft ESH Directive, and the Department has incorporated the Board's recommendations and feedback. This process continues and some of these discussions will be central to the Board's rulemaking on restrictive housing, which the Board hopes to commence shortly.

Acting Chair Cephas explained that in October 2016, the Board approved a variance that allows the Department to house 18-year old inmates in ESH. This variance is in effect until April 11, 2017. The Board believes that the use of ESH for inmates ages 18 to 21 year olds constitutes a single issue and so should be treated as a single variation from the Board's Standards. Thus, going forward, the inclusion of 18-21 year olds in ESH should be considered as one variance request. The Board understands that the Department agrees with this approach.

To align the time frame of Board authorization and conditions of young adults currently in ESH, Acting Chair Cephas stated that the Board will consider DOC's February 9, 2017 variance request (re use of ESH for 19-21 year olds) as two separate requests: *First*, the Board will consider a variance renewal request for a six-month variance permitting the Department to house young adults ages 19 through 21 in ESH, to expire on August 14, 2017. *Second*, the Board will consider a six-month variance request — also with an August 14 expiration date — to replace the variance which currently expires on April 11 and allows the housing of 18 year olds in ESH. If the Board votes to approve both variances, and if, in advance of the expiration of these variances on August 14, DOC continues to believe it needs a variance to house young adults in ESH, it may, at that time, request a single variance permitting it to house young adults ages 18 to 21 in ESH.

Acting Chair Cephas asked the Department to present its variance request for 18 year olds and 19-21 year olds. He reiterated that the Board would consider this as two separate variances and hold two separate votes: first, the Board would decide whether to grant a renewal variance for 19 to 21 year olds, and then decide whether to replace the current variance for 18 year olds with one that matches the conditions and period of time of the variance request for 19 to 21 year olds.

► *The Department's Presentation of the Variance Requests*

Chief Murphy first presented the Department's variance request for a six-month renewal of the limited variance, last granted by the Board on October 11, 2016, from Minimum Standards § 1-16(c)(1)(ii), which requires that young adults ages 18 through 21 be excluded from placement in ESH. On October 11, the Board also granted the Department a six-month limited variance from §

1-16(c)(1)(ii) to allow for the use of ESH for 18 year olds. That variance is set to expire on April 11, 2017. Since both variances are applicable to the same provision of the Minimum Standards and the Department's intention is to use ESH and the ESH Entry Unit for all young adults ages 18 to 21 in the same manner, DOC requested that the variance request for the 18 year olds be amended to conform to the variance request for 19-21 year olds.

► *Board Discussion of the Variance Requests*

Following Chief Murphy's presentation, Acting Chair Cephas called for a motion to vote on the requested variances. After the motion was made and seconded, he opened the floor for debate and asked whether any Board members wished to proposed conditions on the variances. Member Richards responded that he would be proposing conditions but first, he had several questions for the Department. In answer to his and other Members' questions, Department staff stated that (i) restraint desks are utilized in the ESH Entry Unit and in ESH Level 1 but not in Levels 2, 3 or 4; (ii) upon completion of the 30-day assessment in the Entry Unit, young adults can be placed in Levels 1 or 2; (iii) currently, there are 11 people in ESH Level 2, eight (8) of whom started in the Entry Unit and five (5) who entered directly into Level 2; (iv) the *Nunez* federal monitor supports the use of restraint desks in ESH; and (v) the Department will provide the Board with the number of young adults who have spent more than a total of 45 days in any housing unit with restraint desks, including the ESH Entry Unit, ESH Level 1, or any non-ESH unit that has or had restraint desks.

Member Cohen relayed concerns that inmates in ESH had expressed to him about the lack of definitive time limits in the Entry Unit and Level 1. He stated that Vera, in its meeting with various Board members and staff about its recently completed study of segregated housing in the City's jails, recommended that it should be presumed that an inmate will step down to a less restrictive Level at the end of 30 or 45 days unless DOC provides reasons why this should not occur. Member Richards echoed Member Cohen's observations. Mr. Thamkittikasem responded that Vera did not evaluate the current iteration of ESH. However, Vera did discuss with DOC the movement of inmates to less restrictive levels based on whether the inmate had refrained from violent activity and/or had engaged in programming. DOC believes that both factors should be considered in determining whether an inmate should be transferred out of the Entry Unit or Level 1.

In response to Member Bryant's questions, Chief Murphy confirmed that inmates in the ESH Entry Unit or Level 1 are afforded seven (7) hours of out-of-cell time for programming and three (3) additional hours for school, while inmates in PSEG are given one (1) hour of lock-out. The Chief also confirmed that the Entry Unit is for young adults who have just committed a stabbing or slashing or caused serious injury to staff or another inmate. Level 1 is for inmates with a significant history of serious violence or the inmate has been identified as a leader of a security risk group (SRG) and has demonstrated active involvement in the organization or perpetration of violent or dangerous gang-related activity.

Member Cohen asked how there could be meaningful public discussion about ESH when the DOC directive that describes the program is maintained as confidential. In response, Commissioner Ponte stated that the Department had been extremely forthcoming about the program by holding regular meetings with stakeholders, facilitating visits to ESH, and sharing drafts of the directive and other information with the Board. He invited the Board to continue working with DOC to finalize the policy, and noted that once the directive is finalized, it will be shared with the public.

Vote on Variance re 19-21 Year Olds

► *Conditions Proposed by Acting Vice-Chair Richards*

Acting Chair Cephas asked whether any Board members wished to propose conditions on the variance concerning 19-21 year olds. In response, Acting Vice-Chair Richards read out loud proposed conditions, which are available [here](#).

Member Cohen asked the Acting Vice-Chair why there is not a condition limiting the number of hours that inmates are in restraint desks. The Vice-Chair responded that the conditions allow the Board to monitor whether DOC is operating ESH during the variance period in accordance with current policies and procedures. Imposition of time limits on the use of restraint desks is an issue for rulemaking, which the Board is embarking upon soon.

Acting Chair Cephas called for a motion to vote on the proposed conditions. Member Regan moved the item and Acting Vice-Chair Richards seconded it. The Board voted unanimously to approve the proposed conditions.

► *Conditions Proposed by Member Cohen*

Member Cohen proposed additional conditions which he read out loud and are available [here](#). Prior to reading them, he expressed his deep frustration with the Department's failure to submit its variance requests sufficiently in advance of Board meetings to allow Board members to review the requests and propose conditions.

Mr. Thamkittikasem stated that he was hearing these proposed conditions for the first time but that they appeared to raise policy and process issues that the Department was willing to discuss with the Board in finalizing DOC's ESH directive. He noted that DOC would be incorporating some of them in the final directive.

Acting Chair Cephas called for a vote on the conditions. Member Cohen moved the item and the Acting Chair seconded it. The Board voted not to approve the conditions with Member Cohen voting in favor and six (6) members voting in opposition (Acting Chair Cephas, Acting Vice-Chair Richards and Members Bryant, Jones Austin, Perrino, and Regan)².

In voting on the proposed conditions, various Board members made remarks:

- *Acting Vice-Chair Richards* stated that while he supports the substance of Member Cohen's proposed conditions, he reiterated his view that the Board should not engage in rulemaking through imposition of variance conditions.
- *Member Regan* expressed his agreement with Member Richards' comments and his deep admiration for Dr. Cohen's leadership and concern for people incarcerated in the City's jails.
- *Member Jones Austin* agreed with Dr. Cohen's complaint that the Board is often left with insufficient time to consider variance requests and conditions, including the conditions proposed by Dr. Cohen. Not having had an opportunity to digest and thoroughly consider them, she is not able to endorse them at this juncture; however, she does not believe they should be off the table.

² Having left the Board meeting after voting on the conditions proposed by the Acting Vice-Chair, Member Safyer did not participate in this or other votes taken at the meeting.

- *Member Bryant* stated that the conditions are good suggestions that warrant further discussion between the Department and the Board.
- *Acting-Chair Cephas* said that three of the comments that Dr. Cohen made were quite valid: (i) the content of his proposed conditions; (ii) the cramped process in terms of time frames for considering variance requests; and (iii) the need for more public disclosure on some of the background information and documentation that DOC considers in designing its programs. As the Board moves through the fact-finding phase of its rulemaking on restrictive housing, it should focus on these issues and on resolving them sooner rather than later. The Acting Chair concluded by stating that the Board will consider the content of what Dr. Cohen proposed in discussions about the final ESH directive and in the rulemaking process.

► *Vote on Variance with Conditions*

Acting Chair Cephas called for a vote on the variance with conditions. The Board voted to approve the variance with conditions with Member Cohen voting in opposition and six (6) members voting in favor (Acting Chair Cephas, Vice-Chair Richards, and members Bryant, Jones Austin, Perrino, and Regan).

In voting on the variance with conditions, various Board members made remarks:

- *Acting Vice-Chair Richards* reiterated that Member Cohen's conditions present an opportunity for the Board to work on finalizing the Department's ESH directive, which should include many of Dr. Cohen's conditions.
- *Member Cohen* stated that in enacting the ESH Minimum Standard, the Board never contemplated that individuals would be shackled by their feet whenever they were out of cell. The Board purposely barred young adults from ESH because it was worried that without any time limit on length of stay, a young adult could remain there indefinitely. Since the Board's enactment of the Standard, the design of ESH has changed dramatically; thus, approval of the variance is, in Dr. Cohen's view, tantamount to rulemaking. Dr. Cohen participated in a telephone conference with NYU experts who described the use of restraint desks in Washington State in a manner that is very different than how they are used in ESH. In Washington State, restraint desks are used primarily with respect to people who were in long-term punitive or administrative segregation; moreover, restraint desks are used only for one and a half hours twice a week. These experts also said that there are no studies or data on restraint desks. Dr. Cohen stated that the Board had not been provided with any information about the benefits of the ESH model or the people placed in ESH to date. He also said that in the meeting with Vera, Vera described problems with ESH. This included a lack of well-defined criteria for moving to less restrictive housing, issues with training, and lack of steady security staff. Dr. Cohen also expressed concern about going forward without any comment from H+H although previously, H+H had noted its concern with young adults remaining in restraint desks for prolonged periods of time. Dr. Cohen concluded that the young people do not understand what they must do to exit ESH or have any expectation that they will be moved to less restrictive housing. In sum, he believes that ESH as currently operated will harm young adults.
- *Member Jones Austin* commenced her remarks by expressing her sincere appreciation of Dr. Cohen's comments. Like her fellow Board members, her goal is to ensure the safety and the best opportunities for all who are incarcerated or work in the City's jails. It is often difficult to make decisions that may be based on limited information or, more importantly, may present challenges for the people that the Board is seeking to help and not harm. As a Black, proud woman, it bothers her when restraint desks are compared to the shackles of slavery; her intent is not to enslave anyone. When she first heard about restraint desks,

she was deeply disturbed and needed to understand why they were being used. She saw several videos of young people seeking to be educated while in restraint desks and of people being slashed. She came to realize that safety is a real issue. But for the use of restraint desks, young people who are seeking to grow their minds and their opportunities while incarcerated, could be gravely harmed. Like her fellow Board members, she was forced to make a choice between the lesser of two evils, and she decided to err on the side of safety for inmates and staff. It is far better that young people are educated in restraint desks where they can move their feet, arms and hands than remaining in their cells because they fear for their safety in class. In concluding her remarks, Member Jones Austin said that having not been presented with any other options, she was compelled to vote in favor of the variance.

- *Member Bryant* said that as a psychologist, he is faced with the predicament of considering shackling which, on the surface may appear barbaric. However, we must look at the setting we are working in — in corrections, we are always having to making decisions about the safety and security of inmates and staff. Dr. Bryant visited Rikers to observe ESH, during which staff devoted a lot of their time to making the presentations they made here today. DOC has been transparent about ESH in every way and he knows he is making an informed decision in voting in favor of the variance. Dr. Bryant believes that short of any other options, and as compared to 23 hours in punitive segregation, this is by far the best alternative. The young adults housed in ESH have done very grave harm to others. If his child were incarcerated, he would want him to be protected from others and from himself. Dr. Bryant stated that while the timing of when the Board receives variances requests could certainly be better, he has walked in DOC's shoes and knows the challenges it faces. He concluded that the only way for young people to benefit from being incarcerated is to receive educational and other programming to turn their lives around. This can only be achieved in an environment that is safe.
- *Acting Chair Cephas* stated that he supported the variance for many of the reasons already discussed. He said the variance was not a perfect solution but given the alternatives, this was the right move at this time.

Vote on Variance re 18 Year Olds

Acting Chair Cephas called for a motion to vote on conditions to the variance regarding the placement of 18 year olds in ESH. He noted that these conditions were the same as those the Board had voted to impose on the variance re 19-21 year olds and, therefore, there was no need to discuss them again. After the item was moved and seconded, the Board unanimously approved the conditions (Acting Chair Cephas, Vice-Chair Richards, and Members Bryant, Cohen, Jones Austin, Perrino, and Regan).

Acting Chair Cephas then called for a motion to vote on the variance with conditions. After the item was moved and seconded, the Board approved the variance with conditions, with one vote in opposition (Member Cohen) and six (6) members in favor (Acting Chair Cephas, Vice-Chair Richards, and Members Bryant, Jones Austin, Perrino, and Regan).

Public Comment

The Board heard public comment from Alex Abel (Urban Justice Center Mental Health Project), Grace Lee (NYU Mental Health Project), Valentina Morales (Mental Hygiene Legal Services), and Grace Price (JAC). The public comments are available [here](#).

Following public comment, the meeting was adjourned.