



**NEW YORK CITY  
BOARD OF CORRECTION**

**May 8, 2018 Public Meeting Minutes**

**MEMBERS PRESENT**

Derrick D. Cephias, Esq., Acting Chair  
Stanley Richards, Acting Vice-Chair  
Robert L. Cohen, M.D.  
Hon. Bryanne Hamill  
Jennifer Jones Austin, Esq.  
James Perrino  
Michael J. Regan  
Steven M. Safyer, M.D.

Martha W. King, Executive Director

**DEPARTMENT OF CORRECTION (DOC)**

Cynthia Brann, Commissioner  
Jeff Thamkittikasem, Chief of Staff  
Winette Saunders, Deputy Commissioner of Youthful Offender and  
Young Adult Programming  
Anna Marzullo, Senior Policy Advisor  
Steven Kaiser, Policy Analyst  
Danielle Leidner, Executive Director of Intergovernmental Affairs  
Heidi Grossman, Deputy Commissioner for Legal Matters/General Counsel  
Brenda Cooke, Deputy Chief of Staff  
D. Brown, Correction Officer  
William Payne Jr., Acting Deputy Warden  
Jean Rene, Deputy Warden  
Angel Villalona, First Deputy Commissioner  
Dr. Nichole Adams-Flores, Deputy Commissioner for Health Affairs  
Maxsolaine Mingo, DOC's Acting Chief of the Department  
Michael Tausek, Acting Deputy Commissioner of Adult Programs  
Jason Kersten, Press Secretary

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

Ross MacDonald, M.D., Chief Medical Officer, Assistant Vice President, CHS  
Patsy Yang, DrPH, Senior Vice President, CHS  
Carlos Castellanos, Director of Operations, CHS  
Ben Farber, Director of Planning and Analysis, CHS

Ashley Smith, Assistant Director of Policy & Planning, CHS  
Sara Gillen, Senior Assistant Vice President

**OTHERS IN ATTENDANCE**

Nick Marinacci, NYC Department of Education  
Allen Riley, New York State Commission of Correction (SCOC)  
Susana Guerrero, SCOC  
Veronica Lewin, NYC Department of Health and Mental Hygiene  
Ummer Ali, Urban Justice Center-Mental Health Project (UJC)  
Rosa Jaffe, UJC  
Alex Abell, UJC  
Laura Fettig, UJC  
Victoria Phillips, Jails Action Coalition (JAC)  
Kelly Grace Price, JAC  
Al Craig, Correction Officers' Benevolent Association (COBA)  
Steven Isaacs, COBA  
Charlotte Pope, Children's Defense Fund – NY (CDF-NY)  
Maya Brown, Children's Rights  
Matthew Gibson, Children's Rights  
Kelsey De Avila, Brooklyn Defender Services (BDS)  
Simone Spirig, BDS  
Chelsea Davis, NYC Office of the Mayor  
Shevani Patel, NYC Mayor's Office of Operations  
Thomas Giovanni, New York City Law Department (Law)  
Ashley Iodice, Law  
Chantla Stokes, Osborne Association  
Valentina Morales, Fedcap Rehabilitation Services, Inc.  
Julian Castronovo, Sylvia Rivera Law Project  
Jane Stanicki, Hour Children  
Balfour Thompson, Youth Represent  
Jessie Workman, Youth Represent  
Thais Saunders, Youth Represent  
John Coleman, Just Leadership USA  
David Condliffe, Center for Community Alternatives  
Ebonie Steele, Center for Community Alternatives  
Yanela Ortega, NYC Public Library  
Michael Caney, Brooklyn Public Library  
Tyler Davidson, Independent

## **Introductory Remarks**

Acting Chair Cephas commenced the meeting by announcing that it was National Correctional Workers' Week. The Board has said many times over the years that staff in the New York City jails have the most challenging jobs in the City. On behalf of the Board, the Acting Chair thanked Correction Officers for their service to the City, their exceptional work, and their daily commitment to improving the City's public safety and jails.

## **Approval of April 2018 Minutes**

Acting Chair Cephas asked for a motion to approve the April 20, 2018 meeting minutes. Upon Acting Vice-Chair Richards' moving the item and Member Regan's seconding it, the minutes were unanimously approved (Acting Chair Cephas, Acting Vice-Chair Richards, and Members Cohen, Hamill, Jones Austin, Perrino, Regan, and Safyer).

## **Health Care Access and the Action Plan**

### **► Introduction**

Executive Director ("ED") Martha King said that ensuring the delivery of correctional health and mental health services in compliance with the Minimum Standards is a critical part of the Board's mission. Access to health care is a fundamental policy and principle of BOC's and all nationally-recognized jail standards. For the past two years, to monitor compliance with its Rules, BOC has worked closely with Correctional Health Services ("CHS") and the NYC Department of Correction ("DOC" or "the Department") on efforts to track and report on health and mental health services and outcomes in the jails. ED King reported as follows on this issue.

### **► CHS' Monthly Access Reports**

The Board required CHS to produce a monthly access report monitoring each month's approximately 55,000 scheduled health and mental health visits, 10,000 sick call visits, 4,000 health intakes, and various other health encounters at each of, and across, the 12 city jails. The monthly access reports represent the most comprehensive, ongoing reporting on health and mental health care access in jail systems nationwide. The report was improved in spring 2017, with the goal of identifying underlying barriers to access.

Access to health and mental health care in NYC jails has been discussed in eight (8) public Board meetings since January 2016 and is the subject of BOC staff monitoring in DOC facilities. During these public discussions, Board members have repeatedly cited their concerns about issues related to access to care including lockdowns, production, escorting, transportation to Bellevue and Elmhurst hospitals, sick call, and specialty clinic policies. Discussions on these issues have repeatedly addressed the need for improved tracking and outcomes related to BOC Standards. This information is necessary to effectively minimize barriers and improve access to care via measurable reforms.

### **► DOC and CHS' Joint Action Plan**

At the Board's February 2017 public meeting, DOC and CHS announced their development of an action plan to improve access and in June 2017, they presented the Board with a plan that included independent and joint strategies related to staffing, scheduling, transportation, tracking people in custody, and communication. Their joint efforts included two pilot initiatives: (1) a cohort housing initiative to reduce the need for escorts for patients with similar health needs, and (2) a coordinated patient scheduling initiative intended to reduce over-scheduling

and scheduling conflicts. DOC and CHS had reported that the cohort housing initiative was successful in achieving many of the goals of the pilot. However, further coordination between them is needed to determine why patients eligible for cohort housing were not placed there, and whether there is room for improvement or expansion of this approach. In January 2018, CHS and DOC ended their coordinated patient scheduling pilot after finding there were not enough scheduling conflicts to constitute a significant barrier to access. The indicators in the access report did not change during or after the action plan.

### ► **BOC's Access to Health and Mental Health Care Report<sup>1</sup>**

ED King announced the Board's release of a report summarizing the monthly access reports for the last six months of 2017 ("Report"). After thanking BOC research staff Heather Burgess, Nashla Rivas Salas, and Emily Turner for their work on the Report, ED King summarized the its findings and recommendations.

#### Findings

- Just over 340,000 services were scheduled during this six-month period — 41% for mental health services, 24% for nursing, 11% for social work, and 11% for medical.
- Seventy-nine percent (79%) of services scheduled during this period were "completed," meaning that in 79% of scheduled appointments, the patient either saw a clinician or the patient refused the service and told a clinician that they did not want the scheduled service.
- Ninety-three percent (93%) of completed services were seen by a clinician, and 7% (or approx. 20,000 appointments) were refused.
- Completion rates varied by facility, ranging from a 67% low overall completion rate at VCBC to a 92% completion rate at NIC. Completion rates varied more when analyzed by facility and service category.
- Completion rates for Medical and Dental services varied widely across facilities.
- Medical services ranged from a low 54% completion rate at AMKC to a high 98% completion rate at MDC.
- Dental and Oral surgery completion rates ranged from a low 48% at VCBC to a high 84% at RNDC.
- Almost half of completed Off-Island and 31% of completed On-Island Specialty Clinic appointments involved a patient refusing services. Off-Island services are reserved for advanced surgeries, procedures, and appointments that cannot be carried out on Rikers Island.
- People in custody and jail staff reported that high rates of patient refusals for Off-Island Specialty Clinic appointments are due to lengthy wait times, overbooking, waiting area conditions, and transportation challenges.
- Just over a fifth of all scheduled services were not completed.
- Dental and Oral Surgery appointments, Mental Health appointments, and On-Island Specialty Clinic Services were the least likely to be completed — with non-completion rates of 32%, 29%, and 27%, respectively.
- The highest number of missed appointments occurred in mental health services. Close to 40,000 mental health appointments were missed in the last six (6) months of 2017.

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<sup>1</sup> BOC's Report on "Access to Health and Mental Health Care" (May 2018) is available here: [http://www1.nyc.gov/assets/boc/downloads/pdf/Reports/BOC-Reports/Access%20to%20Health%20July%20-%20December%20Final%20Draft\\_5\\_7\\_18.pdf](http://www1.nyc.gov/assets/boc/downloads/pdf/Reports/BOC-Reports/Access%20to%20Health%20July%20-%20December%20Final%20Draft_5_7_18.pdf).

This is over five times as many missed appointments as the next highest service categories with missed appointments.

- The main reason patients missed appointments was because the patient was “Not Produced by DOC.”
- Almost 70% of all missed appointments were due to DOC not producing the person to the clinician. DOC non-production was the top reason for missed appointments each month studied, and across all service categories. CHS does not report detailed reasons for non-production as the reasons are not always known to clinical staff. BOC, CHS, and DOC should all better understand reasons for failure to produce a patient, such as an alarm, lockdown, or a corrections staff escort shortage. DOC must start tracking and reporting on the reasons for non-production in a coordinated way.
- After DOC non-production, the next most common reason for non-completion was that the scheduled service conflicted with a patient’s court date. This accounted for 17% of all missed appointments. The next most common reason for non-completion was that the service was “Rescheduled by CHS,” which accounted for 15% of all missed appointments.

### Recommendations

Based on the Report’s findings, the recommendations seek to (1) address barriers to DOC production; (2) improve completion rates for mental health services; (3) increase access to On- and Off-Island Specialty Clinics; and to fill in key gaps in monitoring compliance with Minimum Standards, including setting benchmarks for access to care and developing new tracking and reporting on sick call, intake, timeliness of service delivery and completion, and substance use treatment.

ED King invited CHS and DOC to present their ongoing and new initiatives for improving access to care. She specifically requested that they discuss how this work will improve access and when and how they project the initiatives’ impacts will be reflected in the access numbers.

#### ► **DOC’s Presentation**

DOC’s Deputy Commissioner for Health Affairs, Dr. Nichole Adams-Flores, said DOC and CHS have a daily “huddle” to discuss individuals who must be produced for appointments that day and potential barriers to production. When necessary, they reallocate resources by assigning additional DOC staff escorts or by bringing over an additional health care provider from another facility. In addition to the daily facility-level discussions, DOC and CHS hold monthly collaboration meetings with executive leadership to discuss security and clinical staff priorities and ensuring access to care in a timely manner. DOC also conducts its own monthly leadership meetings to discuss the number of individuals being produced. In conjunction with these meetings, every facility is asked to report on the number of people being produced, how the facility is enhancing access to care, how services are being impacted, and if each facility is maintaining sufficient staff for production.

Dr. Adams-Flores stated that in addition to the pilots described in the DOC/CHS action plan, the two entities have implemented other initiatives inspired by their daily discussions at the facility-level. Joint concerns about access to mental health care at AMKC led to the opening of a mini-clinic there that serviced 24 housing areas in one day. As part of a two-month pilot, individuals who were referred for mental health services were seen by a clinician at intake, before being assigned to housing. DOC is assessing this pilot for the best way to implement it operationally. Because it is sometimes difficult to hold individuals safely in the hospital

setting due to the large number of Off-Island Specialty Clinic appointments, DOC obtained approval from the State Commission of Corrections (“SCOC”) to build additional holding area space at Bellevue Hospital.

DOC and CHS initially thought one of the main reasons why people were not making it to their appointments was because of scheduling conflicts. However, their data and facility-level discussions revealed that a significant number of people are refusing services to DOC staff in the housing areas. DOC and CHS are jointly considering implementing a teleconferencing model so that providers can educate people on the importance of their appointments. The teleconference option would be available in the housing area when individuals refuse to come down for their appointments.

► **CHS’ Presentation**

CHS’ Director of Operations, Carlos Castellanos, stated that the real-time communication provided by the daily huddles allows CHS and DOC to discuss day-to-day problems and effectively provide services. CHS’ Director of Planning and Analysis, Ben Farber, attributed the success of the clinical cohort evaluation to the collaboration between CHS and DOC. He reported that during the evaluation period, 42-53% of eligible patients were housed in a clinical cohort and the equivalent occupancy rate was 95%.

► **Board Discussion**

Dr. Safyer asked DOC and CHS to discuss how they are enhancing services for patients with mental health care needs. Dr. Adams-Flores responded that DOC conducts special meetings about care at AMKC because it is the largest jail, and during these meetings, discusses ways to ensure that individuals seen by medical staff upon intake are seen by a mental health provider as quickly as possible.

CHS’ Chief Medical Officer, Dr. Ross MacDonald, emphasized the City’s high standards on mental health care service delivery and advised the Board to keep this in perspective when analyzing data on mental health care. He said the high rate of scheduled visits that are not completed reflect CHS’ efforts to see people within three (3) days, rather than a lack of access to care. He clarified that CHS’ standards for a “stat referral” from intake require a provider to see a patient within 24 hours and the standards for a “routine referral” require a provider to see a patient within 72 hours — generating many scheduled appointments. Dr. MacDonald said there are many events within the first three (3) days of an individual’s incarceration contributing to missed appointments such as being transferred to a different facility, lawyer’s visits, court visits, and family visits. He added that CHS has extensive metrics to measure its success in seeing patients within the first three (3) days of incarceration. In response to ED King’s inquiry as to asked what proportion of mental health appointments are scheduled during this initial three (3) day period, Dr. MacDonald said he did not have a specific number available.

Acting Vice-Chair Richards requested clarification on what percentage of missed appointments were initial as opposed to follow-up appointments. Dr. MacDonald did not have a specific number available, but said CHS has quality metrics — many of which are required under the *Brad H.* class action settlement — that it utilizes to monitor and report on all aspects of service delivery.

Dr. Cohen made the following points:

- He fundamentally supports the findings of the Board Staff Report and finds the Report's recommendations on point and critically important.
- The monitoring and provision of health care in the NYC jails requires a common data system between CHS and DOC in which data can be entered in two ways: (1) a person requesting care, as in sick call; and (2) when CHS initiates a referral to mental health, a follow-up to itself, or to specialty care. However, that is not what's happening. DOC's and H+H's data sets bear hardly any relationship to each other and are off by factors of 100% in terms of what is going on.
- It is not a good idea to think of the goal of clinical care in a jail system to be completion where completion means refusal to go to an appointment. When, for example, a person has been waiting for hours to board a bus for an appointment at Bellevue and is told at 9:00 a.m. that the bus is going to be leaving in 15 minutes and might not arrive in time for the appointment, that is called a "refusal," and categorized in the data system as a "completion." That is not right. Every clinical encounter that is initiated by CHS or requested by a person in custody should be an element of a database and completion should be when the care takes place. The evaluation of that care includes whether the care has been provided in a timely manner. It is Dr. Cohen's understanding that H+H has data on this issue; he previously requested it; but H+H has not provided it to the Board. Dr. Cohen reiterated his request for this crucial data.
- It is critical that DOC and H+H work from the same database. To meet the Board's Minimum Standards, DOC and H+H are required to collect and maintain data about individual patient requests and individual referrals by CHS. This is a difficult thing to do but it is very important that it be done.
- The Report's recommendation that DOC and H+H study refusals is critical. There are barriers to providing health care in the jails but the answer is not to say there are barriers, but to break down the barriers. Based on data that DOC and H+H have provided to the Board, there is a lot of work to do to accomplish this and developing a singular database is essential to achieving this goal.
- When a person in the City's jail system requires sick call, that information is provided to DOC, not H+H. That is a fundamental flaw in the health care system. H+H is essentially relying on DOC to get people to sick call without H+H knowing who these people are. It is not DOC's job to triage for H+H. A singular database can be utilized to correct this situation. Moreover, initiation of sick call should be effectuated by a person in custody dropping a request in a sick call box (which is confidential). If the person is in a restricted housing area and does not have access to a sick call box, the request should be made to a health staff member on site. The Department should get involved only to the extent of escorting people, who are recorded in H+H's database as having requested sick call, to clinical care.
- Dr. Cohen understands how extraordinarily difficult it is to accomplish this and how hard H+H works to provide health care to people in the jails. He does not question the quality of health care that is being provided or the tremendous improvement in the jails' health care system that has occurred over the past several years. The proof is that there has not been a suicide in the jails for over two years. The health care system can be further improved by creation of a singular database that is maintained from the point of a patient request that goes directly to H+H to handle, with DOC's role limited solely to transport and not triage.

Member Regan acknowledged the importance of continuity in mental health care and said many people in custody suffer from mental health issues. He asked if the teleconference model described by Dr. Adams-Flores is an acceptable clinical approach for people with mental health designations. Dr. MacDonald responded that telecommunication is an accepted clinical practice but is not appropriate for everyone and must be used on a case-by-case basis. The teleconference model would be beneficial for most refusals as they come from patients with lower levels of pathology (people who may be on the border line but do not have a mental illness), but it would be inappropriate for patients with a serious mental illness or an active psychosis.

Acting Vice-Chair Richards asked how sick call is discussed during the daily huddles between CHS and DOC. Dr. MacDonald responded that DOC and CHS usually have a back-and-forth about the priority of sick calls vs. follow-up appointments. CHS prioritizes follow-up appointments because these are individuals who CHS has determined need additional care while DOC takes very seriously its obligation to provide daily access to sick call. Dr. MacDonald said the Board's Minimum Standards are geared towards ensuring a very high level of access compared to other jail systems; as a result, New York City has a very high number of sick call encounters.

Member Cohen requested an explanation for DOC's high rate of non-production. Dr. Adams-Flores suggested scheduling an in-depth data discussion with the Board because production is complex and nuanced. DOC currently understands that the largest contributor to nonproduction is individuals refusing services in the housing area. The Board's report only captures data from the last half of 2017, and she suggested a review with BOC of the daily metrics that expect facilities to produce at 80% or better across every different service area and that drive discussions in the daily huddles. ED King noted that the Board has looked at this data and found many problems in the reporting of it. She said the reports that CHS and the Board use indicate that production is the main issue in missed appointments while refusals are the main issue for Off- and On-Island Specialty Clinics. Dr. Adams-Flores clarified that the refusals she is referring to are those made in the housing area as opposed to verified refusals that are made to medical professionals in the clinic. She further clarified that that non-production numbers include non-verified refusals.

Acting Chair Cephas inquired about the feasibility of creating a single database. In response, Dr. MacDonald said this would be problematic because CHS and DOC are independent entities with completely different work flows. For the data to be useable to each entity, it must reflect each entity's independent work flows. CHS uses its electronic health record to collect most of its data while DOC often uses a paper process in the housing areas. The effort in standardizing definitions and work flows would not benefit the collecting of data or measuring service delivery, because there is very little external reference to compare this data to. Each entity's data is best used relativistically over time so that patterns and problems specific to an area or facility can be identified. This is in fact how CHS and DOC use their data.

In concluding this discussion, Acting Chair Cephas recognized the seriousness of this issue and the need to address it. He suggested that BOC, DOC, and CHS meet for an in-depth review and discussion to make headway on the issues underlying health care access.



## **Public Comment on Variances**

Acting Chair Cephas said the Board would be voting today on two DOC variance requests permitting the Department to: (1) continue placing young adults in Enhanced Supervision Housing (“ESH”); and (2) continue operating the Secure Unit (“Secure”) with limited lock-out time and provision of law library services in the housing area.

Public comment about these requests was heard from Kelsey De Avila (Brooklyn Defender Services), Umar Ali (Urban Justice Center), and Al Craig (COBA). The public comments are available here: [https://www.youtube.com/watch?time\\_continue=8144&v=VVVJaBHrlrl](https://www.youtube.com/watch?time_continue=8144&v=VVVJaBHrlrl).

## **Young Adult Enhanced Supervision Housing (“YA-ESH”) Variance Request**

### **► Introduction**

Acting Chair Cephas stated that on July 12, 2016, the Board first granted a variance from Minimum Standard § 1-16(c)(1)(ii) to allow DOC to house 19-21-year-olds in ESH. In October 2016, the Board approved an extension of the Variance, allowing the Department to house 18-year-olds in ESH. The Board last renewed the YA-ESH Variance on November 14, 2017, and it is set to expire on May 16, 2018.

Acting Chair Cephas said the Department seeks a six-month renewal of this Variance and requests that it be made permanent by amendment to the Minimum Standards. The Board will vote on the variance request today and consider the proposed amendment to the Standards in its ongoing restrictive housing rulemaking process.

Maxsolaine Mingo, DOC’s Acting Chief of Department (“Chief Mingo”), formally requested a renewal of the six-month limited variance from Minimum Standard § 1-16(c) to allow the Department to house 18-21-year-olds in ESH.

### **► The NYC Department of Education’s (“DOE”) Presentation on YA-ESH**

Nick Marinacci, DOE’s Senior Executive Director of Youth Justice Education and Treatment Programs, presented data on young adults enrolled in school while housed at ESH as compared to young adults who are enrolled in school and housed elsewhere in the jail system. The data presented was current as of April 9, 2018.

Data from September 2017 through April 9, 2018 revealed that 40 young adults were enrolled in school at ESH. The number of 18-21-year-olds housed in other facilities and enrolled in school during the same period were: 297 in GMDC, 103 in the GMDC Peace Center; 11 in Secure; and 99 in EMTC. On April 9, 2018, the active enrollment of students in ESH was 11, 82 in GMDC, and 23 in EMTC.

The average age of students enrolled in school at ESH was 20.9. The City’s compulsory education requirement ends at the end of the school year in which the student turns 21; therefore, most of these students are at the end of their academic career. Fifty-three percent (53%) of the ESH students were identified as having a disability and thus had an individualized educational plan (IEP). This is consistent with students at East River Academy 54% of whom have an IEP. Ninety-five percent (95%) of the ESH students had a “gap in enrollment,” i.e., they stopped attending school and then resumed their education while on Rikers. Similarly, students at EMTC had an 87% gap, while students at GRVC and Secure had an 82% gap. GMDC had a 60% gap in enrollment because this population is often coming

from RNDC, which houses 16-17-year-olds who are subject to compulsory education requirements.

The average daily attendance rate (i.e., the percentage of time that students choose to attend school) for 18-21-year-olds was 42% at ESH; 35% at GMDC; 37% at the GMDC Peace Center; 30% at Secure; and 51% at EMTC.

Eighty-eight percent (88%) of students in ESH demonstrated growth in math on the Test of Adult Basic Education (TABE) exam while 79% demonstrated growth in reading. Corresponding percentages for students at other facilities was as follows: GMDC: 46% growth in math and 56% in reading; GMDC Peace Center: 40% (math) and 50% (reading); Secure: 44% both in math and reading; and EMTC: 40% (math) and 41% (reading).

Between September 2017 and April 1, 2018, all three ESH students who took the Test Assessing Secondary Completion (TASC) exam (formerly the General Educational Development (GED) exam) passed, as compared to the same period last year when only two students passed the exam. Mr. Marinacci attributed the growth in ESH to the student-to-teacher ratio, specifying that ESH has a small number of students with two teachers always providing specialized attention.

#### ► Board Discussion re DOE's Presentation

Judge Hamill thanked Mr. Marinacci for his presentation. She found surprising that Secure Unit students were not growing in math and reading at the same rate as those in ESH, given that other data available to the Board indicates that Secure is more therapeutic than ESH. Judge Hamill asked Mr. Marinacci what specific measures contributed to the growth in ESH. He said while it is difficult to pinpoint a reason for the growth, having two teachers, one of whom who is an exceptional math teacher, provides individualized instruction akin to an intense tutoring session. Member Hamill asked if additional programming could be offered in ESH to make it more therapeutic. Mr. Marinacci responded that this school year, DOE provided counseling at ESH more frequently and aims to provide a 5½-hour-school day next year as opposed to the three (3) school hours. DOE is working with DOC to establish the space and security for implementing a 5½-hour-school day in all facilities, and there may be more DOE staff available once the adolescents are moved off Rikers. Judge Hamill asked if DOE tracks individuals after they leave ESH to see if they continue attending school while housed at another jail. Mr. Marinacci said that DOE does not track this information but it could be readily obtained.

Member Cohen thanked Mr. Marinacci for his work and asked if school would be available during the summer. Mr. Marinacci said school is available for all special education students during the summer because it is mandated for this population. Member Cohen said the Secure Unit appeared to be a better housing model because it does not utilize restraint desks like ESH; however, BOC's data analysis revealed that the number of hours spent in school at Secure are extremely low. Some young adults receive less than one (1) hour of school a day and he asked if this correlates to the lower math/reading growth rates in Secure. Mr. Marinacci responded that school sessions in Secure are held in the housing area. In contrast, one school session in ESH is held in the housing area while the other takes place outside the housing area and thus requires students to travel from their housing area to the school area. Mr. Marinacci has observed students in Secure elect to go back to their cells before the school session is completed because of its proximity to their housing area.

Dr. Cohen asked if the low number of hours of class time in Secure is the result of DOC staggering class time for people in Security Risk Group (SRG) status. Mr. Marinacci was unsure about the protocols for people in SRG status because it falls under DOC's jurisdiction. Dr. Cohen asked Mr. Marinacci to consider this issue as it may be affecting the number of hours available for school.

Dr. Cohen asked if the Individualized Education Program (IEP) requirements are being met. Mr. Marinacci said the *Handberry v. Thompson* litigation governs how special education is provided on Rikers. DOE takes a student's IEP from the community and develops a separate Special Education Plan (SEP) to be used during the individual's incarceration.

Judge Hamill asked how DOE would meet the educational needs of young adults once GMDC is closed and young adults are relocated to other jails. Mr. Marinacci responded that DOE is meeting with DOC to discuss how education will be provided once GMDC closes, and they expect to relocate most young adults to RNDC. Both agencies intend to prioritize education regardless of where young adults are rehoused by: (1) ensuring they have the best staff in place, and (2) continuing as many of the additional programs as possible, such as the Trading Futures' career and technical education programs. DOE looks forward to having an 18-21-year-old population at East River Academy. This will allow DOE to focus on this age group as data shows that many are high school equivalency students in need of career and technical college opportunities.

Judge Hamill asked if DOE would be reaching out to all young adults dispersed throughout the jails after GMDC closes. Mr. Marinacci responded that during the past year, DOE placed educational staff in RNDC's intake housing to ascertain students' educational needs and goals. DOE is discussing with DOC the prospect of embedding educational staff in specific new admission housing units so they can meet with young adults immediately. Additionally, DOC will continue its role in asking individuals if they want to attend school each day.

Member Perrino thanked Mr. Marinacci for his informative presentation and excellent work. On a visit to ESH, Member Perrino observed the passion that teachers, officers, and captains brought to working with young adults and there has been a positive transformation in the way school is being offered to young adults. In addition, teachers told him that without the use of restraint desks during school at ESH, there would be significant outbreaks of violence in the school area.

#### ► DOC's YA-ESH Presentation

DOC's Acting Deputy Commissioner ("DC") of Adult Programs, Michael Tausek, thanked Member Perrino for recognizing the integral part that uniformed staff play in providing access to programming and services.

DC Tausek presented on the changes to ESH that have occurred since January 2018. The Department's 30-day reviews objectively assess whether individuals will progress through the ESH levels. Since DOC began including young adults in the review process, there have been zero incidents. The Department has thus far reviewed over 380 people, and the review incorporates the person's programming history, disciplinary history, compliance with rules and expectations, log book entries, as well as the person's own input.

DC Tausek's team has completed 48 reviews for young adults thus far (this is the total number of reviews conducted, not the total number of individuals reviewed). Twenty-one percent (21%) of young adults have progressed from Level 1 to Level 2; 64% from Level 2 to Level 3; and 14% from Level 3 to General Population (GP) housing. During these reviews, no young adults said they felt unfairly secured to a restraint desk.

Since January 2018, the Department has analyzed how the Challenge Program is delivered in- and out-of-cell. DOC also introduced the Tablet Program in ESH Level 3 and is expanding it to Levels 1 and 2. The tablets have an educational format and people may access the entertainment component, based on their compliance with rules and behavior towards staff. The tablets will soon have programs dedicated to reentry and maintaining appropriate conduct while incarcerated. ESH also introduced a podcast program focused on anti-gang messaging that people can listen to in their cells.

DC Tausek said there is limited research regarding institutional stressors that lead to violence and discipline. However, DOC is aware that the following measures can mitigate such incidents: (1) consistent administration and steady staffing — people in custody are more willing to engage with steady staff and talk about their conflict management issues; (2) gradual reduction in idleness by introducing more programming; and (3) creating a rapport in the unit with uniformed staff as well as senior leadership from DOC headquarters.

Winette Saunders, DOC's Deputy Commissioner of Youthful Offender and Young Adult Programming, said that DC Tausek's presentation focused on young adults in commingled ESH units. She spoke about the YA-only ESH unit (3 South), where DOC developed an evidence-based programming plan that includes cognitive behavior modification strategies, safe crisis management, and interactive journaling, all of which are available in both the YA-only and blended ESH units.

#### ► **Board Discussion re DOC's Presentation**

Judge Hamill said that some young adults opt to remain in their cells during programming because they do not want to be placed in restraint desks. She asked how DOC evaluates these individuals, as participation in programming is crucial for progression through the ESH levels. DC Tausek responded that the 30-day reviews place greater emphasis on compliance with rules, but participation in programming provides insight into an individual's overall progress. He said that some individuals opt out of congregate programming but participate in activities in their cell, such as journaling. DC Tausek said that if someone chose to not participate in programming while in a restraint desk, it would not be held against the person in his 30-day review.

#### ► **Votes on Existing Conditions<sup>2</sup>**

ED King read out loud the existing conditions of the YA-ESH Variance (i.e., condition nos. 1, 4, 7, 8, 9, 10, 11, 12, 14, 15, and 16),<sup>3</sup> and noted they were last approved by the Board as part of its approval of the YA-ESH Variance at the November 2017 public meeting.

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<sup>2</sup> Having left the meeting before discussion on the Variances, Acting Vice-Chair Richards did not participate in voting on them.

<sup>3</sup> The final Record of Variance, including the existing conditions and new conditions, approved at the May 8, 2018 meeting, is available at: <http://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2018/May-9-2018/2018-05-08-final-record-of-variance-action-ya-esh.PDF>.

Member Regan expressed his view that while the use of restraint desks in YA-ESH is undesirable, he is voting in favor of providing an environment where teachers, staff, and others are safe.

Acting Chair Cephas called a roll call vote and the Board voted unanimously to renew the existing conditions, 7-0 (Acting Chair Cephas, and Members Cohen, Hamill, Jones Austin, Perrino, Regan, and Safyer).

► **Votes on Proposed Conditions**

ED King read out loud the following proposed conditions:

- A young adult can be placed in YA-ESH Level 1 only if the person has recently 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.
- Restraints, including restraint desks, shall not be used except to control an incarcerated person who presents an immediate risk of self-injury or injury to others, to prevent serious property damage, for health care purposes, or when necessary as a security precaution during transfer or transport. When restraints are necessary, the Department shall use the least restrictive forms of restraints that are appropriate and should use them only as long as the need exists.
- The Department shall review each young adult in ESH Level 1 every fifteen (15) days to determine whether the person will advance to a less restrictive level or unit. At each such review, a young adult will advance to a less restrictive level or unit unless: (1) he has engaged in violent or aggressive behavior while in his current level; and/or (2) there is credible intelligence that he may engage in additional violence in a less restrictive unit; and/or (3) he has willfully disregarded rules and regulations and these instances are reported and documented. If (1), (2), or (3) is applicable, DOC shall make a specific determination that the restraint desk remains necessary to control this incarcerated person who presents an immediate risk of self-injury or injury to others or to prevent serious property damage. The Department shall commence 15-day evaluations on June 11, 2018.
- Within 60 days, the Department shall develop a curriculum and plan to provide specialized trainings, including crisis intervention and conflict resolution training to all YA-ESH staff. The Department shall update the Board at the July public meeting as to its projected timeline for implementation.

Member Jones Austin requested to hear the Department's response to the proposed conditions. Brenda Cooke, DOC's Deputy Chief of Staff, accepted the new conditions as read by ED King.

Acting Chair Cephas called a roll call vote and the Board voted unanimously to incorporate the new conditions, 7-0 (Acting Chair Cephas, and Members Cohen, Hamill, Jones Austin, Perrino, Regan, and Safyer).

### ► **Vote on Six-Month Variance with Conditions**

Judge Hamill said the Board has approved this Variance for two years and she appreciates the Department's and the Board's work in curtailing the use of 7-hour desk restraints in ESH. She commended DOC for reducing the review period from 45 to 30, and now, to 15 days, letting people in custody participate in their reviews, enhancing programming, and improving education. However, she agrees with City Council Member Daniel Dromm that YA-ESH is not therapeutic because it repeats the deleterious effect of isolation or, alternatively, desk restraints. As BOC continues restrictive housing rulemaking, it will continue to work with DOC to curtail the use of restraints and develop alternatives that create a more humane, therapeutic, and rehabilitative unit. Member Hamill added that the reviews should be done more frequently than every 15 days to comply with the ABA standards and she finds the use of restraints degrading, harmful, and counterproductive. For these reasons, she will vote against the Variance today but recognizes the substantial progress that DOC has made.

Dr. Cohen concurred with Member Hamill's comments, and praised BOC and the Department for their oversight and monitoring of ESH — a unit he considers to be punitive and cruel. When the Board promulgated rules limiting solitary confinement several years ago, it had no idea that DOC intended to impose punitive conditions in ESH. Dr. Cohen expressed hope that DOC would soon discontinue the use of restraints in YA-ESH and said he would be voting against the Variance today.

Acting Chair Cephas stated that a majority of the Board hoped the Department would soon develop an alternative to restraint desks except when legitimate safety concerns require their use.

Acting Chair Cephas 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 five (5) votes in favor (Acting Chair Cephas, and Members Jones Austin, Perrino, Regan, and Safyer) and t (2) votes in opposition (Members Cohen and Hamill).

### **Secure Unit Variance Request**

#### ► **Introduction**

Acting Chair Cephas stated that in May 2016, the Board first granted a variance from Minimum Standards §§ 1-05(b) and 1-08(f) to allow the Department to provide young adults in the Secure Unit with a minimum lock-out time of 10 hours and access to law library services by means of a law library kiosk and typewriter in the Unit. The Board last renewed the Secure Unit Variance on November 14, 2017, and it is set to expire on May 22, 2018.

Acting Chair Cephas said the Department has now asked the Board to consider a six-month renewal of the Variance allowing for the continued operation of Secure. DOC has additionally requested that the Board consider making this Variance permanent through amendment of the Minimum Standards. The Acting Chair said that the Board would vote on the variance request today and consider incorporating the Variance in its Standards as part of the restrictive housing rulemaking process.

#### ► **DOC's Secure Unit Variance Presentation**

Chief Mingo formally requested that the Board renew the Secure Unit Variance for six months.

► **Board Discussion**

Judge Hamill expressed her support of the variance request because the Secure Unit has generally been shown to be a successful restrictive housing model. Dr. Cohen echoed Judge Hamill's support of the request and urged DOC to expand the Secure Unit with a more informed architectural sensibility than was developed. Member Perrino added that the uniformed staff in Secure are well-trained and manage the population without using restraint desks.

► **Votes on Existing Conditions**

ED King said the Board is prepared to vote on the Secure Unit Variance's existing conditions that the Board last approved at the November 2017 meeting, and she proceeded to read them out loud.<sup>4</sup>

Acting Chair Cephas asked the Department to comment on the conditions. DOC's Chief of Staff Jeff Thamkittikasem said DOC agreed with the conditions and thanked the Board for its support.

Acting Chair Cephas called a roll call vote and the Board voted unanimously to renew the existing conditions, 7-0 (Acting Chair Cephas, and Members Cohen, Hamill, Jones Austin, Perrino, Regan, and Safyer).

► **Vote on Six-Month Variance with Conditions**

Acting Chair Cephas called for a motion to vote on the Secure Unit Variance with conditions. After the item was moved and seconded, the Board voted unanimously to approve the Variance with conditions, 7-0 (Acting Chair Cephas, and Members Cohen, Hamill, Jones Austin, Perrino, Regan, and Safyer).

**Public Comment**

The Board heard public comment from Kelsey De Avila (BDS), Laura Fettig (UJC), Al Craig (COBA), Kelly Grace Price (JAC), John Coleman (Just Leadership USA), and Victoria Phillips (UJC).<sup>5</sup>

Following public comment, Acting Chair Cephas adjourned the meeting.

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<sup>4</sup> The Final Record of Variance, including these conditions, available at: <http://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2018/May-9-2018/2018-05-08-final-record-of-variance-action-secure.pdf>.

<sup>5</sup> The public comments are available at: [https://www.youtube.com/watch?time\\_continue=8144&v=VVVJaBHrlrl](https://www.youtube.com/watch?time_continue=8144&v=VVVJaBHrlrl).