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Barbara J. Myers, Vice Chairperson
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COMMONWEALTH
of
VIRGINIA

Board of Juvenile Justice

MINUTES
Board of Juvenile Justice Meeting
Board Meeting
Central Office
600 East Main Street
12th Floor Conference Room-South
Richmond, Virginia

November 14, 2012

Board Members Present: Heidi Abbott, Kecia Brothers, Barbara Myers, Tamara Neo, Justin Wilson

DJJ Staff Present: Mark Gooch, Lionel Jackson, Ralph Thomas, Daryl Francis, Jacqueline Nelson, Ken Bailey, Steve Peed, Chris Moon, Deron Phipps, Peggy Parrish, Scott Reiner, Barbara Peterson Wilson, James Horn, Terri Stott, Janet Van Cuyk, Donna Ahart, Earl Conklin, Greg Davy, Joy Lugar and Deborah Hayes.

Others Present: Lara Jacobs-Asst. Attorney General, Lianne Rozzell-FAVY, Courtney Brown-intern-13th CSU, Sam Taylor-Chesapeake Juvenile Services, Kate Duvall-JustChildren, Lena Jagger-VCU, Clare Gustanaga-ACLU,

I. CALL TO ORDER

Chairperson Abbott called the meeting to order at 9:46 am.

II. INTRODUCTIONS

Chairperson Abbott welcomed everyone and asked the individuals present to introduce themselves.

III. APPROVAL of September 12, 2012, MINUTES

The minutes of the September 12, 2012, Board meeting were presented for approval. On MOTION duly made by Ms. Myers and seconded by Ms. Brothers to approve the minutes as presented. Motion carried.

IV. PUBLIC COMMENT: Clare Guthrie Gustanaga—ACLU: Ms. Gustanaga spoke on behalf of the ACLU. She commended the Board for their steadfastness in their statement that it is really important to ensure that policies are in place which provide adequate protection for the vulnerable population of youth in the care of the Department who are gay, bisexual, lesbian, transgender, or intersex. The ACLU is grateful to the Board for their thoughtful, conscientious, and resolute commitment to ensure this

protection is in place. Ms. Gustanaga said she hopes that this Board will make clear that the intent of the statement unconstitutional discrimination is banned by this regulation. Ms. Gustanaga said (1) she commends the Board for continuing to be clear that as a Board, they want to be committed to a policy that protects the vulnerable youth from discrimination and (2) the ACLU continues to ask what was wrong with the May 2005 regulations and why the Board cannot move forward on the regulations that was adopted in June 2010 and reaffirmed in 2011 and even the amendments from January 2012. She stated that the proposed language is merely doing what the Prison Rape Elimination Act final regulations require and the place where the specific non-discrimination enumerated groups should be listed is in the regulation. The ACLU believes that every public official who takes an oath to uphold the Constitution and law of the United States and the Commonwealth of Virginia, has an inherent authority to adopt whatever regulations that you reasonably believe are necessary to make good on that oath.

- V. Residential Regulations:** 6VAC35-41 (Regulation Governing Juvenile Group Homes and Halfway House), 6VAC35-71 (Regulations Governing Juvenile Correctional Centers), and 6VAC35-101 (Regulations Governing Juvenile Secure Detention Centers): Ms. Van Cuyk shared background information on the history of the residential regulations and the processes the regulations have gone through to date. In order to provide certainty and finality for the regulated facilities, the Department of Juvenile Justice (Department) respectfully requests that the Board of Juvenile Justice (Board) take one of the following actions: (1) amend each proposed chapter to adopt the proposed alternative language provided in Section IV and Appendix I of the memorandum on the topic in the Board packet or (2) withdraw all three actions.

Ms. Myers, in reviewing the proposed alternative language, said that the wording in subsection A it could be read as though there is one assessment to determine if a youth is a member of a vulnerable population. She inquired if there can be ongoing assessments, not just at intake or initial placement. After some discussion on this inquiry, Ms. Van Cuyk said that statement could be changed from “The facility shall assess” to “facility shall implement a procedure for assessing whether a resident is a member of a vulnerable population”.

Mr. Wilson said he wants to understand the connection between the old procedures and the procedures presented today. He asked if the regulations that have been in place are the same as what is being discussed today. Ms. Van Cuyk reviewed the current governing regulations and procedures. She advised that the nondiscrimination provisions in the existing procedures will not be modified to provide less protections to any group.

Mr. Wilson asked for clarity on the issue of creating a situation with the vulnerable population language wherein we would be encouraging residents to be separated and put into some type of solitary situation. Ms. Van Cuyk said PREA regulations states you cannot place someone in isolation solely on the basis of LGBTI status. The Department will have to be in compliance with this regulation. With this language, staff would have to do the assessment and find what works best for the resident. Additionally, the language in subsection B of the proposed alternative language is intended to address this concern directly. This prohibition will be interpreted in more detail in the guidance documents and Department procedures. Mr. Wilson said he wants to hear more about how the Department operationalize this assessment. Ms. Van Cuyk stated the Department will be happy to provide the Board with on-going information. In seeking amendments to subsection A, Mr. Wilson said he also understands Mr. Bailey’s challenges in how to

audit this and that the language has to be sufficient for there to be something concrete to assess.

Ms. Myers said she understands that e.g. means for example, however she wondered if everyone would understand. She asked if it would be safer to have “including, but not limited to”. Ms. Van Cuyk said after we know what the regulations will be, a guidance document will be developed which then takes care of interpreting the language to be very clear that the e.g. is examples of what could be considered a vulnerable population in a facility but that it is not exhaustive and may change depending on the dynamic factors in a facility.

Ms. Myers and Mr. Wilson thanked the Department staff for their hard work on the residential regulations and finding a workable solution. He said he also wanted to note appreciation for the Board, not just members who are present today, but past members who worked on this and Sheriff Stolle who played a critical role in getting the Board to where they are today. Obviously there is more work to do; however he is happy that they have gotten to this point and wants to ensure that the procedures are operationalized in the right way.

On MOTION duly made by Mr. Wilson and seconded by Ms. Myers to amend the language related to prohibited actions in the following regulations 6VAC35-41-560, 6VAC35-71-550, and 6VAC35-101-650; and to adopt new language relating to vulnerable populations in 6VAC35-41-565, 6VAC35-71-555, and 6VAC35-101-655. Motion carried.

On MOTION duly made by Mr. Wilson and seconded by Ms. Myers to approve amendments as adopted and advance 6VAC35-41 (Regulation Governing Juvenile Group Homes and Halfway House), 6VAC35-71 (Regulations Governing Juvenile Correctional Centers), and 6VAC35-101 (Regulations Governing Juvenile Secure Detention Centers) in the final stage of the regulatory process as amended.

Certification Regulation: Mr. Phipps stated that, at the September 12, 2012, meeting, Board members and staff had a lengthy discussion about the powers of the Board as it relates to certification; whether or not they can continue a certification pass the certification due date. As a matter of practice, the Department has customarily recommended that certain certifications be continued until the next Board meeting and the Certification Unit conduct a subsequent post-audit and then report back to the State Board. Certification Unit staff met with Ms. Jacobs to discuss the authority of the Board. They did not find the authority to continue the certification beyond the certification expiration date. In light of that, Department staff is amending their recommendations from what was originally submitted in the Board packet. The recommendations are based on past practice. Department staff wanted to be consistent with the recommendations on how they treated previous facilities and how they treat Department facilities. However, based on the discussion with the Attorney General’s Office, Department staff have modified the recommendations. The list of modifications was distributed to the Board members.

VI. CERTIFICATION REPORTS

A. Secure Services Committee:

1. Certifications

- **Chesapeake Juvenile Services:** The audit reflected three deficiencies, one of which was mandatory. During a follow-up review on September 18, 2012, the audit revealed that the mandatory deficiency had been

corrected putting the facility in compliance. The two non-mandatory deficiencies areas that were not demonstrated as being in compliance. However, based on the requirements of the certification regulations, the program is eligible for a three year certification based on a 100% compliance with all mandatory standards, 99.4% compliance with all other standards, acceptable plans of action for the two non-mandatory standards still in non-compliance, no unresolved life, health or safety violations, and no systemic deficiencies. Mr. Wilson said, since Department staff has a better understanding of the Board's authority, he requested a one-page document advising of the options available to the Board. Mr. Phipps said staff will make this available. After additional questions, Mr. Phipps said to further clarify, in the past, the Department has carried over certifications pass the certification expiration date. This was done to allow a subsequent post-audit visit by the Certification Unit and a status report. As staff reviewed the regulations, there was no authority for making that recommendation to the Board. Department staff made the decision to make recommendations that are consistent with the regulations and the authority in the regulations regardless of past practices. Department staff can make recommendations to certify, de-certify, or to place on probation. Recommendations that are being made today will be consistent with the current regulatory authority which is to certify, de-certify, or place on probation. This is different from what has occurred in the past, but it is consistent with the advice provided by the Attorney General's Office.

Ms. Neo asked for clarification on the probationary status. Mr. Phipps said a facility that has less than 100% compliance with all mandatory standards, but has an adequate corrective action plan can be placed on probation for up to six months. Additional discussion ensued. Ms. Abbott said there has to be an explanation that there is a difference in the probationary period when it is a state run facility and a local facility. Ms. Van Cuyk stated that the effect of probation and decertification is different for the different types of facilities. When a JCC, local or commission operated juvenile secure detention center, or state-operated halfway house is placed on probation, it is a warning that decertification is a serious threat but does not have an operational effect. However, when a group home is placed on probation, the facility is no longer eligible to receive funding through the Comprehensive Services Act (CSA). If the Board were to place a group home on probation, the Department would notify CSA; thus, there is a very big operational impact for group homes placed on probation. The effect of being decertified is different depending on whether the facility is state-operated or not. A state-operated facility may continue to operate when decertified; however, any local or commission operated facility (juvenile secure detention center or group home) may not be used for the placement of children when decertified. Ms. Myers said if the deficiencies are not satisfied by the six month probationary period, do they have to de-certify or will the probationary status be extended? Ms. Abbott said again this depends on the type of facility and whether or not children will need to be moved. Ms. Jacobs said there is language in the regulations that only one probationary period is allowed.

Mr. Sam Taylor was present to represent Chesapeake Juvenile Services. Mr. Wilson said the standards that concerned him was the room check standard. Mr. Taylor said staff conducted the room checks; however it was not properly documented. The facility went to an automated system called "soft tek", so instead of writing the room checks in the logbook, staff were to scan it; the system malfunctioned. He said the system has been fixed. Mr. Wilson said the other standard that concerned him was the room confinement standard wherein the resident was to receive one hour of recreation every 24 hours. Mr. Taylor said this was a records issue.

On MOTION duly made by Mr. Wilson and seconded by Ms. Myers to certify the Chesapeake Juvenile Services to November 8, 2015, with a follow-up review and report to the Board by the January 2013 Board meeting. Motion carried.

- **Culpeper Juvenile Correctional Center:** Mr. Bailey reviewed the current status of the findings of the audit conducted October 4, 2012. There were five mandatory deficiencies. Dr. Peed said the Department became aware of the deficiencies in medical care at Culpeper JCC after the head nurse left. He advised of the deficiencies in health care procedures, medical examinations and treatment and medication. Dr. Peed also outlined how Culpeper JCC is working to correct all deficiencies. Mr. Phipps advised that Culpeper JCC submitted its corrective action plan in May, although it was not due until June; and implemented the corrective actions July 1, 2012.

Superintendent Peggy Parrish advised that she was hired at Culpeper JCC in July 2012. Since that time, there has been significant turnover in the medical staff. She stated that Culpeper JCC has been very dependent on agency nurses. She said she believes that the agency has now hired a nurse supervisor and nurse manager.

Dr. Moon stated that a nurse with the National Council in Healthcare audited the medical department at Culpeper. There were no life, health, safety issues noted and she said there was no need for her to come back. A consultant from the American Correctional Association (ACA) also conducted an audit of Culpeper.

Dr. Peed said he is confident that the medical issues are not a threat to the residents' life, health or safety.

On MOTION duly made by Mr. Wilson and seconded by Ms. Neo to place Culpeper Juvenile Correctional Center on probation until June 12, 2013, with an update of their progress at the January Board meeting. Motion carried.

B. Non-Secure Services Committee:

1. Certifications

- **Aurora House:** Mr. Bailey advised that at the September 12, 2012, Board meeting, the current certification of Aurora House was continued to November 2012, with an audit of all medication administration records after July 31, 2012, and an amended corrective action plan. On October 1, 2012, a review was conducted to assess compliance. The medication

administration records generated after July 31, 2012, in all applicable medical files were reviewed and fully compliant.

On MOTION duly made by Ms. Brothers and seconded by Ms. Myers to certify Aurora House until August 24, 2015. Motion carried.

- **Chaplin East Youth Center and Chaplin West Youth Center:** At the September 12, 2013, Board of Juvenile Justice meeting, the current certification of Chaplin Youth Center was continued to November 14, 2012, with a status report on compliance with corrective action plan. The two areas that remained in noncompliance at the September Board meeting have been corrected.

On MOTION duly made by Ms. Brothers and seconded by Ms. Myers to certify Chaplin East Youth Center and Chaplin West Youth Center to June 9, 2015.

- **Barry Robinson Family Oriented Group Home Program:** On MOTION duly made by Ms. Brothers and seconded by Ms. Neo to certify Barry Robinson Family Oriented Group Home Program for three years with a letter of congratulations for 100% compliance.
- **SPARC House:** Mr. Bailey said an audit conducted in June 2012 revealed that SPARC House was in non-compliance with six standards, four mandatory and two non-mandatory standards. One was a repeat mandatory from the previous audit. A subsequent review was conducted on September 26, 2012. SPARC House was in compliance with all six of the standards—mandatory and non-mandatory.

On MOTION duly made by Ms. Brothers and seconded by Ms. Myers to certify SPARC House until November 20, 2015. Motion carried.

VII. OTHER BUSINESS

- A. **PREA Zero Tolerance Policy:** Ms. Van Cuyk asked the Board members to review and approve the Policy Governing the Operation of Programs and Facilities, Number: 05-101, Title: The Prison Rape Elimination Act (PREA). PREA requires, and it is the policy of the Board to mandate, zero tolerance toward any incident involving the sexual assault, sexual harassment, or rape of a resident and the Department to make preventing, detecting, and responding to such incidents a priority in all facilities housing committed juveniles. The proposed policy would place the PREA requirements into a Board policy.

On MOTION duly made by Ms. Neo and seconded by Ms. Brothers to adopt Board Policy Number 05-010 Prison Rape Elimination Act. Motion carried.

- B. **Regulatory Update:** Ms. Van Cuyk reviewed the regulations and their current stages:
 - 6VAC35-20 Regulations Governing the Monitoring, Approval, and Certification of Juvenile Justice Programs: in the proposed stage; published in the Virginia Register on October 8, 2012, and public comment period is open through December 7, 2012. No comments have been received; however several calls have been received from regulated programs and facilities stating they plan to comment.

Ms. Van Cuyk distributed the changes to the regulations. She distributed 6VAC35-20 Regulation Governing the Monitoring, Approval, and Certification of Juvenile Justice Programs and facilities. Ms. Van Cuyk distributed and discussed a flow chart of Board certification actions (proposed 6VAC35-20-100).

6VAC35-180 Minimum Standards for Research Involving Human Subjects or Records of the Department of Juvenile Justice: request for NOIRA; the Department convened a multi-disciplinary committee to review the regulations. Amendments were recommended by the committee. At the September 27, 2011, Board meeting, the Board authorized the submission of a NOIRA to initiate the regulatory process for a comprehensive review of this regulation. The NOIRA will undergo an Executive Branch review and will be subject to a 30-day, public comment period.

- 6VAC35-41 Regulation Governing Juvenile Group Homes and Halfway Houses; 6VAC35-71 Regulation Governing Juvenile Correctional Centers; and 6VAC35-101 Regulations Governing Juvenile Secure Detention Centers: regulations are in the final stage; Ms. Van Cuyk reviewed the various stages of the regulations from May 11, 2009 through January 10, 2012. The next step is dependent on whether there is resolution on the disagreement on the legality of the provisions in dispute.

VIII. Education Division Update: Ms. Nelson advised:

- Title I funds can be used for tuition and books. There are 79 students who will be with DJJ through August 2013. Education staff will focus on students at Culpeper, Bon Air and Beaumont Juvenile Correctional Centers. It is hoped that at least 50 of the 79 students will be able to participate. Staff will look at class sizes once students have been identified. Ms. Myers asked if the students will be able to take the college placement test. Ms. Nelson said students will be able to take the test.
- Ms. Neo asked how will the representatives measure results. Ms. Nelson stated that administration will give 5-10 points. The Career Development Course will provide students an opportunity to explore careers and job opportunities within the state.
- Ms. Myers asked where will instructors come from. Ms. Nelson responded from John Tyler and Reynolds Community Colleges. She advised that the consultant is from the Alberta Campus at the Southside Virginia Community College campus.

IX. BOARD COMMENTS

- Proposed Board Meeting Schedule: The Board members accepted the proposed dates for the 2013 meeting schedule. The dates are January 8, 2013; April 10, 2013; June 12, 2013; September 11, 2013; and November 13, 2013.

X. NEXT MEETING

- The next meeting will be held on Tuesday, January 8, 2013, at the Cedar Lodge Training Center, Bon Air, VA.

XI. ADJOURN

- Having no other business, the meeting adjourned at 11:45 am without objection.

Respectfully submitted,

Deborah Canada Hayes
DJJ Board Secretary