

**MOUNT PROSPECT ACADEMY**  
**Prison Rape Elimination Act (PREA) Procedures**  
**8/9/2019**

**SOURCE:**

The following Procedures are based on those elements of the Prison Rape Elimination Act Juvenile Facility Standards issued by the U.S. Department of Justice that apply to staff-secure residential treatment facilities. The standards may be viewed in their entirety at the following web address:

<https://www.prearesourcecenter.org/sites/default/files/content/preafinalstandardstype-juveniles.pdf>

**APPLICABILITY:**

This policy applies to those employees of Mount Prospect Academy (MPA) whose programs are subject to PREA Regulations.

**PREVENTION PLANNING:**

**§ 115.311 Zero tolerance of sexual abuse and sexual harassment**

Mount Prospect Academy has a zero-tolerance policy for any sexual contact or sexual harassment, whether consensual or non-consensual, between residents, and between residents and staff members. Any behavior of a sexual nature whether verbal, nonverbal, or physical is strictly prohibited. The policy covers: sexual assault, sexual misconduct, and sexual harassment. The Term "*SEXUAL ABUSE*" includes—

- (1) Sexual abuse of a resident by another resident; and
- (2) Sexual abuse of a resident by a staff member, contractor, or volunteer.

Sexual abuse of a resident by another resident includes any of the following acts, if the victim does not consent, is coerced into such act by overt or implied threats of violence, or is unable to consent or refuse:

- (a) Contact between the penis and the vulva or the penis and the anus, including penetration, however slight;
- (b) Contact between the mouth and the penis, vulva, or anus;

- (c) Penetration of the anal or genital opening of another person, however slight, by a hand, finger, object, or other instrument; and
- (d) Any other intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or the buttocks of another person, excluding contact incidental to a physical altercation.

(3) Sexual abuse of a resident by a staff member, contractor, or volunteer includes any of the following acts, with or without consent of the inmate, detainee, or resident:

- (a) Contact between the penis and the vulva or the penis and the anus, including penetration, however slight;
- (b) Contact between the mouth and the penis, vulva, or anus;
- (c) Contact between the mouth and any body part where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;
- (d) Penetration of the anal or genital opening, however slight, by a hand, finger, object, or other instrument, that is unrelated to official duties or where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;
- (e) Any other intentional contact, either directly or through the clothing, of or with the genitalia, anus, groin, breast, inner thigh, or the buttocks, that is unrelated to official duties or where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;
- (f) Any attempt, threat, or request by a staff member, contractor, or volunteer to engage in the activities described in paragraphs (1)-(5) of this section;
- (g) Any display by a staff member, contractor, or volunteer of his or her uncovered genitalia, buttocks, or breast in the presence of an inmate, detainee, or resident, and
- (h) Voyeurism by a staff member, contractor, or volunteer.

Voyeurism by a staff member, contractor, or volunteer means an invasion of privacy of an inmate, detainee, or resident by staff for reasons unrelated to official duties, such as peering at an inmate who is using a toilet in his or her cell to perform bodily functions; requiring an inmate to expose his or her buttocks, genitals, or breasts; or taking images of all or part of an inmate's naked body or of an inmate performing bodily functions.

The Term "*SEXUAL HARASSMENT*" includes—

- (1) Repeated and unwelcome sexual advances, requests for sexual favors, or verbal comments, gestures, or actions of a derogatory or offensive sexual nature by one inmate, detainee, or resident directed toward another; and
- (2) Repeated verbal comments or gestures of a sexual nature to an inmate, detainee, or resident by a staff member, contractor, or volunteer, including demeaning references to gender, sexually suggestive or derogatory comments about body or clothing, or obscene language or gestures.

Mount Prospect Academy has designated an upper-level agency-wide **PREA Coordinator** with sufficient time and authority to develop, implement, and oversee agency-wide efforts to comply with PREA standards at its facilities. The PREA Coordinator will, in coordination with program specific PREA Compliance Managers, develop and update PREA policies and procedures. These policies and procedures will include specific information about MPA's approach to prevention, detection, and response to sexual abuse and sexual harassment, and summarize each program's obligations under the law.

Each program within MPA shall designate a **PREA Compliance Manager** with sufficient time and authority to coordinate the program's day-to-day PREA compliance efforts.

### **§ 115.313 Supervision and monitoring**

- Each Program has a written staffing plan for each of its facilities that is fully implemented provides adequate levels of supervision, and is in compliance with applicable federal, state, and local laws, regulations, and standards. Staffing levels are based on the compositions of the resident population and generally are negotiated and approved by the program's funding agency during contract award and renewal. Please see attached procedure which outlines the staffing plan for the shelter care program
- The program complies with its staffing plan except during limited and discrete exigent circumstances and, when it must deviate from the staffing plan, it fully documents deviations from the plan during such circumstances.
- Whenever necessary, at least once each year, each program's PREA Compliance Manager shall meet with the state PREA Coordinator to assess, determine, and document whether adjustments are needed to the staffing plan for each facility run by the program. All staffing changes must be approved by the funding agency.
- MPA performs periodic unannounced rounds by intermediate and upper-level supervisors on all shifts to deter, prevent, and detect sexual abuse and sexual harassment of inmates in the facility. These rounds are documented by intermediate and upper level supervisors. Documentation remains on file at least three years. This policy and practice shall be implemented for night shifts as well as day shifts. MPA prohibits staff from alerting other staff members that these supervisory rounds are occurring, unless such announcement is related to the legitimate operational functions of the facility.

### **§ 115.315 Limits to cross-gender viewing and searches**

- MPA prohibits staff from conducting strip searches or pat-down searches. If a client is suspected of being in possession of an item that may place him/her at risk, staff should

contact the local police for assistance. (This is company policy and not a requirement of PREA).

- Residents should be permitted to shower, perform bodily functions, and change clothing without non-medical staff of the opposite gender viewing their breasts, buttocks, or genitalia except in exigent circumstances or when such viewing is incidental to routine bedroom checks. Staff should announce their presence when entering an area where residents are likely to be showering, performing bodily functions, or changing clothing.
- The facility shall not search or physically examine a transgender or intersex resident for the sole purpose of determining his/her genital status. If a resident's genital status is unknown, it may be determined during conversations with the resident, by reviewing medical records, or, if necessary, by learning that information as part of a broader medical examination conducted in private by a medical practitioner.
- In an emergency situation where there is a safety concern, and no other options are available, then hypothetically a staff member of the opposite sex may have to have their foot in the bathroom door to ensure the safety of the resident. MPA has cameras that show the outside of the bathroom door so we can see what the staff is doing. A staff member of the opposite sex would never watch a student change clothing.

#### **§ 115.316 Residents with disabilities and residents who are limited English proficient**

- Company programs shall take appropriate steps to ensure that residents with disabilities, including residents who are deaf or hard of hearing, those who are blind or have low vision, and those with intellectual, psychiatric, or speech disabilities, have equal opportunity to participate in or benefit from all aspects of MPA's efforts to prevent, detect, and respond to sexual abuse and sexual harassment.
- This includes providing interpreters, see MPA's Policy, CM021, Translation Services/ Interpretation Services, TDD or TTY lines for reporting and the ability to arrange ASL Interpreters. It also includes ensuring written materials are provided in formats or through methods that ensure effective communication.
- For residents with disabilities, MPA will provide a combination of PREA information in simple, large-format posters; handbooks written for lower grade levels; reading material aloud to youth, accompanied by clarifying discussion; TDD or TTY lines for reporting and the ability to arrange ASL interpreters; staff assisting residents, on request, to dial relevant phone numbers and write grievances; and allowing residents to make an oral complaint to any staff member.

MPA contracts with interpretation services that are available 24/7. All faculty are trained so they know how to access these services, 24/7. In addition, the MPA faculty members are trained to immediately contact their Administrator on Duty in the event the MPA faculty member has concerns about the quality of the interpretation services. The AODs are all trained to know how to access supplementary interpretation services.

- In the event that these interpretation services do not achieve effective communication, the Executive Director will be immediately notified and a meeting of the referral and any other treatment team members immediately convened to discuss the best system for that individual to achieve effective communication.

### **§ 115.317 Hiring and promotion decisions**

- MPA shall not hire or promote anyone who may have contact with residents, and shall not enlist the services of any contractor who may have contact with a resident who:
  - Has engaged in sexual abuse in a prison, jail, lockup, community confinement facility, juvenile facility, or other institution (as defined in 42 U.S.C. 1997);
  - Has been convicted of engaging or attempting to engage in sexual activity in the community facilitated by force, overt or implied threats of force, or coercion, or if the victim did not consent or was unable to consent or refuse; or
  - Has been civilly or administratively adjudicated to have engaged in the activity described above.
  - MPA shall consider any incidents of sexual harassment in determining whether to hire or promote anyone, or to enlist the services of any contractor, who may have contact with residents.
  - MPA has a detailed contractor policy that is incorporated by reference HR policy 019.
- Before hiring a new employee, who may have contact with residents, MPA shall:
  - Perform a criminal background records checks and consult applicable child abuse registries.
  - Make best efforts to contact all prior institutional employers for information on substantiated allegations of sexual abuse or any resignation during pending investigation of an allegation of sexual abuse.
  - Conduct criminal background record checks at least every five years of current employees and contractors who may have contact with residents.

- Impose upon employees a continuing affirmative duty to disclose any incidents of criminal misconduct. Material omissions regarding such conduct or the provision of materially false information shall be grounds for termination.
- Unless prohibited by law, provide information on substantiated allegations of sexual abuse or sexual harassment involving a former employee upon receiving a request from an institutional employer for whom such employee has applied to work.

**§ 115.318 Upgrades to facilities and technologies**

- When designing or acquiring new facilities and in planning substantial expansion or modification of existing facilities, consider the effect of the design, acquisition, expansion, or modification upon its ability to protect residents from sexual abuse.
- When installing or updating a video monitoring system, electronic surveillance system, or other monitoring technology, consider how such technology may enhance its ability to protect residents from sexual abuse.

## **RESPONSIVE PLANNING**

### **§ 115.321 Evidence protocol and forensic medical examinations**

Credible allegations of sexual abuse or sexual harassment that involve potentially criminal behavior shall be referred to the proper authority for investigation. Program staff are not trained to conduct such investigations and should not attempt to do so. The following steps should be followed:

- Ensure that the alleged victim is protected from additional harm
- Secure the scene to prevent potential evidence from being compromised and immediately seek guidance from law enforcement as to how long MPA needs to secure the scene
- Call 911 (investigation will be handled by the police)
- Report allegations to DCYF
- Offer the alleged victim access to forensic medical examination by a Sexual Assault Forensic Examiner (SAFE) or Sexual Assault Nurse Examiner (SANE)
- Offer the alleged victim access to a qualified victim advocate, if available, or a qualified agency staff member to accompany and support the victim through the forensic medical examination process and investigatory interviews. Victim advocate shall provide emotional support, crisis intervention, information and referrals as necessary to support the victim. Qualified advocates shall have received education concerning sexual assault and forensic examinations.

### **§ 115.322 Policies to ensure referrals of allegations for investigations**

- The PREA Compliance Manager shall ensure administrative or criminal investigation is completed for all allegations of sexual abuse and sexual harassment. Credible allegations of sexual abuse or sexual harassment that involve potentially criminal behavior shall be referred for investigation to an agency with the legal authority to conduct criminal investigations.
- MPA refers all sexual abuse reports to an outside law enforcement agency. These reports to an outside law enforcement agency are made the same day as the disclosure. In addition, the victim's lawyer (if applicable) and parent/legal guardian are notified of the report.
- Sexual harassment that does not meet the definition of a crime is reported to the State of New Hampshire, Department of Health and Human Services via the Critical Incident

Report System and is investigated internally by the trained PREA Investigator. The PREA Investigator begins the investigation upon disclosure.

- The roles and responsibilities for collecting evidence and conducting the investigation are directed by law enforcement and/or external investigators assigned by the NH Department of Health and Human Services. If a criminal investigation is not proceeding, the trained PREA Investigator will be responsible for collecting evidence and conducting the investigation.
- MPA provides faculty with guidance to ensure that evidence is not destroyed in the time between the report and law enforcement response. This guidance is posted in the residential offices. Medical Policy 015.
- MPA makes this policy available to the public and documents all referrals for investigation.
- During the investigation, MPA will ensure that the youth, consistent with NH practices, has an external victim's advocate assigned to the youth, who is able to provide statuses to the youth and their guardian.
- After a PREA related criminal investigation, and/or prosecution, Mount Prospect Academy will call the investigating agency for a report of their findings.

## **TRAINING AND EDUCATION**

### **§ 115.331 Employee training**

- Employees who have contact with residents will participate in training on their responsibilities under PREA to prevent, detect, report, and respond to sexual abuse and sexual harassment.
- Training will be provided by Granite State College during the employee's initial onboarding and orientation and annually thereafter.
- Training by Granite State College is supplemented by internal training that includes, but is not limited to, the following topics: MPA's PREA policy, Professionalism and Boundaries, LGBTQQIA++ sessions, and Reporting Child Abuse and Neglect Video.
- The program shall document, through employee signature or electronic verification, that employees have completed annual training, understand their responsibilities under PREA, and commit to follow PREA compliance requirements.

### **§ 115.332 Volunteer and contractor training**



- Volunteers and contractors who have contact with residents must be trained in their responsibilities under MPA's PREA policies and procedures prior to working directly with youth.
- The level and type of training provided to volunteers and contractors shall be based on the services they provide and the level of contact they have with residents. All volunteers and contractors must be notified of MPA's zero-tolerance policy regarding sexual abuse and sexual harassment and informed of how to report such incidents.
- The program shall maintain documentation confirming that volunteers and contractors understand the training they have received.
- MPA has a detailed Volunteers Policy that is hereby incorporated by reference, MPA HR 017.

### **§ 115.333 Resident education**

- During the intake process, residents shall receive information explaining, in age-appropriate fashion, MPA's zero tolerance policy regarding sexual abuse and sexual harassment and how to report incidents or suspicions of sexual abuse or sexual harassment.
- Within 10 days of intake, MPA will provide comprehensive age-appropriate education to residents regarding their rights to be free from sexual abuse and sexual harassment and to be free from retaliation for reporting such incidents, and regarding agency policies and procedures for responding to such incidents.
- MPA shall provide resident education in formats accessible to all, including those who have limited English proficiency or who are deaf, visually impaired, or otherwise disabled, as well as to residents who have limited reading skills.
- MPA shall maintain documentation of resident participation in these education sessions.
- In addition to providing such education, MPA shall ensure that key information is continuously and readily available or visible to residents through posters, resident handbooks, or other written formats.

### **§ 115.334 Specialized training: Investigations**

All credible allegations of sexual abuse shall be reported to the State Police and local law enforcement immediately for investigation. "Credible allegations" are defined as those that are supported by, and not disproved by, immediately available factual evidence (e.g., first-hand report(s) from a credible witness, physical evidence that the incident occurred, opportunity/

proximity of alleged perpetrator to the victim). If in doubt about whether sexual abuse occurred, report it to the State Police.

As noted above MPA refers allegations of sexual abuse to trained, professional external agencies. If MPA will conduct any sexual abuse investigations, the investigator must have been trained in conducting sexual abuse investigations in confinement settings, and proof of such training must be in their personnel file.

### **§ 115.335 Specialized training: Medical and mental health care**

- In addition to the training referenced in § 115.331 MPA shall ensure that all mental health care practitioners who work regularly in its facilities have been trained in:
  - How to detect and assess signs of sexual abuse and sexual harassment;
  - How to preserve physical evidence of sexual abuse;
  - How to respond effectively and professionally to juvenile victims of sexual abuse and sexual harassment; and
  - How and to whom to report allegations or suspicions of sexual abuse and sexual harassment.
- Medical staff employed by MPA shall not conduct forensic examinations and should be trained to refer victims of sexual abuse to an appropriate medical professional for examination.

### **PRECLUSION OF USE OF POLYGRAPHS OR OTHER TRUTH TELLING DEVICES**

MPA does not allow the use of polygraphs or truth telling devices when interviewing victims during any investigations, including PREA investigations.

### **SCREENING FOR RISK OF SEXUAL VICTIMIZATION AND ABUSIVENESS**

#### **§ 115.341 Obtaining information from residents**

- Within 72 hours of arrival at the facility and periodically throughout a resident's stay in the program, staff shall obtain and use information about each resident's personal history and behavior to reduce risk of sexual abuse by or upon that resident. Assessments shall use MPA's objective screening instrument that attempt to ascertain information about:
  - Prior sexual victimization or abusiveness and offense history.
  - Gender nonconforming appearance or manner or identification as lesbian, gay, bisexual, transgender, or intersex, and whether the resident may therefore be vulnerable to sexual abuse.

- Age, level of emotional and cognitive development, physical size and stature, mental illness or mental disabilities, intellectual or developmental disabilities, physical disabilities, self-perception of vulnerability, and any other information that may indicate heightened needs for supervision, additional safety precautions, or separation from certain other residents.
- Information shall be ascertained through conversations, classification assessments, and by reviewing court records, case files, facility behavioral records, and other relevant documentation from the resident's files.
- The program shall implement appropriate controls on the dissemination of information within the facility to ensure that sensitive information is not exploited to the resident's detriment by staff or other residents.

**§ 115.342 Placement of residents in housing, bed, program, education, and work assignments**

- Information gleaned from activities described in § 115.341 will be used to make housing, bed, program, education, and work assignments for residents with the goal of keeping all residents safe from sexual abuse.
- MPA precludes the use of isolation in its programs as allowed in this standard.
- Lesbian, gay, bisexual, transgender, or intersex residents shall not be placed solely based on such identification or status.
- MPA prohibits staff from considering lesbian, gay, bisexual, transgender, or intersex identification or status as an indicator of likelihood of being sexually abusive.
- MPA prohibits staff from considering gender as an indicator that they may be sexually abusive
- Program shall consider on a case-by-case basis whether to place a transgender or intersex resident to a single-sex facility. Factors to consider include the resident's health and safety and whether the placement would present management or security problems.
- Placement and programming assignments for transgender or intersex residents shall be reassessed at least every 6 months to review any threats to safety experienced by the resident.
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**REPORTING**

**§ 115.351 Resident reporting**

- Residents may report sexual abuse and sexual harassment, retaliation by other residents or staff for reporting sexual abuse and sexual harassment, and staff neglect or violation of responsibilities that may have contributed to such incidents. Internal reports may be made verbally or in writing to any staff member.
- Staff shall provide residents with access to tools necessary to make a written report.
- Residents also may report abuse or harassment to a public or private entity or office that is not part of MPA and is able to receive and immediately forward resident complaints to agency officials, allowing residents to remain anonymous upon request. Contact information for such entities shall be posted in common areas.
- If staff are aware that sexual abuse or sexual harassment has occurred, they are obligated to file a report and initiate an investigation even if the victim does not.
- Staff shall accept reports made verbally, in writing, anonymously, and from third parties, and shall promptly document any verbal reports.
- All reports of abuse and harassment must be reported to the Executive Director, investigated, and the outcome documented. Any incident that involves illegal behavior shall be reported to the police immediately. The Executive Director shall immediately inform the Director of Residential Operations, the Director of Clinical Services and the Chief Compliance Officer.
- Sexual abuse and sexual harassment are considered a human rights violation and will be investigated by the human rights committee (see human rights policy/procedure)

#### **§ 115.352 Exhaustion of administrative remedies**

- There is no time limit on when a resident may submit a grievance regarding an allegation of sexual abuse.
- Grievances should be submitted in accordance with the Program's Grievance Policy.
- If the program receives a grievance alleging a resident is subject to substantial risk of imminent sexual abuse, it shall immediately forward that grievance (or any portion thereof that alleges the substantial risk of imminent sexual abuse) to a level of review at which immediate corrective action may be taken. In such instances, an initial response must be provided within 48 hours, and a final decision will be made within five (5) calendar days. The initial response and final decision shall document MPA's determination whether the resident is in substantial risk of imminent sexual abuse and the action taken in response to the emergency grievance
- Third parties, including fellow residents, staff members, family members, attorneys, and outside advocates shall be permitted to assist residents in filing requests for administrative

remedies relating to allegations of sexual abuse, and shall also be permitted to file such requests on behalf of residents.

- A resident who alleges sexual abuse may submit a grievance without submitting it to a staff member who is the subject of the complaint, and such grievances will not be referred to the staff member who is the subject of the complaint.
- If a third party, other than a parent or legal guardian, files such a request on behalf of a resident, the facility may require as a condition of processing the request that the alleged victim agree to have the request filed on his or her behalf and may also require the alleged victim to personally pursue any subsequent steps in the administrative remedy process. If the resident declines to have the request processed on his or her behalf, MPA shall document that decision.
- A parent or legal guardian of a juvenile shall be allowed to file a grievance regarding allegations of sexual abuse, including appeals, on behalf of such juvenile. Such a grievance shall not be conditioned upon the juvenile agreeing to have the request filed on his or her behalf.
- MPA may discipline a resident for filing a grievance related to alleged sexual abuse only where MPA demonstrates that the resident filed the grievance in bad faith.

#### **§ 115.353 Resident access to outside support services and legal representation**

- The program will provide residents with access to outside victim advocates for emotional support services related to sexual abuse and shall enable reasonable communication between residents and these organizations and agencies, in as confidential a manner as possible
- During a student's orientation, MPA provides contact information for outside victim advocate agencies that provide emotional support services related to sexual abuse. The types of services provided by these victim advocate agencies are also described. In addition, the contact information for these agencies, along with descriptions of the type of services provided is displayed in written materials in the buildings.
- The program shall inform residents in advance of the extent to which such communication will be monitored and the extent to which reports of abuse will be forwarded to authorities in accordance with mandatory reporting laws.
- MPA shall maintain or attempt to enter into memoranda of understanding or other agreements with community service providers able to provide confidential emotional support services related to sexual abuse, and shall maintain copies of agreements or documentation showing attempts to enter such agreements.

- Residents will be provided with reasonable and confidential access to their attorneys or other legal representation and reasonable access to parents or legal guardians.

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#### **§ 115.354 Third-party reporting**

- MPA shall maintain a method to receive third-party reports of sexual abuse and sexual harassment and shall distribute publicly information on how to report sexual abuse and sexual harassment on behalf of a resident. How to report concerns is explained to students during orientation. In addition, this information is included in the Family Handbook which is distributed to legal guardians and referral sources.
- In addition, MPA's website offers the ability to email or contact MPA.

## **OFFICIAL RESPONSE FOLLOWING A RESIDENT REPORT**

### **§ 115.361 Staff and agency reporting duties**

- Staff, including medical and mental health practitioners, shall comply with applicable mandatory child abuse reporting laws.
- Staff shall immediately report any knowledge, suspicion, or information received regarding an incident of sexual abuse or sexual harassment that occurs in the program's facilities, whether or not the incident was part of MPA. Report shall be in accordance with the program's grievance policy.
- Apart from reporting the incident to designated supervisors or officials and designated state or local services agencies, staff shall be prohibited from revealing any information related to a sexual abuse report to anyone other than to the extent necessary to facilitate investigation, treatment, and to make other relevant security and management decisions.
- Upon hearing any allegation of sexual abuse, the program's Executive Director or his/her designee shall promptly report the allegation to the appropriate agency office and to the alleged victim's parent(s) or legal guardian(s) unless the facility has official documentation showing that the parents/guardians should not be notified. If the alleged victim is under guardianship of the child welfare system, the report shall be made to the alleged victim's caseworker. If a juvenile court retains jurisdiction over the alleged victim, a copy of the report shall be provided to the juvenile's legal representative of record within 14 days of receiving the allegation.

### **§ 115.362 Agency protection duties**

When an agency learns that a resident is subject to a substantial risk of imminent sexual abuse, it shall take immediate action to protect the resident and shall document the action taken in the resident's electronic file.

### **§ 115.363 Reporting to other confinement facilities**

Upon receiving an allegation that a resident was sexually abused while in *another* program, the PREA Compliance Manager or his/her designee shall notify the head of the facility where the alleged abuse occurred, and also shall notify the appropriate investigative agency. Such notification shall be provided as soon as possible and no later than 72 hours after receiving the allegation. MPA shall document that it has provided such notification.

### **§ 115.364 Staff first responder duties**

- Upon learning of an allegation of sexual abuse, the first staff member to respond shall:

- Separate alleged victim and abuser.
- Preserve and protect the crime scene until appropriate steps can be taken to collect evidence.
- If the abuse occurred within a time period that still allows for the collection of physical evidence, request that the alleged victim and alleged abuser not take any actions that could destroy physical evidence such as washing, brushing teeth, changing clothes, urinating, defecating, drinking, or eating.

### **§ 115.365 Coordinated response**

- This PREA policy/procedure, in its entirety, constitutes an institutional plan for a coordinated response to sexual abuse or harassment that involves staff, first responders, medical and mental health practitioners, investigators, and facility leadership.

### **§ 115.366 Preservation of ability to protect residents from contact with abusers**

Neither MPA nor any other governmental entity responsible for collective bargaining on MPA's behalf shall enter into or renew any collective bargaining agreement or other agreement that limits MPA's ability to remove alleged staff sexual abusers from contact with residents pending the outcome of an investigation or of a determination of whether and to what extent discipline is warranted.

### **§ 115.367 Agency protection against retaliation**

- Residents and staff who report sexual abuse or sexual harassment, or who cooperate with investigations, are protected from retaliation by residents or staff.
- Staff who retaliate for an allegation of abuse may be disciplined according to MPA's progressive discipline process.
- MPA shall employ multiple protection measures, such as removal of alleged staff or resident abusers from contact with victims, and emotional support services for residents or staff who fear retaliation for reporting sexual abuse or sexual harassment or for cooperating with investigations.
- For at least 90 days following a report of sexual abuse, MPA shall monitor the conduct or treatment of residents or staff who reported the sexual abuse and of residents who were reported to have suffered sexual abuse to see if there are changes that may suggest possible retaliation by residents or staff, and shall act promptly to remedy any such retaliation. Items MPA should monitor include any resident disciplinary reports, housing, or program changes, or negative performance reviews or reassignments of staff. MPA



shall continue such monitoring beyond 90 days if the initial monitoring indicates a continuing need.

- If someone who cooperates with an investigation expresses a fear of retaliation, MPA shall take appropriate measures to protect that individual against retaliation.
- MPA's obligation to monitor shall terminate if MPA determines that the allegation is unfounded.

## **INVESTIGATION**

### **§ 115.371 Criminal and administrative agency investigations**

- Credible allegations of sexual abuse or sexual harassment that involve potentially criminal behavior shall be referred to the police for investigation.
- The facility shall cooperate with outside investigators and shall endeavor to remain informed about the progress of the investigation.
- When investigating allegations that do not require a police presence, the program shall investigate promptly, thoroughly, and objectively.
- MPA shall not terminate an investigation solely because the source of the allegation recants the allegation.
- The credibility of an alleged victim, suspect, or witness shall be assessed on an individual basis and shall not be determined by the person's status as resident or staff.
- Administrative investigations:
  - Shall include an effort to determine whether staff actions or failures to act contributed to the abuse, and;
  - Shall be documented in written reports that include a description of the evidence, reasoning behind credibility assessment, and investigative facts and findings.
- The State of NH protocols ensure that criminal investigations shall be documented in a written report containing a thorough description of physical, testimonial, and documentary evidence and attaches copies of all documentary evidence where feasible
- Departure of the alleged abuser or victim from the facility or agency shall not provide a basis for terminating an investigation
- MPA prohibits requiring a polygraph or other truth-telling device as a condition for continuing an investigation.

### **§ 115.372 Evidentiary standard for administrative investigations**

MPA shall impose no standard higher than a preponderance of the evidence in determining whether allegations of sexual abuse or sexual harassment are substantiated.

### **§ 115.373 Reporting to residents**

- Upon completion of an investigation, MPA shall inform the alleged victim whether the allegation was determined to be substantiated, unsubstantiated, or unfounded. This notification will be done by the youth's Clinician or the Director of Clinical Services, in conjunction with the PREA Compliance Manager.
  
- Following a resident's substantiated allegation of sexual abuse by a staff member, MPA shall inform the resident whenever:
  - The staff member is no longer posted within the resident's unit;
  - The staff member is no longer employed at the facility;
  - MPA learns that the staff member has been indicted on a charge related to sexual abuse within the facility; or
  - MPA learns that the staff member has been convicted on a charge related to sexual abuse within the facility.
  
- Following a resident's substantiated allegation that he or she has been sexually abused by another resident, MPA shall subsequently inform the alleged victim whenever:
  - MPA learns that the alleged abuser has been indicted on a charge related to sexual abuse within the facility; or
  - MPA learns that the alleged abuser has been convicted on a charge related to sexual abuse within the facility.
  
- All such notifications or attempted notifications shall be documented.
  
- MPA's obligation to report under this standard shall terminate if the resident is released from MPA's custody.
  
- In all sexual abuse investigations, the youth should have an external advocate assigned. This external advocate will be the initial person to communicate dispositions. However, MPA will ensure that, if the assigned advocate has not communicated those dispositions to the alleged victims in all cases alleging sexual abuse, that the dispositions are communicated

- MPA will also track cases to ensure these notifications occur. The PREA Compliance Manager shall be responsible to ensure the tracking occurs.
- For those cases where charges are filed and an accused staff member or resident has been indicted or convicted, in New Hampshire an advocate is assigned out of the prosecutors office to ensure the victim is notified. MPA will ensure that an advocate is identified, and updates the victim.

## **DISCIPLINE**

### **§ 115.376 Disciplinary sanctions for staff**

- Staff shall be subject to MPA's progressive disciplinary process and sanctions up to and including termination for violating agency sexual abuse or sexual harassment policies. Termination shall be the presumptive disciplinary sanction for staff who have engaged in sexual abuse.
- All terminations for violations of the PREA policy and resignations by staff who would have been terminated for violation of the PREA Policy if not for their resignation, shall be reported to law enforcement agencies and licensing bodies unless the activity was clearly not criminal.

### **15.377 Corrective action for contractors and volunteers**

- Any contractor or volunteer who engages in sexual abuse shall be prohibited from contact with residents and shall be reported to law enforcement agencies, unless the activity was clearly not criminal, and to relevant licensing bodies.
- The facility shall take appropriate remedial measures and shall consider whether to prohibit further contact with residents, in the case of any other violation of agency sexual abuse or sexual harassment policies by a contractor or volunteer.

### **§ 115.378 Interventions and disciplinary sanctions for residents**

- MPA prohibits all sexual activity between residents and may discipline residents for such activity. However, such activity does not constitute sexual abuse if it determines that the activity is not coerced.
- A resident may be subject to disciplinary sanctions only pursuant to a formal disciplinary process following an administrative finding that the resident engaged in resident-on-resident sexual abuse or following a criminal finding of guilt for resident-on-resident sexual abuse. The Program will work with the resident's referral agency to determine what sanctions should be implemented.

- MPA may discipline a resident for sexual contact with staff only upon a finding that the staff member did not consent to such contact.
- For the purpose of disciplinary action, a report of sexual abuse made in good faith based upon a reasonable belief that the alleged conduct occurred shall not constitute falsely reporting an incident or lying, even if an investigation does not establish evidence sufficient to substantiate the allegation.

## **MEDICAL AND MENTAL CARE**

### **§ 115.381 Medical and mental health screenings; history of sexual abuse**

- If the screening pursuant to § 115.341 indicates that a resident has experienced prior sexual victimization, whether it occurred in an institutional setting or in the community, staff shall ensure that the resident is offered a follow-up meeting with a medical or mental health practitioner within 14 days of the intake screening.
- If the screening pursuant to § 115.341 indicates that a resident has previously perpetrated sexual abuse, whether it occurred in an institutional setting or in the community, staff shall ensure that the resident is offered a follow-up meeting with a mental health practitioner within 14 days of the intake screening.
- Any information related to sexual victimization or abusiveness that occurred in an institutional setting shall be strictly limited to medical and mental health practitioners and other staff, as necessary, to inform treatment plans and security and management decisions, including housing, bed, work, education, and program assignments, or as otherwise required by Federal, State, or local law.
- Medical and mental health practitioners shall obtain informed consent from residents before reporting information about prior sexual victimization that did not occur in an institutional setting, unless the resident is under the age of 18.

### **§ 115.382 Access to emergency medical and mental health services**

- Resident victims of sexual abuse shall receive timely, unimpeded access to emergency medical treatment and crisis intervention services. Staff first responders shall take preliminary steps to protect the victim pursuant to § 115.362 and shall immediately notify the appropriate medical and mental health practitioners.
- Resident victims of sexual abuse while incarcerated shall be offered timely information about and timely access to emergency contraception and sexually transmitted infections prophylaxis, in accordance with professionally accepted standards of care, where medically appropriate.
- Treatment services shall be provided to the victim without financial cost and regardless of whether the victim names the abuser or cooperates with any investigation arising out of the incident.

### **§ 115.383 Ongoing medical and mental health care for sexual abuse victims and abusers**

- The facility shall offer medical and mental health evaluation and, as appropriate, treatment to all residents who have been victimized by sexual abuse in any prison, jail, lockup, or juvenile facility. The evaluation and treatment of such victims shall include, as appropriate, follow-up services, treatment plans, and, when necessary, referrals for continued care following their transfer to, or placement in, other facilities, or their release from custody.
- The facility shall provide such victims with medical and mental health services consistent with the community level of care.
- Resident victims of sexually abusive vaginal penetration while in the program shall be offered pregnancy tests, at no cost to the victim or the victim's legal guardian. If pregnancy results from sexual abuse while in the program, victim shall receive timely and comprehensive information about, and access to, all lawful pregnancy related medical services.
- Resident victims of sexual abuse while in the program shall be offered tests for sexually transmitted infections as medically appropriate, at no cost to the victim or the victim's legal guardian..
- Treatment services shall be provided to the victim without financial cost and regardless of whether the victim names the abuser or cooperates with any investigation arising out of the incident.
- The facility shall attempt to conduct a mental health evaluation of all known resident-on-resident abusers within 60 days of learning of such abuse history and offer treatment when deemed appropriate by mental health practitioners.

## **DATA COLLECTION AND REVIEW**

### **§ 115.386 Sexual abuse incident reviews**

- The facility shall conduct a sexual abuse incident review at the conclusion of every sexual abuse investigation, including where the allegation has not been substantiated, unless the allegation has been determined to be unfounded.
- Such review shall ordinarily occur within 30 days of the conclusion of the investigation.
- The review team shall include upper-level management officials, with input from line supervisors, investigators, and medical or mental health practitioners.
- The review team shall:
  - Consider whether the allegation or investigation indicates a need to change policy or practice to better prevent, detect, or respond to sexual abuse;

- Consider whether the incident or allegation was motivated by race; ethnicity; gender identity; lesbian, gay, bisexual, transgender, or intersex identification, status, or perceived status; or, gang affiliation; or was motivated or otherwise caused by other group dynamics at the facility;
- Examine the area in the facility where the incident allegedly occurred to assess whether physical barriers in the area may enable abuse;
- Assess the adequacy of staffing levels in that area during different shifts;
- Assess whether monitoring technology should be deployed or augmented to supplement supervision by staff; and
- Prepare a report of its findings and any recommendations for improvement and submit such report to the facility head and PREA compliance manager.
- The facility shall implement the recommendations for improvement or shall document its reasons for not doing so.

#### **§ 115.387 Data collection**

- MPA shall collect accurate, uniform data for every allegation of sexual abuse at facilities under its direct control using a standardized instrument and set of definitions.
- MPA shall aggregate the incident-based sexual abuse data at least annually.
- The incident-based data collected shall include, at a minimum, the data necessary to answer all questions from the most recent version of the **Survey of Sexual Violence** conducted by the Department of Justice.
- MPA shall maintain, review, and collect data as needed from all available incident-based documents, including reports, investigation files, and sexual abuse incident reviews.
- Upon request, MPA shall provide all such data from the previous calendar year to the Department of Justice no later than June 30.

#### **§ 115.388 Data review for corrective action**

- MPA shall review data collected and aggregated pursuant to § 115.387 in order to assess and improve the effectiveness of its sexual abuse prevention, detection, and response policies, practices, and training, including:
  - Identifying problem areas;
  - Taking corrective action on an ongoing basis

- Preparing an annual report of its findings and corrective actions for each facility and MPA.
- Such report shall include a comparison of the current year's data and corrective actions with those from prior years and shall provide an assessment of MPA's progress in addressing sexual abuse.
- MPA's report shall be approved by MPA head and made readily available to the public through its website or, if it does not have one, through other means.
- MPA may redact specific material from the reports when publication would present a clear and specific threat to the safety and security of a facility, but must indicate the nature of the material redacted.

**§ 115.389 Data storage, publication, and destruction**

- MPA shall ensure that data collected pursuant to § 115.387 are securely retained, in a locked location at the Chief Compliance Officer's office.
- MPA shall make all of its aggregated sexual abuse data readily available to the public at least annually through its website.
- Before making aggregated sexual abuse data publicly available, MPA shall remove all personal identifiers.
- MPA shall maintain sexual abuse data collected pursuant to § 115.387 for at least 10 years after the date of its initial collection unless Federal, State, or local law requires otherwise.