

PREA AUDIT: AUDITOR'S FINAL REPORT

JUVENILE FACILITIES



Name of Facility: MacCormick Secure Center			
Physical Address: 300 South Road, Brooktondale, New York			
Date report submitted: March 1, 2015			
Auditor information: Charles J. Kehoe			
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Date of facility visit: June 4 – 6, 2014			
Facility Information			
Facility Mailing Address: Same			
Telephone Number: (610) 258-2880			
The Facility is:	<input type="checkbox"/> Military	<input type="checkbox"/> County	<input type="checkbox"/> Federal
	<input type="checkbox"/> Private for profit	<input type="checkbox"/> Municipal	<input type="checkbox"/> XX State
	<input type="checkbox"/> Private not for profit		
Facility Type:	<input type="checkbox"/> Detention (Juvenile)	<input type="checkbox"/> XX Correction (Juvenile)	Other:
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Email Address: Beverly.King@ocfs.ny.gov		Telephone Number:	(607) 539-7121
Agency Information			
Name of Agency: Office of Children and Family Services			
Governing Authority or Parent Agency: (if applicable) New York State			
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Agency Chief Executive Officer			
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Agency Wide PREA Coordinator			
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AUDIT FINDINGS

NARRATIVE:

The PREA Audit of the New York State, Office of Children and Family Services (OCFS), MacCormick Secure Center (MSC) in Brooktondale, New York, was conducted on June 4, 5, and 6, 2014. The Designated Auditor was Charles J. Kehoe of Midlothian, Virginia.

The auditor wishes to extend his deepest appreciation to OCFS, Deputy Commissioner, Ines Nieves, MacCormick Secure Center, Facility Director, Jeff Calkins, OCFS PREA Coordinator Kurt Pfisterer, MacCormick Secure Center PREA Manager, Beverly King, and all the employees of the MacCormick Secure Center for their professionalism, hospitality, and kindness.

Because of scheduling conflicts, the interviews with the Deputy Commissioner of OCFS ("Agency Director"), Ines Nieves and the PREA Coordinator could not be conducted until after the on-site audit. Ms. Nieves was interviewed on June 16, 2014. Mr. Pfisterer was interviewed on July 8, 2014.

The PREA Coordinator sent materials to the auditor in advance of the audit. Following the audit, the auditor requested additional policy and procedures which were received on July 9, 2014.

The Auditor contacted Just Detention International to inquire if that agency had received any information regarding the MSC. A check of their records showed no complaints on file regarding the MSC

Earlier in the day of June 4, 2014, arrangements had been made to meet with two Investigators from the New York State Justice Center at the MSC when the auditor arrived. The auditor had completed an audit at another OCFS facility that day and was delayed in arriving at MSC. When the auditor arrived he immediately met with the two investigators as they had been waiting for over two-hours. The Investigators reviewed four (4) investigations with the auditor. One investigation that was reported on November 1, 2013 is now closed. The other investigations are still pending. On March 29, 2013, an allegation was reported regarding staff misconduct. That investigation has been referred to Justice Center Headquarters for review. The two remaining investigations are related to the March 29th incident and are still in the investigation phase. The staff member who was named in the allegation has been on paid administrative leave since the incident was reported. These were the only PREA allegations that had been reported for this facility.

The PREA Audit Entrance Meeting was held in the Conference Room in the administrative area at 5:30 p.m. on Wednesday, June 4, 2014. Deputy Commissioner Nieves, Facility Director Calkins, PREA Coordinator Pfisterer, PREA Manager King, and other management and supervisory staff participated in the meeting. The Auditor thanked the facility leadership for being involved in the PREA process and for being one of the early state juvenile justice agencies in the country to request an audit. The Auditor apologized for the delay in starting the Entrance Meeting. He then explained the audit process and reviewed the Audit Schedule with the administrative team.

The tour of the MSC followed the Entrance Meeting from 5:52 p.m. to 7:00 p.m. Accompanying the Auditor on the tour was Facility Director Calkins, PREA Coordinator Pfisterer, PREA Manager King and other management and supervisory staff. All areas where residents could be found were seen, including the outdoor areas. Ms. King gave the auditor a list of all current employees and a list of all residents. Residents who were identified as being in specialized categories were also identified. The Auditor randomly selected a list of residents, by living unit, and staff, by shift, to be interviewed, in addition to those who are in specific groups.

Twelve interviews were conducted of randomly selected residents. In addition, two other interviews were conducted; one with a resident who was identified as being disabled or having language difficulties and the other because he was in isolation because of behavioral problems. No residents were identified as

being gay or transgender. No resident was identified as having reported an abuse or harassment in the facility. No resident reported a prior abuse. Residents said they felt safe in this facility.

Ten Youth Development Aides and Youth Counselors, who were randomly selected by the auditor from all shifts, were interviewed. Seventeen interviews were conducted with staff and volunteers in specialized categories and included the Deputy Commissioner (Agency Director's Designee), the OCFS PREA Coordinator, the Superintendent, the PREA Manager, two investigators, first responders, therapists (mental health professionals), counselors (intake and screening), an Incident Review Team member, mid-level managers, the supervisor who monitors for retaliation, non-security first responder, the Human Resource Manager, and a volunteer. It should be noted that since this is a relatively small facility, several of the staff have multiple responsibilities so a few individuals were interviewed twice if their duties covered more than one specialized area. In all, the auditor conducted 41 interviews.

During the audit, the auditor found that MSC did not meet three standards. Two standards had to do with the confirmation that employees and volunteers not only received the required PREA training, but that they confirmed they "understand" the PREA training. The third standard focused on the Annual PREA Report that the agency must write and publish on its Web site. During the 180-day corrective action period, the agency corrected those deficiencies that did not meet the standards.

Interviews with residents clearly indicated that they are well informed about PREA, their rights, and how to report an abuse. New admissions are informed about PREA upon admission to the facility. All staff who are authorized to do admissions are well trained on how to conduct the PREA interview and the admission process. The OCFS has an excellent publication which is given to each resident. The booklet, titled *Checking in for: Your Safety at OCFS DJJOY*, explains in great detail what residents need to know about PREA, how to avoid sexual assaults and harassment and how to report it if it happens. This is an impressive publication and is in an easy to read format. There are large posters throughout the facility that call attention to PREA and the importance of reporting any abuse or harassment. In all the units there was also a large poster that describes how to access language services and interpreters. Residents all spoke of knowing how to call the Ombudsman and acknowledged the posters throughout the facility. It was noted, however, that there is no mention of PREA in either the MacCormick Secure Center Resident Orientation Manual (published in November 2010) nor in the OCFS Resident Manual for Secure Facilities. This is something that should be addressed in the next editions of those documents.

Staff training is very comprehensive. During interviews with the Youth Development Aides and Youth Counselors, it was obvious they had all received the required PREA training and that the training has become part of the culture of this facility. Youth Development Aides described procedures for protecting residents from harm or threats of retaliation and the mandatory reporting requirements. Some did not understand their duties regarding "the preservation of evidence." A Training Specialist was interviewed and described the 3 hour, computer-based training that was produced by the National Institute of Corrections. Training records were reviewed and provided documentation that the training was provided. However, when employees sign that they have "received" the training, the document does not ask if the employee "understands" the training he or she just received. This was also confirmed in other interviews. OCFS is planning on having a written exam by 2015 that evaluate what employees have learned in the PREA training. Medical and mental health staff are given a written exam following their PREA training now. Volunteers receive a one-hour Orientation Training from the PREA Manager. As with the staff, there was no documentation, at the time of the audit, that the volunteers understood the training, which is a requirement of the standard.

The auditor was impressed with the 162 cameras that are positioned inside and outside the facility. The Control Room has several flat screens that are showing what the cameras are viewing throughout the facility and on the outside. The resolution of the cameras and wide-screens is very good. Individuals can be easily identified with these cameras. The system has an automatic 14 days of storage.

Investigations are conducted by the New York State Justice Center. This agency was established to

protect the vulnerable populations in the State's care. Investigators are assigned to regions and have considerable responsibilities. Given the workloads of the investigators, it can take several months for a case to be investigated, reviewed, and approved by headquarters.

Sexual assault and harassment data is collected using an impressive data base. When an allegation of sexual abuse or sexual harassment is made, the information is entered into the database. The agency has not published its annual report but is expected to very soon.

The auditor conducted an exit meeting on June 6, 2014, at approximately 3:00 p.m. While the auditor could not give the facility a final finding, as there were issues needing further attention, the Auditor did give an overview of the audit and thanked the Deputy Commissioner, the PREA Coordinator, the Facility Director and the staff of the MacCormick Secure Center for their hard work and commitment to the full implementation of the Prison Rape Elimination Act.

The Interim Report identified 3 standards the MSC did not meet during the audit. Following the submittal of the Interim Report, the PREA Coordinator created a corrective plan of action which was shared verbally with the auditor. All corrective actions were completed and sent to the auditor on or before January 30, 2015. The auditor reviewed and approved the corrective actions on January 30, 2015. The MacCormick Secure Center is now in complete compliance with the PREA Juvenile Facility Standards.

DESCRIPTION OF FACILITY CHARACTERISTICS:

The New York Office of Children and Family Services, Division of Juvenile Justice and Opportunities for Youth (DJJOY), provides a continuum of services for juvenile offenders and juvenile delinquents, including secure residential facilities. Secure residential facilities are the most controlled and restrictive of the residential programs operated by OCFS while providing intensive programming for youth requiring this type of environment. Secure facilities are located in non-urban areas with virtually all program services provided on-grounds. Access to and from secure facilities is strictly controlled. The facility is either a single building or a small cluster of buildings surrounded by security fencing and individual resident rooms are locked at night. The MacCormick Secure Center (MSC) is a secure residential center.

The MSC is located at 300 South Road, Brooktondale, New York, in a heavily wooded, rural area, fifteen minutes from the City of Ithaca. The population is housed in a one-story, block and brick building. Four units house ten (10) youth per unit in individual bedrooms. Each unit contains two lounge areas and a central shower room. The units connect with school classrooms and a dining/kitchen area.

The MacCormick Secure Center serves juvenile offenders from across New York State who, while under the age of 16, committed certain violent felonies and were convicted and sentenced in adult criminal court. Depending upon the sentence, youth may remain in OCFS custody up to 21 years of age. MSC also serves "fettered" juvenile delinquents who are under the jurisdiction of the family court and are restrictively placed juvenile delinquents. Juvenile delinquents may remain in OCFS custody up to the age of 21 depending on their placement order.

On the first day of the audit, there were 31 residents in the facility. The facility is budgeted for 39 and has an overall capacity of 52. The average length of stay (ALS) is 267 days. Those youth classified as juvenile offenders have an ALS of approximately 2 years.

There are 74 positions assigned to the MSC. Of these, 59 positions are filled and 15 are vacant. The facility operates under a Department approved staffing plan that provides for a staff to resident ratio of 1 to 5 on the first and second shifts and a 1 to 8 ratio on the third shift.

The MSC provides individual and group counseling seven-days a week utilizing several different modalities, including but not limited to Aggression Replacement Therapy, Moral Recognition Therapy, and Core Life Skills. Substance abuse generalized education is also offered.

The academic program is provided in accordance with the New York State Education Department requirements. An Individual Education Program (IEP) plan is developed for every student with a disability. Students can earn a General Equivalency Diploma (GED) and students who qualify can take college-level courses through Tompkins Cortland Community College.

A vocational program provides training in the culinary arts, wood working, and computers. Health care is available seven-days a week by licensed health care professionals. Registered nurses are scheduled during the day and evening shifts seven-days a week. Nursing sick call occurs daily. Primary care is provided by a full-time physician's assistant or nurse practitioner. A contract physician visits MSC once a month. There are two infirmary rooms in the health care area for youth needing that level of care. All youth receive a comprehensive health assessment upon admission and a plan of care is developed, as needed.

Residents are taken to a dentist for an initial diagnostic dental assessment and preventative dental and treatment services are provided, as needed. An optometrist visits the facility once per month and glasses are provided when needed.

The mental health team consists of staff psychologists and a licensed Master Social Worker (MSW). Mental health staff work directly for OCFS. Mental health assessments include mental health and substance abuse evaluations, sex offender evaluations, crisis assessments, and family, group, and individual therapy, treatment planning and continuity of psychiatric care. If hospitalization is indicated, the MSC clinical staff will facilitate that plan and will serve as the facility liaison during a youth's hospitalization.

A structured recreation program is provided under the guidance of a recreation specialist. The facility has a large in-door gym and includes a game room, exercise area, and basketball court. Out-door recreation includes volleyball and baseball.

Religions services are provided under the direction of the OCFS Chaplaincy Office.

Visitation is permitted seven-days a week at the facility.

The facility has four living areas, Alpha Unit, Bravo Unit, Charlie Unit, and Delta Unit. The facility is currently budgeted to handle up to 10 youth in three units and nine youth in the fourth Unit for a budgeted total of 39 residents. The design capacity of the facility is 52. The day this audit began, there were 31 youth in the facility. (One youth was living on one unit by himself with a single staff member providing supervision. This specific youth was to stay on this unit until he agreed to manage his anger and cease bullying other residents.) All the sleeping rooms are "dry" meaning they do not have toilets or sinks in the rooms. If a youth has to use the bathroom during the night, he has to be let out of his room by the Control Room. Only one youth is out of his room at a time during the night.

The facility has a classroom for each housing area and a conference room that is used for meetings and resident conferences. There is also an intake area with two cells (where new admissions are held for the initial 24-hours), a medical area, a library, a dining room, a gym, a laundry, a greenhouse, and a trailer that is used for musical practice.

There are 140 cameras inside the facility and 22 cameras outside the facility. The cameras can be monitored in three different locations. The video camera storage is 14 days.

SUMMARY OF AUDIT FINDINGS:

Number of standards exceeded:	4
Number of standards met:	34
Number of standards not met:	0
Number of standards that are not applicable	3

Standard Prevention Planning**§ 115.311 Zero tolerance of sexual abuse and sexual harassment; PREA coordinator.**

- XX Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

The Office of Children and Family Services (OCFS) has widely published its Zero Tolerance Policy in material provided to the residents, in the resident education program, and in posters that are visible to residents, staff and members of the general public. The agency's Zero Tolerance Policy is also on the OCFS Web site in the Juvenile Justice section. In part the policy states: OCFS "is committed to the prevention and elimination of sexual abuse/assault within Division of Juvenile Justice and Opportunities for Youth (DJJOY) facilities through compliance with the Prison Rape Elimination Act (PREA) of 2003." The policy includes the agency's protocols for preventing, detecting, reporting, and responding to sexual abuse and harassment.

DJJOY has appointed Kurt Pfisterer as the PREA Coordinator. This is Mr. Pfisterer's only responsibility with the agency. He reported he has sufficient time to do his PREA Coordinator duties.

Ms. Beverly King is the PREA Manager for MSC. In addition to her responsibilities as the PREA Manager, Ms. King also has a clinical caseload, and does Cognitive Behavioral Therapy work in the facility. She reported she has sufficient time and authority to coordinate MSC's efforts to comply with the PREA standards and do other PREA Manager work.

Standard**§ 115.312 Contracting with other entities for the confinement of residents.**

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)
- XX Not Applicable

The MSC does not contract with other public or private agencies for the confinement of its residents.

Standard**§ 115.313 Supervision and monitoring**

- Exceeds Standard (substantially exceeds requirement of standard)
- XX Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

As directed by OFCS policy, MSC has a Video Surveillance and Staffing Plan. The staffing plan is based on a population of 40 youth in 4 living units (10 residents per living unit). On the day of the audit, there were 31 youth in the facility. The staffing ratios on the first and second shift are 1:5 and on the third shift are 1:8. In addition, there are 2 supervisors for each shift. On weekdays and weekends, the third shift can have an additional supervisor. In the 12 months prior to the audit, the facility did not deviate from the staffing plan. The

Video Surveillance and Staffing Plan is reviewed annually by the Facility Director and the PREA Coordinator and takes into consideration all the elements in the standard and determines if any changes are needed in the plan. The plan that was provided to the auditor was signed and dated by the Facility Director, but not the PREA Coordinator. That was corrected immediately.

The most recent Workplace Violence Risk Assessment identified some inadequacies related to the video surveillance system in that not all areas had camera surveillance. The camera system was upgraded in January of 2014 and the issue was corrected. There are now 140 cameras inside the facility and 22 cameras outside the facility. The cameras can be monitored in three different locations. The video camera storage is 14 days.

Supervisors and administrators conduct and document unannounced rounds on all shift. The unannounced rounds are documented in a log. OCFS policy also prohibits staff from alerting other staff members that the unannounced rounds are taking place. One supervisor who was interviewed said that the rounds may not always be recorded in the log as "unannounced rounds," but the rounds are being conducted and documented. The supervisor also said that staff respect the supervisors and would not alert other staff that supervisors were moving through the facility because supervisors are always moving throughout the entire facility during the shift.

Standard

§ 115.315 Limits to cross-gender viewing and searches.

- Exceeds Standard (substantially exceeds requirement of standard)
- XX Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

Cross-gender strip searches, pat-down searches, and cross-gender visual body cavity searches are prohibited by OCFS policy, except in exigent circumstances. One female staff reported that she had to do a cross-gender search not long before the audit, but that she notified the Control Room so that cameras could be focused on her as she did the search. She also justified and documented the search in the log. During random staff interviews, some security staff reported that they had received training on how to do a cross gender search at the Academy. Other security staff told the auditor they had not had any training on how to do a cross-gender pat-down search. It appears that refresher training on cross-gender searches is needed. Paragraph (f) of this standard requires such training, as well as how to conduct searches of transgender and intersex residents, "in a respectful and professional manner, and in the least intrusive manner possible, consistent with security needs."

In interviewing residents, two residents reported that announcements were not being done consistently by the female security staff. The majority of residents said the announcements are being made. Nine of 10 residents reported female staff never see residents naked. OCFS policy prohibits such viewing. One resident said it has happened, but he could not give any details.

Staff are aware of the agency policy that prohibits staff from strip-searching a resident strictly for the purpose of determining the youth's genital.

Standard

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

- XX Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

MSC posters and printed materials for resident education are all in Spanish and English. In addition, OCFS has a

contract with an interpretation service that is available to assist with several different languages seven days a week. Signs, that explain this service, are posted in the living units and other public areas. At the time of the audit, there were no residents who were limited in the English language. One student who was developmentally disabled was interviewed. He reported that the Counselors and the PREA Coordinator explained PREA to him and how to tell a staff member or family member if he needed help. He said the staff were very helpful to him. Staff told the auditor that a resident would never be used to interpret for another resident in the event of a sexual assault unless the victim initiated the other resident's help. To the staff's knowledge this has never happened.

Standard

§ 115.317 Hiring and promotion decisions.

- XX Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

Screening and hiring of prospective employees in OCFS facilities is a multi-step process. The New York State Justice Center for the Protection of People with Special Needs (known at the Justice Center) is the lead agency on conducting background checks. The process begins when a person applies for a position in OCFS. The first step begins when the Justice Center checks to see if the person is identified on the Staff Exclusion List (SEL). The Justice Center is responsible for maintaining this statewide register (SEL) which contains the names of individuals found responsible for serious or repeated acts of abuse and neglect. If the applicant is on the list, the person is dropped from further consideration. If a person is not on the list, then the OCFS requests a criminal background check and a check of the Statewide Central Register of Child Abuse and Maltreatment (SCR). The Justice Center then informs the agency if the person has successfully passed his/her background check. Previous employment references are also contacted. On the application for employment, applicants are also required to report any arrests or misconduct that would impact their ability to work with young people.

When a person is hired in OCFS, he/she is also entered into a national database that tracks all contacts with law enforcement agencies. If an OCFS employee is arrested anywhere in the U.S, a notification is immediately sent to the New York State Justice Center where a notice is sent to the agency. While the agency does not do criminal background checks every five years, this system captures arrest information for current employees much faster. Agency policy states that employees have an affirmative duty to disclose misconduct that can impact on their ability to perform their responsibilities. OCFS checks the Statewide Central Register of Child Abuse and Maltreatment every two-years for current employees.

Promotions follow similar procedures.

If a former employee, for whom there is a substantiated allegation of sexual abuse or sexual harassment, applies for a position at another institution and that institutional employer requests a reference for such employee, that request is sent to the Justice Center where the determination is made as to what will be shared with the perspective employer. The OCFS does not respond to the institution requesting the information.

The auditor interviewed the Human Resources Manager and examined one personnel file.

Standard

§ 115.318 Upgrades to facilities and technologies.

- Exceeds Standard (substantially exceeds requirement of standard)
- XX Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

The facility has not had any substantial expansion or modification of the existing facility in recent years. The most recent Workplace Violence Risk Assessment identified some inadequacies related to the video surveillance system in that not all areas had camera surveillance. The camera system was upgraded in January of 2014 and the issue was corrected. There are now 140 cameras inside the facility and 22 cameras outside the facility. The cameras can be monitored in three different locations. The video camera storage is 14 days.

Standard Responsive Planning
§ 115.321 Evidence protocol and forensic medical examinations.

- Exceeds Standard (substantially exceeds requirement of standard)
- XX Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

The Justice Center is responsible for conducting all administrative and criminal investigations. The Justice Center investigators normally work Monday through Friday, but are on-call on evenings and weekends. In the case of a sexual assault or sexual abuse (felony), the MSC administrator on duty would also notify the New York State Police who would initiate the investigation and work with the Justice Center investigators. The OCFS Deputy Commissioner has requested that the Justice Center follow the requirements of Standard 115.321. Justice Center Investigators are familiar with PREA and its requirements but have not received PREA Investigator training, yet. Justice Center investigators are sworn law enforcement officers. The Facility Director said the Investigators do their best to keep him informed on the status of pending investigations.

MSC signed a Memorandum of Understanding with the Cayuga Medical Center on January 13, 2014 which states that the a Sexual Assault Nurse Examiner at the Medical Center will provide a forensic exam if a resident of MSC is sexually assaulted or sexually abused. The Medical Center will also collect and maintain the integrity of the evidence collected for the law enforcement agency. The Medial Center will also contact the Advocacy Center who will send an advocate to the Medical Center to provide rape crisis counseling and advocacy services. Counseling and mental health staff at the MSC can provide crisis counseling and accompany the resident to the forensic exam, if requested by the resident.

There have been no sexual assaults and therefore no forensic exams conducted, to date.

Standard
§ 115.322 Policies to ensure referrals of allegations for investigations.

- Exceeds Standard (substantially exceeds requirement of standard)
- XX Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

OCFS policy and procedures ensure an investigation is completed for all allegations of sexual abuse and harassment. Allegations of sexual abuse are reported through the chain of command to the Justice Center, the Central Communication Unit where it is entered into the Juvenile Justice Information System, and the nearest State Police Barracks. OCFS publishes the policy and procedures on its Web site. The Justice Center Web site also provides information on reporting and responding to abuse in facilities.

The auditor interviewed two Justice Center Investigators and reviewed four investigations. The first investigation was received as an anonymous response to the Service Recipient Survey. The investigators interviewed staff and residents and reviewed all related materials and found no evidence of any inappropriate sexual activity. The case was closed as unfounded. The next three investigations are related. The allegation is that the incident occurred at the end of March, 2014. One employee has been on administrative leave since the investigation began.

The investigation is on-going and has been referred to the Office of General Counsel in the Justice Center for review. The Investigators do make every effort to keep the MSC updated on the progress of the investigation.

Standard – TRAINING AND EDUCATION
§ 115.331 Employee training.

- Exceeds Standard (substantially exceeds requirement of standard)
- XX Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

Staff receive a three-hour, computer-based training program. All the staff interviewed reported that they had been trained on the areas noted in this standard. All staff acknowledge in writing that they received the training, but the form did not say they “understand” the training they received. Standard 115.331 (d) states, “The agency shall document, through employee signature or electronic verification that employees understand the training they have received.” OCFS PPM 3247.01.IV. C.1 states, “Employees must sign an acknowledgement verifying that they understand the training they receive,” but the form they sign does not include that wording. On January 17, 2015, the PREA Coordinator, Kurt Pfisterer, sent the auditor 6 pages of documentation showing employees had signed PREA Training Rosters indicating they had received the training and understood the training. The facility now meets the requirements of the standard.

Three of the 10 staff interviewed reported that they did not know who is responsible for conducting sexual abuse investigations, in spite of the fact that posters that encourage staff and inmates to report to the Justice Center are displayed in all public areas and on all living units. This topic should be reviewed in staff meetings and documented and employees should document, in writing, that they understand which agency will be responsible for conducting investigations. One female staff member also suggested that there be a special training session for female staff since they need to know where they may be vulnerable to manipulation by residents.

Standard
§ 115.332 Volunteer and contractor training.

- Exceeds Standard (substantially exceeds requirement of standard)
- XX Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

The MSC’s Volunteer Program Handbook clearly states that there shall be no sexual contact between volunteers and includes specific training on the OCFS Zero Tolerance Policy, definitions (i.e., sexual abuse and assault, sexual contact, and sexual harassment), prohibitions, reporting requirements, and an acknowledgement. The acknowledgement states: “My signature acknowledges that I have received a copy of OCFS PPM 3247.01, *Prevention of Sexual Abuse and Assault of Youth in OCFS Care* and have received training on the above information. I agree to comply with the provisions of OCFS 3247.01, *Prevention of Sexual Abuse and Assault of Youth in OCFS Care*.” The standard requires that “The agency shall maintain documentation confirming that volunteers and contractors understand the training they have received.” The DJJOY Volunteer Training form did not include this language. On January 17, 2015, PREA Coordinator, Kurt Pfisterer provide the auditor with the revised “Volunteer and Contractor PREA Training” form which states in the last paragraph “My signature acknowledges that I have received a copy of OCFS PPM 3247.01, *Prevention of Sexual Abuse and Assault of Youth in OCFS Care*, and have received training on the above information. I understand the information and agree to comply with the provisions of OCFS PPM.” The agency now meets the requirements of the standard.

The audit did interview one volunteer who confirmed that she had received the training and did understand the

agency's Zero Tolerance Policy and all that is required of her under agency policy and PREA standards.

Standard

§ 115.333 Resident education.

- Exceeds Standard (substantially exceeds requirement of standard)
- XX Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

OCFS procedures specify that all residents be informed, at the point of intake, of their rights to be free from sexual assault, abuse, and harassment and how to report any abuse or harassment. Within 10-days, residents are given a more comprehensive PREA education program. Residents are also given a booklet titled "Checking in for: Your Safety at OCFS DJJOY." This 15-page multi-colored booklet explains in great detail what residents need to know about PREA and their protection from sexual assault and harassment. Posters that call attention to sexual assault and harassment are also displayed on every unit and in public places throughout the MSC. In random interviews with the residents, one youth reported that he did not remember receiving the training when he arrived, but he said he did receive the booklet. All youth acknowledge, on the Resident Orientation Letter, that they have received the booklet and reviewed it.

It should be noted that in the MSC Resident Orientation Manual (Revised 11/2010) there is no mention of PREA. When this manual is next revised, it should include PREA information.

One resident, who was identified as being developmentally disabled, said the he was given PREA information verbally by the counselor and the PREA Coordinator and that they explained all of his rights and how to report any sexual assault or sexual harassment.

Standard

§ 115.334 Specialized training: Investigations.

- Exceeds Standard (substantially exceeds requirement of standard)
- XX Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

In interviews with two investigators, it was reported that although they had law enforcement experience and they have had the basic PREA training; they have not yet had the PREA Training for Investigators. The auditor explained how the investigators could take the training on-line through the National Institute of Corrections Web site. OCFS has also explained to the Justice Center how beneficial the training can be and recommended it to them, as well. The auditor believes the Justice Center Investigators will take the online training in the near future.

Standard

§ 115.335 Specialized training: Medical and mental health care.

- Exceeds Standard (substantially exceeds requirement of standard)
- XX Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

All medical and mental health staff have received the NIC three-hour program for medical and mental health professionals, as well as the basic training that is required of all staff. The training is documented and was confirmed through interviews with the medical and mental health staff. The training was facilitated by Robert Lally. Forensic exams are not conducted at this facility.

Standard Screening for Risk of Sexual Victimization and Abusiveness
§ 115.341 Obtaining information from residents.

- Exceeds Standard (substantially exceeds requirement of standard)
- XX Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

OCFS policy and procedures require that within 72-hours of intake and periodically throughout their MSC, information is obtained about each resident's history, behavior, and mental health status. The process begins with the Admission Checklist, then moves to the Admission Screening Interview, then the Facility Classification Form, and then to the Orientation Checklist for Secure Facilities. During this interview process, the youth's social history and delinquency history are obtained. Residents are also asked about their sexual orientation and their own perception of vulnerability. Staff observations on these areas are also asked on the forms. A check of four resident files confirmed the material was in the resident's file. Three residents reported they did not remember or recall being asked about their sexual orientation.

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

- Exceeds Standard (substantially exceeds requirement of standard)
- XX Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

The information that is obtained pursuant to Standard 115.341 is used to classify residents and make housing, room, program, education, and work assignments, consistent with OCFS policy. One youth was in one unit by himself with 1:1 staff supervision. This resident's history of intimidation and assaultive behavior made it necessary for the facility to house him separately until an individual treatment plan could be developed that adequately addressed his behavior. The auditor interviewed the resident and the staff member on that unit. Both confirmed that the resident is seen twice a day by the nurse, once a day by the mental health professional and the counselor and that he has access to the education program, television, and other privileges. His status is evaluated every 24-hours. It must be noted that this resident's assignment to this unit is not PREA related and that he is not confined to his room for extended periods of the day, but he is, nonetheless being housed separately from all other residents.

Lesbian, gay, bisexual, transgender, or intersex residents are maintained in the general population, but may shower separately. There were no youth in the facility during the audit who identified themselves as lesbian, gay, bisexual, transgender, or intersex. OCFS policy and procedures require that the agency determine, on a case-by-case basis whether a placement ensures the resident's health and safety and whether the placement would present management or security problems.

Policy and procedures require that housing and programming assignments for transgender or intersex residents are reassessed at least every six months to review any threats to the resident's safety.

Standard Reporting
§ 115.351 Resident reporting.

- XX Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

The OCFS has provided multiple ways for residents to report sexual abuse, assault, and harassment. Every resident interviewed knew they could call the agency's Ombudsmen or the Justice Center. They also knew they could talk to a staff member, make a written report, and notify their parent or lawyer, or their probation officer. There are posters and signs on every living unit that inform residents how they can contact the Ombudsman and Justice Center. They also knew that reports could be made by third parties or anonymously. Residents said they would have no difficulty getting writing materials to make a referral and that staff are very helpful.

Most staff, though not all, knew they could report a case of sexual assault or sexual harassment privately by calling the Justice Center.

Standard
§ 115.352 Exhaustion of administrative remedies

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)
- XX Not Applicable

Residents have been informed of the multiple ways they can report an allegation of sexual abuse, assault, or harassment. If a resident filed a grievance regarding a sexual assault, abuse, or harassment, that report would be handled in the way prescribed in the OCFS policy and procedures.

Standard
§ 115.353 Resident access to outside support services and legal representation.

- Exceeds Standard (substantially exceeds requirement of standard)
- XX Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

Outside support services contact information is provided to residents in the booklet, "Checking in for: Your Safety at OCFS DJJOY and in the Resource Guide which is available to residents. The Memorandum of Agreement with Cayuga Medical Center also acknowledges that the Advocacy Center is available for support services for victims of sexual assault and sexual abuse. These services are also made known on posters in the facility. In spite of these efforts, nearly half of the residents interviewed said they were not aware of these services nor could they name any services or what they do. The booklet does inform residents that their calls are subject to monitoring. Residents reported that they have access to their attorneys and reasonable access to their parents and guardians.

Standard

§ 115.354 Third-party reporting.

- Exceeds Standard (substantially exceeds requirement of standard)
- XX Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

The OCFS Web site informs readers on how to report allegations of sexual abuse or harassment. OCFS policy and procedures also state how third party reporting can be accomplished. The primary referral route is to the Justice Center but referrals can also be made to the Ombudsman, law enforcement agencies, and Children’s Protective Services and to the facility directly.

Standard Official Response Following a Resident Report

§ 115.361 Staff and agency reporting duties.

- Exceeds Standard (substantially exceeds requirement of standard)
- XX Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

The OCFS policy and procedures regarding staff and agency reporting duties meet the standard. All staff interviewed stated they fully understand they are mandatory reports of all types of child abuse and neglect, including sexual abuse and sexual harassment. Agency procedures articulate the reporting chain. Staff also confirmed their understanding that any information related to a sexual abuse or sexual harassment is confidential and should not be shared with anyone who does not have a “need to know.”

Medical and mental health professionals understand that in addition to their reporting duties, they must also inform residents they are mandatory reporters.

OCFS procedures state how parents, guardians, attorneys, and agencies that have custody of a resident (i.e., juvenile courts, social service agencies, etc.) are to be informed of a sexual abuse allegation involved a youth in their care.

Standard

§ 115.362 Agency protection duties.

- Exceeds Standard (substantially exceeds requirement of standard)
- XX Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

Interviews with staff confirm that they have been well trained in how to immediately respond when they learn that a resident is subject to substantial risk of imminent sexual abuse. OCFS training and procedures are very explicit.

Standard**§ 115.363 Reporting to other confinement facilities.**

- Exceeds Standard (substantially exceeds requirement of standard)
- XX Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

OCFS policy and procedures articulate reporting requirements when an allegation of sexual abuse of a resident is made while the resident was at another facility. OCFS policy and procedures meet the requirements of this standard. There have been no reports of this type reported.

Standard**§ 115.364 Staff first responder duties.**

- Exceeds Standard (substantially exceeds requirement of standard)
- XX Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

OCFS policy and procedures state how an employee will respond when he/she is a first responder to a sexual abuse. The policy and procedures are consistent with the requirement of this standard. All staff interviewed knew exactly what to do if they happened to be the first responder to sexual abuse incident. Staff knew the first priority would be on protecting the victim, securing the alleged offender, and securing the crime scene and all evidence, including instructions to the victim and offender regarding what they cannot do until they have been given permission. Staff said they are trained often on these procedures. The Deputy Commissioner issued a memorandum to all facility directors on April 2, 2014, that clearly stated First Responder Duties, to reinforce the revised PPM 3247.01 which was reissued on March 18, 2014. The Deputy Commissioner stated that this memorandum "must be shared with all staff during pre-shift briefings and staff meetings throughout the month of April. Additionally, this information must be issued to all staff as a paycheck attachment April 23, 2014."

Standard**§ 115.365 Coordinated response.**

- Exceeds Standard (substantially exceeds requirement of standard)
- XX Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

MSC has a local operating practice which identifies what the initial responders will do when a sexual abuse is reported. OCFS PPM 3247.01 identifies the priorities of protecting the victim and securing the offender (if he is known), notifying the appropriate law enforcement agency, arranging for immediate medical attention and protection of evidence, securing the crime scene, arranging for emotional support, and notification of parents or guardian, arranging for a mental health assessment.

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

- Exceeds Standard (substantially exceeds requirement of standard)
- XX Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

The OCFS has not entered into or renewed any collective bargaining agreement or other agreements since August 20, 2012. The Deputy Commissioner did state that management and the collective bargaining unit have held discussions regarding PREA. If a staff member is the subject of a PREA investigation he/she can be placed on administrative leave pending the outcome of the investigation. As previously mentioned there is one case currently under investigation at MSC where the employee is on administrative leave pending the outcome of the investigation.

Standard**§ 115.367 Agency protection against retaliation.**

- Exceeds Standard (substantially exceeds requirement of standard)
- XX Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

At the MSC, the Assistant Director for Treatment is the designated staff member charged with monitoring retaliation. While the Assistant Director said they have had no confirmed sexual abuse incidents, she is always monitoring the safety of residents and staff and staying aware of the facility environment. For a youth who feared retaliation, he could be moved to a different housing unit or if the abuser was known, he could be moved to a different unit. For a staff member, he or she could be moved to a different post. Emotional support services can also be provided. Residents and staff will be monitored for at least 90-days following their report of a sexual abuse or sexual harassment. Such monitoring will include status checks of a resident's behavioral reports and program participation. For a staff member, it can include monitoring attendance and behavior on the job. OCFS policy and procedures are consistent with the requirements of this standard.

Standard**§ 115.368 Post-allegation protective custody.**

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)
- XX Not Applicable

MSC does not use segregated housing to protect a resident who is alleged to have suffered sexual abuse.

Standard Investigations**§ 115.371 Criminal and administrative agency investigations.**

- Exceeds Standard (substantially exceeds requirement of standard)
- XX Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

As previously stated, the Justice Center and the New York State Police are the two primary agencies who are designated to investigate allegations of sexual abuse and sexual harassment in OCFS facilities. Evidence is gathered and preserved and victims, witnesses, and alleged offenders are interviewed according to professional law enforcement practices. All allegations of a sexual abuse or harassment are taken on their face value and assumed to be possible until shown otherwise. Criminal case investigations will be referred to the local prosecuting attorney or the special prosecutor in the Justice Center where a decision will be made on how to proceed with the case.

All investigations will consider whether staff neglect or failures contributed to the assault. Written reports will be presented to the appropriate bodies for further action.

All investigations (criminal and administrative) are documented in written reports. Reports include a thorough description of all the evidence taken in the course of the investigation.

As reported earlier, there have been four investigations at MSC in the past 12 months. One has been closed and reported as unfounded and the other three remain under investigation.

OCFS policy and procedures regarding investigations are consistent with the requirements of the standard.

Standard**§ 115.372 Evidentiary standard for administrative investigations.**

- Exceeds Standard (substantially exceeds requirement of standard)
- XX Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

The Justice Center and OCFS use no higher standard than preponderance of evidence in making the final determination if a sexual abuse or harassment is substantiated. However, for the prosecutor to move forward with a case would almost certainly require probable cause.

Standard**§ 115.373 Reporting to residents.**

- Exceeds Standard (substantially exceeds requirement of standard)
- XX Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

The OCFS policy and procedures are consistent with the requirements of the standard and require that the victim be notified of the status of the case and the offender when a case has been substantiated. Since the first case

was anonymous and no victim was identified, it was not possible to provide notice. The three remaining cases are all related and the investigations are on-going. The Superintendent and PREA Coordinator are aware that the notice must be documented.

Standard Discipline § 115.376 Disciplinary sanctions for staff.

- Exceeds Standard (substantially exceeds requirement of standard)
- XX Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

OCFS policy and procedures PPM 3247.01.IV.J. (p. 13) are consistent with the requirements of this standard. Termination shall be the presumptive disciplinary sanction for an employee when it has been substantiated that he/she engaged in the sexual abuse of a resident. . Should a termination or resignation occur following a substantiated case of sexual abuse or sexual harassment, OCFS or the Justice Center would notify the appropriate law enforcement agency and any relevant licensing body.

Standard § 115.377 Corrective action for contractors and volunteers.

- Exceeds Standard (substantially exceeds requirement of standard)
- XX Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

OCFS policies are consistent with the requirements of this standard. PPM 3247.01.IV.J.2 (p. 13) states "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."

Standard § 115.378 Interventions and disciplinary sanctions for residents.

- Exceeds Standard (substantially exceeds requirement of standard)
- XX Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

OCFS PPM 3247.01.IV.3 is consistent with the requirements of this standard. MSC would not use isolation as a sanction or deny a youth access to general programming.

Standard Medical and Mental Care

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

- Exceeds Standard (substantially exceeds requirement of standard)
- XX Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

OCFS policy and procedures are consistent with the requirements of the standard. The nurse and mental health professional both stated that a resident who reported having been sexually victimized while in a juvenile or adult detention or correctional facility or community-based program would be offered immediate medical and mental health services.

Standard

§ 115.382 Access to emergency medical and mental health services.

- Exceeds Standard (substantially exceeds requirement of standard)
- XX Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

As previously stated, the OCFS policies and procedures are consistent with requirements of this standard. If the MSC nurse is not available, the AOD will have the resident transported to the Cayuga Medical Center. The mental health professionals would also be notified. Service will be provided without cost to the victim.

Standard

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

- Exceeds Standard (substantially exceeds requirement of standard)
- XX Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

OCFS health care and mental health policy and procedures are consistent with the requirements of the standard. There have been no cases of sexual abuse reported.

Standard Data Collection and Review

§ 115.386 Sexual abuse incident reviews.

- Exceeds Standard (substantially exceeds requirement of standard)
- XX Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

MSC has a Sexual Abuse Incident Review Team that is composed of designated employees who are in positions grade 18 and above. This would include the Assistant Facility Director, the PREA Coordinator, a Youth Counselor II (.i.e., supervisor) and possibly other staff. OCFS policy and procedures are consistent with the standard and identify all the areas the Team is to consider when reviewing the investigation and the reports. Since there had been no confirmed reports as of the audit, the team has not met to review a sexual abuse or harassment case.

The auditor suggested to the PREA Coordinator that scenarios be developed, based on cases of sexual assaults in other states, which could be used as a drill for the team. To complete the drill, a report should be written by the Review Team, as they would be required to do in a real situation.

Standard

§ 115.387 Data collection.

- Exceeds Standard (substantially exceeds requirement of standard)
- XX Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

The OCFS has developed a very comprehensive PREA Database that collects and organizes information on reported cases of sexual abuse and assault and sexual harassment. The approach is "incident-based." The elements in the database are consistent with PREA requirements and standards and the most recent version of the Survey of Sexual Violence. While the system is still in its infancy, it has the capacity to be of great benefit to the agency as it moves forward tracking and analyzing PREA data from the various facilities. The system is able to capture large amounts of data that can be used to identify and track areas needing attention (i.e., physical plant blind spots, the need for more cameras, better staff supervision). The data will also be very useful in generating reports for the three branches of New York State government and other organizations.

The OCFS does aggregate the data and has placed its 2013 Survey of Sexual Violence on its Web site.

Standard

§ 115.388 Data review for corrective action.

- Exceeds Standard (substantially exceeds requirement of standard)
- XX Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

As mentioned previously, the OCFS PREA Database will enable the agency to allocate resources to further prevent, detect, and respond to sexual abuse, sexual assaults and sexual harassment. The database will also provide a foundation for training as real time information can be presented to trainees. Because there have been so few allegations of sexual abuse and harassment, at the time of the audit, the database did not contain a great deal of information.

In the auditor's interview with the Deputy Commissioner, it was reported that while the agency had posted the 2013 Survey of Sexual Violence on its Web site, the agency's Annual PREA Report had not be finalized and published as of the time of the audit. The Annual Report referenced in this standard requires the OCFS DJJ0Y to present its PREA findings and corrective actions and to compare the current year's data with that of previous years and thereby assess the agency's progress in addressing sexual abuse and sexual harassment.

On January 30, 2015, the auditor was informed that the OCFS Annual PREA Report had been posted on the agency's Web site. The auditor confirmed that the report was on the Web site. The agency now meets the requirements of the standard.

Standard

§ 115.389 Data storage, publication, and destruction.

- Exceeds Standard (substantially exceeds requirement of standard)
- XX Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

The PREA Coordinator and the PREA Information Technology Coordinator both reported that the access to the PREA Database is limited to the Deputy Commissioner and to the two of them. Facility directors have "read only" access to information in the database. All personal identifiers are removed before the information is made public. The PREA Database follows the New York State Retention Schedule which exceeds the requirements of the standard.

AUDITOR CERTIFICATION:

The auditor certifies that the contents of the report are accurate to the best of his/her knowledge and no conflict of interest exists with respect to his or her ability to conduct an audit of the agency under review.



Auditor Signature

March 1, 2015

Date