

PREA AUDIT: AUDITOR'S SUMMARY REPORT

ADULT PRISONS & JAILS

NATIONAL
PREA
RESOURCE
CENTER



BJA
Bureau of Justice Assistance
U.S. Department of Justice

[Following information to be populated automatically from pre-audit questionnaire]	
Name of facility:	Penitentiary of New Mexico (PNM)
Physical Address:	4311 State Rd 14, Santa Fe, New Mexico, 87504
Date report submitted:	September 2, 2014
Auditor Information Shelley Nobriga	
Address:	919 Ala Moana Blvd. Suite #116, Honolulu, HI 96814
E-Mail:	shelley.d.nobriga@hawaii.gov
Telephone number:	808-587-1415
Date of facility visit:	July 28, 2014 to August 1, 2014
Facility Information	
Facility mailing address: (if different from above)	P.O. Box 1059, Santa Fe, New Mexico 87501-1059
Facility Telephone Number:	505-827-8201
PNM is:	
<input type="checkbox"/> Military	<input type="checkbox"/> County
<input type="checkbox"/> Private for profit	<input type="checkbox"/> Municipal
<input type="checkbox"/> Private not for profit	<input type="checkbox"/> Federal
	<input checked="" type="checkbox"/> State
Facility Type:	<input type="checkbox"/> Jail <input checked="" type="checkbox"/> Prison
Name of PREA Compliance Manager: Clarence G. Olivas	Title: Deputy Warden of Administration, Facility PREA Manager
E-Mail Address: clarence.olivas@state.nm.us	
Phone Number: 505-827-6538	
Agency Information	
Name of agency:	New Mexico Corrections Department
Governing authority or parent agency: (if applicable)	
Physical address:	4337 State Rd 14, Santa Fe, New Mexico, 87508
Mailing address: (if different from above)	PO Box 27116, Santa Fe, New Mexico 87502-0116
Telephone Number:	505-827-8645
Agency Chief Executive Officer	
Name: Greg Marcantel	Title: Secretary of Corrections
E-Mail Address: greg.marcantel@state.nm.us	Telephone Number: 505-827-8884
Agency-Wide PREA Coordinator	
Name: Shannon McReynolds (Retired)	Title: PREA Coordinator
E-Mail Address: shannon.mcreynolds@state.nm.us	Telephone Number: 505-827-8242

NARRATIVE:

The PREA audit for the Penitentiary of New Mexico (PNM) was conducted from July 28, 2014 to August 1, 2014 by Shelley Nobriga, DOJ Certified PREA Auditor with the assistance of one Support Staff Member, Cheyenne Evans. The areas toured during the PREA audit were the PNM North Facility or the Level VI Facility, PNM South Facility or the Level V Facility, PNM Level II Facility, the Warehouse Area, the Physical Plant Services, Maintenance Area, and the New Mexico Correction Department's (NMCD) Academy. The PNM Facility Administrators were Warden German Franco, Level VI Deputy Warden Derek Williams, the Level V Deputy Warden Alisha Lucero, the Level II Deputy Warden Brian Johnson, and the Deputy Warden for Administration Clarence G. Olivas.

Warden Franco held an introductory meeting in his conference room to introduce the PREA Audit Team. This meeting was held on Monday, July 28, 2014 at 0830 hours and PNM Supervisory Staff from the Level VI, the Level V, and the Level II facilities were invited to attend. The attendees were: Warden German Franco; Secretary Rosemarie Quintana; Inspector General (IG)/PREA Coordinator Shannon McReynolds, Deputy Warden for Administration Clarence Olivas (Facility PREA Manager); Deputy Warden Level II Brian Johnson; Deputy Warden Level V Alisha Lucero; Deputy Warden Level VI Derek Williams; Major Michael De La Torre; Administrative Captains Robert Lucero (Level II), Hector Cardenas (Level V); Business Manager David Vigil; Unit Managers Art Suazo (Level V), Leon Martinez (Level V), Vince Vigil (Level V), Patrick Lovato (Level VI), Wendy Perez (Level VI); Level II Program Director Jessalyn Eaton; Human Resource Debbie Brandle; Behavioral Health Manager Andrea Fitzgerald; Behavioral Health Staff: Patrick McDermott, Susan Sutton; STIU Coordinator Adam Vigil; Training Coordinator Ignacio Flores; PPS Director Richard Arellanes; Education Director Michelle Ribeiro; Quality Assurance/ACA Manager David Trainer, Orion Stradford; Chaplin Andy Carvillo; and Psychologist Pete Brainard. During the meeting goals and expectations for the PNM audit were outlined by the Warden and the PREA Auditor. The PREA Auditor was advised that PNM's rules and regulations banned electronic devices (cell phones, cameras etc.), which were also prohibited New Mexico's criminal statute.

The agenda for the PNM audit started with the Level VI Facility on Monday, the Level V Facility on Tuesday, the Level II Facility on Wednesday, further interviews and file reviews on Thursday, and cross referencing supporting documents for each Standard with additional interviews of staff on Friday. The Audit Exit Debriefing was tentatively scheduled for Friday at 1500 hours. This Auditor was provided with inmate housing lists for Level VI, Level V, and Level II and a staff schedule to cover the audit period. The watch schedule for PNM functioned primarily on a 12-hour work schedule with alternating three and four days off. The fire escape schematics for the Level VI, Level V and Level II facilities were provided to orient this Auditor during the facilities tours.

On Monday, July 28, 2014, the audit of the Level VI Facility began after the introduction meeting and ended at about 2230 hours. It consisted of a complete tour of the Level VI Facility followed by interviews with staff and inmates, review of institutional files, medical files, mental health files, and follow-up inquiries based on observations and information obtained. By the close of business on July 28, 2014, 10 random and specialized staff members, 1 contractor, and 9 inmates were formally interviewed. In addition, random medical, mental health, and institutional files were reviewed. It should be noted that inmates at the Level VI Facility required coaxing to participate in the PREA Audit random inmate interviews.

On Tuesday, July 29, 2014, after morning updates the audit of the Level V Facility began at about 0830 hours and ended at 1900 hours. It consisted of a complete tour of the Level V Facility followed by interviews with staff and inmates, and review of institutional and medical files. By the close of business on July 29, 2014, 8 random and specialized staff members and 10 inmates were formally interviewed. The mental health files are managed and stored at the Level VI Facility, but while touring the Infirmary a review of random medical files was achieved.

On Wednesday, July 30, 2014, after morning updates the audit of the Level II Facility began at about 0845 hours and ended at 1845 hours. It consisted of a thorough tour of the Level II Facility followed by interviews with staff and inmates, and reviews of the institutional and medical files. This Auditor was afforded the opportunity to sit in and observe the Multi-Disciplinary Program Hearing for several inmates. The files for the inmates scheduled for hearing were reviewed during break periods. By the close of business on July 30, 2014, 5 random and specialized staff members and 8 inmates were formally interviewed. A review of selected medical files and random medical files occurred at the Level II Infirmary.

On Thursday, July 31, 2014, the audit was stationed at the PNM Administrative Building from about 0815 hours to 1800 hours. It consisted of additional staff interviews, Human Resources file reviews (for staff, contractors, and volunteers), documentation review relating to the PREA Standards, follow up on inmate concerns that were raised during interviews, and discussions with the Facility PREA Manager related to areas of concern. By the close of business, 6 random and specialized staff members were formally interviewed. The Sexual Risk Indicator Screening (SRNS) I for victimization and II for abusiveness was reviewed online through the NMCD network. The SRNS process was demonstrated with a beta test case followed by a review of the completed SRNS form for selected inmates. The goals and objectives for outstanding audit issues were discussed with the Facility PREA Manager. An action plan was formulated for the final day of the audit.

On Friday, August 1, 2014, the audit was again stationed at the PNM Administrative Building from about 0830 hours to 1545 hours. The audit consisted of a preliminary assessment of PNM's compliance with the PREA Standards by discussing each Standard with the Facility PREA Manager. The areas of concern were identified with further discussion about a possible methodology to achieve compliance. The Facility PREA Manager was amenable to the recommendations and an action plan was developed between the Facility PREA Manager and this Auditor. At about 1430 hours, an exit debriefing was held in the Warden's conference room. The attendees included the NMCD Secretary Mr. Gregg Marcantel, Deputy Secretary of Administration Mr. Mark Myers, and Deputy Secretary of Operations Mr. Joe W. Booker Jr. and PNM Administrators and Staff, who attended the initial "meet and greet" held on Monday, July 28, 2014. The exit briefing highlighted PNM's positive compliance issues and recapped the need for a correction action period. The tentative correction action plan that was developed with the Facility PREA Manager was discussed with the attendees. The exit briefing terminated at about 1545 hours.

DESCRIPTION OF FACILITY CHARACTERISTICS

PNM is located along the old turquoise Trail, 14 miles south of Santa Fe. PNM is described on the New Mexico Corrections Department's website as the State's only super-max facility, housing the highest security classification of inmates in the State of New Mexico. The PNM Complex is comprised of three facilities housing male inmates in 1) Level II (previously categorized as a minimum restricted unit); 2) Level V Special Management Unit (previously categorized as a close custody unit); and 3) Level VI Special Management Unit for the highest security classification of offenders.

PNM maintains its national accreditation status from the American Correctional Association and reports that PNM continues to intensify its efforts to achieve the mission of the Corrections Department by providing a balanced system approach to corrections from incarceration to community-based supervision with training, education, programs and services that provide opportunities for inmates to transition within the Department and into the Community. The New Mexico Corrections Department's (NMCD) mission statement is "We commit to the safety and well-being of the people of New Mexico by doing the right thing, always." NMCD's credo is "CRED: Courage, Responsibility, Ethics, and Dedication."

The NMCD utilizes a "level system" that requires an inmate, who cannot be managed in general population and/or cannot function in general population due to criteria or established policy will be separated from the general population. Management of such inmates is based upon behavior based step programs, in which increased privileges are granted for inmates who demonstrate appropriate behavior for a specified period of time.

The Receiving and Diagnostic Center (RDC) is located in Los Lunas, New Mexico. The RDC processes newly admitted inmates by evaluating the inmate based on mental health, education, STG (Security Threat Group) affiliation, medical, and security factors. The classification staff completes an initial custody designation based on significant factors listed in the risk assessment policy and procedure. These factors include: history of institutional, adjustment/violence, severity of current conviction, escape history, prior felony convictions, severity of prior convictions, alcohol/drug abuse, current age and gang membership in the past 10 years. The RDC also conducts the initial PREA Screening or SRNS I and II for all inmates. Based on this multi-disciplinary approach the most appropriate custody level is determined and a housing assignment recommendation is formulated.

PNM Level II was previously known as minimum restrict. Inmate's criminal background and record of institutional behavior indicate that the inmate can function in a dormitory setting without presenting a significant risk to the safety, security, and the orderly operation of the institution. The inmate must not have a recent history of violent incidents or escape. The inmate has the ability to work outside the confines of the security perimeter, while under staff supervision without posing a risk of escape. The inmates assigned to Level II have less than four (4) years, until their projected release and are not serving a sentence for first-degree murder.

PNM Level V is a Special Management Unit. For placement at Level V, institutional behavior indicates the inability to function in general population, as the inmate poses a threat to the safety of staff, inmates or to the security of the institution. The inmate requires separation from the general population with limited movement and activities. Some inmates in level V are housed in single occupancy cells for 23 hours per day, receiving one (1) hour per day for recreation. Other inmates may or may not be allowed to congregate with other inmates and

inmates in this level have been identified for reintegration to a general population facility.

PNM Level VI is a Special Management Unit. For placement at Level VI, institutional behavior threatens the security of the institution, requiring separation from the general population. This behavior includes, but is not limited to, assaults, escapes, inciting riots and planning or participating in STG activities. The inmates are housed in single occupancy cells for 23 hours per day with one (1) hour of recreation and are not allowed to congregate with other inmates.

The PNM Level VI and Level V facilities are designed similarly with three buildings (1, 2, and 3). The Buildings are divided into A and B Units with alpha housing pods within each Unit. The inmates are housed in single cells with numerous accessible strip search cages in the pod and in the entry way areas outside of the housing pods. The Control Station is maintained on the second level with glass floors, windows accessibility and visibility to the pods, and it contains the video monitoring equipment for ingress/egress, and the pod housing units. The Supervisory staff and Program staff maintains their offices within each building. The Level VI and Level V facilities function independently with separate Laundry Management, contracted Medical and Mental Health staff work in the Infirmary, a Gymnasium, Education Unit, Library, Chapel, Commissary, Visit Area, Property Area, Sally Port and Intake Area. Both Level VI and Level V receive food services through a contractor, Trinity Foods located in the Kitchen at the Level II facility. The Level II Facility consists of two housing units (A and B) with one of the units functioning as a therapeutic community for sex offenders. The Level II facility is designed for dormitory housing and program access is within the confines of the Level II facility. Inmates assigned to Level II have the option for workline assignments on the grounds of PNM and outside the physical structure of Level II. The Level VI, Level V, and Level II facilities house approximately 288 inmates each and PNM's maximum total population is approximately 861 inmates.

Number of standards exceeded: 0

Number of standards met: 42

Number of standards not met: 0

Number of standards not applicable: 1 (\$115.14)

115.11	ZERO TOLERANCE OF SEXUAL ABUSE AND SEXUAL HARASSMENT; PREA COORDINATOR
<input type="checkbox"/> Exceeds Standard (substantially exceeds requirement of standard) <input checked="" type="checkbox"/> Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period) <input type="checkbox"/> Does Not Meet Standard (requires corrective action)	
Auditor comments, including corrective actions needed if does not meet standard	
<p>NMCD policies/procedures CD-150100, CD-150101, and CD-150102, outlines its written policy mandating a zero tolerance policy toward all forms of sexual abuse, sexual harassment, and sets forth procedures for the agency's approach to preventing, detecting, and responding to sexual abuse and sexual harassment.</p> <p>The agency employs an upper-level, agency-wide PREA Coordinator, whose position functions as the NMCD IG, located within the Deputy Secretary of Administration's Office. The position has sufficient time and authority to develop, implement, and oversee the agency's efforts to comply with PREA in all of its facilities.</p> <p>PNM has designated the recently promoted Deputy Warden of Administration, as the Facility PREA Compliance Manager. Prior to this assignment, responsibilities of the PNM Facility PREA Manager were managed by the NMCD PREA Coordinator.</p>	

115.12	CONTRACTING WITH OTHER ENTITIES FOR THE CONFINEMENT OF INMATES
<input type="checkbox"/> Exceeds Standard (substantially exceeds requirement of standard) <input checked="" type="checkbox"/> Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period) <input type="checkbox"/> Does Not Meet Standard (requires corrective action)	
Auditor comments, including corrective actions needed if does not meet standard	
<p>All contracts with Private and County confinement agencies that were subject to renewal contains the required language mandating compliance with the PREA Standards. The contracts includes language that the Private and County confinement agencies are subject to monitoring to ensure compliance with the PREA Standards. The contracts with the Corrections Corporation of America (2013) and Otero County (2013) were reviewed and deemed compliant with this Standard.</p>	

115.13	SUPERVISION AND MONITORING
<input type="checkbox"/> Exceeds Standard (substantially exceeds requirement of standard) <input checked="" type="checkbox"/> Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period) <input type="checkbox"/> Does Not Meet Standard (requires corrective action)	
Auditor comments, including corrective actions needed if does not meet standard	
<p>The agency has developed, documented, and made its "best efforts" to comply on a regular basis with a staffing plan that provides for adequate staffing levels, video monitoring, and considers the factors identified in section a.1-11. Any deviations from the minimum staffing requirements are reported to the Warden via the Deputy Warden. PNM has the added benefit of staff living at on-site housing to assist with potential facility staffing deficiencies.</p>	

NMCD's PREA Coordinator meets annually with the Facility Warden to discuss whether adjustments are necessary to the staffing plan by analyzing video monitoring technologies and all potential resources options.

NMCD policies/procedures CD-150101 and CD-130301, require that intermediate or higher level supervisors conduct unannounced rounds and that staff are prohibited from alerting other staff members to these unannounced supervisory rounds. Reviewed logs documenting that unannounced rounds are conducted by intermediate or higher level supervisors at PNM.

115.14	YOUTHFUL INMATES
---------------	-------------------------

- 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)
- NOT APPLICABLE

Auditor comments, including corrective actions needed if does not meet standard

NOT APPLICABLE, PNM does not house youthful inmates as defined by the PREA Standards. The PREA Standard requirement for §115.14 is covered in NMCD policy CD-150100.

115.15	LIMITS TO CROSS GENDER VIEWING AND SEARCHES
---------------	--

- 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)

Auditor comments, including corrective actions needed if does not meet standard

NMCD policy/procedure CD-130301 and lesson plans prohibits cross gender strip searches or cross gender visual body cavity searches, except in exigent circumstances or when performed by medical staff. A part of the corrective action plan this policy was amended to identify a reporting mechanism for deviations, i.e., if there is an incident of cross gender strip search or body cavity search.

NMCD policy does not specify that staff of the opposite gender is required to announce their presence when entering an inmate housing unit. On the first day of the audit, it was apparent that PNM staff were not accustomed to making the "knock and announce" notice provision, when a female entered the male housing unit. This was discussed with the Facility PREA Manager and the Warden. A visual inspection of the view from the inmate shower area was conducted to illustrate the potential concerns.

The Warden indicated that he would issue a directive to staff to announce a female's presence in the housing unit. By the second day of the audit, PNM staff member were consistently providing the "knock and announce" notice requirement when a female entered the housing unit. The Warden instituted corrective action prior to the issuance of this Interim Audit Report. The Warden's written directive was issued to PNM staff on August 8, 2014.

NMCD policy/procedure CD-150100 and the applicable lesson plans prohibit searching a transgender or intersex inmate for the sole purpose of determining genital status. The policy

requires that a verbal inquiry, file review, and/or medical records review be conducted, prior to initiating a referral for a medical exam. If required, the medical exam would be conducted in private by a medical practitioner.

The lesson plan revised on September 2013 for "Search Procedures" indicates that pat searches of transgender inmates (**no reference to intersex inmates**) must be performed in a professional and respectful manner as well as in the least intrusive manner possible consistent with security needs. The lesson plan further states that "pat searches of transgender inmates must be conducted by female staff only."

Based on interviews with staff (random and specialized) there appears to be confusion on "how to pat search a transgender or intersex inmate" as required by the training curriculum. A majority of the staff indicated that they were trained and instructed to have a female pat search above the waist and a male pat search below the waist. The PREA Resource Center's FAQs indicates that DOJ deems the use of both a male staff member and a female staff member to pat search a transgender or intersex inmate at the same time is intrusive.

PNM instituted corrective action by amending the policy, the lesson plan, and began training staff on how to pat search a transgender or intersex inmate in a professional, respectful and least intrusive manner, while balancing the security needs of the facility.

115.16

INMATES WITH DISABILITIES AND INMATES WHO ARE LIMITED ENGLISH PROFICIENT

- 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)

Auditor comments, including corrective actions needed if does not meet standard

NMCD PREA handouts and the comprehensive inmate video are formatted in both English and Spanish. The facility has identified specific staff authorized to assist with interpretative services for Spanish as verified by a memorandum from PNM Major De La Torre to the Facility PREA Manager dated July 8, 2014. The facility's population is predominantly of Hispanic origin, however there should be formalized procedures in place to facilitate interpretative services in other languages. The Facility PREA Manager indicated that there is a "working relationship" for interpretative assistance with the New Mexico Department of Public Safety (NMDPS) and the National Guard Headquarters, which are both located in close proximity to PNM.

NMCD policy/procedure CD-150100 requires that inmates with disabilities and limited English proficiency shall have access to all aspects of the Department's efforts to prevent, detect, and respond to sexual abuse and sexual harassment incidents. The policy limits the use of inmate interpreters to circumstances whereby an extended delay in obtaining an interpreter could compromise the inmate's safety, the performance of first responders, or the investigation.

115.17	HIRING AND PROMOTION DECISIONS
---------------	---------------------------------------

- 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)

Auditor comments, including corrective actions needed if does not meet standard

NMCD policy/procedure CD-037400 addresses the provision of a.1-3 by prohibiting the hiring or promoting of anyone who may have contact with inmates and prohibits enlisting the services of any contractor who may have contact with inmates who:

- 1) 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);
- 2) 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
- 3) Has been civilly or administratively adjudicated to have engaged in the activity described in the above paragraphs.

The policy includes the provisions requiring the disclosure of incidents of sexual harassment, the continuing affirmative duty on the part of staff to disclose any such misconduct related to items 1-3, and notice to staff that material omissions or materially false information, shall be grounds for termination.

Based on interviews with PNM Human Resources (HR) staff, they are conducting background checks of prospective employees, promotional employees, contractors, and volunteers by utilizing NCIC; screening of prior employers and institutional employers are conducted; following up with provided references is documented; and if the prior/current employer is local the HR staff conducts an on-site file review. HR staff conducts annual reviews of current staff, contractors, and volunteers. A review of random HR files for staff, contractors, and volunteers was conducted. The review did not reveal any significant discrepancies other than the identified corrective action.

PNM HR staff was not aware of this Standard and the NMCD policy/procedure CD-037400 requirements. PNM HR staff has not screened staff and contractors based on the above requirements. HR staff has not included these questions as part of interviews or written self evaluations conducted as part of reviews of current employees.

The Facility PREA Manager and HR staff initiated corrective action prior to the issuance of the Interim Audit Report. A new form was developed related to items 1-3 and an amended employment application packet was forwarded to this Auditor.

115.18	UPGRADES TO FACILITIES AND TECHNOLOGY
---------------	--

- 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)

Auditor comments, including corrective actions needed if does not meet standard

PNM is the process of updating their video enhancement technology at the Level VI and Level V facilities. During the audit, it was observed that the Level VI facility's updates were 98% completed and required only minor adjustments to the program options for viewing cameras. The same process was in the beginning phase for implementation at the Level V facility. The placement and quantity of the camera viewing options clearly indicates that PNM is committed and focused on its ability to protect inmates through the use of video monitoring systems.

115.21

EVIDENCE PROTOCOL AND FORENSIC MEDICAL EXAMINATIONS

- 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)

Auditor comments, including corrective actions needed if does not meet standard

NMCD policy/procedure CD-150102 addresses the internal Coordinated Response to Sexual Assaults, and the services provided through external agencies, such as NMDPS, Solace Crisis Treatment Center, and Christus St. Vincent's Regional Medical Center.

Reviews of formalized Memorandums of Understanding (MOU) and/or attempts to enter into a MOU were conducted. PNM external agreements requires compliance with a uniform evidence protocol, National Protocol for Sexual Assault Medical Forensic Examinations, the use of SAFEs, SANEs or other qualified medical practitioners, and facilitates the use of Victim Advocates during the examination and the investigative process.

115.22

POLICIES TO ENSURE REFERRALS OF ALLEGATIONS FOR INVESTIGATIONS

- 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)

Auditor comments, including corrective actions needed if does not meet standard

NMCD policy/procedure CD-150101 states that an investigation shall be conducted and documented whenever a criminal sexual behavior, sexual misconduct, or threat is reported. This PREA Standard requires that an administrative or criminal investigation be completed for all allegations of sexual abuse and sexual harassment. The referenced section does not specifically incorporate the sexual harassment component; however NMCD policy does incorporate sexual abuse and sexual harassment into the definition for sexual misconduct.

NMCD's website under the Office of Inspector General and Office of Professional Standards clearly states that matters related to PREA and staff misconducts are investigated. NMCD's website also provides a link to NMDPS's website. PNM conducted corrective action amending the policy to ensure consistency with the Standard and for staff to aware of the investigation process requirements.

115.31	EMPLOYEE TRAINING
---------------	--------------------------

- 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)

Auditor comments, including corrective actions needed if does not meet standard

NMCD's lesson plan related to PREA training for staff consists of 4 hours of classroom instruction. The lesson plan's subject matter encompasses the requirements of a.1-10. PNM is a male facility and the curriculum is gender neutral. NMCD conducts annual in-service staff training with a one hour block covering Mental Health and PREA. NMCD does document via employee signature verification that the employee understood the PREA training.

Reviewed the lesson plan, PREA training acknowledgement forms and conducted interviews of staff. During the interviews with staff several employees (5 staff members) indicated that they had not received training on PREA and a follow up inquiry was made with the Facility PREA Manager. After further investigation on his part, it was discovered that there is a "gap group" of staff at PNM who had not received the 4 hour block of PREA Training. This information is inconsistent with the Pre-Audit Questionnaire.

The Facility PREA Manager indicated that the PREA training was incorporated into NMCD's Training Academy in 2008; therefore he would cross reference the staff that began employment prior to 2008 and review their training records. He indicated that NMCD's Training Academy recently purchased a new software system (Royal) to assist the Training Academy and HR staff with creating a centralized and automated process to maintain the department's training records.

The Facility PREA Manager took the initiative to resolve this corrective action item by identifying the staff who had not received PREA training. He scheduled PREA training classes for the identified "gap group" staff and he was personally involved in the training of these individuals. The attendance sheets documented the corrective action prior to the issuance of the Interim Audit Report.

115.32	VOLUNTEER AND CONTRACTOR TRAINING
---------------	--

- 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)

Auditor comments, including corrective actions needed if does not meet standard

NMCD's lesson plan related to PREA training for volunteers and contractors consists of at least 1 hour of classroom instruction. The lesson plan's subject matter educates volunteers and contractors on NMCD's zero tolerance policy, how to report an incident of sexual abuse or sexual harassment, and their obligations toward the prevention, detection, and response to an incident of sexual abuse and sexual harassment based on NMCD's policies. This lesson plan utilizes the sexual misconduct terminology, which includes sexual harassment.

PNM's primary contracts deal with medical and mental health Services and for food service management to the inmate population. The level and type of training provided to volunteers

and contractors is based on the services they provide in combination with the level of contact they have with inmates. The audit consisted of a review of the lesson plan, PREA training acknowledgement forms, and interviews with various contractors.

115.33 **INMATE EDUCATION**

- 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)

Auditor comments, including corrective actions needed if does not meet standard

NMCD has a centralized intake process managed by the Central New Mexico Correctional Facility's Reception and Diagnostic Center (RDC). The RDC processes every inmate by evaluating the inmate based on mental health, education, STG (Security Threat Group) affiliation, medical, and security factors. The classification staff completes an initial custody scoring and the PREA Screening Tool or SRNS I and II based on significant factors listed in the risk assessment policy. While at RDC, the inmate is provided his/her first access to information about PREA and the inmate receives PREA comprehensive inmate education within the mandated requirement by watching a video produced by NMCD and documentation of participation is mandated on the intake form. The video is available in an English version and based on corrective action for a PREA audit conducted at another facility a Spanish voice-over version was developed.

Upon transfer to PNM, inmates are again provided information on NMCD's zero tolerance policy for sexual abuse and sexual harassment, and how to report incidents or suspicions of sexual abuse or sexual harassment while housed at PNM. They are provided additional information on PREA via the handbook, pamphlets, orientation forms, posters, and a video. The TV feed is controlled by PNM and NMCD's PREA comprehensive inmate education video is programmed to run on a recurring schedule in both English and Spanish. NMCD policy/procedure CD-150100 mandates that PREA information shall be communicated orally and in writing, in a language clearly understood by the offender, upon arrival at a facility.

PNM consists of Level VI and Level V inmates, who may not have earned the privilege of purchasing a TV. Inmates in Level VI, Level V and Level II may have insufficient funds to purchase a TV at about \$175. Based on interviews with staff and inmates combined with documentation review of PNM's orientation process, it is evident that PNM inmates have received the required PREA information and education. Upon arrival at PNM, the orientation process is conducted in the housing unit by Unit Manager, who facilitates the viewing of the PREA video and other orientation forms. PNM maintains a supply of donated or repaired TVs to provide to indigent inmates. PNM is evaluating whether to utilize a program area TV to ensure access for all inmates to the scheduled recurring PREA inmate educational video.

115.34 **SPECIALIZED TRAINING: INVESTIGATIONS**

- 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)

Auditor comments, including corrective actions needed if does not meet standard

PNM utilizes the Office of Professional Standards (OPS) Investigators to conduct PREA sexual abuse administrative investigations and NMDPS is responsible for conducting PREA sexual abuse criminal investigations. The NMCD lesson plan for Investigation of Sexual Assaults in a Correction Setting covers the Standard's mandated training components: specialized investigative training for interviewing sexual abuse victims; proper use of Miranda and Garrity; sexual abuse evidence collection in a confinement setting; and the criteria and evidence required to substantiate a case for administrative action and/or prosecution referral.

In addition to OPS Investigators the training is provided to key facility staff who conduct preliminary investigations or facility investigations. A review of staff training records and interviews were conducted with Facility Investigators and an OPS Investigator.

115.35 SPECIALIZED TRAINING: MEDICAL AND MENTAL HEALTH CARE

- 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)

Auditor comments, including corrective actions needed if does not meet standard

The NMCD lesson plan for Training Correctional Medical and Mental Health staff covers the mandated training components as required by the Standard: how to detect and assess signs of sexual abuse and sexual harassment; how to preserve evidence of sexual abuse as facility medical staff do not perform forensic examinations; how to respond effectively and professionally to victims of sexual abuse and sexual harassment; and how to report allegations or suspicions of sexual abuse and sexual harassment.

A review of staff training records and interviews were conducted with medical and mental health staff. This training is in addition to the required training for employees (§115.31) and for contractors and volunteers (§115.32).

115.41 SCREENING FOR RISK OF VICTIMIZATION AND ABUSIVENESS

- 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)

Auditor comments, including corrective actions needed if does not meet standard

NMCD policy/procedure CD-150100 states that inmates shall be screened within 24 hours of arrival at the facility and reassessed 30 days after the inmate's arrival for potential vulnerabilities and tendencies of sexually aggressive behavior. Based on interviews with staff who conduct the screening at PNM these reviews normally occur within 72 hours, as it is completed in the housing unit by the Unit Manager. This screening is conducted by utilizing an objective automated tool referred to as SRNS I and II to score an inmate for sexual victimization and sexual abusiveness. The SRNS complies with the criteria in d.1-10 and e, after the form was amended as part of corrective action from a PREA audit conducted at a different facility.

Interviews with the Unit Managers correspond with policy mandates that within 30 days from the inmate's arrival, if additional relevant information is received, the inmate will be reassessed on the SRNS. The Unit Managers indicated that an inmate will be reassessed thereafter due to a referral, an incident of sexual abuse, or receipt of additional information that bears upon an inmate's risk for sexual victimization or abusiveness, which is consistent with the policy and the Standard. The policy prohibits disciplining an inmate for refusing to participate in the PREA screening process.

According to the NMCD PREA Coordinator, access to the actual scoring instrument or the SRNS for each inmate is restricted based on security log in access to ensure that sensitive information is not exploited to the inmate's detriment by staff or other inmates.

115.42

USE OF SCREENING INFORMATION

- 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)

Auditor comments, including corrective actions needed if does not meet standard

NMCD policy/procedure CD-150100 states that housing and program assignments (inclusive of work and educational classes) will be made in conjunction with the SRNS scoring and an individualized determination on how to ensure the safety of an inmate.

According to the PREA Coordinator, a transgender or intersex inmate's facility assignment to determine placement at a facility for males or females is conducted at the RDC. A change in facility assignment may be reassessed on a case by case basis to ensure the inmate's health and safety, while balancing the impact the action may have on management or security concerns. Based on their custody and status, inmates at the Level VI and Level V facilities are required to shower individually. The dorm shower configuration at the Level II facility requires that transgender and intersex inmates be given the opportunity to shower separately. During interviews with Level II staff, they were unaware of this requirement and were open to affording a transgender or intersex inmate this option. Staff indicated that they had never denied a request or been approached with this type of request. It is recommended that clarification be provided to Level II staff.

Based on interviews with transgender inmates housed in Level II, they indicated that they were not aware of this option and had been selective in when they would shower, such as when the showers were empty or they showered quickly in order to avoid possible incidents. The transgender inmates indicated that showers were available for use throughout the day without a significant time restriction, so they could make personal adjustments to their shower schedule.

115.43

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)

Auditor comments, including corrective actions needed if does not meet standard

NMCD policy/procedure CD-150100 states that the placement of an inmate determined to be at high risk of sexual victimization in a Level VI facility is limited to 1) no alternative placements that are appropriate and consistent with CD-143001 and 2) after the facility's concerns for the inmate's safety has been assessed and documented.

NMCD policy/procedure CD-143001 defines the process and criteria for placement in Level VI and Level V facilities based on various issues inclusive of protective custody. According to the Facility PREA Manager, PNM has not placed inmates at high risk for sexual victimization in involuntary segregation. A review of the administrative segregation log and status review forms did not refute this statement. Inmates placed in administrative segregation are subject to 7 day and 30 day reviews.

Based on random inmate interviews, an inmate identified as transgender and currently housed at the Level VI facility as an interim placement, reported being physically assaulted while at a NMCD privately contracted facility. In reviewing the inmate's records, the assault is documented and he was transferred from a Level III facility to the PNM Level VI facility. The justification for the transfer was for safety concerns and behavioral issues unrelated to a PREA sexual abuse or sexual harassment incident. This offender tracking system indicated that this transgender inmate was temporarily housed at PNM, while awaiting available bed space at a different Level III facility.

115.51

INMATE REPORTING

- 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)

Auditor comments, including corrective actions needed if does not meet standard

NMCD policy/procedure CD-105101 identifies various methods for an inmate to report an incident of sexual abuse or sexual harassment. The PREA pamphlet, orientation materials, videos, and posters advise inmates of internal and external processes and hotlines for reporting an incident of sexual abuse or sexual harassment. PNM's PREA posters and painted wall signs provide inmates with details for internal and external reporting options.

NMCD policy/procedure CD-031800 covers the administrative investigative process and states that if the allegation rests solely upon the accusation of an inmate or another staff member, the Department will require, whenever practical or feasible, that a sworn statement be provided by the complainant. It further states that if the complainant refuses to sign a sworn statement, the investigation will be terminated unless the Bureau Chief of SIIA determines that other sufficient credible evidence exist to pursue the investigation.

NMCD policy/procedure CD-150600 states that any inmate making an allegation (verbal or written), against a staff member or another inmate "may be" requested by the department to complete a sworn statement by a notary public. The inmate is on notice that an official administrative proceeding will be initiated and if the information provided by the inmate is knowingly false, the offense of perjury attaches.

Based on interviews with staff and inmates the above policy's "may be" provision has been adopted as an affirmative practice with most inmate complaints requiring that the Inmate Sworn Statement form be completed with a notarized signature. An inmate reported that when he attempted to file a complaint of sexual harassment against a staff member he was ordered to sign the Inmate Sworn Statement form and the facility investigator repeatedly pressured the inmate, but he refused to sign the form. The staff acquiesced and documented the inmate's oral complaint. The premise of this policy is to serve notice to the inmate and have the inmate understand the seriousness of falsifying a report (inclusive of reporting a PREA incident).

This practice sends the wrong message to inmates that their oral report of a PREA incident will not be accepted. The OPS Investigator confirmed that if an inmate refuses to sign the Inmate Sworn Statement form the complaint would still be referred and processed for investigation by OPS. PNM initiated corrective action by amending policy and advising investigative staff that this requirement was not mandatory for PREA allegations.

115.52

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)

Auditor comments, including corrective actions needed if does not meet standard

NMCD policy/procedure CD-150500: Inmate Grievance policy was revised on March 11, 2014 to incorporate the complete provisions of this Standard. The policy does not require the inmate to utilize an informal grievance process; it does not impose time limits for the submittal of a grievance related to sexual abuse; it prohibits submitting the grievance to a staff member who is the subject of the complaint, and mandates that the grievance will not be referred to the staff member who is the subject of the complaint for a response.

The policy incorporates the 90 day response requirement and the optional 70 day extension with written notice to the inmate. If the inmate does not receive a timely response at any level, the inmate may accept the absence of a response as a denial at that level. The policy allows for third party grievance filing, which is subject to the concurrence of the inmate. If the inmate declines to have a third party grievance processed on his/her behalf, the decision is documented in the grievance record.

The policy covers filing an emergency grievance and requires that an emergency grievance response is completed within 48 hours of receipt. The definition of emergency grievance includes a threat of imminent harm. The policy allows disciplinary action for filing a grievance related to an alleged sexual abuse only when the facts indicate that the inmate filed the grievance in bad faith.

Based on interviews with staff and inmates and a review of grievance documents it was verified that the policy is being applied in practice.

115.53	INMATE ACCESS TO OUTSIDE CONFIDENTIAL SUPPORT SERVICES	INMATE RI
<input type="checkbox"/> Exceeds Standard (substantially exceeds requirement of standard) <input checked="" type="checkbox"/> Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period) <input type="checkbox"/> Does Not Meet Standard (requires corrective action)		
Auditor comments, including corrective actions needed if does not meet standard		
<p>PNM maintains a MOU with Solace Crisis Treatment Center, which requires Solace to provide victim advocate services; work with Law Enforcement related to investigations; comply with federal, state, and local laws for certification; ensure procedures are in place to protect the identity and confidentiality of sexual assault victims; provide written support materials to inmates; accept phone calls from inmates requesting emotional support services; provide in person emotional support services during approved business hours; and provide peer to peer consultation services to PNM Mental Health staff.</p> <p>NMCD policy/procedure CD-150300 outlines that a call to the MOU approved local rape crisis center is considered privileged and confidential, which is similar to a legal attorney call. Interviews with staff and inmates indicated that they were aware of the process and the confidentiality concerns when dealing with victim advocate services.</p>		

115.54	THIRD-PARTY REPORTING
<input type="checkbox"/> Exceeds Standard (substantially exceeds requirement of standard) <input checked="" type="checkbox"/> Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period) <input type="checkbox"/> Does Not Meet Standard (requires corrective action)	
Auditor comments, including corrective actions needed if does not meet standard	
<p>NMCD website has several web pages, which address this Standard. The Office of the Inspector General's web page specifically states that allegations of prison rape can be reported by calling a specified phone number.</p> <p>The Office of Professional Standards' (OPS) web page informs all visitors that if you have an allegation of misconduct involving NMCD personnel to please contact their office. The Offender Family Services' web page provides family members with information on how to process questions and concerns related to an inmate.</p>	

115.61	STAFF AND AGENCY REPORTING DUTIES
<input type="checkbox"/> Exceeds Standard (substantially exceeds requirement of standard) <input checked="" type="checkbox"/> Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period) <input type="checkbox"/> Does Not Meet Standard (requires corrective action)	
Auditor comments, including corrective actions needed if does not meet standard	
<p>NMCD policies/procedures CD-150010 and CD-031800 place an affirmative duty on staff, contractors, and volunteers to immediately report any knowledge, suspicion, or information regarding an incident of sexual abuse or sexual harassment that occurred in a facility, whether or not the facility is part of the agency; any retaliation against inmates or staff who reported an incident; and any incident of staff neglect or violation of responsibilities that may</p>	

have contributed to an incident by contacting facility investigators. The lesson plans for staff, contractors, and volunteers also emphasizes this provision.

Apart from reporting to designated supervisors or officials, staff are ordered not to reveal any information related to a sexual abuse report to any person other than to the extent necessary, as specified in policy, to facilitate treatment, conduct investigations, and other security and/or management decisions. PNM contracts for medical and mental health services with Corizon. There are no limitations for medical or mental health practitioners to report an incident of sexual abuse that occurred in a facility. The medical and mental health intake orientation advises the inmates of the various mandatory reporting requirements.

The mandatory reporting requirements are also statutorily applicable to vulnerable adults/persons and victims under the age of 18 years. PNM does not house youthful offenders as defined by PREA. Based on interviews with staff and health care staff, it was evident that these mandatory reporting requirements have been understood.

115.62	AGENCY PROTECTION DUTIES
---------------	---------------------------------

- 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)

Auditor comments, including corrective actions needed if does not meet standard

NMCD upon receiving notice that an inmate is subject to a substantial risk of imminent sexual abuse takes immediate action to protect the inmate.

Based on a review of cases, whereby the facts indicated that an inmate may have been subjected to a substantial risk of imminent harm (not exclusive to PREA sexual abuse cases). It was evident that the staff's immediate response focused on ensuring the safety of the inmate by evaluating housing alternatives and the viability of the perceived threat of harm.

115.63	REPORTING TO OTHER CONFINEMENT FACILITIES
---------------	--

- 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)

Auditor comments, including corrective actions needed if does not meet standard

According to the PREA Coordinator, when a NMCD facility receives a report of an allegation that an inmate was sexually abused while confined at another facility (NMCD facility or Non-NMCD facility) it shall be immediately reported to the PREA Coordinator assigned to the IG Office.

The PREA Coordinator is responsible for providing the notification to the other confinement facility as soon as possible, but no later than 72 hours after receiving the allegation. If NMCD is on the receiving end of the sexual abuse notification, the allegation will be investigated as required by NMCD policy mandating that all sexual abuse allegations are investigated.

115.64	STAFF FIRST RESPONDER DUTIES
<input type="checkbox"/> Exceeds Standard (substantially exceeds requirement of standard) <input checked="" type="checkbox"/> Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period) <input type="checkbox"/> Does Not Meet Standard (requires corrective action)	
Auditor comments, including corrective actions needed if does not meet standard	
<p>NMCD policy/procedure CD-150102 outlines the coordinated response for an incident of sexual abuse for first responder security staff and non-security staff. The policy requires the completion of the Serious Incident Checklist and the Facility Response to Sexual Assault Checklist.</p> <p>The coordinated response requires the separation of the alleged victim and abuser; preservation and protection of the crime scene for evidence collection; if the time period allows for the collection of physical evidence, request that the alleged victim does not destroy physical evidence (including, washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking, or eating). If the time period allows for collection of physical evidence, ensure that the alleged abuser does not take any action that could destroy physical evidence (including, washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking, or eating). The first responder duties were verified by staff during interviews, but a few staff required case illustrations to assist with their responses.</p>	

115.65	COORDINATED RESPONSE
<input type="checkbox"/> Exceeds Standard (substantially exceeds requirement of standard) <input checked="" type="checkbox"/> Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period) <input type="checkbox"/> Does Not Meet Standard (requires corrective action)	
Auditor comments, including corrective actions needed if does not meet standard	
<p>NMCD policy/procedure CD-150102 outlines the coordinated response for a sexual abuse incident through the development of a written institutional plan. The response plan incorporates the actions of first responders, medical practitioners, mental health practitioners, investigators, and facility leadership.</p> <p>The procedures dictate who is notified during the initial disclosure within 72 hours of a sexual abuse incident; how the investigative process is managed; where to transport the inmate for a forensic examination; the after action and follow-up care requirements; court referral process; and the after action review based on a Critical Incident Reviews (CIR). The CIR should not be confused with §115.86 requirement for a Sexual Abuse Incident Review (SAIR). Interviews with supervisory staff or staff trained to conduct investigations yielded the best responses.</p>	

115.66	PRESERVATION OF ABILITY TO PROTECT INMATES FROM CONTACT WITH ABUSERS
<input type="checkbox"/> Exceeds Standard (substantially exceeds requirement of standard) <input checked="" type="checkbox"/> Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period) <input type="checkbox"/> Does Not Meet Standard (requires corrective action)	

Auditor comments, including corrective actions needed if does not meet standard

According to the Warden and the PREA Coordinator, based on the State of New Mexico and AFSCME New Mexico Council 18's inability to reach an agreement on a new Collective Bargaining Agreement (CBA) the current CBA in place should have expired on December 31, 2011.

This CBA on page 108, allows the Employer to remove an employee from his/her post of choice or assigned post, or to assign an employee to a post not of his/her choice, if there is a substantial need to do so. The language in CBA complies with the Standard's mandates.

115.67

AGENCY PROTECTION AGAINST RETALIATION

- 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)

Auditor comments, including corrective actions needed if does not meet standard

NMCD policy/procedure CD-150100 mandates that an employee, inmate, or other person, who in good faith reports sexual abuse or sexual misconduct, will not be subject to retaliation. The Warden or his/her designee will monitor those who report sexual abuse or cooperate with investigations for 90 days and take appropriate steps to protect individuals from retaliation, including periodic status checks. The Facility PREA Manager indicated that monitoring is within the scope of his responsibilities and he would monitor for as long as necessary to ensure that the individual is not being subjected to retaliation. The Facility PREA Manager was recently assigned to this role in July 2014 and prior to his assignment the NMCD PREA Coordinator functioned as the Facility PREA Manager for PNM.

NMCD policy/procedure CD-031800 mandates a zero tolerance policy prohibiting any retaliatory acts against anyone who has reported allegations of staff misconduct or criminal acts. Any employee who engages in substantiated retaliatory behavior is subject to dismissal.

The PREA audit questionnaire documents included a correspondence from the PNM Facility PREA Manager to the PREA Auditor with references to the Warden that there has not been any reported cases of retaliation against any staff or inmate in regards to reporting any sexual abuse or sexual harassment in the past 12 months.

115.68

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)

Auditor comments, including corrective actions needed if does not meet standard

NMCD policy/procedure CD-150100 states that the placement of an inmate determined to be at high risk of sexual victimization in a Level VI facility is limited to 1) no alternative placements that are appropriate and consistent with CD-143001 and 2) after the facility's concerns for the inmate's safety has been assessed and documented.

NMCD policy/procedure CD-143001 defines the process and criteria for placement in Level VI and Level V facilities based on various issues inclusive of protective custody. According to the Facility PREA Manager, PNM has not placed inmates at high risk for sexual victimization in involuntary segregation. A review of the administrative segregation log and status review forms did not refute this statement. Inmates placed in administrative segregation are subject to 7 day and 30 day reviews.

115.71

CRIMINAL AND ADMINISTRATIVE INVESTIGATIONS

- 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)

Auditor comments, including corrective actions needed if does not meet standard

NMCD policies/procedures CD-031800, CD-031801, and CD 150101 dictate the procedures for NMCD to conduct investigations into allegations of sexual abuse and sexual harassment, it shall do so promptly, thoroughly, and objectively for all allegations, including third-party and anonymous reports. NMCD conducts the administrative investigation into allegations of sexual abuse and sexual harassment internally. All criminal allegations related to sexual abuse or criminal sexual harassment are referred to NMDPS.

PNM initially reported on the pre-audit questionnaire as having no PREA incident, however based on interviews with staff and inmates, cases were identified and the investigative files reviewed.

Where sexual abuse is alleged, NMCD has investigators who have received special training in sexual abuse investigations pursuant to §115.34. Investigators gather and preserve direct and circumstantial evidence, including any available physical and DNA evidence and any available electronic monitoring data; interview alleged victims, suspected perpetrators, and witnesses; and review prior complaints and reports of sexual abuse involving the suspected perpetrator. If the PREA incident is related to sex abuse, then the criminal case is managed by NMDPS.

When the evidence appears to support criminal prosecution, the agency conducts compelled interviews only after consultation with prosecutors.

The credibility of an alleged victim, suspect, or witness is assessed on an individualized basis and is not determined by the person's status as an inmate or staff. The OPS Investigator confirmed that an inmate who alleges sexual abuse would not be required to submit to a polygraph examination or other truth-telling device as a condition for proceeding with the investigation.

Administrative investigations are conducted by NMCD OPS Investigators or PNM Investigators. The administrative investigation process includes efforts to determine whether staff actions or failures to act contributed to the abuse; and documents in written reports a description of the physical and testimonial evidence, the reasoning behind credibility assessments, and list the investigative facts and findings.

NMCD requires that NMDPS document all criminal investigations in a written report that contains a thorough description of physical, testimonial, and documentary evidence. Substantiated allegations of conduct that appears to be criminal warrants a referral to NMDPS for prosecution.

NMCD retains all written reports for administrative investigation for as long as the alleged abuser is incarcerated or employed by the agency, plus five years. The departure of the alleged abuser or victim from the employment or control of PNM or NMCD does not provide a basis for terminating an investigation.

115.72

EVIDENTIARY STANDARDS FOR ADMINISTRATIVE INVESTIGATIONS

- 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)

Auditor comments, including corrective actions needed if does not meet standard

NMCD policy/procedure CD-090101 for the Inmate Discipline process specifies that inmate disciplinary hearings are administrative hearings and findings will be determined by a preponderance of the evidence.

NMCD staff and PNM staff were unable to provide documentation of similar language in policies and/or lesson plans for Staff Discipline. The CBA currently being utilized dated December 29, 2009 to December 31, 2011, does not include an evidentiary standard for staff discipline.

The Facility investigators and OPS investigator interviewed reiterated that the evidentiary standard for staff discipline is a preponderance of the evidence (POE), but they could not cite to any authority. PNM instituted corrective action by amending policy and the lesson plan to incorporate the POE evidentiary standard already in practice as it relates to PREA investigations.

115.73

REPORTING TO INMATES

- 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)

Auditor comments, including corrective actions needed if does not meet standard

NMCD PREA Coordinator reiterated that he is responsible for notifying an inmate that the sexual abuse allegation has been determined to be substantiated, unsubstantiated, or unfounded. The PREA Coordinator is also responsible for requesting information from the external criminal investigative agency in order to provide notice to the inmate. The PREA Coordinator provided copies of notices to inmates and emails to external criminal agencies to substantiate the process utilized by NMCD.

The PREA Coordinator functioned as the PNM's Facility PREA Manager, however with the retirement of the PREA Coordinator and PNM's Deputy Warden for Administration's newly

assigned role as the Facility PREA Manager there will be a shift in duties and responsibilities at PNM.

The Warden manages the work schedule and the facility population, however it is unclear at this juncture if the newly selected PREA Coordinator or the Facility PREA Manager will be providing the relevant notifications to an inmate regarding the actions involving a staff member or an inmate in c.1-4 and d.1-2. Assurances were provided that the current notification and documentation process will be maintained.

115.76

DISCIPLINARY SANCTIONS FOR STAFF

- 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)

Auditor comments, including corrective actions needed if does not meet standard

NMCD policies/procedures CD-037800, CD-032200, CD-031801, and CD-150100 outline the Disciplinary Action for Classified Employees, the Code of Ethics, the OPS Investigation and Staff Misconduct Reporting, and the Offender Protection Against Abuse and Sexual Misconduct requirements. NMCD policy references a progressive discipline schedule; however, it states that some misconducts are so severe as to not warrant progressive discipline, immediate dismissal is the only appropriate course of action and that a violation of the Code of Ethics may be grounds to terminate.

Termination is the presumptive disciplinary sanction for staff who have engaged in sexual abuse. Disciplinary sanctions for violations of agency policies relating to sexual abuse or sexual harassment (other than actually engaging in sexual abuse) is commensurate with the nature and circumstances of the act, the staff member's disciplinary history, and the sanctions imposed for comparable offenses by other staff with a similar employment history.

All terminations for violations of agency sexual abuse or sexual harassment policies, or resignations by staff who would have been terminated if not for their resignation, shall be reported to law enforcement agencies, unless the activity was clearly not criminal, and to any relevant licensing bodies.

115.77

CORRECTIVE ACTION FOR CONTRACTORS AND VOLUNTEERS

- 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)

Auditor comments, including corrective actions needed if does not meet standard

Any contractor or volunteer who engages in sexual abuse is prohibited from contact with inmates and are reported to law enforcement agencies, unless the activity was clearly not criminal. The relevant licensing bodies are also notified.

An investigation related to a PREA sexual abuse incident between a contractor and an inmate was reviewed. The action taken by NMCD and PNM resulted in the termination of the contractor based on the administrative investigation and a referral to NMDPS. This case

demonstrates that PNM takes measures to prohibit further contact with inmates when sexual abuse by a contractor is substantiated.

115.78 DISCIPLINARY SANCTIONS FOR INMATES

- 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)

Auditor comments, including corrective actions needed if does not meet standard

NMCD policies/procedures CD-090100 and CD-090101 related to Inmate Discipline dictates the procedures to subject an inmate to disciplinary action pursuant to a formal disciplinary process.

Sanctions are commensurate with the nature and circumstances of the abuse committed, the inmate's disciplinary history, and comparable offenses by other inmates with similar histories. The disciplinary process considers whether an inmate's mental disabilities or mental illness was a contributing factor when determining what type of sanction is appropriate.

PNM's Level II facility houses a Therapeutic Treatment Program for Incarcerated Male Sex Offenders; however the programmatic requirements mandate that the inmate has a sex offense conviction. If an inmate has a PREA sexual abuse incident without a conviction, then this not a treatment option. An abuser would receive individualized counseling from mental health staff.

Inmates are disciplined for sexual contact with staff only upon a finding that the staff member did not consent to such contact and inmates are not subject to discipline for a report of sexual abuse made in good faith.

NMCD prohibits all sexual activity between inmates and may discipline inmates for said activity. It does not deem consensual sex as constituting sexual abuse and the key differentiating criteria is whether the act was coerced. The primary inmate disciplinary charges related to a PREA incident are A (21) Sexual Misconduct and A (22) Rape.

115.81 MEDICAL AND MENTAL HEALTH SCREENINGS; HISTORY OF SEXUAL ABUSE

- 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)

Auditor comments, including corrective actions needed if does not meet standard

NMCD policies/procedures CD-180200 and CD-150100 and the Rights to Confidentiality and Availability of Services form outline the obligations of medical and mental health practitioners. If the SRNS form as required by §115.41 indicates any prior sexual victimization the inmate will be offered a follow-up meeting with medical or mental health practitioners within 14 days of intake screening. If the SRNS form as required by §115.41 indicates any prior perpetrated sexual abuse the inmate will be offered a follow-up meeting with mental health practitioners within 14 days of intake screening.

Any information related to sexual victimization or abusiveness that occurred in an institutional setting is strictly limited to medical and mental health practitioners and other staff, as necessary, to formulate treatment plans, security considerations, and management decisions, including housing, bed, work, education, and program assignments.

Medical and mental health practitioners shall obtain informed consent from inmates before reporting information about prior sexual victimization that did not occur in an institutional setting. This information was verified through interviews with staff and contracted medical and mental health practitioners.

115.82

ACCESS TO EMERGENCY MEDICAL AND MENTAL HEALTH SERVICES

- 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)

Auditor comments, including corrective actions needed if does not meet standard

NMCD policies/procedures CD-150102 and CD-176100 outline the obligations to provide treatment services to victims of sexual abuse. Inmate victims of sexual abuse shall receive timely, unimpeded access to emergency medical treatment and crisis intervention services, the nature and scope of which are determined by medical and mental health practitioners according to their professional judgment.

If no qualified medical or mental health practitioners are on duty at the time a report of recent abuse is made, security staff first responders shall take preliminary steps to protect the victim pursuant to §115.62 and shall immediately notify the appropriate medical and mental health practitioners.

Incarcerated inmate victims of sexual abuse are offered timely information about and timely access to emergency contraception (not applicable to a male facility) and sexually transmitted infections prophylaxis, in accordance with professionally accepted standards of care.

Treatment services are 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. This information was verified through interviews with staff and contracted medical and mental health practitioners.

115.83

ONGOING MEDICAL AND MENTAL HEALTH CARE FOR SEXUAL ABUSE VICTIMS AND ABUSERS

- 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)

Auditor comments, including corrective actions needed if does not meet standard

NMCD policies/procedures CD-150102, CD-170101 and CD-180100 outlines the obligations to provide medical and mental health services to inmates victimized by sexual abuse in any prison, jail, lockup or juvenile facility. The evaluation and treatment of such victims includes follow-up services, treatment plans, and, when necessary, referrals for continued care.

PNM provides such victims with medical and mental health services consistent with the community standard of care. Inmate victims of sexual abuse are offered tests for sexually transmitted infections as medically appropriate. Treatment services are provided to the victim without financial cost and regardless of whether the victim names the abuser or cooperates with the investigation.

PNM attempts to conduct a mental health evaluation of all known inmate on inmate abusers within 60 days of learning of such abuse history and offers treatment when deemed appropriate by mental health practitioners. Interviews with mental health staff confirmed that PNM was not utilizing the SAIR process. The recent changes to the SAIR process will facilitate more involvement by mental health staff.

115.86 SEXUAL ABUSE INCIDENT REVIEWS

- 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)

Auditor comments, including corrective actions needed if does not meet standard

NMCD's policy/procedure CD-150102 related to the Coordinated Response to Sexual Assaults does not reference the Sexual Abuse Incident Review (SAIR) process. The SAIR should not be confused with the referenced policy's Critical Incident Review (CIR) process. The SAIR is to be conducted by a Multi-Disciplinary Team within 30 days of a completed investigation determined to be substantiated or unsubstantiated. The CIR is completed within 14 days following an incident.

It was initially determined that PNM was not compliant with this Standard and information was provided to the Facility PREA Manager to initiate immediately corrective action. PNM developed a process and form to document the actions of the SAIR. PNM provided evidence of compliance prior to the issuance of the Interim Audit Report. PNM conducted SAIRs for specific cases that were identified during the audit as reaching an investigative conclusion of substantiated or unsubstantiated.

Based on the corrective action generated, PNM ensures that the SAIR occurs within 30 days after the completion of an investigation that was substantiated or unsubstantiated. The review team includes upper-level management officials, with input from line supervisors, investigators, and medical or mental health practitioners.

The SAIR form addresses all elements of the standard by assessing the following criteria: 1) whether the allegation or investigation indicates a need to change policy or practice to better prevent, detect, or respond to sexual abuse; 2) whether the incident or allegation was motivated by race, ethnicity, gender identity, LGBTI identification, status, or perceived status, or gang affiliation, or was motivated or otherwise caused by other group dynamics of PNM; 3) examines the area at PNM where the incident allegedly occurred to assess whether physical

barriers in the area may enable abuse; 4) assess the adequacy of staffing levels in that area during different shifts; 5) assess whether monitoring technology should be deployed or augmented to supplement supervision by staff; and 6) utilizes the form to report its findings and any recommendations for improvement.

The Warden has the final authority for the implementation of the SAIR recommendations and shall document his reasons for not implementing the SAIR recommendations in whole or in part.

115.87

DATA COLLECTION

- 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)

Auditor comments, including corrective actions needed if does not meet standard

NMCD collects accurate, uniform data for every allegation of sexual abuse at facilities under its direct control using a standardized instrument and set of definitions. The incident based sexual abuse data is maintained on a calendar year cycle. The incident-based data collected includes statistics necessary to answer all questions from the most recent version of the Survey of Sexual Victimization (title amended for 2013) conducted by the Department of Justice.

NMCD maintains, reviews, and collects data all available incident-based documents and obtains incident-based data from its private contracted facilities. The information is provided to the Department of Justice no later than September 1 (current schedule based on 2013 SSV). The following information was reviewed: the annual report posted on NMCD's website for 2012 and 2013; the 2012 SSV; and the PREA data collection forms.

115.88

DATA REVIEW FOR CORRECTIVE ACTION

- 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)

Auditor comments, including corrective actions needed if does not meet standard

NMCD reviews data collected and aggregated pursuant to §115.87 in order to assess and improve the effectiveness of NMCD's sexual abuse prevention, detection, and response policies, practices, and training, including by identifying problem areas; taking corrective action on an ongoing basis; and preparing an annual report of its findings and corrective actions for each facility, as well as the agency as a whole.

The report includes a comparison of the current year's data and corrective actions with those from prior years and an assessment of the agency's progress in addressing sexual abuse. The report is approved by the agency head and is available to the public at <http://corrections.state.nm.us/oig.html>. Reviewed annual report on the website for 2012 and 2013. Material is redacted from the report when publication would present a clear and specific threat to the safety and security of a facility.

115.89	DATA STORAGE, PUBLICATION, AND DESTRUCTION
<input type="checkbox"/> Exceeds Standard (substantially exceeds requirement of standard) <input checked="" type="checkbox"/> Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period) <input type="checkbox"/> Does Not Meet Standard (requires corrective action)	
Auditor comments, including corrective actions needed if does not meet standard	
<p>NMCD ensures that data collected pursuant to §115.87 is securely retained and the data is managed by the PREA Coordinator. NMCD makes all aggregated sexual abuse data, from facilities under its direct control and private facilities with which it contracts, readily available to the public at least annually through its website. NMCD's report is accessible at http://corrections.state.nm.us/oig/oig.html.</p> <p>Before making aggregated sexual abuse data publicly available, NMCD removes all personal identifiers and maintains sexual abuse data collected pursuant to §115.87 for at least 10 years after the date of the initial collection, unless Federal, State, or local law requires. This requirement is located in NMCD policy/procedure CD-150101.</p>	

AUDITOR CERTIFICATION:

The auditor certifies that the contents of this 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 agency under review.



 Shelley Nobriga
 Certified DOJ PREA Auditor

9-19-14

 Date