City of New York
Administration for Children's Services

Policy and Procedure
#2016/

Prevention, Detection, and Response to Sexual Misconduct in Limited Secure Juvenile Justice Placement

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Related Laws: Public Law 108-79 - Prison Rape Elimination Act (PREA) of 2003 Penal Law Article 130, Sex Offenses, Sections 130.00 (1) through 130.90 (2)	**ACS Divisions/Provider Agencies:** All ACS Divisions and city partner agencies working with youth in LSP facilities	**Contact Office /Unit:** John Dixon Associate Commissioner Close to Home john.dixon@acs.nyc.gov	
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	• ACS Policy and Procedure #2015/10 Room Isolation Policy for Limited Secure Juvenile Justice Placement • ACS Policy and Procedure #2015/13 Mechanical Restraints for Limited Secure Placement • ACS Policy and Procedure #2015/09 Limited Secure Placement Personal Youth Search Policy • Transfers in Juvenile Justice Placements • Log Books for Juvenile Justice Placement Facilities • Safe Intervention Policy for Juvenile Justice Placement • Vulnerable Persons Central Register (VPCR) Reportable Incidents and Notification • Incident Reporting for Juvenile Justice Placement and Aftercare • Youth Grievance Policy for Juvenile Justice Placement	

Related Forms: Search Request Form for Transgender and Intersex Youth

SUMMARY:

Employees of the Administration for Children's Services (ACS), Limited Secure Placement (LSP) provider staff, professional and other visitors, volunteers, interns, contractors, staff of city partner agencies and youth may not engage in sexual abuse or sexual harassment of youth in the care and custody of ACS. Individuals covered by this policy must report and engage in appropriate follow-up with respect to allegations of sexual abuse and sexual harassment of youth as required by this policy. Those personnel responsible for the provision of services for youth in LSP must provide alleged victims and youth perpetrators with needed services and supports. ACS employees and LSP provider staff must employ supervision and search practices that minimize the possibility of harm to youth in their care, and must educate youth and staff about their rights and responsibilities under this policy.

SCOPE:

This policy applies to all youth in the care and custody of ACS in LSP, in court, and during transportation to and from LSP facilities pursuant to Article 3 of the Family Court Act. This policy applies to ACS employees, LSP provider staff, professional and other visitors, volunteers, interns, contractors, and staff of city partner agencies in those settings.

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I. PURPOSE

The purpose of this policy is to outline the approach of the Administration for Children's Services (ACS) to zero tolerance for sexual misconduct for youth in limited secure placement (LSP). This policy applies to all youth in the care and custody of ACS in LSP, in court, and during transportation to and from LSP facilities pursuant to Article 3 of the Family Court Act. This policy applies to ACS employees, LSP provider staff, professional and other visitors, volunteers, interns, contractors, and city partner agency staff in those settings. The policy sets forth ACS' approach to sexual misconduct prevention, detection, and response for youth in LSP and the adults who work with them.

II. POLICY

ACS employees, LSP provider staff, professional and other visitors, volunteers, interns, contractors, staff of city partner agencies, and youth may not engage in sexual abuse or sexual harassment of youth in LSP. Individuals covered by this policy must report allegations of sexual abuse and sexual harassment of youth as required by this policy. Those personnel responsible for the provision of services for youth in LSP must engage in appropriate follow-up with respect to allegations of sexual abuse and sexual harassment of youth, and must provide alleged victims and youth perpetrators with needed services and supports. ACS employees and LSP provider staff must use supervision and search practices that minimize the possibility of harm to youth in their care and must educate youth and staff about their rights and responsibilities under this policy.

III. DEFINITIONS

A. Body Cavity Search – A visual, manual, and/or instrument inspection of a youth's anal or vaginal cavity. **LSP staff shall not conduct body cavity searches.**

B. Contact with Youth – Verbal or physical interactions with LSP youth that are expected to occur based on an individual's role in LSP facilities. For example, a maintenance worker or food delivery person generally would not have contact with youth, even though he or she may pass by youth in part of the facility, because interacting with youth is not part of his or her responsibilities.

C. Contractor – A person or agency that provides services on a recurring basis pursuant to a contractual agreement with ACS, LSP providers, and/or city partner agencies.

D. Exigent Circumstances – Any set of temporary and unforeseeable circumstances that require immediate action in order to combat a serious threat to the security of a facility.

E. Gender Expression – The manner in which a person expresses his or her gender through clothing, appearance, behavior, speech, etc. A person's gender expression

may vary from the gender norms traditionally associated with that person's biological sex.

F. Gender Identity – Individuals' internal view of their gender; individuals' innermost sense of being male, female, or a different gender. Gender identity is well established around the ages of 3-4; this will often influence name and pronoun preferences for an individual.

G. Gender Non-Conforming – Having or perceived to have gender characteristics and/or behaviors that do not conform to traditional or societal expectations.

H. Interns – Students who assist LSP provider agencies and/or ACS pursuant to an agreement with the student's school.

I. Intersex – A person whose sexual or reproductive anatomy or chromosomal pattern does not seem to fit typical definitions of male or female. Intersex medical conditions are sometimes referred to as disorders of sex development.

J. Limited Secure Placement (LSP) Facility – A limited secure residential setting where youth are placed close to home, in the care and custody of the Commissioner of ACS, by the Family Court, on juvenile delinquency cases, pursuant to Article 3 of the Family Court Act.

K. Limited Secure Placement (LSP) Providers – ACS contracted agencies responsible for the care and custody of youth placed with ACS by the Family Court in the limited secure placement setting pursuant to Article 3 of the Family Court Act.

L. Limited Secure Placement (LSP) Staff – Staff of the LSP facility, including medical and mental health professionals employed by LSP Providers.

M. Pat-Frisk Search – A visual and manual inspection of a youth's clothed body that consists of physically patting down his or her clothing.[1]

N. Prison Rape Elimination Act (PREA) – A law passed by the United States Congress in 2003 to promote the prevention, detection, investigation, and appropriate response to sexual misconduct in custodial settings, including juvenile facilities.

O. Residential Care Advocate – An advocate for youth in LSP facilities overseen by the ACS Office of Advocacy. The Residential Care Advocate is part of the Resident Care Advocacy Program, which advocates for the rights of placed youth by monitoring the

[1] See ACS Policy and Procedure #2015/09, *Limited Secure Placement Personal Youth Search Policy*.

overall living conditions within LSP facilities and advocating for improvements in the quality of care in accordance with ACS' policies and procedures.

P. Room Isolation – In an LSP setting, the isolation of a youth for a time-limited period, in a bedroom or other designated room in order to calm and control the acute physical behavior of a youth.

Q. Security Search – An inspection to check for contraband, conducted to maintain the safety and security of staff and youth, that requires the youth to wear a medical gown or robe after removing his or her upper garments, and then subsequently to remove the rest of his or her garments.[2]

R. Sexual Abuse – The definition of sexual abuse for purposes of this policy includes sexual abuse of a youth by another youth and sexual abuse of a youth by an ACS employee, LSP provider staff member, professional and other visitor, volunteer, intern, contractor, or staff of city partner agencies.

1. **Sexual abuse of a youth by another youth:**

   a. The victim does not expressly or impliedly acquiesce in the alleged perpetrator's conduct;

   b. The victim is four (4) or more years younger than the alleged perpetrator;

   c. The victim is unable to consent or refuse because of being mentally disabled, mentally incapacitated, or physically helpless;

   d. The victim is coerced into such act by overt or implied threats of or actual use of force or violence; or

   e. The victim is under the age of 11; and

   f. Any of the following acts occur:
      i. Contact between the penis and the vulva or the penis and the anus, including penetration, however slight;

      ii. Contact between the mouth and the penis, vulva, or anus;

      iii. Penetration of the vagina, urethra, penis, rectum or anus of another person, however slight, by a hand, finger, object, or other instrument; and

[2] See ACS Policy and Procedure #2015/09, *Limited Secure Placement Personal Youth Search Policy*.

iv. Any other intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or the buttocks of any person. Sexual abuse does not include contact incidental to non-sexual horseplay or a physical altercation such as a kick in the groin or touching someone's breasts while pushing her away.

2. **Sexual abuse of a youth by ACS employees, LSP provider staff, professional and other visitors, volunteers, interns, contractors, or staff of city partner agencies** includes any of the following acts conducted by these parties, with or without the consent of the youth:

   a. Sexual touching, including any of the following:
      i. Contact between the penis and the vulva or the penis and the anus, including penetration, however slight;

      ii. Penetration of the vagina, urethra, penis, rectum or anus of another person, however slight, by a hand, finger, object, or other instrument, except when conducted by a medical professional as part of a medical examination or medical treatment;

      iii. Contact between the mouth and the penis, vulva, or anus;

      iv. The emission or ejaculation upon any part of a youth, clothed or unclothed;

      v. Any other intentional touching not required by official duties, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or the buttocks of any person. Sexual abuse does not include conduct required by or incidental to official duties (e.g., it would not be sexual misconduct for a staff member to touch a youth's body as required in order to conduct a proper pat-frisk search, or if a staff member's hand slips unavoidably while he or she is breaking up a fight); and

      vi. Any other contact where the individual has the intent to degrade or abuse the youth or to arouse or gratify a sexual desire.

   b. Any attempt, threat, or request to engage in sexual touching.

   c. Indecent exposure, which means the display of his or her uncovered genitalia, buttocks, or breast in the presence of a youth.

   d. Voyeurism, which means an invasion of a youth's privacy for reasons that do not involve the performance of official duties. Voyeurism may include peering at a youth who is using a toilet or changing in his or her room or bathing,

except when staff are required to maintain constant visual supervision of a youth pursuant to ACS Policy and Procedure #2015/10 *Room Isolation in Limited Secure Juvenile Justice Placement*; requiring a youth to expose his or her buttocks, genitals, or breasts for reasons other than a properly administered strip search, or medical examination; or taking images of all or part of a youth's naked body or of a youth performing bodily functions, except when staff are required to maintain constant visual supervision of a youth, as above.

e. Any conduct or communication that advances, profits from, uses, patronizes or encourages a youth's engagement in any act of sexual exploitation, sex trafficking, or prostitution as defined in Article 230 of the Penal Law.

f. Any conduct or communication that allows, permits, promotes, produces, uses, or encourages a youth's engagement in any sexual performance as defined in Article 263 of the Penal Law; having such material involving a youth in his or her possession or control; or having accessed such material with the intent to view it.

g. Any conduct that subjects a youth to incest as defined by Article 255 of the Penal Law.

h. Commission of any other sex offense as defined by Article 130 of the Penal Law.

S. Sexual Harassment – The definition of sexual harassment includes:

1. Repeated and unwelcome sexual advances, requests for sexual favors, or verbal comments, gestures, or actions of a derogatory or offensive sexual nature by one youth in ACS custody toward another youth in ACS custody; and

2. Verbal or digital (e.g. text, email, social media) comments or gestures of a sexual nature to a youth by ACS employees, LSP provider staff, professional and other visitors, contractors, volunteers, staff of city partner agencies, or interns, including demeaning references to gender, sexually suggestive or derogatory comments about body or clothing, or obscene language or gestures.

T. Sexual Misconduct – Actions constituting either sexual harassment or sexual abuse.

U. Strip Search – An inspection to check for contraband believed capable of inflicting harm on the youth, staff or others, conducted to maintain the safety and security of youth and staff. A strip search requires individualized reasonable suspicion that the

youth is in possession of potentially dangerous contraband and may only occur after a security search has been conducted.[3]

V. Substantiated* – An allegation that was investigated and determined to have occurred.

W. Transgender **–** A person whose gender identity (i.e., internal sense of feeling male or female) is different from the person's assigned sex at birth.

X. Unfounded* – An allegation that was investigated and determined not to have occurred.

Y. Unsubstantiated* – An allegation that was investigated and the investigation produced insufficient evidence to make a final determination as to whether or not the event occurred.

Z. Volunteer – An individual who donates time and effort on a recurring basis to enhance the activities and programs of LSP facilities.

AA. Vulnerable Persons Central Register (VPCR) – An entity of the New York State Justice Center for the Protection of People with Special Needs (Justice Center) that is designated to receive reports of abuse, neglect, and other significant incidents involving youth in residential settings.

BB. Youth – Any child in LSP, under ACS supervision, who is in the custody of ACS pursuant to Article 3 of the Family Court Act.

Note: Definitions denoted with an asterisk (*) are derived from the regulations implementing the PREA as it applies to Juvenile Facilities. The definitions only apply to this policy. They are not interchangeable with the definitions of the same words as used in Social Services Law.

IV. COORDINATION

A. The Deputy Commissioner of the Division of Youth and Family Justice (DYFJ) must designate a DYFJ staff member as **PREA Coordinator** to coordinate the development, implementation, and oversight of measures to prevent, detect, and respond to incidents and allegations of sexual misconduct in ACS LSP facilities.

[3] See ACS Policy and Procedure #2015/09, *Limited Secure Placement Personal Youth Search Policy*.

B. Each facility must designate an existing staff member to be the **PREA Compliance Manager** to oversee each facility's implementation of PREA and compliance with ACS policies on preventing, detecting, and responding to sexual misconduct.

C. The Court Services, Admissions, and Movement and Control Communications Unit (CAM) and Field Operations Unit must manage compliance with ACS' policies on preventing, detecting, and responding to sexual misconduct in situations involving ACS and LSP provider staff who interact with youth in court and during transportation to and from LSP facilities.

V. HIRING AND PROMOTION

A. ACS and LSP providers shall not hire or promote any employees who may have contact with youth, and shall not hire any contractor who may have contact with youth, if the prospective employee or contractor:

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 in 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 above.

B. ACS and LSP providers must consider any incidents of sexual harassment in determining whether to hire or promote any employee or to hire any contractor who may have contact with youth.

C. Before hiring new employees who may have contact with youth in LSP, ACS and LSP provider staff must:

1. Perform a criminal background check;

2. Consult the State Central Register and the New York State Justice Center for the Protection of People with Special Needs (Justice Center) Staff Exclusion List (SEL); and

3. Make best efforts to contact all prior institutional employers for information on substantiated allegations of sexual abuse or any resignation during a pending investigation of an allegation of sexual abuse.

D. ACS and LSP providers must also perform a criminal background records check and consult the State Central Register and the Justice Center SEL before enlisting the services of any contractor who may have contact with youth.

E. ACS and LSP providers must either conduct a criminal background records check at least every five (5) years of current employees and contractors who may have contact with youth, or have in place a system for otherwise capturing such information for current employees.

F. The LSP provider must ask all applicants and employees who have contact with youth about previous misconduct described in Section A. above in written applications or interviews for hiring or promotions, and in any interviews or written self-evaluations conducted as part of reviews of current employees. Employees must have a continuing affirmative duty to disclose any such misconduct to LSP providers.

G. Material omissions regarding such misconduct or the provision of materially false information shall be grounds for termination.

H. Unless prohibited by law, the LSP provider must provide information on substantiated allegations of sexual abuse or sexual harassment involving a former employee upon receiving a request from an institutional employer for whom such employee has applied to work.

VI. STAFFING PLAN AND MONITORING

A. Each LSP provider facility must develop, implement upon ACS approval, and document a staffing plan that provides for adequate levels of staffing and video monitoring to protect youth against sexual abuse. LSP provider facilities must comply with the staffing plan, except during limited and discrete exigent circumstances, and document any deviation from the plan. LSP provider facilities must consider the following factors on an annual basis in consultation with the PREA Coordinator:

1. Any minimum staffing levels required by law, regulation, or policy;
2. Generally accepted juvenile residential practices;
3. Any judicial findings of inadequacy;
4. Any findings of inadequacy from federal investigative agencies;
5. Any findings of inadequacy from internal or external oversight bodies;
6. All components of the facility's physical plant (including "blind spots" or areas where staff or youth may be isolated);
7. The composition of the youth population in LSP facilities operated or overseen by ACS;
8. The number and placement of supervisory staff;
9. The use and quality of video monitoring;

10. Programs occurring during a particular shift;
11. The prevalence of substantiated and unsubstantiated incidents of sexual abuse;
12. Whether additional resources or adjustments to video monitoring or staffing patterns are needed; and
13. Any other relevant factors.

B. The Office of Planning, Policy, & Performance (OPPP) must require an increase or adjustment in staffing levels and video monitoring as necessary to fill gaps identified through the review described above in Section A. LSP provider facilities must comply with any such requirements.

C. OPPP must consider whether any of the following will have an impact on ACS and the LSP provider's ability to protect youth from sexual misconduct when ACS or an LSP provider plans the following:

1. Any new building;
2. Any building modification or conversion of existing spaces; or
3. Any new or changed video monitoring capabilities for LSP facilities.

D. At each LSP facility, the facility director must designate staff who must conduct and document regular unannounced rounds on all shifts to identify and deter staff sexual abuse and sexual harassment. Staff may not alert other staff members that these supervisory rounds are occurring, unless such announcement is related to the legitimate operational functions of the facility.

VII. SEARCHES

A. No youth shall be subject to a body cavity search by LSP staff, ACS employees, or contractors.

B. No youth shall be subject to a strip search by non-medical staff of the opposite gender <u>under any circumstances</u>.

C. Youth shall be subject to a pat-frisk search by LSP staff of the opposite gender only in exigent circumstances and with approval by the LSP program director or his or her designee.

D. All cross-gender pat-frisk searches of youth, and the justification for those searches, must be logged in the appropriate unit logbook and documented according to ACS policy, with approval by the program director or designee.[4]

[4] See ACS Policy and Procedure *Log Books for Juvenile Justice Placement Facilities*.

E. No LSP staff member will conduct searches of transgender or intersex youth solely for the purpose of determining genital status.

F. Upon admission,[5] LSP provider intake staff must offer transgender or intersex youth the opportunity to request that staff of a particular gender conduct any pat-frisk or necessary strip search of the youth.

   1. LSP provider staff must offer youth the opportunity to complete Attachment A: Search Request Form for Transgender and Intersex Youth. LSP staff must comply with that request, absent exigent circumstances, and document any deviation from the youth's documented preference.

   2. If a youth does not indicate a preference, the staff member of the youth's self-identified gender must perform the search.

   3. Any ACS or LSP staff to whom youth disclose that they are transgender or intersex, thereafter, must arrange for the youth to be offered the opportunity to complete the form if the youth has not already done so.

   4. ACS and LSP staff must also offer the youth the opportunity to complete a new form if he or she changes his or her preference.

G. LSP provider facilities must establish procedures for review and approval by ACS that outline who will receive copies of the Search Request Form for Transgender and Intersex Youth, where such forms will be stored, how youth's preferences shall be communicated to staff, and how LSP provider facilities will assist a youth in changing his or her preference.

H. LSP staff must also follow requirements contained in ACS Policy and Procedure *Limited Secure Placement Personal Youth Search Policy*.

VIII. LIMITS TO CROSS-GENDER VIEWING OF YOUTH

A. LSP staff must help youth understand and abide by the expectation that youth must cover themselves when they may be viewed by others, except as appropriate for medical care.

B. The LSP provider facility must submit policies and procedures for ACS approval that enable youth to shower, perform bodily functions, and change clothing without nonmedical staff of the opposite gender viewing their breasts, buttocks, or genitalia,

[5] Transgender and intersex youth may make this request at any point during their juvenile delinquency case, including while in Detention and throughout placement in an LSP facility.

except in exigent circumstances or when such viewing is incidental to routine bed checks. LSP providers must establish procedures, submitted for approval by ACS, so that Sections B. and C. of this section are implemented based on the individual layout of each LSP facility.

C. LSP staff must maintain an environment in which youth are not viewed in a state of undress, except as required for security or medical reasons outlined in this and other policies. All LSP staff must announce their presence in areas and during times when youth may be performing bodily functions, showering, or changing clothing, and must allow sufficient time for youth to cover themselves before entering those areas, except in exigent circumstances.

IX. COMMUNICATION WITH YOUTH

A. ACS employees and LSP staff who come into contact with youth who may have disabilities or limited English proficiency (LEP) must inform supervisors so that supervisors may make appropriate referrals for assessment and services.

B. ACS employees and LSP staff shall provide youth with disabilities and LEP youth an equal opportunity to participate in and receive the benefits of the programs and services available in ACS facilities, including efforts to prevent, detect, and respond to sexual misconduct.

C. In order to make appropriate accommodations for youth with disabilities and LEP youth, LSP providers must do the following:

1. Identify youth with disabilities and LEP youth upon admission to an ACS LSP facility and work with each youth's family and medical, mental health, psychiatric, and other staff as necessary;

2. Provide access to interpreters who can interpret effectively, accurately, and impartially, using any necessary specialized vocabulary;

3. Provide written materials in formats or through methods that achieve effective communication with youth with disabilities, including youth who have intellectual disabilities, limited reading skills, or who are blind or have low vision;

4. Document the youth's special needs in the youth's case notes and, in consultation with the PREA Coordinator, develop a PREA-compliant case plan in accordance with the youth's needs. The case plan must include arrangements for providing youth with disabilities and LEP youth with explanations, in a manner that the youth can understand, for how to report if they are feeling unsafe, how to access medical and mental health care, and strategies for effective communication; and

5. Implement the case plan described above, consulting with the Case Manager Supervisor, medical staff, mental health staff, psychiatric staff, family members of the youth, and others, as necessary.

D. Each LSP facility must post and make readily available information for telephone interpretation and translation services for all individuals who work with youth. ACS employees and LSP staff must be trained on how to use available resources to communicate with LEP youth and their families, and must arrange for staff to provide such youth with meaningful access to programs and services.

E. ACS employees, LSP provider staff, professional and other visitors, volunteers, interns, contractors, and city partner agency staff must use interpretation resources to communicate with LEP youth at all stages of a youth's stay at an LSP facility unless the staff, volunteer, intern, or contractor speaks the youth's native language and the youth has been advised that he or she is entitled to free interpretation services.

F. ACS employees, LSP provider staff, professional and other visitors, volunteers, interns, contractors and city partner agency staff must not rely on youth, family, friends or neighbors to provide translation or interpretation, except in limited circumstances where an extended delay in obtaining an interpreter could compromise the following:

1. The youth's safety;
2. The performance of first responder duties following an allegation that a youth was sexually abused; or
3. The investigation of the youth's allegations.

G. The PREA Coordinator or designee must communicate with the contractor(s) and agency contracting entity to confirm that interpreters can interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary.

X. TRAINING OF STAFF

A. ACS employees and LSP provider staff who may have contact with youth at an LSP facility must receive initial and biannual refresher training on the following:

1. ACS' zero tolerance for sexual misconduct and retaliation;

2. How to fulfill responsibilities regarding prevention, detection, reporting and response to sexual misconduct;

3. A youth's right to be free from sexual misconduct;

4. The right of youth and employees to be free from retaliation for reporting sexual misconduct;

5. The dynamics of sexual abuse and sexual harassment in juvenile facilities;

6. The factors that make youth vulnerable to sexual abuse and sexual harassment;

7. Adolescent development for girls and boys that includes developmentally normative sexual behavior for adolescents, how to distinguish between developmentally normative adolescent behavior and sexually aggressive and dangerous behaviors, and the ways in which sexual victimization can affect healthy development. The training must be informed by the extent to which cultural, social, and family influences interfere with a youth's functioning;

8. The prevalence of trauma and abuse histories among youth in juvenile justice facilities, possible behaviors of youth with trauma and abuse histories, and appropriate gender-specific ways of responding to those behaviors;

9. The common reactions of youth victims of sexual abuse and sexual harassment;

10. How to detect and respond to signs of threatened and actual sexual abuse and sexual harassment, and how to distinguish between consensual sexual contact and sexual abuse between youth;

11. How to communicate effectively and professionally with youth, including lesbian, gay, bisexual, transgender, intersex, and gender non-conforming youth;

12. How to handle disclosures of victimization by youth in a sensitive manner;

13. How to preserve evidence associated with instances of sexual abuse;

14. How to avoid inappropriate relationships with youth, and how to maintain professional relationships and boundaries with youth;

15. Relevant laws and policies related to age of consent, with a clear directive that no youth in ACS care can consent to sexual conduct with any adult, and mandatory reporting of sexual abuse to outside authorities; and

16. How to conduct professional, respectful, and minimally intrusive cross-gender pat-frisk searches and searches of transgender and intersex youth.

B. ACS employees and LSP provider staff must receive additional gender-responsive training if the employee or staff member is reassigned from a facility that houses only male youth to a facility that houses only female youth, or vice versa.

C. During the years in which ACS employees or LSP staff do not receive the refresher trainings outlined above in Section A., ACS must provide information on the agency's current sexual misconduct policies to its employees, and LSP provider facilities must provide this information to LSP provider staff. ACS and LSP provider facilities may provide this information in person, in writing, or through some other means.

D. All full- and part-time medical, mental health, and psychiatric employees and contractors who work with youth in LSP facilities must be trained on these topics:

   1. How to detect and assess signs of sexual abuse;
   2. How to determine when youth require protection from sexual abuse;
   3. How to preserve physical evidence of sexual abuse;
   4. How to respond effectively and professionally to youth victims and alleged perpetrators of sexual abuse, both in terms of the procedures to follow and the treatment to administer; and
   5. How and to whom to report allegations or suspicions of sexual abuse.

E. LSP providers must submit their facility's staff training materials, adapted to their facilities, for ACS approval.

F. The LSP provider must develop a method of determining that LSP staff understand and exhibit competence in the information and skills provided in the trainings. The LSP provider facilities must retain records of the trainings described above, including documentation that individuals understood the training they received. LSP providers must provide an acknowledgment form upon completion of training which the employee or contractor must sign indicating that they received and understood the training information.

G. Administrative staff or contractors who will not have contact with youth must receive the training for volunteers described below in Section XI.

H. The Facility Director must require that intake staff in LSP facilities be trained to provide the information provided below on Youth Education in Section XIII(A) in an age-appropriate, trauma-informed, and sensitive manner.

I. LSP providers must require that, as new contracts for medical, mental health, psychiatric, and other services are developed, they include requirements that contractors whose jobs will include contact with youth receive the training required

under this policy and the United State Department of Justice PREA regulations in their most current form.

XI. TRAINING OF VOLUNTEERS

A. Each volunteer working with youth in an LSP facility must receive a written document providing information about the agency's sexual misconduct prevention policy including how to report suspected misconduct, the facility's zero tolerance for sexual misconduct, and rules about confidentiality. Volunteers must sign a document acknowledging receipt and understanding of this information.

B. Any volunteer working with youth at the facility must have brief verbal contact with an LSP staff member to introduce the document described above, and each volunteer must sign it prior to contact with youth at the facility.

C. Each LSP facility must require that volunteer groups that collaborate with the agency on an ongoing basis receive an in-person orientation to the facility and annual training about sexual misconduct prevention and reporting. It is not required that every member of the volunteer group receive the annual, in-person training prior to having contact with youth, as long as they sign the document, receive the brief verbal introduction described above, and attend the first available volunteer training.

D. Individuals who volunteer once, rather than on a recurring basis, are not required to engage in the activities above. However, such volunteers must be supervised by LSP provider staff at all times.

XII. TRAINING OF CONTRACTORS, INTERNS, PROFESSIONAL AND OTHER VISITORS, AND CITY PARTNER AGENCIES

A. Contractors, interns, professional and other visitors, and individuals from city partner agencies who will have unsupervised interactions with youth must receive a training, prior to beginning work with ACS or a provider agency, that includes information about the agency's sexual misconduct prevention policy, including how to report suspected misconduct, the agency's zero tolerance for sexual misconduct, and rules about confidentiality.

B. Contractors, interns, professional and other visitors, and individuals from city partner agencies who will only have supervised interactions with youth must receive the training for volunteers described above in Section XI. prior to beginning work with ACS or a provider agency.

C. ACS and LSP providers must retain records of the trainings conducted according to this section, including documentation that individuals understood the training they received.

XIII. YOUTH EDUCATION

A. Upon admission, intake staff in LSP facilities must provide age-appropriate information to youth explaining the facility's zero tolerance policy regarding sexual misconduct, a youth's right to be free from any form of sexual abuse, and how to report incidents or suspicions of sexual misconduct or situations where a youth does not feel safe. In the event that a youth is moved from an LSP facility before receiving this information, the Facility Director of the receiving LSP facility must provide youth with this information.

B. As part of the intake process in LSP facilities, LSP provider staff must require that youth sign a form confirming receipt and understanding of the information described in Section A. above. In the event a youth refuses to sign, staff must note the youth's refusal on the form, and initial and date the note.

C. Within seven (7) days of a youth's arrival at an LSP facility, LSP provider staff must present more in-depth information about a youth's rights to be free from sexual misconduct and retaliation for reporting incidents, the importance of and avenues for reporting, ACS policies for responding to incidents including the youth's right to medical, mental health, and psychiatric care regardless of the status of an investigation, and where to go if he or she has questions.

    1. LSP providers must determine who will deliver the youth education and must communicate this to ACS.

    2. The Executive Director of Quality Assurance must arrange for youth already housed in the facilities to receive the same information within 60 days of the promulgation of this policy.

    3. LSP provider facilities must document a youth's receipt and understanding of this information.

D. The PREA Compliance Manager, in consultation with the PREA Coordinator, must oversee development and posting of informational posters regarding the sexual misconduct prevention and response policies. Such posters will include key information and be continuously and readily visible to youth.

E. LSP provider facilities must develop and implement the youth education materials described above, submitting such materials for review and approval by the PREA Coordinator. The PREA Compliance manager must verify that youth education materials are updated to reflect any changes to policies and practices.

F. LSP providers must work with the agency's PREA Coordinator to provide youth with disabilities, youth with low reading skills, and LEP youth with the information outlined in Section XIII. in formats that they can understand.

XIV. OBTAINING INFORMATION FROM YOUTH AND PLACEMENT OF YOUTH IN HOUSING AND PROGRAMMING ASSIGNMENTS

A. ACS employees and LSP facility provider staff must attempt to obtain and use the following information to make housing and programming decisions that will reduce the risk of sexual abuse by or upon youth in LSP:

1. Prior sexual victimization or abusiveness;
2. Any gender non-conforming appearance, manner, or identification as lesbian, gay, bisexual, transgender, or intersex, and whether the youth may therefore be vulnerable to sexual abuse;
3. Current charges and offense history;
4. Age;
5. Level of emotional and cognitive development;
6. Physical size and stature;
7. Mental illness or mental disabilities;
8. Intellectual or developmental disabilities;
9. Physical disabilities;
10. The youth's own perception of vulnerability; and
11. Any other specific information that may indicate a heightened need for supervision, additional safety precautions, or separation from certain other youth.

B. When youth in LSP are housed in detention awaiting placement in an LSP provider facility, detention staff must attempt to obtain and consider the information outlined above in Section A. 1-11., following the requirements outlined in Policy #2015/06, *Prevention, Detection, and Response to Sexual Misconduct in the Division of Youth and Family Justice Detention Services*.

C. When ACS staff are deciding where youth in LSP must be placed, ACS staff must attempt to obtain and consider the information outlined above in Section A. 1-11. when choosing a particular LSP provider facility.

D. When youth are admitted to an LSP provider facility, LSP provider staff must attempt to obtain the information outlined above in Section A. 1-11. Within 72 hours, LSP provider staff must use this information and an objective screening instrument to make housing, programming, education, and other supervision arrangements with the goal of keeping all youth safe and free from sexual abuse.

E. ACS and LSP provider staff must review a youth's housing and programming assignments periodically and work to adjust them, as necessary, based on information that becomes available that affects ACS and LSP provider staff's ability to keep all youth safe and free from sexual misconduct.

F. ACS and LSP providers shall not place lesbian, gay, bisexual, transgender, gender non-conforming, or intersex youth in particular housing or other programming assignments solely on the basis of such identification or status.

   1. ACS and LSP staff shall not consider lesbian, gay, bisexual, transgender, gender non-conforming, or intersex identification or status as an indicator or likelihood of being sexually abusive.

   2. ACS and LSP staff must follow the provisions outlined in Policy #2012/01 *Promoting a Safe and Respectful Environment for Lesbian, Gay, Bisexual, Transgender, and Questioning Youth (LGBTQ) and Their Families Involved with the Child Welfare, Detention, and Juvenile Justice System*.

G. ACS and LSP providers shall not automatically house transgender and intersex youth according to the sex they were assigned at birth.

   1. ACS and LSP providers must make housing decisions for transgender and intersex youth based on each youth's individualized needs and must prioritize the youth's emotional and physical safety.

   2. ACS and LSP staff must take into account the youth's perception of where he or she will be most secure, as well as any recommendations provided by the youth's medical, mental health, or psychiatric care provider.

   3. The presumed default housing for transgender and intersex youth will be according to their gender identity, unless there is a compelling reason that this would be inappropriate or unsafe.

   4. For transgender or intersex youth admitted to LSP, ACS and LSP intake staff must determine appropriate housing and programming placements in consultation with the facility Executive Director.

   5. When a youth is not housed according to his or her identified gender, the Facility Director or his or her designee must consult with and receive authorization from the Associate Commissioner or designee of OPPP within DYFJ in order to receive authorization for the housing decision. ACS and LSP provider staff must document the housing decision for each transgender and intersex youth in the youth's record.

H. All youth must shower individually.

I. If a youth is experiencing trouble with his or her housing or programming assignment, LSP provider staff must assess the youth's current assignments and explore supports and alternatives. LSP provider staff must review housing and programming assignments for transgender and intersex youth at least every six (6) months even if they are not experiencing trouble with those assignments, or sooner if requested by the youth or if the safety of the youth becomes a concern.

J. The Facility Director in each LSP facility must implement appropriate controls on the internal and external dissemination within the facility of the information described in Section XIV. in order to prevent sensitive information from being exploited to the youth's detriment by staff or other youth, and confirm that the LSP provider upholds its responsibilities to safeguard confidential information.

XV. YOUTH REPORTS OF ALLEGED SEXUAL MISCONDUCT

A. LSP staff must provide youth with multiple ways to report[6] sexual misconduct, retaliation, and staff neglect or violation of responsibilities that may have led to such incidents. Youth may report concerns, either anonymously or by name, by using any of the following methods:

1. Completing a written grievance form and putting it in a grievance box or giving it to an LSP staff member;

2. Writing the grievance on any piece of paper and putting it in a grievance box or giving it to an LSP staff member;

3. Talking to an LSP staff member and indicating that they have a complaint or grievance or otherwise want to report an incident;

4. Talking to a third party, such as a family member, ACS staff member, or any other adult, and indicating that they have a complaint or grievance or otherwise want to report an incident.

B. <u>Requirements for LSP Reporting Mechanisms</u>

1. The LSP provider must not put a time limit on when a youth may submit a grievance regarding an allegation of sexual abuse.

[6] See ACS Policy and Procedure *Youth Grievance Policy for Juvenile Justice Placement*.

2. The LSP provider must explain to youth how they can file an emergency grievance if they are subject to substantial risk of imminent sexual abuse, whereby LSP staff will provide an initial response no later than 48 hours after the youth files the grievance. The LSP provider must secure approval for this process from ACS.

3. The LSP provider must not require youth to use any informal grievance process or to attempt to resolve with staff an alleged incident of sexual abuse.

4. The LSP provider must make sure that:

   a. A youth who alleges sexual abuse may submit a grievance without submitting it to a staff member who is the subject of the complaint; and

   b. Such grievance is not referred to a staff member who is the subject of the complaint.

5. Third parties, including other youth in LSP, staff members, family members, attorneys, and outside advocates, must be permitted to assist youth in filing grievances relating to allegations of sexual abuse and must be permitted to file grievances relating to allegations of sexual abuse on behalf of a youth.

C. LSP staff must provide youth with at least one way to report sexual misconduct, retaliation, and staff neglect that may have led to such incidents to an entity that is not part of DYFJ or ACS. Youth may do so by contacting the Justice Center VPCR or by asking an LSP staff member for access to a telephone to call the Justice Center VPCR. Youth do not need to explain why they wish to call the Justice Center VPCR.

XVI. COORDINATED RESPONSE TO ALLEGED SEXUAL MISCONDUCT

A. ACS employees and LSP provider staff must take immediate action to protect a youth when informed by any means that the youth is subject to a substantial risk of imminent sexual abuse or that a youth has been sexually abused. This includes the following:

1. Separating the youth from the alleged perpetrator;

2. Preserving and protecting any crime scene until appropriate steps can be taken to collect any evidence;

3. Requesting that the alleged victim not take any actions that could destroy physical evidence if the alleged incident occurred in the last five (5) days, including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, drinking, or eating; and

4. Requesting that the alleged perpetrator not take any actions that could destroy physical evidence if the alleged incident occurred in the last five (5) days, including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, drinking, or eating.

B. If the first responder to an allegation of sexual abuse is not an ACS employee or LSP staff member but is subject to this policy, the responder must request that the alleged victim not take any actions that could destroy physical evidence and then notify the Facility Director, an ACS employee, or an LSP staff member.

C. LSP provider staff must take immediate and appropriate action to house any youth who is alleged to have suffered sexual abuse in a safe environment. Appropriate actions may include transferring the youth to a different housing area within the same facility or transferring the youth to another facility.[7] All actions must be communicated to ACS and reviewed by the Placement and Permanency Specialist (PPS).

D. LSP staff must offer youth who have reported sexual abuse or are believed to have been sexually abused appropriate access to a sexual assault advocate and emergency and ongoing medical, mental health, counseling, and crisis intervention services, free of charge, and regardless of whether the youth names the alleged abuser or cooperates with any investigation.

1. Such services must be made available both to youth who report victimization that occurred while in ACS custody and to youth who report victimization that occurred prior to the youth's entrance into ACS custody.

2. LSP staff must also offer youth who are actual or alleged perpetrators of sexual abuse a mental health evaluation and appropriate treatment, so long as such services do not conflict with ongoing investigations or jeopardize a youth's Fifth Amendment right against self-incrimination.

E. <u>Reporting Responsibilities for ACS Employees, LSP Provider Staff, Professional and Other Visitors, Contractors, Volunteers, Staff of City Partner Agencies and Interns</u>

1. Any ACS employee, LSP staff member, professional and other visitor, contractor, volunteer, staff of city partner agencies or intern who has any knowledge of, suspicion of, or information about any of the following must make a report to the Justice Center VPCR:

[7] See ACS Policy and Procedure *Transfers in Juvenile Justice Placements*.

a. Sexual abuse of a youth in ACS custody by an ACS employee, LSP staff member, professional and other visitor, contractor, volunteer, staff of city partner agencies or intern;

b. Sexual harassment of a youth in ACS custody by an ACS employee, LSP staff member, professional and other visitor, contractor, volunteer, staff of city partner agencies or intern;

c. Retaliation against youth or staff who reported abuse by an ACS employee, LSP staff member, professional and other visitor, contractor, volunteer, staff of city partner agencies or intern; or

d. Neglect or violation of responsibilities by an ACS employee, LSP staff member, professional and other visitor, contractor, volunteer, staff of city partner agencies or intern that may have contributed to an incident of sexual abuse or retaliation.

2. The individual making the report must follow ACS policies *Incident Reporting for Juvenile Justice Placement and Aftercare* and *Vulnerable Persons Central Register (VPCR) Reportable Incidents and Notification*.

3. If any of the following involve alleged conduct by ACS employees, the individual must also immediately notify the ACS Employment Law Unit (ELU).

4. In cases involving sexual activity or sexual harassment among youth in ACS custody, the individual making the report must follow the policies *Incident Reporting for Juvenile Justice Placement and Aftercare* and *Vulnerable Persons Central Register (VPCR) Reportable Incidents and Notification* when reporting the incident.

5. ACS employees, LSP staff members, professional and other visitors, contractors, volunteers, staff of city partner agencies and interns must report incidents involving sexual misconduct to the Justice Center VPCR when required to do so by OCFS, the ACS reporting policy, and/or applicable New York State statutes and regulations.

6. LSP staff must contact the New York City Police Department (NYPD) or other appropriate law enforcement agency as follows:

   a. Any time an incident of sexual abuse is discovered in progress or a report is made soon after an incident, the LSP staff member observing the incident or receiving the report must immediately call the Director of the facility or that person's designee.

i. The Facility Director or designee must immediately contact the Special Victims Division of the NYPD through that unit's hotline at 646-610-7272, or the designated contact at the law enforcement agency with jurisdiction over the facility.
ii. However, if LSP staff encounter a situation where there is an immediate need to protect life and/or prevent a crime from occurring, staff must call 911 to report the incident prior to calling the Facility Director or designee.

b. Any time a report is received of prior sexual abuse, the Facility Director or that person's designee must contact the Special Victims Division of the NYPD through that unit's hotline at 646-610-7272, or the designated contact at the law enforcement agency with jurisdiction over the facility.

7. Designated ACS employees and LSP staff members must be trained in techniques for interviewing youth so that they can determine whether sexual activity with another youth is alleged to have been consensual. These interviews will be solely for the purpose of deciding whether or not a referral must be made to law enforcement.

8. Upon receiving an allegation that a youth in ACS custody was sexually abused or harassed in ACS custody or while in another facility, the director of the facility currently housing the youth must, immediately upon discovery:

a. Report the alleged misconduct to the Justice Center VPCR pursuant to OCFS guidance, ACS policies *Incident Reporting for Juvenile Justice Placement and Aftercare* and *Vulnerable Persons Central Register (VPCR) Reportable Incidents and Notification*, and any applicable New York State statutes and regulations;

b. Report the alleged misconduct to the Facility Director where the alleged abuse occurred and, if the abuse occurred outside of New York State, to the appropriate investigating agency for that facility;

c. Document that these notifications were made in an incident report; and

d. Notify ACS of all steps taken.

F. Upon receipt of information about or an allegation of sexual abuse by an ACS employee, LSP staff member, professional and other visitor, contractor, volunteer, staff of city partner agencies or intern:

a. The Facility Director or his or her designee must prohibit the individual alleged to have engaged in the conduct from having contact with any youth in ACS custody pending any investigation by the Justice Center or the Department of Investigation

(DOI).

G. During the pendency of any investigation by the Justice Center or DOI of alleged sexual harassment by an ACS employee, LSP staff member, professional and other visitor, contractor, volunteer, staff of city partner agencies or intern:

   a. The Facility Director or his or her designee must determine whether the individual alleged to have engaged in the conduct should be suspended or reassigned until completion of the investigation, depending on the nature of the allegation, in consultation with the PREA Coordinator.

H. Beyond reporting to designated supervisors or officials and ACS, ACS and LSP staff must be prohibited from revealing any information related to a sexual abuse report to anyone other than to the extent necessary as specified in this policy to make treatment, investigation, and other security and management decisions. Medical and mental health practitioners must be required to inform youth at the beginning of services of their duty to report and the limitations of confidentiality.

XVII. YOUTH ACCESS TO OUTSIDE SUPPORT SERVICES AND LEGAL REPRESENTATION

A. The LSP provider must provide youth with access to outside victim advocates for emotional support services related to sexual abuse by providing, posting, or otherwise making accessible mailing addresses and telephone numbers, including toll-free hotline numbers, where available, of local, state, or national victim advocacy or rape crisis organizations. The LSP provider must enable reasonable communication between youth and these organizations and agencies in as confidential a manner as possible.

B. The LSP provider must inform youth, prior to giving them access, of the extent to which such communications described above in Section A. must be monitored, and the extent to which reports of abuse will be forwarded to authorities in accordance with mandatory reporting laws.

C. The LSP provider must maintain or attempt to enter in a Memorandum of Understanding (MOU) or other agreements with community service providers that are able to provide youth with confidential emotional support services related to sexual abuse. The LSP provider must maintain copies of agreements or documentation showing attempts to enter into such agreements.

D. The LSP provider must also provide youth with reasonable and confidential access to their attorneys or other legal representation, and reasonable access to parents/legal guardians.

XVIII. NOTIFICATION OF YOUTH'S PARENT, GUARDIAN, ATTORNEY, AND/OR CASEWORKER

A. Within 24 hours of receipt of information of an allegation of sexual abuse against a youth in ACS custody, the LSP staff member designated in Section B. below must attempt to notify the parties listed below, by telephone, that a child abuse allegation was made to the Justice Center VPCR. Said LSP staff member must make this notification regardless of whether the Justice Center VPCR accepts the allegation, must document in the youth's case file the date and time of each call to the following parties, and must notify ACS that such notifications have been made or attempted:

   1. The youth's parent/guardian, unless the case manager has documentation indicating that the parent/guardian should not be notified;

   2. The youth's attorney of record; and

   3. The youth's child welfare caseworker, if the youth is involved with the child welfare system.

B. The LSP staff members listed below must make the notifications in Section A. above under the following circumstances:

   1. If the allegation involves sexual abuse in an LSP facility, the Facility Director of the facility where the alleged abuse occurred or his or her designee must make the required notifications.

   2. If the allegation involves sexual abuse during transportation to or from the LSP facility or during court, the Executive Director of CAM must make the required notifications.

C. If the LSP staff member is not successful in speaking with the parties listed above during the initial telephone call, that staff member must make two (2) additional attempts to contact the party, by telephone, within one (1) week of the allegation, documenting the date and time of each attempt in the youth's case file. After three (3) unsuccessful attempts to contact the party by telephone, the staff member must mail a letter, return receipt requested, to the person's last known address. The staff member must include a copy of the letter in the youth's case file, as well as the return receipt if and when it is received.

D. Aside from fulfilling reporting responsibilities and cooperating with investigations and supervisory reviews, LSP staff must keep confidential any information they learn regarding an allegation of sexual misconduct, consistent with DJJ Directive #05/07 *Confidential Nature of Resident's Information Including Immigration Status* and DJJ

Order #08/07 *Resident Case Confidentiality*.

XIX. EMERGENCY AND ONGOING MEDICAL, MENTAL HEALTH, AND CRISIS INTERVENTION SERVICES FOLLOWING AN ACTUAL OR ALLEGED INCIDENT OF SEXUAL ABUSE

ACS employees and LSP provider staff must follow the procedures below depending on the nature of the alleged sexual abuse:

A. For youth who are actual or alleged victims of sexual abuse 1) while housed in a DYFJ LSP facility or 2) that occurred within 96 hours prior to the youth's admission to a DYFJ LSP facility:

1. After following the procedures outlined in Section XVI, LSP staff must provide the youth with an opportunity to meet with a sexual assault advocate. If the youth wants to meet with an advocate, the advocate will be allowed to meet with the youth in as confidential a setting as possible.

2. LSP staff must immediately make arrangements to transport the youth to the hospital to be offered a forensic medical examination and emergency medical services if the youth agrees to such an examination.

3. Youth must be transported in the least restrictive means possible to a designated hospital, depending on where the youth is currently housed.[8] If there are multiple youth to transport at the same time, staff must transport each youth in separate vans and keep youth apart at the hospital.

4. At the time of a youth's transport to the hospital, LSP staff must provide the youth with the opportunity to have her or his sexual assault advocate go to the hospital as well or to meet only with a social worker or volunteer community sexual assault advocate, when one is available, at the hospital. At the hospital, LSP staff will make every effort to provide the youth with an opportunity to speak with her or his advocate or social worker in a manner that is as confidential as possible.

5. LSP staff will also give the youth the opportunity to place a phone call to his or her parent/guardian and attorney of record.

6. Upon the youth's return from the hospital, LSP providers' medical and mental health staff must offer the youth all follow-up medical and mental health care determined necessary by them or by hospital staff. This may include the following:

[8] See ACS Policy and Procedure #2015/13, *Mechanical Restraints for Limited Secure Placement*.

a. Information about and timely access to emergency contraception and sexually transmitted infections prophylaxis;
b. Pregnancy tests;
c. Information about and timely access to all lawful pregnancy-related medical services;
d. Treatment plans;
e. Other follow-up medical and mental health services;
f. Referrals to rape crisis centers or other organizations that can provide emotional support services; and
g. Referrals for continued care following the youth's release or transfer to another facility.

7. LSP provider medical, mental health, and psychiatric staff must also offer youth any services that they deem necessary during follow-up consultations with youth.

8. Prior to the youth's release from LSP, case managers must provide youth with referrals to a rape crisis center or similar organization that is located in the area where the youth will live upon discharge from the facility.

B. For youth who are actual or alleged victims of sexual abuse <u>that occurred more than 96 hours prior to the youth's admission to an ACS detention facility</u>:

1. After following the procedures outlined in Section XVI of this policy, LSP staff must provide the youth with an opportunity to meet with a sexual assault advocate. If the youth wants to meet with an advocate, the advocate will be allowed to meet with the youth in as confidential a setting as possible.

2. LSP staff must immediately telephone the Sexual Assault Response Team hotline at a designated hospital, depending on where the youth is currently housed, to determine whether the youth should be transported to the hospital to receive services. If the Sexual Assault Response Team indicates that the youth can benefit from services at the hospital, staff must transport the youth to the hospital, following the procedures outlined in Section A., above.

3. LSP provider staff must also offer the youth a referral to the LSP provider's medical, mental health, and psychiatric staff within 24 hours of receipt of the information.

4. If the youth accepts the referral, the LSP provider's medical, mental health, and psychiatric staff must meet with the youth within seven (7) days of receipt of this information to offer the youth timely, unimpeded access to emergency medical treatment and crisis intervention services, the nature and scope of which must be

determined by medical, mental health, and psychiatry practitioners according to their professional judgment. This may include the following:

a. Information about and timely access to emergency contraception and sexually transmitted infections prophylaxis;
b. Pregnancy tests;
c. Information about and timely access to all lawful pregnancy-related medical services;
d. Treatment plans;
e. Other follow-up medical and mental health services;
f. Referrals to rape crisis centers or other organizations that can provide emotional support services; and
g. Referrals for continued care following the youth's release or transfer to another facility.

5. If no qualified facility-based medical, mental health, or psychiatry professional is available at the time that such services are needed, LSP provider staff must transport youth to the appropriate medical facility in the least restrictive means possible.

6. Prior to the youth's release from LSP, case managers must provide youth with referrals to a rape crisis center or similar organization that is located in the area where the youth will live upon discharge from the facility.

C. For youth who are actual or alleged perpetrators of sexual abuse:

1. LSP provider staff must offer the youth a referral to the LSP provider's mental health and psychiatric staff within 24 hours of receipt of the information.

2. If the youth accepts the referral, the LSP provider's mental health and psychiatric staff must meet with the youth within 7 days of receipt of this information to offer the youth a mental health evaluation and, as appropriate, mental health treatment. Mental health and psychiatry providers must not offer youth interventions that conflict with ongoing investigations or that jeopardize a youth's Fifth Amendment right against self-incrimination.

XX. PROTECTION FROM RETALIATION

A. The individuals governed by this policy must not retaliate against youth or other individuals who report sexual abuse or sexual harassment or who cooperate with sexual abuse or sexual harassment investigations.

B. The PREA Coordinator and the PREA Compliance Manager must coordinate to protect from retaliation all youth, staff, and others governed by this policy who make such reports or who cooperate in such investigations. The PREA Compliance Manager must designate which LSP staff members must monitor retaliation at LSP provider facilities.

C. LSP staff must protect all youth and staff who report sexual abuse or sexual harassment or who cooperate with sexual abuse or harassment investigations from retaliation by youth or staff. Protection measures must include the following:

1. Housing changes or transfers for youth victims;
2. Removal of alleged staff or youth abusers from contact with victims; and/or
3. Provision of emotional support services.

D. For at least 90 days following a report of sexual abuse, the individuals designated in Section B. above must monitor the conduct and treatment of youth and staff who reported sexual abuse and youth who were reported to have suffered sexual abuse to see if there are changes that suggest possible retaliation by youth and/or staff. Monitoring must continue beyond 90 days if the initial monitoring indicates an ongoing need. Monitoring must include the following:

1. Periodic in-person status checks with youth, ACS or LSP staff, and individuals governed by this policy;
2. Review of disciplinary incidents involving youth;
3. Review of housing or program changes; and
4. Review of negative performance reviews or reassignments of ACS or LSP staff and individuals governed by this policy.

XXI. BEHAVIOR MANAGEMENT CONSEQUENCES FOR YOUTH WHO ENGAGE IN SEXUAL ABUSE AND SEXUAL HARASSMENT, AND UNSUBSTANTIATED OR UNFOUNDED ALLEGATIONS OF SEXUAL MISCONDUCT MADE BY YOUTH

A. In addition to following the reporting and response requirements in Part XVI, LSP staff must take the following actions in cases involving youth who engage in sexual abuse or sexual harassment.

1. LSP staff must refer youth alleged to have engaged in sexual abuse of another youth to NYPD's Special Victims Division or the other appropriate law enforcement agency pursuant to this policy, and the youth shall receive consequences pursuant to the court process.

2. **For youth who are alleged to have engaged in sexual misconduct other than sexual abuse**, LSP staff must determine whether any action is appropriate as part of the facility's behavior management system. LSP staff must consider whether a

youth's mental disabilities or mental illness contributed to his or her behavior when determining whether any action is appropriate.

B. LSP staff must offer youth who have committed or are alleged to have committed sexual abuse or sexual harassment the opportunity for therapy, counseling, and other appropriate interventions. LSP staff must not offer a youth interventions that conflict with ongoing investigations or that jeopardize the youth's Fifth Amendment right against self-incrimination.

C. LSP staff must not impose behavior management consequences upon youth for sexual contact with staff unless the agency makes a finding that the staff member did not consent to such contact.

D. LSP staff must not impose behavior management consequences upon youth for making a report of sexual misconduct, even if an investigation does not establish sufficient evidence to substantiate the allegation. If a youth files a false report in bad faith, LSP staff must take appropriate steps to address the underlying reasons for the filing of the false report.

XXII. REPORTING TO YOUTH

A. When an investigating entity completes its investigation into an allegation of sexual abuse or sexual harassment, the ACS PPS worker or supervisor must notify the youth as to whether the investigating entity has referred an allegation for prosecution or declined to proceed with the investigation, or whether the investigating entity determined that the allegation was substantiated, unsubstantiated, or unfounded.

B. Unless the investigating entity determines that the allegation of staff sexual abuse or sexual harassment is unfounded, the ACS PPS worker or the PREA Coordinator must make the following notifications:

1. Within 24 hours of learning the information, notify the youth when the staff member is no longer posted within the youth's unit or when the staff member is no longer employed at the facility.

2. Within 96 hours of learning the information, notify the youth when the staff member has been indicted or convicted on a charge related to sexual abuse within the facility.

C. Within 96 hours of learning the information, the ACS PPS worker or the PREA Coordinator must notify youth of the following:

1. When the alleged youth abuser has been indicted on a charge related to sexual abuse within the facility; or

2. When the alleged youth abuser has been convicted on a charge related to sexual abuse within the facility.

D. ACS staff must document the notifications made according to this section.

XXIII. CRIMINAL AND ADMINISTRATIVE AGENCY INVESTIGATIONS

A. When the LSP provider conducts its own investigations into allegations of sexual harassment, it must do so promptly, thoroughly, and objectively for all allegations including third-party and anonymous reports. The PREA Compliance Manager and the PREA Coordinator must cooperate and coordinate with investigating outside entities and must not impede outside investigations.

B. **All incidents of alleged sexual abuse must be referred to law enforcement.**

C. If applicable, sexual harassment allegations must be referred to the Justice Center.

D. Administrative investigations:

1. Must include an effort to determine whether staff actions or failures to act contributed to the abuse; and

2. Must be documented in written reports that include a description of the physical and testimonial evidence, the reasoning behind the credibility assessments, and investigative facts and findings.

E. The LSP provider must retain all written reports referenced above for as long as the alleged abuser is incarcerated or employed by the agency, plus five (5) years, unless the abuse was committed by a youth and applicable law requires a shorter period of retention.

F. Administrative investigations must continue even if the alleged abuser or victim leaves the employment or control of the facility or agency.

XXIV. ACS AND LSP STAFF DISCIPLINE

A. ACS employees and LSP provider staff must be subject to disciplinary sanctions up to and including termination for violating ACS sexual abuse or sexual harassment policies.

B. Termination must be the presumptive disciplinary sanction for ACS employees and LSP provider staff who have engaged in sexual abuse.

C. Disciplinary sanctions for violations of ACS policies relating to sexual abuse or sexual harassment (other than actually engaging in sexual abuse) must be commensurate with the nature and circumstances of the acts committed, the employee's disciplinary history, and the sanctions imposed for comparable offenses by other employees with similar histories.

D. For misconduct involving ACS employees, the Employment Law Unit (ELU) must notify any licensing body responsible for licenses that were required for the employee's position of all terminations for violations of ACS sexual abuse or sexual harassment policies, or resignations by employees who would have been terminated if not for their resignation.

E. For misconduct involving LSP provider staff, the LSP Facility Director or designee must notify any licensing body responsible for licenses that were required for the employee's position of all terminations for violations of ACS sexual abuse or sexual harassment policies, or resignations by employees who would have been terminated if not for their resignation.

XXV. DISCIPLINE OF CONTRACTORS, VOLUNTEERS, AND INTERNS

A. ACS and LSP providers must prohibit any contractor, volunteer, or intern who engages in sexual abuse from any contact with youth; report the individual to law enforcement agencies; and report the individual to any licensing body responsible for licenses that were required as part of the staff member's job description.

B. ACS and LSP providers must take appropriate remedial measures, and must consider whether to prohibit further contact with youth, in the case of sexual misconduct other than sexual abuse perpetrated by any contractor, volunteer, or intern.

C. Termination must be the presumptive disciplinary sanction for interns and contractors who have engaged in sexual abuse. Contractors who have engaged in sexual abuse must also be placed on the Justice Center SEL.

XXVI. SEXUAL ABUSE INCIDENT REVIEWS

A. As soon as possible, but no later than 30 days after the completion of each investigation into sexual abuse, a Sexual Abuse Incident Review Committee (the Committee) must convene to review the incident. The Committee must include the PREA Coordinator, Facility Compliance Manager, and other upper-level management

officials from LSP providers with input from line supervisors, investigators, and medical or mental health practitioners. The Committee must:

1. Consider whether the allegation or investigation indicates a need to change policy or practice to better prevent, detect, or respond to sexual abuse;

2. Consider whether the incident or allegation was motivated by race; ethnicity; gender identity; lesbian, gay, bisexual, transgender, or intersex identification, status, or perceived status; gender expression; disability; gang affiliation; or was motivated or otherwise caused by other group dynamics at the facility;

3. Examine the area in the facility 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;

6. Prepare a preliminary report of its findings, including, but not necessarily limited to, determinations made pursuant to the aforementioned factors, and recommendations for improvement within 30 days of the incident; and

7. Submit the final report of findings and recommendations to the Associate Commissioner of OPPP within 60 days of the incident, as well as the ELU if the incident involved allegations against an ACS employee.

8. If a Committee was already convened to examine previous investigations of the same incident, the Committee must review its findings to determine whether subsequent investigations have revealed new information or reached different conclusions that would warrant revisiting the Committee's previous findings. The Committee is not required to begin a new full review.

B. The Committee must follow the procedures outlined in ACS Policy and Procedure *Safe Intervention Policy for Juvenile Justice Placement* when conducting the review outlined in Section A. The Committee's activities must be distinct from any activities of the Justice Center review committees.

C. The Facility Director of the facility where the alleged abuse occurred must review the report and document the steps taken to implement the recommendations, or must document the reasons for not doing so. If the alleged abuse occurred during transportation to or from LSP or during court, the Executive Director of CAM must review the report and document the steps taken to implement the recommendations,

or must document the reasons for not doing so.

D. The OPPP must review the report prepared by the Committee and the response of the Facility Director of the facility where the alleged abuse occurred, or the response of the Executive Director of CAM if the alleged abuse took place during transportation to or from the LSP facility or during court. The Associate Commissioner or his or her designee must work with other agency officials to implement the recommendations that require coordination with other parts of the agency.

E. To help Sexual Abuse Incident Review Committees begin their review within 30 days of the completion of an investigation:

1. The ELU must maintain a docket of open investigations of alleged sexual abuse by ACS employees, referred to ELU, and must determine the status of those investigations on a monthly basis, to the extent that this information is available. The ELU must notify the Facility Director or the Executive Director of CAM upon completion of each pending investigation. The ELU must maintain the records of these investigations.

2. The PREA Coordinator or his or her designee must maintain a docket of open investigations of alleged sexual abuse by all ACS employees not investigated by the ELU, as well as investigations of alleged sexual abuse by LSP provider staff, contractors, youth, volunteers and interns, and any other incident reported under this policy. The PREA Coordinator or his or her designee must determine the status of those investigations on a monthly basis. The PREA Coordinator or his or her designee must notify the Facility Director of the facility where the alleged abuse occurred or the Executive Director of CAM upon completion of each pending investigation. The PREA Coordinator must maintain the records of these investigations.

XXVII. DATA COLLECTION AND REPORTING

A. The Incident Review Coordinator must collect accurate, uniform data for every allegation of sexual misconduct in LSP facilities operated by ACS and under contract to ACS, using a standardized instrument and set of definitions. The data collection must include, at a minimum, the data necessary to answer all questions from the most recent version of the Survey of Sexual Violence conducted by the Department of Justice. The Incident Review Coordinator must collect and maintain data, as needed, from all available incident-based documents, including reports, investigation files, and sexual abuse incident reviews.

B. The Incident Review Coordinator must securely retain data collected pursuant to Section A. and maintain that data for at least 10 years from the date of its initial collection unless federal, state, or local law requires otherwise.

XXVIII. DATA REVIEW FOR CORRECTIVE ACTION

A. The Incident Review Coordinator must gather and aggregate data collected in Section XXVII. A. in order to help ACS and provider agencies assess and improve the effectiveness of its approach to sexual misconduct prevention, detection, and response.

B. The Incident Review Coordinator must report the aggregate data described in Section XXVII. A. at monthly GOALS meetings and to LSP Facility Directors on a monthly basis to help ACS and provider agencies identify problem areas and take corrective action on an ongoing basis.

C. The Incident Review Coordinator must prepare an annual report of DYFJ's findings and corrective actions for each LSP facility. The report must include a comparison of the current year's data, disaggregated by each LSP provider facility, and corrective actions with those from prior years and must provide an assessment of DYFJ's progress in addressing sexual misconduct. The Incident Review Coordinator must consult with the following individuals when preparing the annual report:

1. OPPP;
2. The PREA Coordinator;
3. Facility Directors of LSP provider facilities; and
4. Any other officials who would be helpful in preparing the report.

D. The Incident Review Coordinator, in consultation with the ACS Office of Communications and Intergovernmental Affairs, must secure approval of the annual report by the ACS Commissioner and publish the report on the ACS website.

E. LSP provider facilities must make the information outlined in Section C. available on the provider agency's website or otherwise make such information publicly available if the provider agency does not have a website.

XXIX. AUDITS

The Incident Review Coordinator, in consultation with the PREA Coordinator, must coordinate ACS' response to any audit findings that ACS does not meet a standard in consultation with the Associate Commissioner of OPPP and the LSP Facility Directors.

ATTACHMENT A: SEARCH REQUEST FORM FOR TRANSGENDER AND INTERSEX YOUTH

You can request to be searched by either a male or female staff member while you are here. We will do our best to honor your choice unless there is a security emergency.

Please check the box next to the statement that best matches how you feel.

- ☐ I am most comfortable being searched by a **male** staff member.
- ☐ I am most comfortable being searched by a **female** staff member.
- ☐ I do not care whether a **male or female** staff member searches me.

Youth's Signature: _____

Youth's Printed Name: _____

Today's Date: _____

CC: Youth File