

115.66

Preservation of ability to protect
inmates from contact with abusers

Standard in Focus

Preservation of ability to protect inmates from contact with abusers

§115.66

- a) Neither the agency nor any other governmental entity responsible for collective bargaining on the agency's behalf shall enter into or renew any collective bargaining agreement or other agreement that limits the agency's ability to remove alleged staff sexual abusers from contact with any inmates pending the outcome of an investigation or of a determination of whether and to what extent discipline is warranted.
- b) Nothing in this standard shall restrict the entering into or renewal of agreements that govern:
 - (1) The conduct of the disciplinary process, as long as such agreements are not inconsistent with the provisions of §§ 115.72 and 115.76; or
 - (2) Whether a no-contact assignment that is imposed pending the outcome of an investigation shall be expunged from or retained in the staff member's personnel file following a determination that the allegation of sexual abuse is not substantiated.

Purpose

To help prevent staff sexual abuse and foster a culture of reporting, recognizing that:

- A person who is confined is more likely to report sexual abuse when the agency is able to protect them from further abuse.
- Confined people are more likely to report sexual abuse when staff are held accountable for engaging in sexual abuse.
- Holding staff accountable for committing sexual abuse discourages future abuse.

To ensure that employee collective bargaining agreements do not present a barrier to an agency's ability to protect confined persons from contact with alleged sexual abusers during investigations, nor hinder an agency's ability to discipline staff found to have engaged in sexual abuse of inmates.

Implementation

- The **agency** or **governmental entity** responsible for collective bargaining on the agency's behalf shall NOT:

- (1) Enter into or renew any collective bargaining agreement or other agreement that limits the **agency's** ability to remove alleged staff sexual abusers from contact with any confined person— not just the alleged victim — pending the outcome of an investigation.
 - (2) Enter into or renew any collective bargaining agreement or other agreement that limits the **agency's** ability to determine whether and to what extent discipline is warranted against the staff.
- This Standard **does not restrict the entering into or renewing of agreements** that govern:
 - (1) The conduct of the disciplinary process, so long as the agreements do not impose an evidentiary standard higher than a preponderance of the evidence in administrative investigations of sexual abuse (§ 115.72) and are not inconsistent with the required disciplinary sanctions for staff, including that termination shall be the presumptive disciplinary sanction for staff who have engaged in sexual abuse (§ 115.76).
 - (2) Whether a no-contact assignment that is imposed pending the outcome of an investigation shall be expunged from or retained in the staff member's personnel file following a determination that the allegation of sexual abuse is not substantiated.
 - Note that this standard applies only to **agencies** with collective bargaining agreements or other agreements that may limit the **agency's** ability to change staff assignments or discipline staff. The standard applies to agreements that were created or were renewed on or after August 20, 2012.

Challenges

- In cases where the agency is not involved with collective bargaining, ensuring that the governmental entity that is responsible for doing so on the agency's behalf understands and complies with this standard during contract negotiations.
- Where an agency may have multiple bargaining agreements with various unions (e.g., security, medical, or education staff), ensuring that **all** newly created or renewed collective bargaining agreements comply with this standard.
- This standard should not impede agencies and unions in their efforts to reach agreements. However, if it does, the Department of Justice has stated that, "such an (unlikely) outcome is necessary in order to ensure that alleged staff abusers are kept out of contact with alleged victims." (28 CFR Part 115 at 125.)

Best Practices

- Agencies or any other governmental entity responsible for collective bargaining on the agency's behalf should be prepared to explain the requirements of this standard in any negotiations.
- Agencies should continuously partner with unions in all aspects of implementing the PREA Standards to ensure that unions and the employees they represent understand how the standards protect confined persons, staff, and overall facility security.

Audit Issues

- Auditors will review whether the agency, facility, or any other governmental entity responsible for collective bargaining on the agency's behalf has entered into or renewed any collective bargaining agreement or other agreement since August 20, 2012, or since the last PREA audit, whichever is later.
- Auditors will review all collective bargaining agreements or similar agreements to verify that they permit the agency to remove alleged staff sexual abusers from contact with any inmates pending an investigation or a determination of whether and to what extent discipline is warranted.

Standard Variations

There are no variations noted for this standard for Lockups, Community Confinement Facilities and Juvenile Facilities.

Resources

PREA Resource Center Library

- *The Influence of Labor Contracts on Administrators' Response to Staff Sexual Violence*
 - ➔ <https://www.prearesourcecenter.org/sites/default/files/library/5reporttothenationalprisonrapeeliminationcommissiontheinfluenceofcollectivebargainingagr.pdf>
- *Labor and Employment Law: Tools for Prevention, Investigation and Discipline of Staff Sexual Misconduct in Custodial Settings*
 - ➔ https://www.prearesourcecenter.org/sites/default/files/library/86-laborandemploymentlawtoolsforprevention2009_0.pdf

Notes and Federal Disclaimer

Note: Standards in Focus (SIFs) are not intended for use by the Department of Justice PREA auditors to evaluate PREA compliance. SIFs are a tool designed to help agencies and facilities implement, educate, and become familiar with the PREA standards and some related best practices, but are not a compliance checklist. They contain guidance about implementation best practices that may not be required and thus it would not be appropriate for auditors to audit against the SIF. SIFs also do not exhaust implementation guidance for every requirement in every standard.

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