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Assessment of Diocese of
Manchester's Compliance
Program

for

The New Hampshire
Attorney General

October 14, 2005

Prepared by:

KPMG FORENSIC SERVICES

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I. Introduction

A. Background

The Diocese of Manchester (“the Diocese”), which was established in 1884, encompasses the entire State of New Hampshire and consists of 117 parishes, 25 Diocesan schools and two summer camps. The Diocese’s website listed 116 active priests and 48 permanent deacons serving 310,206 registered Catholics as of December 31, 2004. Bishop McCormack, responsible for overseeing the Diocese, was appointed by Pope John Paul II and installed as the ninth Bishop of Manchester on September 21, 1998.

In December 2002, the State of New Hampshire, through its Attorney General (“the Attorney General”), reached a Non-prosecution Agreement (the “Agreement”) with the Diocese relating to allegations of sexual misconduct with minors by priests and Diocesan leaders over a forty-year period. This Agreement established terms and conditions to facilitate the protection of minors and ensure a system of accountability, oversight, transparency, and training.

The terms of the Agreement comprise the basis for the Diocese’s Compliance Program (the “Compliance Program” or “Program”). This Program is to include:

- (1) The implementation of policies and procedures for preventing, responding to, and reporting, allegations of sexual abuse;
- (2) The provision of safety training regarding the sexual abuse of minors and the reporting requirements for Diocesan personnel;
- (3) The maintenance of the Office of the Delegate for Sexual Misconduct to handle all allegations of sexual abuse of minors;
- (4) The retention of all documents and information relating to allegations of sexual abuse by minors until the death of the accused Diocesan Personnel; and,
- (5) An annual audit regarding compliance with the terms of the Agreement and Diocesan policies.

A copy of the Agreement is attached as **Exhibit A**.

In November 2003, the Attorney General selected KPMG LLP’s Forensic practice to provide assistance with the annual audits provided for in the Agreement. In February 2004, the Diocese sent the Attorney General’s Office a draft of a proposed assessment instrument.¹ After resolving the issues raised by the Diocese, the Attorney General retained KPMG on May 4, 2005, to assess the Diocese’s compliance with the Agreement. This is the first of four planned annual program assessments.

B. Limitations on Liability

KPMG was not engaged to perform an audit, review, or compilation of financial statements or financial information, as those terms are understood and defined by professional guidance promulgated by the American Institute of Certified Public Accountants and, accordingly, it

¹ Discussions between the New Hampshire Attorney General’s Office and representatives of the Diocese ensued, and the following concerns were expressed by the Diocese: the nature of the personnel selected for interviews; the scope of the assessment for year one given the implementation of new policies for subsequent years; the selection of an outside entity to assist with the assessment; the cost of the assessment and the party responsible for payment; the structure and tone of the final report; and the timing for commencement of assessment procedures.

expresses no opinion or other form of assurance on financial statements or financial information. Furthermore, KPMG was not engaged to conduct a comparative legal analysis or to provide any legal conclusions, opinions, or advice herein.

In conducting its assessment, KPMG made subjective judgments in a variety of areas relating to legal, regulatory, and industry standards. These judgments are based on U.S. laws and regulations, and on KPMG's knowledge and experience in understanding relevant guidance presented by leading industry policy groups. There is no guarantee, however, that KPMG's views will concur with those of regulators or law enforcement and therefore, KPMG makes no representation regarding the same.

During the course of the assessment, KPMG was provided with various documents and explanations. If further documentation or explanations come to light after the issuance of our report, KPMG reserves the right to, but is not obligated to, amend its findings, recommendations or considerations for enhancement.

This report provides the results of KPMG's independent assessment of the Diocese's Compliance Program as it existed at the time of its review. The observations and recommendations of KPMG as presented in this report are based on the procedures performed as described in the Methodology below, and on the information supplied by the Delegate, Diocesan and parish employees, and the analysis of the relevant documents provided at the time of our request. Were KPMG to perform additional procedures, or should the information provided be inaccurate for any reason, it is possible that our assessment and observations would be different.

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II. Executive Summary

KPMG found that since entering into its Agreement with the Attorney General, the Diocese has developed and implemented a Program represented as intent on meeting the terms of the Agreement. Commendably, this has included developing a Diocesan Policy; the formation of various committees and Program roles; the development of reporting mechanisms and actual reporting of allegations of abuse to civil authorities; the development, enhancement and provision of training; the background screening of Church Personnel; and obtaining thousands of signed "Acknowledgements" from Church Personnel certifying that they understood their reporting obligations under the Program.

While the Diocese has accomplished many positive steps and implemented several of these initiatives over the past 2 ½ years, the Program itself still lacks adequate levels of overall internal control and oversight mechanisms, which are essential to an overall effective compliance program. Further, these should allow the Diocese to achieve full compliance with the spirit of the terms of the Agreement, as well. This lack of internal control and oversight has created several significant gaps as described below.

For example, while the Diocese has established preventative measures such as employee/volunteer screening for criminal records, it has not attempted to perform any wide-scale verification or reconciliation of the information provided by the Diocesan parishes, schools and/or camps, which are charged with self-reporting information relating to the identification and screening of Church Personnel. The Diocese's inability to ensure that all personnel are adequately and timely screened could afford potential perpetrators access to minors.



It appears as though the Diocese may not have performed this type of reconciliation, as it is the Delegate's belief² that the Church's decentralized structure requires his office to act in more of an advisory capacity to the parishes and the Bishop than an enforcement capacity with the Program. Furthermore, the Diocese does not currently have sufficient resources to accomplish an adequate level of oversight at the parish/school/camp level, which has resulted in an inconsistent implementation. An organization's control environment sets the tone and is the foundation for all other components of internal control, providing discipline and structure. Thus, it is essential that the Delegate's Office and the Bishop establish a strong control environment, articulating its role in mandating compliance with the terms of the Agreement and the Diocesan Compliance Program. In doing this, the Diocese needs to ensure sufficient controls and resources exist to certify the self-reported information provided by parishes/schools/camps.

In addition, KPMG identified at least one priest who did not complete the Safe Environment Program screening requirements and was later accused of prohibited conduct, as defined by the Church's Code of Ministerial Conduct. The priest was reinstated into active ministry after he resigned to seek medical treatment. The same priest was later investigated by the Diocese for using a parish computer at his new rectory to access pornographic websites and images, a few of which were believed to possibly depict child pornography. Although the allegations surfaced much earlier in 2005, the Diocese waited until June 30, 2005 to report this information to the Attorney General, advising that it believed it did not explicitly fall under the terms of the Agreement. The lack of sufficient internal controls and an appropriate control environment over the Diocesan Program could have had far-reaching consequences, if this matter had gone undetected. Without having conducted the required background screening, it is impossible to determine if red flags would have been identified. In any event it appears the situation may have benefited from further review by the Delegate and the Diocesan Review Board. Currently, the Policy does not address how to respond to inappropriate conduct creating a gap in the program's ability to be truly effective.

Notably, while the Diocese appears to have trained thousands of key personnel on issues relating to the sexual abuse of minors, it has not demonstrated that it has established a comprehensive plan to identify the full body of individuals and train all personnel who have contact with minors as required by the Agreement. While the Diocese's original goal called for all personnel to be trained by year end 2004, this was not accomplished, requiring the Office for Ministerial Conduct to establish a new completion goal of October 30, 2005. As training is the cornerstone of any effective compliance program, it is imperative that the Diocese ensure that **all** personnel be fully trained to identify and report allegations of sexual abuse in accordance with New Hampshire State Law, the Agreement, and the Diocesan Compliance Program. Not providing all personnel with training could impede the Church's ability to identify and report allegations of abuse, allowing them to go undetected for greater periods of time.

This report contains details of KPMG's findings, as well as, several recommendations for enhancing the Diocese's Program, including: the Diocese's need to evaluate its ability to provide additional oversight resources; the Diocese's need to ensure that all personnel have received training; the validation of information provided by the parishes/schools/camps as to Church Personnel; and, compliance with the Program's screening requirements.

See the body of this report for full details of KPMG's findings and recommendations.

² As identified by Father Arsenault during his interview with KPMG.

III. Methodology

A. Overview

KPMG's overall methodology for this review included: (1) interviewing appropriate Diocesan and Parish personnel who have responsibility over the Program, and (2) analyzing Diocesan policies, procedures, standards, and relevant correspondence. The documents analyzed and the practices described to us by Diocesan and Parish personnel are collectively referred to as "the Program" for purposes of this report.

B. KPMG's Compliance Program Assessment Methodology

1. Scope of Assessment

a. Interviews Conducted

KPMG had discussions with Diocesan and Parish personnel, including the following:

- Most Reverend John B. McCormack, Bishop of Manchester;
- Father Edward Arsenault, Delegate to the Office for Ministerial Conduct;
- Diane Quinlan, Associate Delegate to the Office for Ministerial Conduct;
- Joseph Naff, Director, Office for Healing and Pastoral Care;
- Personnel and Benefits Coordinator, Office for Ministerial Conduct;
- Secretary for Administration;
- Jim Stewart, Investigator (former) – Criminal Record Requests;
- Jim Lundt, Investigator – Allegations of Abuse;
- Reverend Gayle Whittemore, Member of the Diocesan Review Board;
- Peter Janelle, Member of the Safe Environment Council;
- Richard Shannon, Protecting God's Children - Trainer Coordinator;
- Dave Gabert, Assistant Director of Finance;
- Kathleen Rush, Safe Environment Coordinator for Our Lady of Mercy Parish;
- Elizabeth Lochman, Safe Environment Coordinator for Our Lady of Mercy Parish;
- Len Campbell, Protecting God's Children trainer;
- Terry Bolduc, Safe Environment Coordinator for St. Marie's Parish;
- Suzanne Walsh, Safe Environment Coordinator for Bishop Brady High School;
- Father Robert Cole, Pastor, St. Joseph's in Dover;
- Nancy Watkins, Nancy Gurick and Laurie Lewis, Religious Education, St. Joseph's in Dover;
- Michael Drumm, Safe Environment Coordinator for Camp Fatima; and
- Executive Secretary, Delegate for Ministerial Conduct

Throughout the course of the assessment, KPMG also spoke with the following personnel at the Attorney General's Office:

- Ann Larney, Assistant New Hampshire Attorney General;

- Will Delker, Assistant New Hampshire Attorney General; and
- Paul Brodeur, Investigator for New Hampshire Attorney General.

b. Documents Reviewed

In preparing its report, KPMG reviewed numerous documents, including the Diocese's *Promise to Protect, Pledge to Heal: The Protection of Children and Young People (Policy)* and *Serving Christ, Serving Others: A Code of Ministerial Conduct (Code)*. Both documents became effective on March 19, 2004 and are attached as **Exhibits B and C**. A list of documents reviewed by KPMG, considered to be a part of the Diocese's Program, is also attached as **Exhibit D**.

c. Limiting Testing Performed

As part of its assessment, KPMG performed limited and subjective testing on a judgmental basis at the Diocese, two parishes, a Diocesan school, and one of the two Diocesan summer camps. The results of this testing are provided for in the relevant sections of this report. Sample testing results are attached as **Exhibit E**.

2. Levels of Assessment

KPMG, in its findings, considered the Agreement's requirements and those of the Diocese's Program to be more important than industry leading standards. Both the completeness and quality of the policies and procedures as well as their implementation were considered.

The KPMG assessment standards should not be interpreted as assurance that a regulator, judicial officer, law enforcement body, or any other third party might assess the Program herein in a similar fashion.

3. Context of the Assessment

In performing its assessment and evaluating the design of the Diocese's Compliance Program, KPMG relied on several outside organizations that provide sample guidance as to the definition of an effective compliance program. These included the United States Conference of Catholic Bishops' ("USCCB") own principles and policies, which offer a baseline standard for the Diocesan policies as well as an approach for conducting a compliance review and the organizational guidelines set forth by the United States Sentencing Commission in its Federal Sentencing Guidelines.

United States Conference of Catholic Bishops

In response to the growing number of sexual abuse allegations in dioceses nationwide, the USCCB approved a *Charter for the Protection of Children and Young People* ("the Charter") on June 14, 2002. This document provided a framework of policies and procedures relating to sexual abuse allegations and a response thereto. The Charter focused on the following four principles:

- (1) To promote healing and reconciliation with victims/survivors of sexual abuse of minors;
- (2) To guarantee an effective response to allegations of sexual abuse of minors;
- (3) To ensure the accountability of its procedures; and

- (4) To protect the faithful in the future.³

The 17 articles contained within the Charter address individual issues such as counseling, the establishment of a mechanism to respond to allegations of abuse of minors, the creation of a national office for Child and Youth Protection, a Review Board providing an annual report on each diocese, and the formation of preventative programs.

Following the approval of the Charter, the USCCB issued the *Essential Norms for Diocesan/Eparchial Policies Dealing with Allegations of Sexual Abuse of Minors by Priests or Deacons* (the “Essential Norms”). The Essential Norms sought to ensure that each diocese in the United States had procedures in place for responding to allegations of sexual abuse of minors. The Essential Norms directed each diocese to:

- (1) Have a written policy on sexual abuse;
- (2) Appoint a competent person to coordinate assistance;
- (3) Establish a review board to consult with the bishop;
- (4) Conduct investigations into allegations;
- (5) Remove priests or deacons when abuse is discovered; and,
- (6) Comply with all civil authorities and investigations.⁴

The Essential Norms became the law of the dioceses and eparchies of the United States on December 8, 2002 through a Decree of *recognito* by the Holy See.

United States Sentencing Commission

The United States Sentencing Commission’s Federal Sentencing Guidelines (the “Guidelines”) provide the most widely accepted guidance for an effective compliance program. According to the Guidelines’ Application Notes, the definition of “organization” includes corporations, partnerships, associations, joint-stock companies, unions, trusts, pension funds, unincorporated organizations, government and political subdivisions thereof, and *non-profit organizations*.⁵ Given this consideration, arguments have been made that these standards should apply to the entities such as Catholic dioceses.⁶

The principles behind the Guidelines’ model are important to understand because they have created: (i) a judicial framework that rewards responsible, self-governing companies; (ii) a sound model that companies can follow for managing ethical business conduct; and (iii) a standard that is influencing regulatory enforcement policies, criminal prosecutions, and director and officer liability in civil litigation.

As originally adopted, the Guidelines stated that for an organization’s compliance program to be creditworthy, the program must, “at a minimum,” include seven categories of activity:

³ United States Conference of Catholic Bishops, *Charter for the Protection of Children and Young People (Revised Edition)*, 2002.

⁴ United States Conference of Catholic Bishops, *Essential Norms for Diocesan/Eparchial Policies Dealing with Allegations of Sexual Abuse of Minors by Priests or Deacons*, 2002.

⁵ United States Sentencing Commission, Guidelines Manual, §8A1.1, *Commentary* (Nov. 2004) (emphasis added).

⁶ Herbert I. Zinn, “The Saga of the Catholic Archdiocese of Boston: To Which Higher Authority Does Your Organization Report,” Practising Law Institute’s Corporate Compliance Seminar, 2002, Page 4.

- (1) Compliance standards and procedures reasonably capable of reducing the prospect of criminal activity;
- (2) Oversight by high level personnel;
- (3) Due care in delegating substantial discretionary authority;
- (4) Effective communication to all levels of employees;
- (5) Reasonable steps to achieve compliance, which include systems for monitoring, auditing, and reporting suspected wrongdoing without fear of reprisal;
- (6) Consistent enforcement of compliance standards including disciplinary mechanisms; and,
- (7) Reasonable steps to respond to and prevent further similar offenses upon detection of a violation.⁷

Recent revisions, responding to numerous high-profile instances of misconduct as well as additional learning and development in the compliance field, have strengthened these criteria through the following structural safeguards: the promotion of a culture of compliance; active participation of the board and senior management; effective training and communications; monitoring, ongoing evaluation and adherence to controls and program requirements; well-publicized mechanisms to report violations, with protections in place for confidentiality and non-retaliation; disciplinary action for program violations and program modification to prevent similar future violations; and ongoing risk assessments. Further guidance, as well as the specific commentary and language issued by the Sentencing Commission, can be found in **Appendix A** to this report.

Accordingly, our approach seeks to determine whether basic initiatives with respect to each of these new categories are present in the Diocese's Compliance Program. It is important to note that the Guidelines also have an overarching requirement, namely that an organization exercise "due diligence" to ensure that its program "generally will be effective." Therefore, our approach goes beyond compiling an inventory of basic activities and incorporates practices that companies with relatively mature compliance programs have generally found to correlate with effective compliance management. However, there are no "hard and fast" rules in this regard, and no single approach is necessarily appropriate for every organization. Thus, KPMG has taken into consideration the Diocese's particular needs and operating environment in assessing the design of its Compliance Program.

IV. Assessment of the Diocese of Manchester's Compliance Program

A. Organizational Structure and Oversight

1. Requirements of the Agreement

In relation to the Diocese's Compliance Program, and more specifically, its organizational structure and oversight, the Agreement requires that the Diocese "maintain [its] existing Office of the Delegate for Sexual Misconduct as an appropriately-trained and easily accessible office dedicated to the handling of allegations of sexual abuse of minors."⁸ The Agreement also specifies that the Diocese shall "continue to develop, implement, and revise, as necessary, policies and protocols for preventing, responding to, and ensuring the reporting

⁷ Paula Desio, "An Overview of the United States Sentencing Commission and the Organizational Guidelines," United States Sentencing Commission, Page 2.

⁸ Agreement at § 3.

of, allegations of sexual abuse.”⁹ Furthermore, the Diocese is required to provide copies of its policies and protocols to the Attorney General on an annual basis, or as otherwise requested by the Attorney General.

2. Industry Guidance

In establishing an effective compliance program, the Guidelines, and specifically the amendments thereto, emphasize that organizations must not only “exercise due diligence to prevent and detect criminal conduct,” but also “otherwise promote an organizational culture that encourages ethical conduct and a commitment to compliance...”¹⁰ According to the excerpt, this type of due diligence and promotion of a desired organizational culture can be evidenced through the fulfillment of the seven minimum requirements, “which are the hallmarks of an effective program...”¹¹

Specifically, the Guidelines require the development of compliance standards and procedures to prevent and detect criminal conduct, which according to Application Note 1, are further defined to include the establishment of “standards of conduct and internal controls that are reasonably capable of reducing the likelihood of criminal conduct.”

Secondly, the Guidelines require the assignment of “overall responsibility to oversee compliance” to a specific “high-level” individual within the organization. This individual is charged with not only being “knowledgeable about the content and operation of the compliance and ethics program,” but also “exercis[ing] reasonable oversight with respect to the implementation and effectiveness” of the program.¹² The Guidelines make clear that while operational responsibility may be delegated, “ultimate responsibility for the program’s effectiveness” must remain with the high-level individual assigned.¹³

In delegating day-to-day responsibility, the Guidelines require that the individual to whom such responsibility is given: (1) report to organizational leadership and the program’s governing authority at least annually; and (2) be given adequate resources, appropriate authority, and direct access to the governing authority or an appropriate subgroup of the governing authority.¹⁴

3. Program Overview

a. Policies and Procedures

In October 2002, Bishop McCormack established a Task Force on Sexual Misconduct to develop the Diocese’s compliance standards and procedures. The Task Force reviewed and revised the policies in place, including *Protecting God’s Children – Responsible Relationships in Ministry*, and the *Mandatory Reporting Requirements*, a document describing the appropriate notifications of internal, as well as state and local authorities, in response to allegations of abuse. Subsequent revisions to these policies became effective March 1, 2003 and incorporated the Essential Norms. These policies led to the creation of the Diocese’s current Policy, the *Promise to Protect, Pledge to Heal: The*

⁹ Id.

¹⁰ U.S. Sentencing Commission, *Guidelines*, §8B2.1 (Nov. 2004)

¹¹ *Excerpt from the U.S. Sentencing Commission Amendments to the Organizational Sentencing Guidelines*, at Page A-2.

¹² Id.

¹³ Id.

¹⁴ Id.

Protection of Children and Young People - Policies and Procedures (the “Policy”) in December 2003, which became effective March 19, 2004 and superseded all prior Diocesan policy on this topic.

b. Organizational Structure and Oversight

Both before and after the effective date of its current Policy in March 2004, the Diocese has attempted to enhance the effectiveness of its Policy through the development of various formal and informal processes (i.e., its Compliance Program).

Although not explicitly stated within the Diocesan Policy,¹⁵ Bishop McCormack appropriately retains ultimate responsibility for the Diocese’s Compliance Program. To assist him with the Program’s implementation and his oversight thereof, he has established several subgroups, each designed to serve a unique function under the Program. These include: an Office for Ministerial Conduct, a Diocese Review Board, an Office for Healing and Pastoral Care, and a Safe Environment Council (including the naming of Safe Environment Coordinators).

1. Office for Ministerial Conduct

The Bishop has assigned day-to-day responsibility for oversight and implementation of the Program to the Office for Ministerial Conduct. In 2000, Father Edward Arsenault replaced Monsignor Bolduc as the Delegate to the Office of Sexual Misconduct (the “Delegate”), which was later renamed the Office of the Delegate for Ministerial Conduct (“Office for Ministerial Conduct” or the “Delegate’s Office”). Thereafter, the Diocese hired Diane Quinlan as the Associate Delegate to the Office for Ministerial Conduct in April 2002 (the “Associate Delegate”). According to the *Diocese Administration Child Safety* (December 2003), the Office for Ministerial Conduct “shall administer the Policy on Sexual Abuse of Minors and all relevant Diocesan policies on sexual abuse, sexual exploitation, sexual harassment, and inappropriate conduct of a sexual nature involving minors.” The Delegate’s duties are specifically described as including: 1) reporting suspected sexual abuse of minors to the appropriate civil authorities in accordance with the law and Diocese Policy; 2) conducting investigations into allegations of sexual abuse; 3) coordinating the pastoral care of those who are accused of having committed sexual abuse; and 4) developing and coordinating programs designed to prevent sexual abuse in the Church.¹⁶

2. Diocesan Review Board

In January 2002, Bishop McCormack, in accordance with Diocesan policy, appointed six people to the Diocesan Review Board (“DRB” or the “Board”), two of whom are not Catholic: J. Michael McDonough (a retired attorney who is Catholic), Peter Favreau (a retired police chief who is Catholic), Christine Tremblay (a lay person, mother, and parish and school volunteer who is Catholic), Reverend Gayle Whittemore (a Congregational minister), Dr. David Bulmer (a psychiatrist who is not Catholic), and Reverend Monsignor Donald Gilbert (a canon lawyer and a priest).¹⁷

¹⁵ There are, however, several inferences within the *Policy* that such responsibility has been assigned to the Bishop.

¹⁶ *Diocese Administration Child Safety* (December 2003 Release 1.0), Page 3.

¹⁷ According to the Associate Delegate, the Review Board was established by policy in 1999, but did not meet until 2002.

In 2003, Bishop McCormack appointed lay persons, Monique Ierardi and Marcel Durette, to the Diocesan Review Board to comply with the provisions contained in the *Charter for the Protection of Children and Young People* adopted by the USCCB in June 2002 and the *Essential Norms for Diocesan/Eparchial Policies Dealing with Allegations of Sexual Abuse of Minors by Priests or Deacons* (“*Essential Norms*”), which became Church law in the United States in March 2003.¹⁸

The Board is charged with making recommendations for the Bishop’s consideration in discharging his responsibilities. The functions of the Board include: 1) advising the Bishop in his assessment of preliminary investigations into allegations of sexual abuse by clerics (i.e., the process by which the Bishop determines the probable nature of the allegation); 2) advising the Bishop in his assessment of sexual abuse by lay employees or volunteers, up to and including recommending appropriate disciplinary action; 3) reviewing the Diocesan policies for dealing with sexual abuse at least once every two years and recommending changes to the Bishop; 4) conducting regular compliance audits of the Office for Ministerial Conduct for compliance with the Policy on Sexual Abuse of Minors and applicable church and state law and subsequently to make a regular public report to the Christian faithful regarding the compliance audit and the work of the Office for Ministerial Conduct and the Diocesan Review Board; and 5) offering advice on all aspects of cases involving sexual abuse, whether prospectively or retrospectively, including, but not limited to, providing input to the Office for Ministerial Conduct regarding the background screening of lay applicants, employees, or volunteers.¹⁹

3. Office for Healing and Pastoral Care

Also in January 2002, Bishop McCormack appointed Joseph P. Naff, LICSW, to serve as an advocate for persons who made reports of having been sexually abused as a minor to the Diocese. Mr. Naff directs the Office for Healing and Pastoral Care which provides timely outreach, assistance, and support to adult survivors and their families. This support includes referrals to counseling, spiritual direction, parish consultation, and retreats.

4. Safe Environment Council & Coordinators

On or around March 2004, the Diocese established a Safe Environment Council which, in accordance with the *Diocesan Administration Child Safety*, consists of one member from each of the Diocese’s nine deaneries, who are appointed to three-year terms. The members are charged with assisting the Office for Ministerial Conduct and the DRB in matters associated with the *Policy on Sexual Abuse of Minors* and to respond to the needs and questions of Safe Environment Coordinators in the parishes and schools located in their respective deaneries.²⁰

¹⁸ The *Essential Norms* provide, in pertinent part:

5. The review board, established by the diocesan/eparchial bishop, will be composed of at least five persons of outstanding integrity and good judgment in full communion with the Church. The majority of the review board members will be lay persons who are not in the employ of the diocese/eparchy; but at least one member should be a priest who is an experienced and respected pastor of the diocese/eparchy in question, and at least one member should have particular expertise in the treatment of sexual abuse of minors. The member will be appointed for a term of five years, which can be renewed.

¹⁹ *Diocese Administration Child Safety* (December 2003 Release 1.0), Page 2.

²⁰ *Diocese Administration Child Safety* (December 2003 Release 1.0), Page 4.

At this same time, the Diocese attempted to have the parishes name a Safe Environment Coordinator.²¹ The Coordinator, appointed by the pastor of each parish or principal of each school, shall assist the parish and the school with matters such as: 1) scheduling training sessions on sexual abuse; 2) coordinating the distribution of materials on sexual abuse, and 3) assisting in the background screening process.²²

According to the Associate Delegate, however, the responsibility for identifying employees and volunteers and reporting to the Office for Ministerial Conduct on completion of criminal records searches, signed acknowledgement forms, sex offender registry checks, and training for these individuals, remains the responsibility of the individual parish, school, or camp.

Overviews of the organizational architecture of the Diocese's Compliance Program are attached as **Exhibit F & Exhibit J**. In addition, a timeline depicting implementation of these various Program elements is included herewith as **Appendix C**.

4. Findings

a. Policies and Procedures

1. In accordance with both the Agreement and the Guidelines, the Diocese has appropriately developed a written Policy as guidance to its employees/volunteers, which outlines its Safe Environment Program. As described above, the Policy was developed by a Sexual Abuse Task Force that appropriately consulted experts outside the Diocese, hosted listening sessions, and invited comments from the Attorney General.
2. The Diocesan Policy appropriately contains a leadership message from Bishop McCormack expressing the importance of this initiative and compliance with the Program which, in accordance with the Guidelines, is designed to establish a culture of ethical conduct and compliance with the Program.
3. The Diocesan Policy, while inferring such responsibility, does not explicitly assign oversight responsibility and enforcement of the Program to the Bishop as ultimate overseer of the Diocese's Compliance Program. Such oversight is, however, noted in the *Diocese Administration Child Safety*.
4. The Diocesan Policy does not contain the defined roles and responsibilities for all Program participants. Rather, such roles and responsibilities are maintained in a separate document referred to as the *Diocese Administration Child Safety*, which unlike the Policy, is not distributed to all Church Personnel.²³ It became clear through some interviews with Church personnel that confusion as to specific roles and responsibilities exists throughout the organization and thus, it may be prudent to incorporate such roles and responsibilities into the Policy itself.

²¹ To date, not all parishes within the Diocese have been able to fill the Safe Environment Coordinator role.

²² *Diocese Administration Child Safety* (December 2003 Release 1.0), Page 4.

²³ For purposes of this report and the Diocese's Compliance Program, Church personnel is defined as including: all clerics (bishops, priests, and deacons); members of religious institutes; lay employees and volunteers, whether serving the Diocese, a parish, school or camp. This includes personnel identified under the Agreement as "Diocesan Personnel." See *Policy* at Page 4.

b. Organizational Structure & Oversight

1. Fittingly, the Bishop recognizes and admits to bearing ultimate responsibility for enforcement and oversight of the Diocese's compliance with both the Agreement and its Program.
2. While the Bishop has delegated day-to-day oversight of the Program to the Delegate and Associate Delegate, he appears to remain knowledgeable about the status of the Program by receiving weekly verbal updates²⁴ from the Delegate. Regular, formal written auditable reports detailing key performance indicators as measures of the Program's effectiveness (i.e., degree of compliance) are not being generated, however.
3. Based upon the composition of its membership, the DRB appears to act as a quasi-independent advisory group reporting to the Bishop. Consideration should be given to making this body more independent, more empowered and at least partly accountable for the Program's effectiveness.
4. According to the Essential Norms, "The review board ... will be composed of ... and at least one member should have particular expertise in the treatment of sexual abuse of minors." A review by KPMG of the resumes and CVs of Board members provided by the Diocese, however, did not identify anyone with this expertise. The Associate Delegate advised KPMG that David R. Bulmer, MD has extensive and current expertise in dealing with treatment of issues involving sexual abuse of minors. Although his CV does not reflect this experience, the Diocese did provide KPMG with a copy of Dr. Bulmer's medical license, post-review.
5. Although the governance structure of the Diocesan Compliance Program appears to involve a variety of committees and participants to promote objectivity and oversight, it has historically been ineffective in implementing various components of the Diocesan Policy and, in some respects, the Agreement.
6. While all individuals interviewed and participating in the Diocesan Compliance Program expressed an understanding of the importance of, and their commitment and dedication to, the success of the Program and the safety and welfare of the minors and parishioners; there appears to be an overall lack of appreciation for how to achieve an effective compliance program at both the Diocesan and Parish levels.
7. While the Diocese's combined use of a centralized and decentralized compliance model, based on the Church's current reporting structure, could be used effectively to achieve compliance: the lack of established and documented systems for management oversight, monitoring, and accountability is hindering the Program's overall effectiveness. For example, resource limitations at both the Diocese and school/parish/camp levels are limiting the Program's success. While such limitations include staffing and budgetary constraints, they also include a lack of guidance and experience on how to achieve, and monitor for, compliance with the Program. For example, the member of the Safe Environment Council interviewed advised that he performs no regular review of the progress of his Safe Environment Coordinators' implementation of the Policy. Nor does the Delegate provide him, or the other Council members, with regular reports as to the level of compliance for individual parishes/schools/camps. Furthermore, interviews conducted with several Safe Environment Coordinators revealed that they were either 1) unaware that the Safe

²⁴ In the case of reported allegations, such updates are provided more frequently through the Delegate's almost daily contact with the Bishop.

Environment Council existed, 2) unfamiliar with their assigned council member, or 3) were aware that they had an assigned council member but had never spoken with them.

8. Although a willingness to cooperate was expressed across the various functions interviewed (i.e., the Board, the Office for Ministerial Conduct, the Safe Environment Council & Coordinators, the parishes, etc.), the Delegate's Office advised that the Diocese's decentralized structure prevents it from requiring pastors and/or parish personnel to abide by its directives making enforcement of the Agreement and the Program impossible.
9. As indicated above, the Bishop has delegated his oversight responsibility for compliance with the Agreement and the Policy to the Delegate of the Office for Ministerial Conduct. The Delegate, however, does not view his role, or compliance in general, as one of requiring immediate enforcement of the Diocese's Program. Rather, the Delegate believes he is charged with "changing cultural attitudes over time to gain the acceptance of the Program's initiatives." Furthermore, the Delegate defines non-compliance as "a refusal" to adhere to the Program standards, rather than simply not achieving Program elements as defined or within proscribed timetables. This has led to a lack of oversight and enforcement of the Policy at the parish and school level and resulted in varying degrees of compliance in relation to the Program's prevention efforts.
10. Neither the Delegate, nor the Associate Delegate, maintains a formalized job description detailing his/her roles and responsibilities under the Program. There is no evidence of accountability at the performance evaluation level, or otherwise, for not achieving defined goals. For example, although numerous deadline goals have been established over the course of the Program for completion of specific components (i.e., completion of acknowledgement forms, completion of Criminal Record Searches for employees and volunteers), not a single deadline has been met and there are no indications that disciplinary action resulted. Rather, the Diocese merely continues to create new deadlines for achieving its goals.
11. The Diocese appears to be too reliant on the 144 schools/parishes/camps and their assigned Safe Environment Coordinators to: 1) self-report the identities of Church personnel; 2) make determinations as to which Church personnel are considered to be working with minors (and thus higher risk); and 3) achieve compliance with both Agreement and Policy requirements such as screening forms, criminal record research, acknowledgement forms, and sex offender registry checks (See Section IV.C – Program to Prevent, below for additional details).
12. Until as recently as April 2005, the Diocese had not tested the compliance level for any parishes, schools and/or camps to insure the accuracy of self-reported information. (See Section IV.E – Audit, below for additional details).
13. While the Diocese appropriately continues to regularly consult with outside experts and attend conferences to gain input and insights from other dioceses throughout the nation on how to enhance its Program, it does not appear to maintain a formal risk assessment process for evaluating the effectiveness of its Program.

5. Recommendations for Program Enhancements

- a. To ensure overall accountability, the Diocesan Policy should explicitly assign oversight of the Program to the Bishop, or in the alternative, reference the *Diocese Administration Child Safety*, which does state the "Bishop shall be responsible for enforcing the Policy on Sexual Abuse of Minors and the Code of Conduct."

- b. To ensure clarity and accountability the Diocesan Policy should be enhanced to incorporate the roles and responsibilities of Program participants as defined in the *Diocese Administration Child Safety* document.
- c. The Diocese should develop a format for formal written reports to be provided to the Board and Bishop that provides insightful analysis and key performance indicators related to the Program and is designed to: 1) facilitate the Board and Bishop's ability to monitor and conclude on the Program's effectiveness; and 2) bring greater clarity and alignment of oversight activities around measurable program targets and results.
- d. The Office for Ministerial Conduct should enhance its understanding and appreciation for how to maintain an effective compliance program and relate the same to those individuals assigned direct Program compliance responsibilities (e.g., Pastors, Principals, and Safe Environment Coordinators) by providing additional instruction, guidance, and oversight.
- e. The Diocese should formalize the roles and responsibilities of the Delegate and Associate Delegate in written job descriptions and performance evaluations to ensure accountability. Such responsibilities should include oversight, monitoring, and enforcement of the Program's initiatives.
- f. The Diocese should establish a formalized system of ongoing accountability and oversight designed around monitoring compliance at the parish/school/camp level, to include assigning a Diocesan employee, preferably one with previous audit experience, who can work with the Safe Environment Coordinators to ensure that they are capturing the relevant information from their member parishes/schools/camps for timely forwarding to the Delegate's Office. Such oversight should include testing to ensure that: 1) all Church personnel are identified; 2) all Church personnel who work with minors have been appropriately identified as such; and 3) all screening requirements are being met.
- g. The Diocese should perform ongoing and regular risk assessments to ensure that the Diocese's limited resources are being appropriately allocated to the areas at greatest risk for exposure. As part of this process, the Diocese should examine factors that may give rise to significant risk areas (i.e., root cause analysis) or any other challenges to the prevention, detection, and response to sexual abuse as well as inappropriate conduct.

B. Mandatory Reporting and Response to Allegations

1. Mandatory Reporting Requirements

a. Requirements of the Agreement

The Agreement mandates that all Church Personnel serving in the Diocese must follow the mandatory reporting obligations (as set forth in RSA 169-C-:29 to C-:32) whenever they have reason to suspect a minor has been abused or neglected.²⁵ In addition to the requirements of New Hampshire State Law, Church Personnel must also report to local law enforcement (either where the incident occurred or where the suspect is currently located) if they have reason to suspect any other Diocese personnel has sexually abused a minor, even if the identity of the alleged victim is unknown or if that person is no longer a minor.²⁶ Further, the Office for Ministerial Conduct must make an immediate oral report to local law enforcement where the suspect abuse may have occurred if it has reason to suspect that an individual was sexually abused as a minor, and the alleged victim is no

²⁵ Agreement at §2 (a).

²⁶ Agreement at §2 (b).

longer a minor, regardless of whether or not the alleged abuser is named or identified.²⁷ In addition, the Agreement, as written, requires that all Church Personnel are required personally to make reports directly to Division for Children, Youth and Families (“DCYF”) and local law enforcement.²⁸

b. Industry Guidance

While as indicated above, the Diocese is required to report allegations of sexual abuse, industry guidelines also encourage organizations to voluntarily report detected misconduct.²⁹

c. Program Overview

The Diocesan Policy reiterates the requirements of the Agreement while also including inappropriate conduct involving minors among the list of inappropriate behaviors that the Diocese requires to be reported to the Delegate.³⁰ If the alleged victim is still a minor, the Office for Ministerial Conduct must file a report with DCYF, local law enforcement, and the Attorney General; if the alleged victim is no longer a minor at the time of the report, the Policy stipulates that the Delegate need only report to the Attorney General.³¹ In addition, the Policy requires that all Diocesan personnel make an additional report to the Office for Ministerial Conduct.

Similarly, the Diocesan Policy echoes the Agreement, by requiring Church Personnel to report directly to local law enforcement and DCYF.³² In February 2003, however, the Attorney General and the Diocese reached a mutual agreement to allow the reporting of all allegations to the Attorney General to come from the Office for Ministerial Conduct, rather than requiring individual Church Personnel to report. In addition, the two parties agreed that the Diocese would report to the Attorney General rather than reporting to local law enforcement. The Attorney General would review the facts of each case and provide the Diocese with a determination as to whether notice to local law enforcement was required. In either event, this agreement did not eliminate the need for the Diocese to report directly to DCYF and local law enforcement, if an allegation involved the abuse of a current minor. See **Exhibit H**.

The Diocese has maintained its Office for Ministerial Conduct as a centralized location for receipt of calls relating to its Compliance Program, including the reporting of allegations. Telephone calls to the Office are answered by the Executive Secretary, Delegate for Ministerial Conduct, who immediately transfers callers reporting allegations of abuse to the Delegate, Associate Delegate, Office for Healing and Pastoral Care or another properly trained Diocesan representative. The Diocesan representative receiving the call is then responsible for logging the call and completing a Civil Authority Reporting Form and for notifying outside counsel, which was recently changed from Attorney Ovide Lamontagne to Attorney Brian Quirk. The Diocesan attorney is then responsible for the actual notification to the Attorney General’s Office about the allegation/report.

²⁷ Agreement at §2 (c).

²⁸ Agreement at §2 (a) and 2 (b). See discussion of change to Agreement in Section C- Program Overview.

²⁹ U.S. Sentencing Commission, Guidelines, §5.K.216.

³⁰ Policy at Page 5, §II.F.

³¹ Policy at Page 1.

³² Policy at Page 10, §I.B.

If the allegation relates to an individual who is currently a minor, the Associate Delegate advised that the Office for Ministerial Conduct will report such to DCYF and local law enforcement. Pursuant to its Attorney Lamontagne's January 2003 correspondence with the Attorney General's office, the Diocese also agreed to report all cases of sexual abuse involving a minor to the Attorney General in addition to DCYF and local law enforcement.

Diocesan flyers regarding mandatory reporting requirements are posted at the front of all Policy booklets. The flyers clearly define the responsibilities of all adults, Church Personnel and the Office for Ministerial Conduct. Likewise, all Protecting God's Children attendees receive instructions on how to report any allegations/suspicions of possible abuse or neglect of minors.

d. Findings

1. The Diocesan files contain extensive evidence of contacts between Attorney Ovide Lamontagne and the Office of the Attorney General, demonstrating an apparent open communication between the parties.
2. The Diocese and Attorney General appear to have agreed to alter the procedures for reporting sexual abuse without updating the Agreement or the Diocesan Policy. Thus, the Diocese's current reporting practices do not follow either the terms of the Agreement or its own Policy for reporting allegations of abuse or neglect.
3. The Office for Ministerial Conduct performs no internal reconciliation of its forms/spreadsheets of incoming calls against reports filed. Without this type of reconciliation, there is no way to guarantee that all calls received actually result in filed reports as required.
4. Although the Associate Delegate mailed a letter to the Attorney General on 3/9/05 regarding her office's list of reports filed with the AG's office, the Office for Ministerial Conduct has not reconciled its identified allegations with the Attorney General to ensure that all reports have been filed.
5. The Diocese's Policy draws a distinction between the "sexual abuse" and "inappropriate conduct" and does not define a response for the handling of allegations of inappropriate conduct, other than to require that they be reported to the Delegate.

e. Recommendations for Program Enhancements

1. The Office for Ministerial Conduct should reconcile the number of referrals sent to the Attorney General's Office with the number of referrals received by the Attorney General's Office since the date of the Agreement.
2. Communication between the Diocese and the Attorney General should be enhanced to include a process that ensures that all Diocesan referrals have been properly received and recorded. Such reconciliations should be performed on a monthly basis to ensure that both parties are in agreement as to the total number of allegations reported, as well as to ensure that all incidents have received proper handling.
3. The Office for Ministerial Conduct should regularly reconcile the forms and spreadsheet it uses internally to record incoming reports of allegations against the reports it has filed with the Attorney General, DCYF, and/or law enforcement, as applicable.
4. The Diocese should update its Policy to reflect the agreement it reached with the Attorney General and review its current reporting practices to ensure it is reporting all

cases involving current minors to **both** local law enforcement and the DCYF, and it is maintaining documentation of all such referrals.

5. The Diocese should update its Policy to specifically address how allegations of inappropriate conduct will be investigated and responded to, and when such allegations will be reported to the Attorney General and/or law enforcement.

2. Response to Allegations

a. Requirements of the Agreement

The Agreement requires that, when the Diocese receives a complaint of sexual abuse, it will ensure that, pending the resolution of the allegations, the alleged abuser will be removed from any position in which there is a possibility for contact with minors.³³ In addition, the Agreement provides that once a report has been filed with the proper authorities, the Diocese will cooperate completely in the investigation, supplying any and all information or documents relating to the alleged abuser in its possession.³⁴

b. Industry Guidelines

The Federal Sentencing Guidelines provide that organizations take corrective action when allegations are substantiated, which typically includes disciplining those who bear responsibility for the offense, remedying the harm caused by misconduct, and taking steps to prevent and detect similar violations in the future. It is also of note that the Guidelines give weight to voluntary disclosures to the government, leaving the potential for a reduction in sanctions for an organization that discloses violations and cooperates with enforcement authorities.

c. Program Overview

1. Investigations and Internal Reporting

Although the Agreement does not require any explicit investigative requirements of the Diocese in relation to allegations of reported abuse, the Diocese has adopted its own limited procedures for handling its internal investigation of such allegations. The Diocesan Policy states that the Diocese will investigate all complaints in a timely manner that does not interfere with any criminal investigation and will be conducted regardless of how the Diocese becomes aware of the complaint (directly, indirectly, or otherwise).³⁵ Further, the Policy states that internal investigations must be conducted by individuals appropriately trained to conduct such investigations.³⁶

Since October 2003, the Diocese has retained a retired federal agent to investigate and conduct interviews regarding any reports of alleged abuse. The investigator conducts an independent review of the allegations and interviews the victim often in the presence of the Director of the Office for Healing and Pastoral Care.³⁷ The Diocesan investigator reports the results of his investigation to the Delegate's Office which provides redacted copies of his report to the DRB, which will then evaluate the

³³ Agreement at §2.f.

³⁴ Agreement at §2.e.

³⁵ Policy at Page 8, §I.A.

³⁶ Policy at Page 9, §I.B.

³⁷ Attorneys for both the victim and Diocese are also present, if such counsel has been retained.

case and assist the Bishop in his “assessment of [the] allegations” and “his determination of suitability for ministry” of the accused in accordance with the Diocesan Policy.³⁸

2. Remedial Actions Against Accused

The Policy states that if an investigation finds an allegation to be true and the accused guilty of “even a single act of sexual abuse of a minor, [that person] will be permanently removed from any ministry, employment or service in the Diocese. If the penalty of dismissal from the clerical state has not been applied, the accused shall be required to lead a life of prayer and penance.” The Policy further states that “the Diocese will not permit any priest or deacon incardinated in the Diocese known to have committed an act of child abuse to be transferred for ministerial assignment to another diocese/eparchy. The Diocese will not permit such priest or deacon to be transferred for residence without having forwarded in a confidential manner to the local bishop/eparch any and all information indicating that he has been or may be a danger to children or youth.”³⁹

When an allegation proves to be unfounded, the Policy requires that the Diocese notify the complainant and communities affected by the decision in an “appropriate time and in an appropriate manner” and work to restore the good name of the accused as soon as possible.⁴⁰ The Associate Delegate stated that the Diocese has received several allegations which, upon further review and investigation, appeared to have been baseless. Nonetheless, the Diocese reported the allegations to the Attorney General’s Office for its consideration. According to the Associate Delegate, the Attorney General agreed with the Diocese’s assessment and decided not to pursue the matters.

According to the Associate Delegate, it is the responsibility of the Bishop to ensure that all clergy (whether Diocese or parish) are removed from service at the direction of the Holy See. The Delegate stated that the Bishop makes a judgment call regarding the removal of clergy, which can occur at any point upon receiving an allegation, during or after an investigation. For non-cleric employees and volunteers, however, the affected pastor/principal is responsible for ensuring that individuals accused of allegations of abuse are removed from contact with minors.

3. Office for Healing and Pastoral Care

In addition to investigating the allegations, and in conformance with the USCCB Charter, the Policy provides for the advocacy and spiritual and emotional care of alleged victims and their families. It requires the Director of the Office for Healing and Pastoral Care to coordinate “pastoral care and counseling, spiritual assistance, and other social services for complainants and their families,” regardless of when the alleged abuse occurred.

The Director confirmed that when the victims request assistance he will:

- arrange for them to meet with the Bishop or the Delegate to receive pastoral care;

³⁸ Policy at Page 8, §I.E.

³⁹ Policy at Page 9-10, §I.

⁴⁰ Policy at Page 10, §II.A & B.

- make referrals to licensed therapists for independent counseling sessions; and,
- arrange for the therapists to be paid directly by the Diocese.

The Director maintains his own files on each allegation, a record of the victims' progress and their therapy sessions, as well as organizes/leads victim support group meetings and retreats. The Director will generally accompany the Diocese's investigator and attorney whenever they interview an alleged victim for the first time. The Director advised, however, that his role during the interview is to offer the victim pastoral support, rather than participating in the interview as a developer of facts.

d. Findings

1. In contrast to the terms of the Agreement, the Diocesan Policy does not explicitly mandate the removal of any alleged abuser from any position where there is the possibility of contact with minors, ***pending the resolution of the allegations.***⁴¹ Rather, the Policy merely advises that such removal will occur if such accusations are admitted to, or "established after an appropriate investigation."⁴² The closest the Policy comes is, as part of its "Public Announcement" procedure, when the Policy states, "If a priest or other person is placed on administrative leave during an investigation, the Diocese may report that the person is on administrative leave..."⁴³ This discrepancy in language was noted by the Attorney General's Office when it reviewed the Diocese's proposed policies and protocols in August 2003.

According to the Associate Delegate, the Diocese follows either the procedures described in *A Manual for Canonical Processes for the Resolution of Complaints of Clerical Abuse of Minors ("Manual")* if the accused is a member of the clergy, or the *Draft Protocols for Addressing Allegations of Sexual Abuse, Sexual Exploitation, Sexual Harassment, and Inappropriate Conduct of a Sexual Nature involving a Minor by Members of Religious Institutes and Lay People ("Draft Protocols")*, if the member belongs to a religious institution or is a lay person.

According to the *Manual* and the *Draft Protocols*, if the Diocese is notified that a member of the Diocese (e.g., clerics, members of religious institutions, employees, or volunteers) has been accused of sexually abusing a minor, the member will be placed on administrative leave provided there is a "semblance of truth" to the allegation.⁴⁴ According to the Associate Delegate, the Diocese will determine if the allegation has a "semblance of truth" either at the time of the allegation or after an initial investigation. If the Diocese determines that there is a semblance of truth to the allegation, the alleged perpetrator will be placed on administrative leave until the Diocese completes its investigation.

2. While the Policy designates responsibility for the removal of accused clerics to the Bishop and Diocese, it does not designate responsibility for the removal of an accused non-cleric employee or volunteer to any party in particular. As indicated above, this responsibility has been left in practice to the affected pastor/principal and is not enforced by the Diocese.

⁴¹ Agreement at Page 5, §2.f.

⁴² Policy at Page 9, §I.

⁴³ Policy at Page 13, §III.D.

⁴⁴ *Manual & Draft Protocols*, Diocesan Binder II, Exhibit 14

3. Since the date of the Agreement, the Diocese has either temporarily or permanently removed three members of its ministry based upon allegations it received. According to the Associate Delegate, none of these individuals has been returned to their previous position nor were they transferred and all three cases were referred to the Attorney General's Office.
4. According to the Attorney General's records, the most recent referral sent to the Attorney General on June 30, 2005, identified Priest A as having been involved with inappropriate conduct. Prior to its report to the Attorney General, the Delegate's Office advised KPMG that Priest A had not completed all of the Program requirements because he was not in active ministry after the Diocese established its Safe Environment Program.⁴⁵ However, KPMG's independent research appeared to indicate that Priest A was in active ministry after the Agreement.

The Delegate advised KPMG that he decided to report two incidents involving Priest A, which he contended were unrelated to the Agreement, to the Attorney General on June 30, 2005 to comply with the spirit of the Agreement. See **Exhibit G** for a full explanation.

5. The DRB and the Diocese's retained investigators appear to have open lines of communication regarding both the findings from background screenings and the investigations into allegations of abuse. The investigators have stated that they feel the Board is actively engaged in the Program and asks insightful questions as to the investigations and the investigators' findings.
6. The Diocese's field investigator, Jim Lundt, stated that he has been given "carte blanche" to perform his investigations. According to Mr. Lundt, the Delegate has asked him to develop an investigation protocol; however, neither he nor the Diocese has pursued the matter beyond this initial discussion. Such a protocol would assist in promoting the consistent handling of such investigations.

e. Recommendations for Program Enhancements

1. The Diocesan Policy should be updated to incorporate language consistent with the Agreement and the Diocese's practice that all Church personnel will be removed from contact with minors pending the resolution of an investigation into allegations of abuse.
2. The Diocese should ensure that all Church Personnel identified as potentially associated with inappropriate conduct, whether rising to the level of sexual abuse or not, be removed from active ministry and contact with minors. Furthermore, the Diocese should define the term "active ministry" in its Policy and Code to ensure that these personnel are properly identified, screened and supervised.
3. The Diocese should affirmatively confirm with the parishes that those individuals accused of abuse have been removed from service rather than solely relying on the pastor/principals for enforcement.
4. The Delegate's Office should annually reconcile its files with those maintained by the Director of the Office for Healing and Pastoral Care to ensure that its records have been properly updated.
5. The Diocese should perform an analysis of its handling of Priest A's case to identify potential gaps in the Program, which prevented the Diocese from enforcing its own

⁴⁵ Although the Associate Delegate informed KPMG that Priest A and several retired priests were not in active ministry, and were therefore not required to comply with the Diocesan screening requirements, neither the Policy nor the Code make any distinction regarding clergy who are in active versus not active in ministry.

Policy regarding the screening of all church personnel who regularly have contact with minors.

6. Further, the matter should be dissected to identify potential gaps in the Diocese's Compliance Program relating to its not enforcing timely background screening requirements, or identifying certain "red flags," in existence at the time which may have prompted further administrative action concerning Priest A.
7. The Diocese should consider notifying key parish personnel, in addition to the pastor, whenever a clergy/employee/volunteer in their parish has been accused of violating the Policy or the Code. For example, if the rectory employees were notified of Priest A's computer restrictions, they may have notified the Diocese long before it initiated its investigation. (The rectory employees later told Jim Lundt that they had observed Priest A using several rectory computers during his stay and that he had once asked an employee about erasing a "history of websites visited").
8. The Diocese should require that its investigators provide it with written procedures regarding their investigative methodologies for accountability, consistency, and auditing purposes. The Diocese should also ensure that it has signed contracts in place with each of its investigators.

C. Program to Prevent the Sexual Abuse of Minors

1. Screening of Church Personnel

a. Requirements of the Agreement

As indicated above, according to its Agreement with the Attorney General, the Diocese shall continue to develop, implement and revise, as necessary, policies and protocols for preventing, responding to, and ensuring the reporting of, allegations of child sexual abuse.⁴⁶ As part of its prevention program, the Diocese has adopted specific protocols for screening Church Personnel in an effort to prevent individuals at greater risk for abusive behavior from working with minors.

b. Industry Guidance

The Amendments to the Guidelines specifically require an organization to "use reasonable efforts not to include within the substantial authority of the organization any individual whom the organization knew, or should have known through the exercise due diligence, has engaged in illegal activities or other conduct inconsistent with an effective compliance and ethics program."⁴⁷ The Notes further explain that an organization has an obligation to "consider the relatedness of an individual's illegal activities or misconduct to the specific responsibilities such individual is expected to be assigned," as well as to consider the recency of such activity.⁴⁸

In addition, the USCCB has issued *Guidelines for Implementation of Safe Environment Programs*, which specifically requires employees/volunteers to undergo criminal history checks, self-disclose allegations of abuse and a check of references. See **Exhibit I** for a copy of these guidelines.

⁴⁶ Agreement at §3.

⁴⁷ U.S. Sentencing Commission, *Guidelines*, §8B2.1(b)(3) (November 2004).

⁴⁸ Id. at *Application Notes*.

c. Program Overview

According to the Diocese’s current Policy,⁴⁹ all Church Personnel⁵⁰ who regularly have contact with minors are subject to a thorough background screening “based on the levels of risk for child abuse in the church positions they fill.”⁵¹ According to the Diocesan *Screening Protocol for Church Personnel* (“*Screening Protocol*”), all clerics are required to complete the *Screening Form for Clerics, Religious and Persons in Ecclesiastical Studies*, as well as undergo a state criminal records check, and a check of the sex offender registry.⁵² Current parish and Diocesan employees who work with minors, including all employees of the diocesan administration of the Diocese of Manchester who were hired prior to March 19, 2004, regardless of whether they have contact with individuals under the age of 18, are required to complete the *Screening Form for Current Parish, School, and Diocesan Employees*, as well as undergo a state criminal records check,⁵³ and a check of the sex offender registry.⁵⁴

Applicants for paid parish and Diocesan or Catholic School personnel positions employed after March 19, 2004 are required to complete an employment application form, as well as undergo a criminal records check, reference checks, a face to face interview, a check of the sex offender registry, and a FBI fingerprint check (Catholic School personnel only). Individuals found not to be working with minors are subject to the same screening requirements, with the exception that a criminal record check is not required for these individuals. The Diocesan *Screening Protocol* also provides target dates for completion for performance of the various levels of screening on both a retroactive⁵⁵ and going forward basis (i.e., screening will be performed prior to employment and/or engagement).

In March 2004, in accordance with its Policy, the Office for Ministerial Conduct began development of an Access database to track adherence to the screening requirements for all Diocesan Church Personnel. The database is designed to track all levels of Church Personnel, identifying completion dates for screening forms, criminal record searches, sex offender registry searches, and training.

1. Criminal Record Releases (CRRs)

The Policy states that all priests and deacons are considered to work regularly with minors, regardless of their ministerial assignments, and are held to the “highest standards” and undergo the “strictest scrutiny” through background screening. When considering a priest or deacon for assignment, the Bishop must consider his entire record, including a report from those that assist him that indicates whether or not a cleric has been accused of sexual abuse and the subsequent recommendation of the DRB regarding permanent deacons.

⁴⁹ Neither of the Diocese’s two previous policies in effect between December 10, 2002 and March 19, 2004 maintained a requirement relating to the performance of background checks on Church Personnel.

⁵⁰ Volunteers under the age of eighteen are not subject to the Reporting Requirements for Church Personnel, the Screening of Church Personnel, or the Training of Church Personnel. However, they are expected to comply with the Standards for Working with Minors listed in the Policy. *Policy* at Page 4.

⁵¹ *Policy* at Page 5, §I.

⁵² *Screening Protocol*, at Page 2. (December 2003)

⁵³ According to the Associate Delegate, Diocesan schools have performed criminal record (including FBI fingerprint) checks on all applicants since 1999.

⁵⁴ *Screening Protocol*, at Page 3. (December 2003)

⁵⁵ The latest target completion goal listed in *Screening Protocol* was December 2004 for completion of volunteer screening.

New Hampshire Criminal Record Releases (CRRs) are notarized and forwarded to the New Hampshire State Police, when applicable, for any Church Personnel who reside within the state. The New Hampshire State Police date stamp the CRR results before forwarding them to the Office for Ministerial Conduct for recording. New applicants who previously resided out-of-state are expected to assist the Diocese in obtaining their own criminal records from the appropriate agencies. The Associate Delegate stated that Massachusetts and Maine results are generally forwarded directly to the Office for Ministerial Conduct, while applicants from other states are expected to deliver records from their respective states. The Policy only requires a criminal record check to be performed at initiation of the personnel relationship.

According to the Associate Delegate, the Office for Ministerial Conduct is expected to notify the Safe Environment Coordinators at the parishes/schools/camps in writing whenever it receives confirmation from the New Hampshire State Police that an applicant's CRR reported no criminal history. For all other cases, the Diocese consults with a Manchester Police detective, who is paid as an independent contractor, assisting the Diocese with its review of the employee/volunteer criminal records. The contractor investigates the reported charge(s) and provides the Office for Ministerial Conduct and/or the Diocesan Review Board with his findings.

Thereafter, considering both the nature and recency of the illegal activity, the Board provides the Bishop with a written recommendation as to whether or not the subject individual should be allowed to work with minors, or restricted in his ability to serve as an employee/volunteer.

2. Screening Forms

As part of its prevention program, the Diocese requires that all employees and volunteers must sign a screening form. The screening form requests that the applicant self-disclose if they were ever investigated by the DCYF, accused or convicted of any sexual abuse and/or been subject to any court order involving allegations of "sexual, physical or verbal abuse of a minor."⁵⁶

Safe Environment Coordinators distribute the screening forms to their respective parish employees/volunteers. According to the Associate Delegate, if an individual answers in the affirmative as having been the subject of a DCYF investigation or subject to allegations of sexual abuse, the Coordinator will forward the document to the Office for Ministerial Conduct, who will engage the previously mentioned Manchester detective to conduct additional investigation into the matter. There are, however, no written policies/procedures formalizing this process.

3. Sex Offender Registry

Although the Delegate's Office has provided KPMG with documentation which lists its guidance to the Safe Environment Coordinators to assist them with locating and using the State of New Hampshire's on-line Sexual Offender Registry: one of the five Safe Environment Coordinators who were interviewed stated that she has been inconsistent with checking the Registry due to time constraints.

⁵⁶ Diocese of Manchester, Screening Form for Volunteers and Current Employees, March 2004, p. 2.

d. Findings

General Program

1. While the Diocese has begun a process designed to track compliance with its screening protocols, automated technology is not being utilized to track and generate reminders for compliance with the Policy's screening protocol requirements. The Diocese's database requires manual updating, which has resulted in what the Diocese admits to being an "incomplete" and "inaccurate" system for tracking overall completion rates for both screening and training requirements.
2. The Diocesan Policy and USCCB standards require the performance of reference checks as part of the Church Personnel screening process. However, interviews with the Safe Environment Coordinators showed that they appeared to be unclear about their role in the reference check process. One Coordinator described her volunteer reference check process as being less formal if she was personally familiar with the person. Others advised that they do not perform such checks at all.
3. Although the Diocese's website (FAQs re: Screening Protocol, p. 4) states that people who have been screened by their secular employers will need to undergo additional screening as part of the Diocesan Safe Environment Program "to ensure consistency and accuracy of information," the Delegate's background files suggests that some members of the clergy have been allowed to submit military background clearance documents in lieu of the approved Diocesan forms.
4. A physical review of the Diocese's 186 background files for active priests (i.e., those clergy who were not identified as retired) provided by the Associate Delegate revealed:⁵⁷
 - Nine files (4.8%) were missing CRR results,
 - 11 files (5.9%) were missing the required screening form, and,
 - 16 files (8.4%) were missing signed acknowledgement forms.
5. A review of the Diocese's database resulted in much higher rates of non-compliance; however, these results are unreliable as the Delegate admits the database is both incomplete and inaccurate.
6. KPMG conducted field reviews at two parishes, one high school, and one camp. KPMG reviewed a limited number of sample files at each location and found that none of these entities maintained documentation supporting 100% compliance with the Program's requirements.
7. At one of the parishes reviewed, KPMG found that the parish currently maintained only 350 out of an expected 644 employee/volunteer files. The Safe Environment Coordinator interviewed advised that files for employees/volunteers are not created until the individual employee/volunteer returns at least one piece of program documentation. Thus, it appears that almost 46% of this parish's employees/volunteers have not submitted any documentation supporting compliance with the Program's requirements.
8. A spreadsheet for one of the parishes, which tracked completion of Criminal Record Release Filed, Sex Offender Registry Check, Acknowledgement Form, and attendance at Protecting God's Children, was provided to KPMG for review. It was noted that there was no section to track 'Completed Criminal Record Check.' The

⁵⁷ Although there was no background file available for Priest A, he was included in this sample since the Delegate confirmed that he had not completed the screening process.

spreadsheet contained the names of approximately 642 employees and volunteers. A sample review of approximately 17% of the names found that completion rates for individuals identified as working with minors were generally as follows:

- Criminal Records Release Filed – 52%,
- Sex Offender Registry Check – 16%,
- Acknowledgement Form – 44%, and,
- Protecting God's Children attendance – 53%.

Criminal Records Checks

9. The Personnel and Benefits Coordinator for the Delegate's Office told KPMG that she used the information contained in a previous Protecting God's Children tracking spreadsheet as the basis for the current central database when she became the Coordinator in March of 2004. The Coordinator informed KPMG that the Diocesan data entry process was incomplete prior to March 2004 since the spreadsheet was not updated for almost two years (i.e., 5/02 to 3/04) after the attendance information from the first regional trainings was input. The Coordinator said she also continues to receive new information regarding previously completed criminal records checks that were never input into the system.
10. Criminal Record Release forms are submitted to the New Hampshire State Police by the respective parishes/schools without being reported to the Delegate. The results of the searches, however, are returned to the Office for Ministerial Conduct and subsequently reported to the parish/school. While this centralized process of recording results is appropriate, the Delegate does not reconcile the results it receives with the number of requests filed by the parishes/schools to ensure that all requests are completed.
11. Furthermore, because the local Safe Environment Coordinators have never been trained by the Diocese on how to track the results which are returned to them (i.e., the letters from the Delegate's Office), each Coordinator maintains his/her own record keeping system, which may or may not properly record the findings. KPMG's review of the parish records revealed that some parishes have not implemented any policies or procedures for tracking the returned results. In fact, some Coordinators have not recorded the findings at all.
12. During its review, KPMG discovered that at least one Safe Environment Coordinator had the state criminal record request results returned directly to him rather than having the results reported to the Office for Ministerial Conduct. Prior to KPMG's discovery, the Delegate was unaware of this situation.
13. Although the Diocese's former investigator, Jim Stewart, who was a retired Manchester Detective, stated that he reviewed the Diocesan CRR results as a trained police professional; neither he nor the Diocese ever developed written protocols regarding the work he was to perform on their behalf.
14. The Delegate's Office claimed it had signed contracts on file for its two background investigators, Messrs. Stewart and Stankiewicz but the Associate Delegate was initially unable to produce signed copies of either document. Although KPMG was later provided with a copy of Mr. Stankiewicz's contract, the Delegate's Office was unable to locate Mr. Stewart's contract.
15. There was no written procedure, protocol or policy for conducting out of state criminal records checks for individuals who have lived in New Hampshire less than one year. On August 12, 2005, KPMG inquired whether there was any procedure or

mechanism to determine whether out of state criminal records checks were being performed. The Delegate responded that his office does not have a tracking mechanism to monitor these out of state checks, although he believed they were being performed.

16. During its review, KPMG discovered that two parishes maintained active CCD teachers for whom no criminal records check results were on file.

Screening Forms

17. The Diocesan Implementation Plan stated that “all Church Personnel will be required to complete background screening in 2004.” The goal to complete background screening for parish employees was September 2004, while parish volunteers were given until December 2004. Neither of these goals was met by the Diocese and no disciplinary consequences have been contemplated as a result. According to its newsletter, the Office for Ministerial Conduct has provided the Safe Environment Coordinators with a new target date/goal for obtaining the completed screening forms of October 30, 2005. See **Exhibit H**.
18. According to the Delegate, several volunteers were not eligible to volunteer because they refused to sign the required screening forms. Although the Delegate admitted that he was aware of “anecdotal evidence” that some current parish employees and volunteers had not completed the screening process, he has never asked for, nor received, a list of those individuals who were not in compliance. According to the Associate Delegate, individual pastors/principals are responsible for ensuring these people are removed from service and that the Office for Ministerial Conduct can not verify that such individuals have actually been dismissed from the parishes. The lack of centralized oversight could result in some individuals not being removed from their work with minors, despite not having fulfilled the Program’s screening requirements.

Sex Offender Registry

19. The Diocesan Policy does not provide guidance for performing checks of the sex offender registry. Thus, the Safe Environment Coordinators interviewed and the Assistant to the Associate Delegate appear to have taken an ad hoc approach to checking the New Hampshire Sex Offender Registry. Some Coordinators advised that they immediately check the state’s registry as part of the individual application process, while others advised that they conduct such checks en masse or not at all. In addition, according to the Coordinators interviewed, they do not research other states’ registries, even if the individual previously resided in another state.

e. Recommendations for Program Enhancements

1. The Diocese should ensure that the new goals and dates which the Office for Ministerial Conduct outlined in its Fall 2005 newsletter are met, to ensure that all employees and volunteers who work with minors are properly screened. This screening verification should be documented in the individual’s folder, at the Diocese or parish level, depending upon the person’s position, and should include the following:
 - completed screening forms;
 - documentation supporting reference checks performed;
 - signed acknowledgement forms (see Section C.2 below);

- completed CRR checks, in New Hampshire or out of state if the person recently moved to New Hampshire;
 - completed review of the appropriate state(s)' Sex Offender Registry; and,
 - documentation evidencing the individual's attendance at, and participation in, a Diocesan *Protecting God's Children* training session or, if applicable, a similar class offered by their prior Diocese (see Section C.2 below).
2. Files maintained by the parishes/schools/camps should be reconciled against the Diocesan database to ensure that it contains accurate and complete data regarding compliance with the Program's requirements for all Church Personnel. Thereafter, the database should be reconciled against parish/school/camp records on a monthly basis to maintain its accuracy and usefulness as a tracking tool.
 3. The Diocese and its Safe Environment Coordinators should conduct reference checks on new employees and volunteers as specified in the USCCB's *Guidelines for Implementation of Safe Environment Programs*.
 4. Either reference to or military background records should not be accepted as proof that the person in question does not have a recent criminal record.
 5. Criminal records checks should be performed at least every five years. To ensure their authenticity, the checks should also be performed by the Diocese or one of its representatives, and not procured by the applicant.
 6. Going forward, the Delegate's Office should work with the Safe Environment Coordinators to reconcile the number of CRR requests sent to the state police with the number of results returned to the Delegate.
 7. The Delegate should provide the Safe Environment Coordinators with enhanced guidance and updated training to reinforce the process for screening employee/volunteers for service and tracking the results of such screening in a consistent format.
 8. The Diocesan Policy and *Screening Protocol* should be updated to provide enhanced guidance on performing checks of the sex offender registry. Guidance should include specifics as to when (e.g., prior to employment), which registries should be reviewed (e.g., all states in which applicant has resided), and how such reviews should be documented.

2. Training, Communication & Acknowledgements

a. Requirements of the Agreement

Pursuant to its Agreement with the Attorney General, the Diocese agreed to "continue to provide, and to revise as needed, its on-going safety training program regarding the sexual abuse of minors and the reporting requirements for all Diocesan personnel who have any contact with minors." In addition, the Diocese agreed that all Church Personnel who had "any contact with minors" would sign an acknowledgement that they had read and understood their reporting obligations (i.e., that they were "personally required to make the report directly to DCYF or local law enforcement"). In addition, all Diocesan personnel would also acknowledge that they had read and understood the Diocesan Policy and "have received specialized instruction" on it.

b. Industry Guidance

Under its new amendments, the Guidelines' original requirement of "effective communication to all levels of employees" has been enhanced to incorporate the specific requirement that such communication include the provision of compliance and ethics training to all organizational levels including all high-level personnel, employees, and agents. It further provides that the obligation to provide such communication and training is ongoing, requiring periodic updates.⁵⁸

c. Program Overview

1. Training of Church Personnel

a. *Protecting God's Children* ("PGC") Training

In September 2001, and prior to reaching its Agreement with the Attorney General, the Diocese retained the services of a third party provider (Presidium) to begin providing *Protecting God's Children* training to Diocesan and parish employees and volunteers.

In accordance with both the Agreement and the Guidelines, the Diocese's current Policy⁵⁹ requires all Church Personnel who work with minors to attend *Protecting God's Children* training as part of their orientation.⁶⁰ Volunteers who work with minors are given three months in which to participate in the class.⁶¹

PGC training is offered at various locations throughout the Diocese several times each month. The training is provided by instructors that have been trained by Presidium, and is offered in both English and Spanish.

According to the Assistant to the Associate Delegate, the Parish Outreach Staff and/or PGC trainers began forwarding their class attendance sheets directly to the Delegate's Office in 2004. Previously, the parishes were individually responsible for forwarding their attendance sheets, but the Assistant to the Associate Delegate has confirmed that as a result of this practice, not every datasheet was properly received, resulting in the change in procedure.

According to the Associate Delegate, the Diocese has credited at least three individuals with taking PGC in another Diocese since:

- it was the same course as the Diocese of Manchester,
- they received a certificate or coordinator verification, and
- they met with a Diocese Safe Environment Coordinator to discuss New Hampshire's specific reporting requirements.

⁵⁸ U.S. Sentencing Commission, Guidelines, §8B2.1(b)(4) (November 2004).

⁵⁹ Neither of the Diocese's two previous policies in effect between December 10, 2002 and March 19, 2004 maintained a requirement relating to the provision of training on the requirements to all Church Personnel. Furthermore, the *Protecting God's Children – Responsible Relationships in Ministry* policy, dated September 1999, which appears to be incorporated into the Diocese's policy, only requires the training of "supervisory personnel."

⁶⁰ *Policy* at Page 6, §III.B.

⁶¹ *Id.*

This exception is not formally documented in the Diocesan Policy and the Delegate's Office confirmed they do not maintain a list of everyone who attended PGC training in another diocese.

Furthermore, if any Diocesan organization (parish/school/camp) employs independent contractors to regularly work with minors, those contractors must provide written assurance that all of their employees have undergone appropriate levels of sexual abuse of minors training and the mandatory reporting requirement instruction. They are not, however, required to attend the Diocese's PGC training program.

b. VIRTUS Training

According to the Policy, all Church Personnel who work with minors must undergo ongoing or refresher training on child sexual abuse once every three years, including a self assessment portion at the end of the program.⁶² To meet this requirement, the Diocese began to utilize the online VIRTUS training program approximately four months ago. The Diocese relies on participants to register on the VIRTUS website. Thereafter, participants automatically receive emails reminding them to visit the website and review its contents. After reviewing the articles, participants are quizzed to test their level of comprehension. The VIRTUS system automatically tracks registration and participation, which will enhance the Diocese's ability to monitor for compliance.

c. Additional Training Under Development

The Diocese is developing three new, modified training programs especially designed for teen participants and/or minors and their parents. The programs, which are not mandatory, will address a variety of topics, including sexual abuse.⁶³

2. Communication

The Policy states that the Diocese will follow a program of regular and ongoing communications to increase awareness and understanding of the problem of child sexual abuse. Communications will include information about the problem of sexual abuse of minors; the means of reporting actual or suspected abuse and communicating allegations; and the services available to those who have been abused and to their families. Supervisors, managers, personnel managers, and/or directors should periodically review with Church Personnel the standards, policies, and reporting procedures. Pastors must periodically remind the parishioners about provisions contained in the Policy by including them in Church bulletins or other means deemed to be appropriate. The Policy also states that the Diocese shall develop a communications plan to remind the public about the procedures for making complaints of sexual abuse and other violations of the Policy.

The Associate Delegate provided two 2003 drafts of the Diocesan Communications Policy. However, Bishop McCormack confirmed that while the Diocesan departments have their own communications policies, the Diocese itself lacks such a plan, which was confirmed after a recent search of the Diocesan website.

⁶² Policy at Page 6, §III.D.

⁶³ Exhibit H.

A 2003 draft copy of the plan stated that the Diocese “will follow a program of regular and ongoing communications to increase awareness and understanding of the problem of child sexual abuse.” These communications should have included three components:

- Awareness of the problem;
- How to report actual or suspected abuse and how to communicate allegations; and,
- Services available to those who have been abused and to their families.

The draft refers to several means of communication, which the Diocese and the parishes confirmed were being used presently to communicate with their followers. Group and individual (pastoral) meetings, church bulletins and posted flyers, formal announcements during Mass and the Diocesan website all appear to have been used to communicate the Diocese’s message(s) on child sexual abuse and/or the reporting requirements.

3. Acknowledgments

In accordance with the terms of the Agreement, the Diocesan Policy also requires that all Church Personnel, both those who do and do not work directly with minors, receive instruction on the Diocese’s mandatory reporting requirements and that they sign an acknowledgement form stating that they have read and understood these requirements.⁶⁴

d. Findings

Training of Church Personnel

1. According to the Associate Delegate, almost 9,000 individuals have attended at least one PGC training session since its inauguration in September 2001.
2. Although thousands of people have apparently attended *Protecting God’s Children* training, the Diocese admits that **not all** Church Personnel who work with minors have attended a session as required. The previously described problems with the Diocese’s database, however, do not allow the Diocese to accurately track compliance with this requirement.
3. It does not appear as though the required attendance at Protecting God’s Children is being universally recorded by the Delegate’s Office or by the parishes. Although the Delegate’s database and the parish records which were reviewed by KPMG contain substantial information about which employees and volunteers have attended the training, the Delegate’s Office has stated that it has only set goals for the coordinators to comply with, which “may not be able to be met in every case...” See Exhibit H. According to the Delegate’s Office, the parishes are responsible for maintaining their own records regarding any non-compliance by employees or volunteers with regards to the training requirements.
4. According to its Safe Environment Newsletter (First Edition, Fall 2005), the Office for Ministerial Conduct recently named Sister Kathleen Haight, R.S.M. as Coordinator of the Diocese’s Safe Environment Programs. In this role, Sister Haight will be responsible for scheduling, planning and coordinating the training sessions for adults

⁶⁴ Policy at Page 6.

(PGC), teenagers in ministry with minors, and “other personal safety programs for children and their parents.” See Exhibit H.

5. Safe Environment Coordinators, if they have registered themselves, can use VIRTUS’ administrative function to determine which of their employees and volunteers have registered and/or completed the VIRTUS program. Although the VIRTUS program is still relatively new, some coordinators and their respective parishes have begun using the program while others have indicated that they have never logged on and are still waiting for a directive from the Diocese.
6. The Policy requires independent contractors, whose employees work with minors, to provide written assurance that all of their employees have undergone appropriate levels of training regarding the sexual abuse of minors as well as the mandatory reporting requirements. According to the Associate Director of Finance, six parishes/schools/camps who utilize independent contractors had not incorporated this language into their contracts, or obtained other evidence of compliance, at the time of his review in the Spring of 2005.
7. There is no formal policy on when PGC training can be substituted for the Diocese’s PGC program, although the Delegate acknowledged that some substitutions have been accepted and the decision is made on a case-by-case basis.

Communication

8. Both the Policy and Code are posted on the Diocesan website and, according to the Associate Delegate, are distributed to all employees and volunteers. This distribution, however, is left to the Safe Environment Coordinator at the parish/school level.
9. Even though the Diocese lacks a formal communications policy for the entire organization, there appears to be evidence that the Diocese, the Office for Healing and Pastoral Care, and the parishes are using various methods to publish the Diocese’s message(s) about the Policy, including:
 - group (victim support and retreat) and individual (pastoral) meetings;
 - church bulletins, pamphlets and flyers (See **Exhibit D**);
 - formal announcements, either by the Diocese, the pastors, or the PGC trainers; and,
 - the Diocese’s website, which contains a link specifically designated to the Diocesan Child Safety Program.
10. The Delegate confirmed that the Diocese is not affiliated with independent hotlines since the Diocese does not believe that these third parties are qualified to provide the same type of pastoral care as the Diocese’s representatives.
11. A member of the Safe Environment Council, who was previously on the Diocesan Communications Task Force, said the Diocese would benefit from the Bishop making more public appearances to distribute his message(s) regarding the importance of this initiative.

Acknowledgements

12. The acknowledgement form, as an attachment to the Policy, is widely distributed; however, not all Church Personnel have completed this form as required. Nor does it

appear that the Diocese is enforcing the completion of a signed Acknowledgement form from all Church Personnel as required.

e. Recommendations for Program Enhancements

Training of Church Personnel

1. The Diocese, its parishes, schools, and camps should implement a system to ensure that every employee and volunteer who works with minors will be trained in PGC within a reasonable time period and that their attendance is properly recorded at both the parish and Diocesan level. KPMG would suggest that the Office for Ministerial Conduct and the newly appointed Sister Haight work together to ensure that all of the required personnel receive the appropriate training.
2. The Delegate's Office should examine its records and reconcile them to the parish and PGC attendance datasheets to determine the exact number of individuals who have received PGC training as well as to determine which personnel are currently not in compliance.
3. The three-month period for volunteers to complete training seems excessively long. Traditionally, compliance timetables for such critical training are between 14 to 30 days. KPMG would recommend that the other Safe Environment Coordinators follow the Camp Fatima model which requires that all new employees and/or volunteers attend training within a two-month period.
4. The Diocese should issue a mandate requiring all Church Personnel to use the VIRTUS on-line program. While the Fall 2005 Newsletter lists September 15, 2005 as a goal for registering on Virtus, it does not state that all individuals must participate in the on-line training by a specific date. The Diocese should also provide training to the Safe Environment Coordinators so that they can utilize the VIRTUS administration function to ensure that all parish/school/camp employees and volunteers have registered and are actively participating in the program.
5. Any and all exceptions to the training requirements should be formalized in the Diocese's written Policy.

Communication

6. The Diocese should finalize and post its annual communications plan on its website.
7. The Diocese should develop and publish a formal communications plan which outlines the Program and its evolution. The plan should also be updated periodically and the Diocese should consider incorporating the feedback it receives into future plans.
8. The Diocese should consider utilizing independent hotlines as additional methods for reporting possible violations of the Safe Environment Program and/or the sexual abuse of minors.

Acknowledgements

9. The Diocese, its parishes, schools, and camps should implement a system to ensure that all Church Personnel complete an Acknowledgement form as required.

D. Program Documentation

1. Requirements of the Agreement

The Agreement stipulates that the Diocese retain all documents and information relating to any allegations of sexual abuse of minors for the life of the accused.

2. Industry Guidance

Although the Guidelines do not specifically address documentation requirements, industry practice would support the Diocese maintenance of any and all documentation supporting its compliance with the Agreement at least for the period of required audits.

3. Program Overview

The Policy requires all records regarding sexual abuse must be maintained for the life of the accused, or the longest period of time permitted by Church and civil law, whichever is longer. It further stipulates that such records must be kept in a format that facilitates their availability to Church Personnel with a legitimate need to know about the allegations.

The Policy also requires that the Diocese maintain a Clergy Personnel documentation system for use when assigning clerics to ministry. The record of each cleric will begin once they have entered seminary or preparation for the diaconate and be maintained for “a period of time established by Church law.” In addition, the Policy calls for the creation of a central records database for all Church Personnel. This database will enable the Diocese to monitor its compliance with screening and training requirements. It will also help parishes to identify whether or not applicants previously employed by other parishes are in good standing.

4. Findings

- a. As previously noted, although the Diocese created a central records database, it is an ineffective tool for monitoring compliance with the Program requirements. Until it is updated and reconciled with the parish datasheets and PGC attendance sheets, the Delegate’s Office will be unable to determine the exact number of individuals who are not in compliance with the Program’s requirements. (See Section C above for additional details.)
- b. While the Delegate’s Office does not maintain the clergy’s personnel files, the Associate Delegate articulated that her office does have access to the files for the purposes of the Program. The Associate Delegate stated that the files are maintained by the Secretary for Ministry Formation.⁶⁵ According to the Delegate’s Office, the Diocese maintains all files in accordance with the terms of the Agreement and has not destroyed any files to date. KPMG was provided access to the clergy’s background files, to determine their compliance with the Program Screening Requirements, as well as settlement documentation for the purpose of comparing a sample of the names of accused clergy to the background files for active clergy. Based upon KPMG’s review of the Diocese’s documentation, it appears as though the Diocese is maintaining the required documentation in accordance with the Agreement.

⁶⁵ On January 31, 2006, post-review, the Associate Delegate advised that she maintains these files. No evidence has been provided to date to support this statement.

- c. The Safe Environment Coordinator for the camps confirmed that he did not collect or forward accurate background information about the camp personnel to the Delegate's Office in 2004 and he stated that the Associate Delegate instructed him to wait until the 2005 summer sessions had concluded before he forwarded the current year's information.
- d. Those people interviewed by KPMG, including the Director of the Office for Healing and Pastoral Care, the Safe Environment Coordinators, and the Diocesan investigators, advised that they properly store and maintain control over their files and that they do not destroy or shred any documentation.

5. Recommendations for Program Enhancements

- a. The Delegate's Office should compare and reconcile its documentation to that of the parishes, schools, camps, the Office for Healing and Pastoral Care and the Attorney General's Office to ensure that there is universal agreement about the accuracy of the Delegate's information regarding Diocesan personnel.
- b. In the case of the Diocesan camps, the Safe Environment Coordinator should not wait until the end of the camp season before he forwards his datasheets to the Delegate's Office for data entry. The Delegate's Office should review the camp employee/volunteer information with the camp coordinator prior to the camp season to ensure that the necessary documents have been obtained before the initiation of the summer session(s).

E. Auditing/Testing of the Program

1. Requirements of the Agreement

The Agreement requires the Diocese to submit to an annual compliance audit to be performed by the Attorney General for a period of four years ending 12/31/07. The audit may include the inspection of records and the interview of Diocesan personnel.

2. Industry Guidance

According to the Guidelines, an organization shall take reasonable steps a) to ensure that the organization's compliance and ethics program is followed, including monitoring and auditing to detect criminal conduct and b) to evaluate periodically the effectiveness of the organization's compliance and ethics program.⁶⁶

In addition, the Guidelines also stipulate that an organization's compliance and ethics program shall be promoted and enforced consistently throughout the organization through appropriate incentives to perform in accordance with the compliance and ethics program as well as appropriate disciplinary measures for engaging in criminal conduct and for failing to take reasonable steps to prevent or detect criminal conduct.⁶⁷ Thus, the Guidelines articulate "both a duty to promote proper conduct... as well as a duty to sanction improper conduct."⁶⁸

⁶⁶ U.S. Sentencing Commission, Guidelines, §8B2.1(b)(5) (November 2004).

⁶⁷ Id. at §8B2.1(b)(6).

⁶⁸ *Excerpt from the U.S. Sentencing Commission Amendments to the Organizational Sentencing Guidelines*, Page A-4, referencing §8B2.1(b)(6).

3. Program Overview

The Diocesan Policy requires the Diocesan Review Board, or selected outside consultants hired by the DRB, to consult with the Safe Environment Council to conduct regular audits of the Office for Ministerial Conduct for compliance with the Policy, as well as applicable Church and State law. According to the Policy, the results of these audits will be reported to the Christian Faithful.⁶⁹

In December 2004, the firm of Howe, Riley & Howe P.C. (“HRH”) was retained by the Diocesan Review Board to perform an audit for compliance with the Policy. This audit was later postponed and rescheduled for June 2005. In the meantime, HRH had apparently selected at random a number of parishes, schools and/or camps to be reviewed as part of its audit. These parishes, schools and camp were notified of their participation in HRH’s review and were visited by the Diocese’s Associate Director of Finance in advance of HRH’s on-site reviews, which resulted in a number of findings as identified below.

The results of the HRH audit had not been finalized at the time of KPMG’s assessment.

4. Findings

- a. The Gavin Group performed two compliance audits on behalf of the USCCB in 2003 and 2004. Although it found the Diocese to be in compliance with the USCCB Charter, the Gavin audits did not measure compliance at the parish level.
- b. The Gavin Group made several recommendations to the USCCB in 2003, which if implemented may benefit the Diocese of Manchester’s Program including:
 - identifying “model forms, checklists and record-keeping systems” pertaining to implementation of the Charter and provide them to all parishes;
 - developing and implementing training programs for Diocesan Review Board members; and,
 - identifying and instituting “effectiveness measurements” for safe environment programs.
- c. The Associate Director of Finance opined that four of the fourteen sites he visited in advance of the HRH audit, starting in April of 2005, needed to improve upon their processes. For example, only seven of ten CCD coordinators at these particular parishes had attended PGC training, forms were missing from some of the files and one parish had not even started its implementation prior to his visit, although the resources were in place. As of the time of KPMG’s interview, no follow-up had been performed with these parishes to assess their progress since the initial review.
- d. The Associate Director of Finance believes that the Diocese should employ a full time auditor to assist its parishes, schools and/or camps with implementing and monitoring their compliance with the Diocese’s Program.
- e. As indicated above, it does not appear as though the Diocese has taken any disciplinary measures against those individuals/parishes that have not fulfilled their obligations under the Program.

⁶⁹ Policy at Page 14.

5. Recommendations for Program Enhancements

- a. KPMG agrees with the Associate Director of Finance's recommendation that the Diocese should employ at least one experienced auditor who can assist the parishes, schools and camps with implementing and monitoring their compliance with the Diocese's Program.
- b. The Diocese should also require that its independent auditors conduct extensive and intensive reviews of its systems to ensure that it is in full compliance with the Agreement, its own Policy, and the previously mentioned leading industry standards. Such reviews should not be predicated by advanced notice to the selected parishes as this could potentially alter the results of the review.
- c. The Diocese should develop a formalized system of accountability, allowing it to enforce the Program's mandates and take appropriate disciplinary measures against individuals/parishes that do not meet their obligations under the Program.