

## Monitor's Fifth Report

# Compliance Levels of the Albuquerque Police Department and the City of Albuquerque with Requirements of the Court-Approved Settlement Agreement

No. CIV 14-1025 RB/KK

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## 1.0 INTRODUCTION

The following document constitutes the Independent Monitor's fifth report detailing the status of the monitoring function of the Albuquerque Police Department's (APD) response to the Court Approved Settlement Agreement (CASA) between the United States Department of Justice (DOJ) and the City of Albuquerque (the City). The document consists of five sections:

1. Introduction;
2. Executive Summary;
3. Synopsis of Findings;
4. Compliance Assessments; and
5. Summary.

On November 14, 2014, the United States Department of Justice entered into a settlement agreement (SA) with the City regarding changes the Parties agreed to make in the management and operations of the APD. This agreement consisted of 276 requirements accruing to the APD, the City of Albuquerque, and related entities, including, for example, the City of Albuquerque's Citizens' Police Oversight Agency (CPOA), and the City of Albuquerque's Police Oversight Board (POB). After approval of the Settlement Agreement by the Court in November 2014, on January 14, 2015, the Parties selected an independent monitor to oversee and evaluate the APD's response to the requirements of the CASA on January 14, 2015. Dr. James Ginger (CEO of Public Management Resources), and his team of policing subject matter experts (SMEs) in the areas of police use of force, police training, police supervision and management, internal affairs, police-community relations, crisis intervention, and special units were tasked with the responsibility of developing and implementing a monitoring methodology designed to, where possible, evaluate quantitatively each of the 276 individual requirements of the CASA. The monitoring team's proposed methodology was submitted to the parties (The USDOJ, the City of Albuquerque, the APD, and the Albuquerque Police Officers' Association) in March 2015. The Parties were given time to review and comment on the draft, and the monitor revised the methodology document that were meaningful and suggested an improved document in terms of accuracy, understandability, and style. A Court Order modifying deadlines for the CASA was approved by the Court and filed on September 24, 2015. This document reflects those comments and represents an attempt by the monitoring team to produce the most accurate assessment possible.

In the pages that follow, the monitoring team presents to the Court, the Parties and the residents of the City of Albuquerque, its findings developed from its fifth site visit. We have noted previously that the

monitor's first report, in effect, represents a "baseline" from which improvements can be tracked. This fifth report represents an assessment of the progress made since the beginning of compliance efforts. Full disclosure of the monitor's reports will be made by presentation in Court, by in-person discussions with the Parties, by publication of the report on the Web, and provision of copies of the report on CDs for those who so desire. The reader is reminded that this document is the fifth step in a multi-year and multi-phased organizational development and planned change process.

The reader familiar with the monitor's process will notice two substantive changes to the format of this report. First, at the request of the Parties, we have changed the reporting process by inserting, where possible, tabular data that shows compliance progress by numeric values instead of by verbal description only. Second, based on the City's assertion that the monitoring team had not been providing recommendations to the City, as stipulated by paragraph 308 of the CASA, this report includes, for each paragraph determined not to be in compliance, written, clear, precise recommendations that APD should effectuate to come into compliance with the CASA.

The monitor contends his "recommendations" responsibilities had been met in much more productive ways in the past—through team-wide on-site coaching every site visit, via the provision of specific problem-oriented "training" provided directly to command staff by the monitor, through monthly Parties meetings comments and discussions, and through the detailed problem-analysis and solution-articulation provided in the monitor's periodic reports, delivered to the Parties and the Court. Our on-site coaching, designed as problem-solving mechanisms, actually began prior to receiving official funding of the monitoring team, and continued through site visits 1-5. Every site-visit interaction the monitoring team had with APD personnel had two objectives: to understand APD's current status, and to discuss "ways forward," that would aid APD in its compliance efforts. All of our site visits were in effect coaching and problem-solving activities. Each consisted of, at a minimum, 360 man-hours of coaching and problem-solving, which over the three-visit "year" constituted 1,080 hours of "recommendations" and discussions of effective ways forward each year. An analysis of past monitor's reports indicates that each report was supported by dozens of specific and clear recommendations. For example, in IMR-3, early on in the monitoring process, we offered the City 34 concrete and specific written recommendations in the first 224 pages, as well as providing the City with painstaking descriptions of problems and issues we encountered in our work. These recommendations were tangible, stating such suggestions as: "APD should continue to improve its investigative protocols and practices based, in part, upon the extensive comments that

are provided within monitoring reports.” Such feedback should be an integral part, among other sources, of any professional, comprehensive training needs assessment” (p. 90). Thus, past practice offered, on average, a “recommendation,” every 7 pages!

Nonetheless, the City felt this inadequate, given their needs. Thus, for this and future reports we have provided the City a structured, detailed, and comprehensive set of step-by-step recommendations in the body of the report, as before, but specifically identified, and “tied” to specific paragraphs. For this report, we have provided the City with 324 specific recommendations, detailing specific actions the City should accomplish if it is to come into complete compliance with the CASA.

Further, at the City’s request, we have eschewed our earlier process of bolding and underlining the more important aspects of our findings. Based on the City’s contention that such a practice “drew attention” to shortcomings,” we have terminated that practice, although, parenthetically, we note we did tend to underline or bold statements relating to the City’s positive steps toward compliance as well.

While the style of this new reporting modality may be a bit technical, the reader should note that it is meant to inform the Court, applicable law enforcement professionals, and the Parties about the monitor’s assessment of the current levels of performance by the APD on the 276 specific tasks required of the City and the APD over the coming years. The monitor’s reports allow the reader to actually assess progress made by APD since the reform process was initiated in January 2015. Thousands of man-hours have gone into developing this report in the form of planning, data collection, data analysis, report writing, staffing and production. The fifth report serves as a review of the effectiveness of the organizational development process engaged in by the APD during the period of August 2016 through January 2017 (inclusive). Similar processes will be used over the remaining life of the CASA.

## 2.0 Executive Summary

This is the fifth monitor's report, covering the period August 2016-January 2017. Under the Court-Approved Settlement Agreement (CASA), the monitor is to issue public reports on the City's progress over the remaining years, by which point the City intends to have reached substantial and sustained compliance with all provisions of the CASA.

As this report discusses in detail, great challenges lie ahead for the Albuquerque Police Department and the City of Albuquerque. This executive summary provides an overview of what the monitoring team has observed so far in the APD's compliance efforts, and is a synopsis of a fuller discussion of compliance which can be found in the body of the report. The summary then provides an explanation of where we are in the process, given some modifications that the City and the Department of Justice requested the Court to make to deadlines in the CASA. Finally, the summary explains more about how this report is organized and where the reader can find more information about specific components of the CASA.

### 2.1 Overview of This Report's Conclusions

Work completed by APD for this reporting period includes beginning six-month revisions to critical policies, continuing work on training curricula development and implementation, continuing work on automated systems to support major APD work processes, revisions and updates to supervisory, command and control processes, improvements to its crisis intervention modalities, upgrades to staffing levels, improvements to its officer assistance and support capacities, and continued improvement to its community engagement and oversight functions.

This summary covers the nine substantive areas laid out in the CASA:

- I. Use of Force;
- II. Specialized Units;
- III. Crisis Intervention;
- IV. Policies and Training;
- V. Misconduct Complaint Intake, Investigation, and Adjudication;
- VI. Staffing, Management and Supervision;
- VII. Recruitment, Selection, and Promotions;
- VIII. Officer Assistance and Support; and

## IX. Community Engagement and Oversight.

While each of these topics is covered in greater detail in the body of the report, this executive summary will provide an overview of our conclusions from the core components of the CASA.

### 2.1.1 Use of Force

As the monitoring team noted in its first four reports, and a Special Report submitted to the Court in September of 2016, fostering the constitutional use of force is the primary goal of this entire effort, and every provision of the CASA is aimed, directly or indirectly, at achieving that goal.

The APD has crafted an acceptable use of force policy, which, during this reporting period was due to be reviewed and revised based on in-field experience relating to use of force practices, supervision, assessment and outcomes. Use of force policy has been a difficult mechanism to master for the APD, and we continue to see residual issues as that policy comes into its six-month review processes. We continue to see issues related to use of force in the areas of neck holds, distraction strikes, and “shows of force.” In fact, treatment of each of these issues has led to delays in our ability to assure that APD crafts a revised use of force policy that addresses the issues the monitoring team have noted over the past months. We also continue to note training-related issues regarding use of force, and supervisory issues related to reviewing and identifying out-of-policy uses of force, and reciprocal issues in supervision, command review, and administrative assessment and regulation of uses of force.

While APD is currently “in compliance” with its initial version of its use of force policies, changes need to be addressed relative to neck holds, distraction strikes, and “shows of force” if APD is to remain in policy compliance. Further, this reporting period, we again note relatively serious supervisory and command-level failures relating to APD’s willingness and ability to identify out-of-policy force events and to take appropriate remedial action.<sup>1</sup>

For this reporting period, the monitoring team reviewed a random sample of 16 separate use of force events. We conducted this review in order to craft a current understanding of APD’s use-of-force-related policies and in-field practices. The outcomes of our review of these incidents are presented in Table S.1, below, and are replicated in the body of the report at Table 4.7.1.

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<sup>1</sup> Our concerns over the reporting and investigating of show of force events extend back to the beginning of the monitoring team’s engagement with APD.

## S.1

Case Number	Advisements, warnings	De-escalation as resistance decreased	Allow to submit	Neck hold	Leg sweep, arm bar	Against person in handcuffs	Lawful command	Point Fire-arm	Inspect for injuries	# in compliance	% in compliance	In Compliance
IMR-5-001	1	1	1	N/A	1	N/A	1	N/A	1	6	100%	Y
IMR-5-002	1	1	1	N/A	N/A	N/A	1	1	1	6	100%	Y
IMR-5-003	1	1	1	N/A	N/A	N/A	1	N/A	1	5	100%	Y
IMR-5-004	1	1	1	N/A	N/A	N/A	1	N/A	1	5	100%	Y
IMR-5-005	1	1	1	N/A	N/A	N/A	1	N/A	1	5	100%	Y
IMR-5-006	1	1	1	N/A	N/A	N/A	1	N/A	1	5	100%	Y
IMR-5-007	0	1	1	N/A	N/A	0	1	N/A	1	4	67%	N
IMR-5-008	1	1	1	N/A	N/A	N/A	1	N/A	1	5	100%	Y
IMR-5-009	N/A	1	N/A	N/A	N/A	N/A	1	N/A	1	3	100%	Y
IMR-5-013	1	1	1	N/A	1	N/A	1	N/A	1	6	100%	Y
IMR-5-015	N/A	1	1	N/A	N/A	1	1	N/A	1	5	100%	Y
IMR-5-030	N/A	N/A	N/A	N/A	N/A	N/A	1	N/A	1	2	100%	Y
IMR-5-031	1	1	1	N/A	N/A	N/A	1	N/A	1	5	100%	Y
IMR-5-010	0	0	0	N/A	N/A	0	1	N/A	1	2	33%	N
IMR-5-012	1	1	1	N/A	N/A	N/A	1	N/A	1	5	100%	Y
IMR-5-011	0	1	0	N/A	1	N/A	1	N/A	1	4	67%	N
											% in Compliance	81%

Our detailed and substantive analysis of these 16 uses of force shows that APD has reached an overall compliance rate of 81 percent (of the 16 cases reviewed, we found significant problems in three). A compliance rate of 95 percent or higher is required for compliance. The majority of use of force events we reviewed were within the requirements of the CASA. Three of the 16 cases we reviewed failed to comply. These failures involved uses of force against handcuffed persons, advisements and warning regarding use of force, de-escalation of incidents, and allowing suspects time to submit prior to resorting to force.

In addition to these data analysis-generated issues, we noted during our combined quantitative and qualitative review that other use-of-force issues appeared to be causing APD difficulties. These included “show of force” practices, distraction strikes, and neck holds. We note here that information developed during the course of five monitor’s reports has identified a reasonably reliable and accurate assessment of force-related issues keeping APD out of compliance with use-of-force requirements of the CASA:

1. Review, identification, and control of “shows of force;”
2. Use of “distraction strikes,” a euphemism that more often than not masks a use of force;
3. Use of neck holds, which are clearly prohibited by the CASA and current APD use of force policy;
4. Use of force against handcuffed prisoners;



5. Advisements and warnings prior to use of force, where practicable;
6. De-escalation of force as resistance decreases; and
7. Where practicable, allowing time for suspects to submit prior to the application of force.

Each of these issues is put into brief context below.

#### 2.1.1.1 Shows of Force

In the third report, we noted: “Training [of officers] regarding use of force began January 25, 2016, two days after receiving approval on the department’s proposed use of force policy.” The monitoring team, at that time, cautioned APD that the ‘rush to training’ was risky, absent adequate time to ensure that the training was modified to reflect very recent changes in policy. As predicted, the training, as offered, had substantial issues due to the rush to final preparation, and some critical pieces were omitted or were inaccurately covered (e.g., failing to cover adequately critical revisions to the use of force policy).”

First, there appear to be multiple definitions of use of force in the training processes, which we note, again, are not currently integrated well with existing policy, more likely than not because of the lack of clear definitions of “show of force.” Second, APD is currently engaged in the planned six-month review and assessment of its use of force policy. We strongly suggest that the monitoring team’s assessment of that policy, as it relates to “show of force,” be included in that policy review.

We note again that supervisors may have left that particular training session confused relative to both Use of Force and Show of Force events. We also noted a clear indication of supervisors confused over those issues in our Special Report filed with the Court in September 2016. Based on our review of training videotapes, we believe strongly that supervisors may have left that training understandably confused about issues such as leg sweeps, shows of force, and neck holds.

The instruction concerning Show of Force resulted a great deal of confusion by the class, based on the videos reviewed. In the opinion of the monitoring team *the information provided to the class concerning what constituted a Show of Force was unclear at times and needs to be supplemented through retraining.* The concepts of “low-ready” and “high-low-ready” (positioning of a weapon), and “acquiring a sight picture” all appeared to confuse a relatively simple concept. During our June 2016 site visit this topic was discussed with an APD Deputy Chief who candidly agreed that Show of Force would need to be addressed through some type of retraining.<sup>2</sup> We appreciate his willingness to self-identify

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<sup>2</sup> As noted earlier in this report we asked for a definition of what constituted a Show of Force of APD commanders and received different interpretations.

the need for retraining and commit to getting that training out to the field. The monitoring team stands ready to work with APD to help clarify the concept.

#### 2.1.1.2 “Distraction Strikes”

Based on our experience, “distraction strikes” as implemented by APD are nothing more than a collective euphemism designed to mask what otherwise would be a use of force. Nonetheless, the term continues to be used at APD in officers’ reports, and continues to be missed as a force issue by sergeants reviewing officers’ reports and On-Body-Recording-Device videos accompanying those reports. Despite our efforts face-to-face with those responsible for developing policy, training, supervision, and oversight related to use of force at APD, the term is often used to mask a use of force that is used to stun or distract a suspect long enough for an officer (or officers) to gain a tactical advantage in handcuffing. Strikes, leg sweeps, pushes, shoves, etc. are uses of force, no matter the rationale behind them. For whatever reason, the monitoring team cannot move APD to define these terms as force and to treat them accordingly. We have noted this problem since our first site visit to APD, and continue to do so.

The reader should note that we are not saying APD cannot *use* these tactics, but that when they *do*, they should be *reported* as uses of force, and subjected to the same review as more serious uses of force.

#### 2.1.1.3 Use of Neck Holds

Neck holds are another use of force tactic that APD appears to be more than hesitant to ban by policy and supervisory practice. The six-month review of APD’s use of force policy has been *seriously delayed* as APD attempt to “debate” with the monitoring team and DOJ what a neck hold *is*. The monitoring team has turned back several attempts by APD to allow neck holds by policy, despite a clear and unambiguous prohibition of neck holds by the CASA, and a clear and unambiguous definition in the CASA of a neck hold as deadly force (CASA at definition aa). At definition gg, the CASA clearly defines a neck hold as “lethal force.” The CASA also clearly defines a neck hold as a “serious use of force.” Despite that clear and convincing level of detail, the monitoring team finds ourselves at a virtual impasse in getting a revised use of force policy through the review process because of APD’s insistence that neck holds do not constitute lethal force. As a result, clear, concise and compliant use of force policy direction is “missing in action” for officers of the APD at this time. In the opinion of the monitor, such deliberate resistance, despite multiple discussions and debate of the topic, and despite clear and unequivocal definitional guidance in the CASA constitutes deliberate non-compliance on the part of APD and the City.<sup>3</sup> Non-compliance on this issue comes from the command-level at APD.

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<sup>3</sup> Despite the fact that the City and APD have ostensibly agreed with the monitor on this issue, we have yet to see a CASA-congruent use of force policy from the APD.

#### 2.1.1.4 Use of Force Against Handcuffed Prisoners

As with neck holds, use of force against handcuffed prisoners is prohibited by the CASA, and in the instance of this type of force, is also prohibited by APD policy, where it is defined as a serious use of force. Nonetheless, we continually see instances involving such tactics in the case files and OBRD videos we review in the course of our monitoring processes. It appears that APD supervisors are inured to this process, failing more often than not, to note and correct it. Such failures apparently rise to the level of CIRT and FRB, who are tasked with review of serious uses of force. An oversight by a patrol officer is one thing. An oversight of a serious use of force event by CIRT and FRB is something else altogether.

#### 2.1.1.5 Advisements and or Warnings Prior to Use of Force

Paragraph 14 of the CASA requires at item a): “officers shall use advisements, warning, and verbal persuasion, when possible, before resorting to force.” This language has been incorporated into APD policy. Despite that, and training directly responsive to these requirements, APD’s use of force review process continues to overlook violations of this requirement. This is true at all levels, supervisory, command, CIRT/IRT FRB and IA. Admittedly, given the more serious issues APD has to deal with, *this can* be a minor issue. However, in the monitor’s opinion, failure to comply with this provision is a direct and serious violation of APD policy and of the CASA. We continue to see events that should be “caught and corrected” by APD supervisory and management systems that are not.

#### 2.1.1.6 De-escalation of Force as Resistance Decreases

De-escalation of force “at the earliest possible moment” is required by the CASA at paragraph 13, and also by approved APD use of force policies. It has also been incorporated into APD training outlines for use of force training. In the monitor’s opinion, failure to comply with this provision is a direct and serious violation of APD policy and of the CASA. We continue to see events that should be “caught and corrected” by APD supervisory and management systems that are not. Despite noting this in our regular reports, and discussing it with the APD management cadre, we continue to observe use-of-force cases in which this requirement is not followed, when feasible and safe, along with the resulting failure of supervisory, management, and oversight systems to identify, note, and remediate such behavior.

#### 2.1.1.7 Failure to Allow Time for Suspects to Submit

Paragraph 14, at section c), requires “officers [to] allow individuals time to submit to arrest before force is used *whenever possible* (emphasis added). This

provision is also reflected in APD's approved use of force policies. Nonetheless, we continue to see instances in which this policy provision is ignored at the street level, and to see failures to note and correct this behavior at the supervisory and command level. Specific incidents are described in past reports, highlighting this oversight in the supervisory process. For IMR-5 one such incident [IMR-5 001] was noted and held out of compliance in section 4.7.29.

### 2.1.2 Issues with Supervision in the Field

We continue to note in IMR-5 significant failures in supervisory processes in general at APD, with four of sixteen force events reviewed failing to note that not all officers involved in a use of force event provided a written statement (a 25 percent failure rate). Five of 16 use of force events reviewed for IMR-5 noted a failure of supervisors present to require involved officers to provide a specific description of the acts that led to a given use of force (an error rated of more than 31 percent). Six of the sixteen use of force cases reviewed by the monitoring team failed to include a narrative description of the justification for use of force, a failure rate of 38 percent. A similar number (6 of sixteen, or 38 percent) of supervisors' reviews used boilerplate language, in direct contradistinction to the language of the CASA, without command personnel taking note of the failure. Many of these errors were also missed by the Force Review Board and IAB.

APD's use of force oversight functions (supervisors, Force Review Board, command, and others) continue to misconnect on their most critical job task elements: reviewing, noting, and correcting errors in the application of force in the field by APD officers. Of the cases reviewed this reporting period, only three quarters of them resulted in effective oversight procedures noting that a use of force or prisoner injury occurred in the field. Only slightly more of APD's supervisors (81 percent) noted that officers failed to activate their OBRDs in accordance with policy. Only 13 percent conducted an appropriate investigation of an in-field use of force. Needless to say, these numbers are concerning after more than two years of "reform."

### 2.1.3 Command Review of Uses of Force

The most mystifying outcome of all this reporting period related to the command reviews of uses of force requirement of the CASA. A review of 16 reported and documented use of force cases reviewed thoroughly and painstakingly by the monitoring team this reporting period showed that **zero percent** of those cases showed an effective command-level review (at the Area Stations) of the officers reported uses of force. More concerning, based on the incidents reviewed by the monitoring team this reporting period **zero percent** of command personnel, who should have ordered additional investigation to resolve inconsistencies and improve the reliability and credibility of supervisory personnel's use of force investigations did so! Few systems can survive such a failure rate.

While supervisory and command lapses are concerning, and at times startling, the situation is little improved at the Force Review Board level. Our review of APD activities at this level found serious shortcomings regarding pattern recognition, decision-making protocols, evidentiary standards, and other potentially major performance shortfalls. For example, one case reviewed by the FRB, on the issue of “was the use of force findings supported by a preponderance of the evidence”, only two members voted “no,” while the remaining five “refrained from answering.” Such questions are the essence of supervision and management control. The monitor finds it inconceivable that “refrain from answering” is viewed by APD FRB functions as a legitimate response.

Further, we have noted that even functionally completed FRB cases have been returned by the senior level command because they were “unsatisfied with chain recommendations.” Such a response is viewed by the monitor as wholly unsatisfactory, as it should have been replete with explications and suggestions for remediation. We note this case here because it began as a supervisory use of force investigation but escalated to a serious use of force case after being highlighted by the monitoring team.

#### 2.1.4 IA/CIRT Review

Attempts by the monitoring team to assess the overall quality of administrative review resulted in a request, in advance of our November site visit, for the monitoring team to meet with IA/CIRT to discuss a “failure analysis” on three cases with which the monitor had been dealing for some time. When we arrived for the meeting, it was clear that IA/CIRT was unfamiliar with the cases. Instead of a detailed meeting we were provided with memoranda that stated “IA/CIRT did not receive a request from FRB to investigate this case for any misconduct.” IA/CIRT further noted “IA was not requested to investigate this case and I cannot find any other documentation in IAPro to suggest FRB conducted any further investigation.” Thus, it is clear that, despite clearly articulated monitoring team concern about this case, it had dropped into a “black hole” at APD. This case involved clear and specific officer reporting discrepancies, supervisory deficiencies and training needs that, to our knowledge, have never been addressed by APD.

A second case noted by the monitor failed to result in adequate follow-up even after the monitoring team brought it to APD’s attention, noting serious policy training failures. APD’s response to our concerns was “The IMT points out several concerns: performance issues of the involved officers as well as issues with the supervisory investigation and subsequent chain of command reviews... As with previous cases, this was a case investigated and reviewed by FRB. Internal Affairs was not

requested to specifically investigate this case or any of the IMT's concerns." Thus, it is clear that, despite clearly articulated monitoring team concerns about this case, it had also dropped into a "black hole" at APD.

#### 2.1.4 Overall Use of Force Conclusions

We note with more than a little frustration that, after five attempts to prompt a legitimate follow-up on cases that the monitoring team have identified as problematic that *two of the three remain unresolved after nine months!* To our minds this constitute a clear example of deliberate non-compliance. APD has done a reasonable job of building "boxes", (specialized units) that are charged with completing the requirements of the CASA, but there seems to be little "input and output" between and among those specialized units. Failures persist, even after direct and focused notice to APD of salient issues, problems, failures, and non-compliance. While the APD has done the job on the surface, the deep dive into communications processes, assessment capacities, findings development, problem-solving, and routinization of taken-for-granted command and control practices in other policing agencies has been missed, over-looked, or deliberately avoided by APD.

#### 2.2 Specialized Units

Obviously, the role of specialized units, such as Training, Internal Affairs, CIRT, SWAT, K-9, etc. are critical to APD's ability to envision coherent responses to the CASA requirements. Many of those specialized units (and their inputs into the process of building compliance) are discussed below.

##### 2.2.1 Training

During past monitoring reports, we have identified numerous pending issues in APD's training function, particularly as it relates to use of force training protocols. Table 4.7.75, below, outlines our findings related to training.

**Table 4.7.75: Assessment of Pending Issues in APD's 24-hour Supervisory Use of Force Investigation Course and the 40-Hour Use of Force Course**

Open Issues: 24-hour Supervisory Use of Force Investigation Course / 40-hour Use of Force Course	Status
1. Review of problematic FRB case involving profanity, serious use of force re-classification	<u>Still pending</u> follow-up training to remediate improper information that was provided during previous training.



2. Credibility determinations	<u>Still pending</u> follow-up training. The monitoring team reviewed the documentation provided by APD and found no direct treatment of this issue. As noted in IMR – 4, in our opinion APD does not address <u>how</u> supervisors go about conducting credibility determinations based on their investigations of force. For example, how supervisors make determinations based on the collection of statements, and the evaluation of facts and evidence is not directly addressed.
3. language confusion, i.e., “Pointing a firearm at a person...and acquiring a target”, procedures for reporting and investigation, and reconciling “low-ready,” and elimination of the concept of “high-ready”	This issue should be reconciled during the six-month review of SOP 2-52 and 2-54 (which at this time are substantially tardy) to resolve the confusion. <sup>4</sup> Note: this is the issue we deal with frequently regarding “show of force”
4. Minimum amount of force necessary	Without clear-cut guidance on how to conduct these assessments, the resultant judgments are likely to be highly subjective. More “how-to” instruction is needed. APD responded to the monitoring team's request for data to demonstrate this gap was filled by directing us back to the original training program we deemed was deficient. We previously documented that APD's use of force expert did an excellent job explaining the concept of minimum amount of force necessary. Unfortunately, his explanation occurred spontaneously in the class

<sup>4</sup> During the monitoring team's June 2016 site visit APD candidly admitted that Show of Force was improperly instructed. Parenthetically, the monitoring team reviewed a portion of the 24-hour Supervisor's Course where Show of Force was discussed. It was clear to the monitoring team that supplemental training is required to ensure all APD officers are clear on what constitutes a “low-ready” weapon position and what constitutes a Show of Force. The “acquiring a target” concept, which is a contributing factor to the confusion, was discussed extensively with APD. APD promulgated a Special Order that outlined how Show of Force events would be reported and investigated, and those procedures were included in the “Standardizing Use of Force Investigations” curriculum as a stopgap. It remains to be seen if those procedures will be acceptable, and this discrepancy needs to be resolved during the review of APD's use of force policies.

	and was not found in any APD curriculum. <sup>5</sup> Parenthetically, we reviewed the 2017 Use of Force Review and Update and find that a comprehensive review is conducted there. That training commenced at the very end of the monitoring period, therefore we will address the quality of the training once we have an opportunity to review videotapes of the training and discuss it with APD personnel.
5. Default to <i>Graham's</i> objective reasonableness (OR) standard	APD needs to explicitly treat APD standard as a three-part standard, <i>Graham's</i> test of OR being only one of the three parts. Otherwise, investigators and reviewers tend to rely solely upon the <i>Graham</i> test, which does not address APD's existing policy standard articulated in the new use of force policy.
6. Un-resisted handcuffing issue	APD developed a video that addressed this issue, but the video had not yet been disseminated as of the end of this reporting period. Discussions in the 24-hour course clearly indicate that confusion remains. Parenthetically, we reviewed the 2017 Use of Force Review and Update and find review of force involving handcuffed people is included there. However, clearly communicating what factors to consider when deciding if a case is above "un-resisted handcuffing" is not evident in the materials we reviewed. That training commenced at the very end of the monitoring period, therefore, we will address the quality of the training once we have an opportunity to review videotapes

<sup>5</sup> APD has asserted on more than one occasion that all the programs were delivered the same way by that instructor, even in training session that occurred before the monitoring team saw his explanation of minimum amount of force necessary. The monitoring team cannot rely on an assertion, since in our view the instructor's explanation occurred spontaneously when we saw it. The training lesson plans need to contain the information. We note again, the central role of lesson plans in ensuring that similar training is presented to each individual participant in each session of training.



	of the training and discuss it with APD personnel.
7. Preponderance of Evidence Standard	This issue is still pending. Without clear-cut guidance on how to interpret and apply this standard, supervisors and chain of command reviewers will have difficulty making the correct findings. More "how-to" instruction is needed, using actual examples.
8. De-escalation Assessment	Without clear-cut guidance on how to conduct these assessments, the resultant judgments are likely to be highly subjective. More "how-to" instruction is needed.
9. Neck Holds	The definition of a neck hold is contained within the academy lesson plan and SOP 2-52. We note that the language concerning neck holds, even at this late date, remains an open issue in terms of reviewing and updating SOP 2-52. However, the monitoring team noted that in the lesson plans for the 2017 Annual Review APD included "proposed additions" concerning the definition of a neck hold. These are presumably "proposed additions" APD hopes to include in SOP 2-52. In our view, including this type of non-approved language in a training program, even when qualified as "proposed" is problematic and may lead to problems in the field.
10. Distraction Strikes	This topic requires proper development in policy, approval by the monitor, and field-wide training.

11. SCOTUS Cases	Refer to Paragraph 15. This needs to be remediated through training.
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Other specialized units at APD (SWAT, Canine, Bomb Squad/EOD) fare much better, as these units tend to be backed by strong policy-training-oversight modalities that would be beneficial for APD to adapt. The only unit in the specialized unit command to experience difficulty this reporting period is the canine unit, which, through no fault of its own, is out of compliance on policies due to a debate among the Parties over the definition of “bite ratio.” We note in the body of the report that:

“As we noted in IMR – 4, in the monitoring team’s opinion, the CASA’s “shall continue” language does not impart automatic compliance on APD, otherwise the paragraph would not have been included in the CASA. In its January 25, 2017, Annual Review SOD documented the issue concerning the appropriate means of calculating bite ratios. They highlighted, citing the National Tactical Officers’ Association (NTOA), various perspectives on the appropriate means for calculating bite ratios. We see the reconciliation of this issue as being an essential part in APD’s success in reaching compliance with this paragraph.”

The reader should note that the Parties have agreed to run concurrent reporting processes concerning “ratios” of bites, with a pending collaborative process to jointly select an appropriate method for calculating bite ratios. That decision has yet to be made. In the interim, absent an agreed upon methodology, we cannot confirm compliance for this paragraph. This is in no way a reflection on Special Operations planning, management or operations, but is merely a technical issue to be resolved by the Parties. Resolution of this issue is expected upon the Parties’ review of APD’s Canine Policy. The monitor will withhold compliance determination until such time as the Parties reach agreement on calculation of bite ratios. This constitutes another critical policy that is delayed by an inability of the APD to craft policy approvable by the monitor.

### 2.2.2 Compliance with Mental Health-related Issues

Paragraphs 111-137 related to mental health issues and the Mental Health Response Advisory Committee (MHRAC). Compliance issues within this group of paragraphs fare better than previous sections, with at least partial compliance for most paragraphs. The APD and its associated mental health processes have attained primary (policy) compliance and secondary (training or organizational) compliance with most paragraphs, with operational compliance to be assessed and determined in coming months. Issues not in compliance include staffing, in-service training for CIU responders, eCIT training and practice, barricaded suspects response, and CIU/COAST staffing.

### 2.2.3 Policy Development

Compliance with Policy Development and Promulgation (Paragraphs 140-150) are in compliance based on APD's approved policy work and existing policy analytic structure. APD is in primary compliance with all other components of its policy infrastructure. Many of the non-compliant findings for this section are directly related to critical policies such as Use of Force, On-Body Recording Devices, and Early Intervention and Recording Systems. These are all systems that support compliance on use of force-related issues, and all of these systems' policies are currently up for review and re-approval.

### 2.2.4 Personnel Policy

These paragraphs are in primary and secondary compliance, for the most part, and pending operational compliance in a few instances.

### 2.2.5 APD IA and CPOA/POB

These policies are held from compliance in many instances due to a faulty mechanism for filing anonymous complaints, an issue we have discussed in detail with APD several times without acceptable resolution. The majority of other paragraphs are in compliance and few notable issues are dealt with in those sections of the monitor's report. Remedial suggestions for paragraphs that are out of compliance are noted in the individual paragraphs.

### 2.2.6 Supervision

CASA paragraphs 206-231 experience substantial compliance issues. Each is articulated individually within the body of IMR-5; however, most compliance issues relate directly to the quality of supervision at APD, which, at this point continues to be a major stumbling block to compliance.

### 2.2.7 Recruitment and Staffing & Personnel

Paragraphs 232-254 are mostly compliant with the notable exceptions of paragraphs 247 and 248 which are not measurable at this time. Compliance issues with these paragraphs are treated individually in the body of the report.

#### 2.2.8 Community Outreach

Paragraphs 256-259 are not in compliance and relate to community outreach. Paragraphs 260- 271 are in compliance with the exception of 269 (not fully addressed by Area Commands) and 270 (due to incomplete annual CPC reports).

#### 2.2.9 POB/CPOA

Paragraphs 270-292 relate to the operations of the POB and CPOA and most are in compliance except for 281 (prompt investigation of complaints), which may actually be a quality control issue.

#### 2.2.10 Notification of OIS Events

Paragraph 320 continues its compliance with all known officer involved shooting resulting in direct and prompt notice to the monitor as required by the CASA.

### 3.0 Synopsis of Findings

This section provides a summary of the monitoring team's findings regarding compliance with specific requirements of the CASA during the fifth reporting period (August 2016 through January 2017). Section 3.0 of the monitor's report is divided into two main parts:

- Accomplishments; and
- Outstanding Issues.

Each of these areas is reported in some detail below, and in greater detail in Section 4.0 of the report.

#### 3.1 Accomplishments

Importantly, APD has accomplished several key milestones during the fifth reporting period. Most significantly, during the last reporting period, the department has completed initial policy development on the specific requirements for policy that were articulated in the CASA. Critical policies are now pending six-month reviews, and, we are beginning to note serious and (to the monitoring team, concerning) difficulties coming to agreement on changes to critical policies, such as Use of Force, Early Intervention and Recording Systems, and On-Body Recording Devices.

APD has performed exceptionally well on its Electronic Control Weapons policies, training and practice. This stands as perhaps the brightest spot in APD's compliance efforts, with policy, training, and supervision all showing marked and substantial improvements.

In addition, APD has reduced the spans of control of sergeants to 8:1 or better in field operations. This marks a major milestone along a difficult road.

The Behavioral Sciences Unit also registers as a remarkably improved and compliant entity this reporting period, no doubt directly related to several "new hires" at the leadership levels of that unit. We commend APD on its focus and commitment to this critical element.

Further the eCIT "advanced" training also marks an exceptional improvement over previous CIT training, showing careful attention to clearly articulated learning objective, training methods, and implementation strategies.

Based on these elements of APD performance the APD has taken the first steps in a long and arduous series of steps.

### 3.2 Outstanding Issues

In IMR-4, the monitor noted “critical outstanding issues” remaining noting that “APD is still in the formative stages of assessment, development, and response to the full requirements of the CASA, and such systems, in the previous experience of the monitor, take time, careful planning, attentive development, and critical self-evaluation. The outstanding issues identified at that point were:

1. Building strong administrative systems to support compliance with the CASA;
2. Building a meaningful “Command and Control” function and review and assessment of Field Operations activities;
3. Building meaningful developmental systems for integrating training, supervision, discipline, and follow-up process development; and
4. Creating a culture of accountability within APD.

Those issues are obviously long-term issues, and remain critical during this reporting period. Remaining critical compliance issues are:

#### 3.2.1 Building Strong Administrative Systems

Based on the monitor’s experience in two previous police reform projects initiated by DOJ, most agencies find themselves “under review” by external sources for the same reason: they have failed, and in some cases failed somewhat spectacularly, in establishing clear, effective, and persistent administrative systems to routinely monitor, note, assess, and correct activities that do not ensure Constitutionally-based policing activities. Such failures are not unique. To date, nearly two-dozen American police agencies have needed outside scrutiny to help them assess, develop, install, and “prove” effective internal systems designed to preclude systemic Constitutional failures. APD, in responding to the requirements of the CASA, needs to carefully assess, identify, select, design, and implement a myriad of “administrative systems” designed to ensure that its policing plans, policies, and practices are, and continue to be, Constitutionally based. These administrative systems include:

1. Development of clear, concise, trainable, supervise-able, and evaluable policies that are congruent with State and Federal law and “best practices” in the field;
2. Routine, methodical, and pervasive assessments of citizen-police interactions to ensure that policing practice conforms to policy;

3. Identification and clear and consistent remediation of interactions that do not conform to policy;
4. Establishment of “learning cycles” designed to assess interactions that do not conform to policy, identify how and why those interactions occurred, and develop responses to ensure, to the extent possible, they do not occur again; and
5. Development of feedback loops between policy-training-supervision-discipline-administration and leadership to foster “early warning” of trends that run counter to established policy and practice.

Overlying all of these administrative systems, of course, is focused, determined, and continual leadership from all levels of management and executive staff.

APD has, at the current time, achieved most of the first item: policy development, although we are experiencing significant “push back” on critical policies such as OBRD, EIRS, and Use of Force. Obviously, most of the following work is dependent upon “good policy.”

### 3.2.2 Building Reliable Use of Force Reporting Mechanisms

One “finding” from this monitor’s report stands out above all others. Based on information and evidence reviewed for this report and for the monitor’s Special Report, filed with the Court on 16 September 2016, at the present time, APD’s use of force practices, including reporting, field assessment, supervision, command review, and administrative review are sub-standard.

Again, we note that we have seen little evidence of a coherent “command and control” function designed to foster clear, attainable, and reasonable processes for supervisory and command review of officers’ in-field actions relating to policing practices, particularly use of force.” The majority of problematic instances noted in the last five site visits have not tended to result in appropriate supervisory and/or command-level responses, i.e., reviews, assessments, findings, and responses to behavior that occurs in contradistinction to the requirements of the CASA. We continue to find examples of language from supervisory and command levels “minimizing” or “rationalizing” out-of-policy behavior, as opposed to noting it formally and requiring retraining or other remedial steps to ensure the out of policy behavior is not repeated. Systems designed to achieve this goal continue to appear to be at times “undermined” during training, which seems to be encountering difficulties matching training product with issues identified in the monitoring reports.

While the monitoring team has noted incidents of excellent supervisory and administrative response to some “out-of-policy behavior,” we suggest APD needs to re-double its efforts to ensure that supervisory and command staff are universally “on board” on this critical requirement.

At this point, it continues to appear that the monitoring team is the only systemic overseer of on-street activities of APD’s officers. Notifications to the APD of problematic behavior have resulted in piecemeal, uneven, or, in some cases, no responses by APD, even after the questionable incidents have been brought to APD’s attention by the monitoring team. Incidents resulting in out-of-policy behavior, such as applications of neck holds, have not been adequately processed. It continues to be apparent that some supervisors, in “writing up” reviews of officer behavior, tend to supplement their write-ups with exculpatory, conclusory, or other language minimizing what actually happened. At this point, a lieutenant or commander would be expected to identify such language and counsel the supervisors using such practices. To date we have noted very few instances of such self-initiated corrective behavior on the part of supervisors, lieutenants or commanders.

Until APD is capable of critical self-assessment, compliance with the supervisory and command issues related to use of force, and other critical issues, will be difficult to achieve. This should be the next step in development of APD’s response to the CASA. It appears to the monitoring team that specific, carefully targeted training may be required to “jump start” this cultural change.

Given the facts articulated in this report, we judge that cultural change not to be substantially engendered at this point. Much work remains to be done, although APD has “begun the process.”

### 3.2.3 Building Meaningful Developmental Systems for Integrating Training, Supervision, Discipline, and Follow-up Process Development

In IMR-4 we noted: “Based on the monitor’s experience in assessing compliance in other police agencies, the process of compliance requires an integrated approach to organizational development and planned change. Creation of disparate and un-related individual “systems” simply does not work. A complete whole is needed to address fully the issues raised in the CASA. To date, the product produced by the City, and under evaluation at this point in time, appears to be a “collection of parts,” as opposed to what is needed: an integrated system consisting of policy-driven policing, well supervised, carefully self-audited, self-correcting, and evolving along carefully thought-out paths as its environment changes,



i.e., a learning organization, responding to nascent situational cues in a thoughtful, coherent, integrated manner.”<sup>6</sup>

Further, we noted: “The monitor is committed to working with APD over the coming months to build organizational capacity to self-monitor, self-correct, and self-evaluate, just as he has done with the Pittsburgh Bureau of Police and the New Jersey State Police.”

Based on the information we have reviewed for the fifth monitor’s report, the APD has yet to forge a concept of what the “complete whole” would look like, and accordingly has not yet forged a holistic approach to reform.

### 3.2.4 Creating a Culture of Accountability within APD

In IMR-4 we noted that supervisory response to use-of-force and related issues is delayed because *training* has been delayed (as it cannot be adequately structured without an understanding of the underlying policies). Training is delayed because *policy* was delayed. For example, the Use of Force policy “suite” was approved by the monitoring team in late January 2016. APD seems to have failed to ensure that training curricula were specifically related to new policy. The same issues confronted the monitoring team as they began to assess the quality of training provided by APD to supervisors who are eventually tasked with reviewing officer use of force processes, identifying issues (if any) with uses of force and other key operational tactics, and establishing remedial recommendations to ensure that errors are eventually eliminated to the extent possible.

The critical issue confronting the monitoring team and the APD is to identify why critical components of CASA compliance are continually running behind expectations, and, as a result push problems “down-line.” This is particularly critical given the accelerated timeline the City has given itself for compliance with the CASA.

We further note that the one critical thing still missing from APD’s compliance efforts is the insistence to carefully and neutrally assess behavior based *against articulated expectations*. The monitoring team has noted ‘clusters’ of mismanaged opportunities to note problematic behaviors related to use of force, to respond to those in a meaningful way, and to articulate those response processes as expected behavior among supervisory and command personnel. But for the intervention of the monitoring team, we fear these issues would have gone un-remedied.

We continue to provide APD specific incidents indicative of un-remedied issues in the command and control systems of the agency. Based on our review of APD's use of force system this reporting period, *the agency has not yet moved forward with a system designed to craft, structure, implement, and maintain officer accountability for use of force.*

Further, the use of force reporting information selected by the monitoring team for the fifth monitor's report continues to exhibit several examples of supervisory and command review completely overlooking critical officer action deemed to be outside of policy and/or minimizing those actions through "re-casting" them at the supervisory review report stage, and failing to adequately deal with the issues arising from those uses of force. Examples of these oversights are discussed fully in this complete Fifth Report.

We noted in the fourth report that it appears that the APD has adapted a *reactive response process*, viewing each monitor's report as an event to be "managed," rather than as a highly detailed and specific identification of internal supervisory, management and leadership issues that must be addressed in an organized problem-solving and reform effort. We also recommended a specific set of assess-and-respond options that would assist APD in meeting the requirements of the CASA.

With this report, we have, at the City's direct request, moved our recommendations from the body of the report narrative (as had been our past practice) and have placed them at the end of each paragraph. We have, since the inception of this process, provided the City with detailed recommendations in the body of each report. With this report, we have moved our recommendations to the end of each paragraph, and have specifically enumerated them, so that the City can easily identify, track, and respond to the recommendations. Additionally, we have included all recommendations in a new section of the report, Section 6.0 Numbered List of Recommendations IMR-5.

During the last reporting period, the monitoring team had a detailed conversation with the Chief of Police relative to a six-step response mechanism for each monitor's report. We followed that up with recommendations related to a Six Step problem-solving process the APD expressed interest in. We will continue to support APD, as necessary, in a thoughtful process designed to change and improve APD's response modalities relating to the monitor's reporting process.

#### 4.0 Current Status

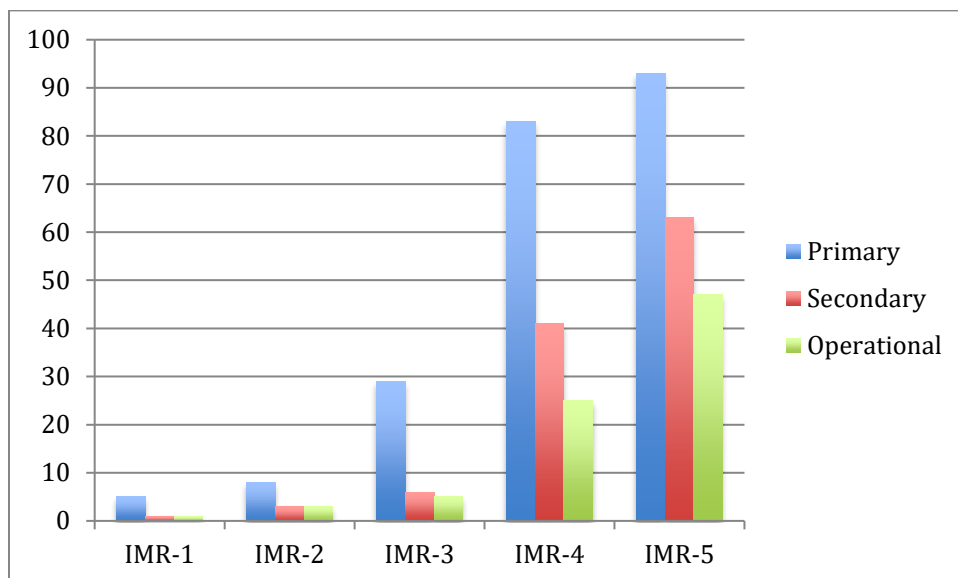
As part of the monitoring team's normal course of business, it established a base-line assessment of all paragraphs of the CASA for the Independent Monitor's first report, (IMR-1). This was an attempt to provide the Parties with a snapshot of existing compliance levels and, more importantly, to provide the Parties with identification of issues confronting compliance as the APD continues to work toward full compliance. As such, the baseline analysis is considered critical to future performance in the APD's reform effort as it gives a clear depiction of the issues standing between the APD and full compliance. This report, IMR-5, provides a similar assessment, and establishes a picture of progress on APD goals and objectives since the last report.

#### 4.1 Overall Status Assessment

Section 4.1 provides a discussion of the overall status of APD as of the fifth reporting period. As of the end of the fifth reporting period, APD continues to make progress overall, having achieved primary compliance in 93 percent of the tasks it agreed to by implementation of the CASA process with the Department of Justice. Primary compliance relates mostly to development and implementation of acceptable policies (conforming to national practices). APD is in 63 percent Secondary Compliance as of this reporting period, which means that effective follow-up mechanisms have been taken to ensure that APD personnel understand the requirements of promulgated policies, e.g., training, supervising, coaching, and disciplinary processes to ensure APD personnel understand the policies as promulgated and are capable of implementing them in the field. APD is in 47 percent Operational compliance with the requirements of the CASA, which means that 95 percent of the time, field personnel either perform tasks as required by the CASA, or that, when they fail, supervisory personnel note and correct in-field behavior that is not compliant with the requirements of the CASA. Figure 4.1.1, below depicts APD's compliance performance over the last five reporting periods.

Figure 4.1.1 indicates some deceleration from compliance findings exhibited previous monitor's reports, as APD's failure to follow-through on recommendations on those reports have resulted in loss of compliance in some paragraphs for this reporting period. Again, we cannot emphasize enough that APD needs to stop viewing monitoring reports as "events," ending with issuance of the report, and needs to begin to see this as a process, requiring assessment, planning, and follow-up on each issue identified in each monitor's report.

Figure 4.1.1 Percentage Compliance by Reporting Period



#### 4.2 Dates of Project Deliverables

Project deliverables are defined by the Settlement Agreement governing the parties' response to the CASA, (DOJ, the City, APD, and the Albuquerque Police Officers' Association (APOA)). Each deliverable is discussed in detail below in section 4.7.

#### 4.3 Format for Compliance Assessment

The Monitor's Reports are organized to be congruent with the structure of the Agreement, and specifically reports, in each section, on the City's and APD's compliance levels for each of the 276 individual requirements of the CASA.

For example, the monitor's reports will be structured into nine major sections, following the structure of the Agreement:

- I. Use of Force;
- II. Specialized Units;
- III. Crisis Intervention;
- IV. Policies and Training;
- V. Misconduct Complaint Intake, Investigation and Adjudication;

- VI. Staffing, Management, and Supervision;
- VII. Recruitment, Selection and Promotions;
- VIII. Officer Assistance and Support; and
- IX. Community Engagement and Oversight;

All future monitor's reports will deal with each of these nine major areas in turn, beginning with APD's response and performance regarding reporting, supervising, and managing its officers' use of force during the performance of their duties, and ending with APD's efforts at community engagement and its ability to facilitate community oversight of its policing efforts.

#### 4.4 Structure of the Task Assessment Process

Members of the monitoring team have collected data concerning the APD's compliance levels in a number of ways: through on-site observation, review, and data retrieval; through off-site review of more complex items, such as policies, procedures, testing results, etc.; through review of documentation provided by APD or the City which constituted documents prepared contemporaneously during the normal daily course of business. While the monitoring team *did* collect information provided directly by APD in response to the requirements of the Agreement, those data were *never* used as a sole source of determination of compliance, but were instead used by the monitoring team as explanation or clarification of process. All data collected by the monitoring team were one of two types:

- Data that were collected by using a structured random sampling process; or
- Selecting *all* available records of a given source for the "effective date."

Under no circumstances were the data selected by the monitoring team based on provision of records of preference by personnel from the City or APD. In every instance of selection of random samples, APD personnel were provided lists of specific items, date ranges, and other specific selection rules, or the samples were drawn on-site by the monitor or his staff. The same process will be adhered to for all following reports until the final report is written.

#### 4.5 Operational Definition of Compliance

For the purposes of the APD monitoring process, “compliance” consists of three parts: primary, secondary, and operational. These compliance levels are described below.

- **Primary Compliance:** Primary compliance is the “policy” part of compliance. To attain primary compliance, APD must have in place operational policies and procedures designed to guide officers, supervisors and managers in the performance of the tasks outlined in the CASA. As a matter of course, the policies must be reflective of the requirements of the CASA; must comply with national standards for effective policing policy; and must demonstrate trainable and evaluable policy components.
- **Secondary Compliance:** Secondary compliance is attained by implementing supervisory, managerial and executive practices designed to (and effective in) implementing the policy as written, e.g., sergeants routinely enforce the policies among field personnel and are held accountable by managerial and executive levels of the department for doing so. By definition, there should be operational artifacts (reports, disciplinary records, remands to retraining, follow-up, and even revisions to policies if necessary, indicating that the policies developed in the first stage of compliance are known to, followed by, and important to supervisory and managerial levels of the agency.
- **Operational Compliance:** Operational compliance is attained at the point that the adherence to policies is apparent in the day-to-day operation of the agency e.g., line personnel are routinely held accountable for compliance, not by the monitoring staff, but by their sergeants, and sergeants are routinely held accountable for compliance by their lieutenants and command staff. In other words, the APD “owns” and enforces its policies.

As is true, in the monitor’s experience, with all of these complex organizational change projects, change is never simple or quick. A great deal of work lies ahead. The monitoring team is committed to assisting APD command staff by working closely with the APD in forging new, and revising old policies, articulating clear guidelines and practices for APD’s intensive training of the department’s supervisors and managers, assisting APD in building assessment tools designed to identify problematic behaviors, and advising on “best practices” that can be adapted by APD as it moves forward in its efforts to meet the individual and global requirements of the CASA.

## 4.6 Operational Assessment

The following sections of the Monitor's Fifth Report articulate processes and findings related to each of the 276<sup>7</sup> active elements of the CASA.

The APD and the City have agreed to comply with each of the articulated elements. The monitoring team has provided the Parties with copies of the team's monitoring methodology (a 299 page document) asking for comment. That document was then revised, based on comments by the Parties. This document reflects the monitor's decisions relative to the parties' comments and suggestions on the proposed methodology, and is congruent with the final methodology included in Appendix One of the monitor's first report<sup>8</sup>. The first operational paragraph, under this rubric, is paragraph 14, as paragraph 13 is subsumed under paragraph 14's requirements.

### 4.6.1 Methodology

The monitor assessed the City and APD's compliance efforts during the third reporting period, using the *Monitor's Manual*, included as Appendix A, in the monitor's first report (see footnote 7). The manual identifies each task required by the CASA and stipulates the methodology used to assess compliance.

## 4.7 Operational Assessment

### 4.7.1 Assessing Compliance with Paragraph 14

Paragraph 14 stipulates:

**"Use of force by APD officers, regardless of the type of force, tactics, or weapon used, shall abide by the following requirements:**

- a) Officers shall use advisements, warnings, and verbal persuasion, when possible, before resorting to force;
- b) Force shall be de-escalated immediately as resistance decreases;
- c) Officers shall allow individuals time to submit to arrest before force is used whenever possible;
- d) APD shall explicitly prohibit neck holds, except where lethal force is authorized;
- e) APD shall explicitly prohibit using leg sweeps, arm-bar takedowns, or prone restraints, except as objectively

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<sup>7</sup> Tasks accruing to the United States or the Monitor were not included in this methodology, as the monitor sees his role as evaluating APD and the City entities supportive of APD in meeting its responsibilities under the CASA.

<sup>8</sup> Available at: <https://www.justice.gov/usao-nm/file/796891/download>



- reasonable to prevent imminent bodily harm to the officer or another person or persons; to overcome active resistance; or as objectively reasonable where physical removal is necessary to overcome passive resistance and handcuff the subject;
- f) APD shall explicitly prohibit using force against persons in handcuffs, except as objectively reasonable to prevent imminent bodily harm to the officer or another person or persons; to overcome active resistance; or as objectively reasonable where physical removal is necessary to overcome passive resistance;
  - g) Officers shall not use force to attempt to effect compliance with a command that is unlawful;
  - h) Pointing a firearm at a person shall be reported in the same manner as a use of force, and shall be done only as objectively reasonable to accomplish a lawful police objective; and
  - i) immediately following a use of force, officers, and, upon arrival, a supervisor, shall inspect and observe subjects of force for injury or complaints of pain resulting from the use of force and immediately obtain any necessary medical care. This may require an officer to provide emergency first aid until **professional medical care providers arrive on scene.**"

## Methodology

The monitor evaluated APD policy requirements relating to this paragraph during the IMR-3 reporting period and the department was found in Primary Compliance following the approval of SOP 2-52. During its site visit in June 2016, the monitoring team provided specific recommendations that we believed should be considered to either address or close gaps that will support the CASA requirements and help APD reach operational compliance. During its November 2016 site visit, the monitoring team met with APD personnel and city attorneys to discuss their policy development process and modifications APD intended to propose for SOP 2-52. We were told that APD's intent was to include many of those recommended during our previous visit. APD's use of force suite of policies were due for scheduled review and revision in December 2016. However, the updated policies have yet to be approved by the monitor and several significant issues continue to be unresolved that have a direct impact on APD compliance with this paragraph.

The information provided, was reviewed by the monitoring team, to determine if the specific gaps that were identified in IMR – 4 were remediated through supplemental training. The monitoring team was provided with several interoffice memoranda, Special Orders and training curriculum to review in response to our data request. Our assessment of the information provided is detailed below.

Finally, the monitoring team requested the data set for supervisory level use of force cases that were reported between August 1, 2016 and December 31, 2016, to conduct a comprehensive review of a sample of those cases. The purpose was to assess the quality of force reporting and supervisory force investigations in the field that occurred after APD's



2016 use of force training.<sup>9</sup> The review and results of those cases serves as a baseline for future determinations of APD operational compliance.<sup>10</sup> The data set we were provided included sixty-five (65) separate and distinct case numbers for a reported use of force, though many of the cases involved more than one type of force (e.g. an ECW deployment with some type of additional physical force) and perhaps more than one officer. As reported in Paragraph 24, the monitoring team decided to conduct a comprehensive review of all ECW cases that were reported between August and December 2016. In addition, the monitoring team chose a random sample of six (6) additional supervisory use of force investigations that were conducted during that same timeframe. We note, that of the 16 cases reviewed by the monitoring team several included more than one type of force that we could assess. It is also important to point out that following our review of the 10 ECW cases, we found that two were improperly reported as such. [IMR-5-011 & IMR-5-012]. Those cases, instead, involved a type of force different than an ECW deployment. Likewise, we found one case that was reported as an ECW deployment that had three additional uses of force that went unreported by APD [IMR-5 008]. Issues such as these should inform the treatment of supervisory training in Paragraph 209.

## Results

APD has achieved Primary Compliance on all the requirements set forth in this paragraph with the monitor's approval of Standard Operating Procedure (SOP) 2-52 Use of Force, dated January 8, 2016. The review of APD's use of force suite of policies was due in December of 2016, however, the update of those policies, in particular SOP 2-52 and 2-54, remained pending at the close of this monitoring period.

The monitoring team reviewed department Special Order 16 – 98, dated December 22, 2016, that was directed to all personnel within the department. The subject of the Special Order was "Procedures for Show of Force". It appears to the monitoring team that Special Order 16 – 98 was promulgated as a "stopgap" procedure for reporting and investigating shows of force. Currently, the only policy reference to show of force investigations is found in SOP 2-52 in the Definitions section, designated as Letter S, which provides: "Pointing a firearm or ECW (sparking or painting with the laser) at a person and acquiring a target. This is reportable as a show of force and investigated by the officer's chain of command." We noted in IMR – 4 that APD had not developed procedures

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<sup>9</sup> The monitoring team notes that these type of cases principally occur in the various area commands and represent the highest number of incidents of force that are reported by APD.

<sup>10</sup> We note that the decision to review the use of force cases was made to provide APD with feedback on the quality of compliance the monitoring team has seen in relation to several CASA paragraphs.

for conducting show of force investigations in any of its force-related policies to implement this requirement and that the incorporation of such documents and training will be necessary prior to attaining full compliance with this task. Likewise, as written about extensively in IMR – 4, deep internal confusion existed over what constitutes a show of force.

It was for that reason the monitoring team identified show of force procedures and supplemental training as critical needs.<sup>11</sup> In our view, it is highly unlikely that the procedures reviewed by the monitoring team will alleviate the confusion that exists, since they center solely on reporting requirements.<sup>12</sup> That said, it appears that APD was attempting to put some measures in place to standardize the approach for show of force investigations. The monitoring team reviewed training materials for a supervisory training program entitled, “Standardizing Use of Force Investigations” that was provided to APD supervisors in December 2016 and included the show of force procedures outlined in SO 16-98.<sup>13</sup> That training simply incorporated the language of SO 16-98.

Finally, the monitoring team was provided an internal memorandum, dated January 24, 2017, entitled “40-hour Course Questions, Issues, Gaps, Supplemental Training (#7)”, which specifically noted how APD intended to address the confusion over what a show of force is, and presumably, how it should be investigated. We were advised that APD intended to address this training gap in its 2017 Use of Force Review and Update, that apparently commenced on January 24, 2017.<sup>14</sup> Therefore, APD’s training solution to communicate what constitutes a show of force began a month after it promulgated a reporting and investigation procedure that placed the onus on the officer reporting the event.<sup>15</sup> We

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<sup>11</sup> Our concerns over the reporting and investigating of show of force events extend back to the beginning of the monitoring team’s engagement with APD.

<sup>12</sup> We note that the procedures in SO 16-98 do not require the supervisor to respond to the scene or conduct an on-scene investigation. We see this as a critical failure, since in our view much can be learned through the initial response to an event. Because all Show of Force investigations, as noted in SO 16-98, begin with self-reporting by an officer, the procedure is fatally flawed because we already know confusion exists as to what constitutes a show of force.

<sup>13</sup> APD self-reported 90% attendance in that course, with the remaining supervisors attending make-up dates. (Interoffice Memorandum dated January 19, 2017, “24-hour Course Gaps and Supplemental Training”).

<sup>14</sup> We note that the monitoring team was not provided the 2017 Use of Force Review and Update training materials prior to the course being launched. Likewise, the training commenced without the show of force procedures being included in APD policy and approved by the monitor. Those facts may produce significant inefficiencies in training and issues with show of force reporting and investigation in the field. Specifically, APD’s 2017 In service training requirements may be found out of compliance as well since 2-52 and 2-54 and show of force procedures have not been approved by the monitor. Since that training commenced at the very end of the monitoring period, it will be evaluated more and reported on in IMR – 6.

<sup>15</sup> The monitoring team reviewed the APD lesson plan entitled “2017 Use of Force Review” and “General Review of Use of Force Policy 2-52 – Noted Trends and Things to Remember – Tips on

also note that SO 16-98 was disseminated six months after the show of force training issue was first communicated to APD, and acknowledged by them as a critical training failure. Issues such as these inform the treatment of supervisory training in Paragraph 209.

Part of the confusion is centered on the phrase “acquiring a target”, which was not an element of the CASA, and what constitutes a “low-ready” weapon position. In fact, during our June 2016 site visit APD training staff acknowledged, and agreed, that some form of supplemental training would be required to clear up confusion that may exist in the department. APD needs to be diligent to ensure wide variations do not occur at the operational levels of the organization with respect to the proper handling of use and show of force events, and therefore the procedures and oversight of those events are essential.

The monitoring team reviewed cases of sixteen (16) separate and distinct APD reported use of force events. The purpose was to provide an assessment of the current state of compliance in the field relating to the provisions of this paragraph. We note that each case brings with it a specific set of facts and circumstances that requires some measure of subjective assessment of how the officers’ conduct either met or fell short of the paragraph requirements. That is why training on making credibility assessments, determining if de-escalation occurred and determining a preponderance of evidence, for example, are important. It is important to note that our review uncovered strong tactical and communication skills by and among officers in the cases we reviewed. Likewise, APD officers were found to routinely de-escalate their force and seek medical assistance for people that were exposed to force. For this data set problems existed principally, but not exclusively, in proper reporting and investigating force, and not in the levels of force used by officers. Issues such as these inform the treatment of supervisory training in Paragraph 209.

As this is the first time tabular data have been used to this extent, a brief explanation of the tables and their use is required. We will accomplish that objective using Table 4.7.1 as an exemplar.

This table assesses APD’s performance on Paragraph 14, which requires: advisements and warnings before using force, where possible; de-escalation of force as resistance decreases; allowing time for suspects to “submit,” where practicable, a prohibition against neck holds, leg sweeps, use of force against a person in handcuffs, and requires APD personnel to issue lawful commands prior to a use of force, to restrict their use of pointing firearms as a “control technique,” and to inspect arrestees for injuries, where possible. Table 4.7.1 assesses 16

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Use of Force Documentation.” That training curriculum does a good job defining show of force, provides reasons it should be used, and some relevant case law. However, it does not resolve the specific issues the monitoring team identified in IMR – 4 and earlier reports.

“events” which included at least one (and sometimes several) of these actions. If the officers were “in compliance” with the individual requirements, listed across the top, shaded portion of the Table, that case is scored as a “1” for that particular issue, e.g., case one’s “1” rating for advisements, de-escalation, allow to submit, etc. If the event noted in individual columns did not occur, e.g., a neck hold in the first case, a “N/A” is recorded for “Not Applicable.” The number of actions taken that are “in compliance” with the requirements of the CASA are recorded as “1.” Any actions taken outside the requirements of the CASA are recorded as “0.” Each individual case is reported on a pass-fail basis, requiring greater than 95 percent compliance on applicable force use event to “pass.” Thus, for example, the review for the requirements in Paragraph 14 for this reporting period show 16 cases and the officers’ performance in dealing with each of those 16 cases’ use of force requirements. As Table 4.7.1 indicates, performance varied across the 16 cases. A total of 13 of the 16 cases of use of force reviewed by the monitoring team this reporting period were properly executed. This constitutes 81 percent effectiveness. Three cases were improperly executed by APD personnel, indicating two failures to advise or warn before a use of force, where, in the judgment of the monitoring team, time existed to do so. One case reviewed exhibited a failure to de-escalate force levels as resistance decreased, two exhibited a failure to allow the suspect to submit before force was used (where time permitted) and two cases exhibited an unwarranted use of force against handcuffed arrestees. Compliance rates for the “failed” cases constituted 67 percent in two cases, and 33 percent in the third. Overall compliance was 81% (three “failed” cases of 16 reported).

See Table 4.7.1, below for a specific tabular treatment of each of these cases and the monitor’s assessment of APD’s performance in reviewing and responding to events noted in the monitor’s review of data related to incidents reported in the Table.

Table 4.7.1

Case Number	Advise-ments, warnings	De-escalation as resistance decreased	Allow to submit	Neck hold	Leg sweep, arm bar	Against person in hand-cuffs	Lawful com-mand	Point Firearm	Inspect for injuries	# in compli-ance	% in compli-ance	In Compli-ance
IMR-5-001	1	1	1	N/A	1	N/A	1	N/A	1	6	100%	Y
IMR-5-002	1	1	1	N/A	N/A	N/A	1	1	1	6	100%	Y
IMR-5-003	1	1	1	N/A	N/A	N/A	1	N/A	1	5	100%	Y
IMR-5-004	1	1	1	N/A	N/A	N/A	1	N/A	1	5	100%	Y
IMR-5-005	1	1	1	N/A	N/A	N/A	1	N/A	1	5	100%	Y
IMR-5-006	1	1	1	N/A	N/A	N/A	1	N/A	1	5	100%	Y
IMR-5-007	0	1	1	N/A	N/A	0	1	N/A	1	4	67%	N
IMR-5-008	1	1	1	N/A	N/A	N/A	1	N/A	1	5	100%	Y
IMR-5-009	N/A	1	N/A	N/A	N/A	N/A	1	N/A	1	3	100%	Y
IMR-5-013	1	1	1	N/A	1	N/A	1	N/A	1	6	100%	Y
IMR-5-015	N/A	1	1	N/A	N/A	1	1	N/A	1	5	100%	Y
IMR-5-030	N/A	N/A	N/A	N/A	N/A	N/A	1	N/A	1	2	100%	Y
IMR-5-031	1	1	1	N/A	N/A	N/A	1	N/A	1	5	100%	Y
IMR-5-010	0	0	0	N/A	N/A	0	1	N/A	1	2	33%	N
IMR-5-012	1	1	1	N/A	N/A	N/A	1	N/A	1	5	100%	Y
IMR-5-011	0	1	0	N/A	1	N/A	1	N/A	1	4	67%	N
											% in Compliance	81%

Though described in greater detail in Paragraph 88, we note here that there are lingering policy and training issues that need to be resolved for Secondary compliance to be achieved, in particular relating to show of force investigations. As is evident from the table of cases reviewed by the monitoring team, APD needs to continue refining its training, supervisory practices, force reporting and investigations to reach operational compliance in this task.

Primary: In Compliance  
Secondary: Not In Compliance<sup>16</sup>  
Operational: Not In Compliance.

***Recommendation 4.7.1a: The monitor recommends that APD track back the three cases that were out of compliance and ensure that the chain of command (sergeant through Area Commander) that reviewed and approved those cases without noting the compliance shortfalls be notified of their failures and be retrained in the requirements of this (and related paragraphs). Similar audits should be performed by APD on each use of force reported by its personnel.***

<sup>16</sup> Secondary compliance is pending resolution of the show of force policy and procedure, and training issues. Likewise, there has been debate over neck holds, and “distraction strikes” and these remain unresolved issues in policy and training.

***Recommendation 4.7.1b: Resolve outstanding issues related to neck holds, shows of force and “distraction strikes” by modifying policy and training to clarify those issues to the point that policy and training are compliant with the CASA.***

#### 4.7.2 Assessing Compliance with Paragraph 15: Use of Force Policy Requirements

Paragraph 15 stipulates:

**“APD shall develop and implement an overarching agency-wide use of force policy that complies with applicable law and comports with best practices. The use of force policy shall include all force techniques, technologies, and weapons, both lethal and less lethal, that are available to APD officers, including authorized weapons, and weapons that are made available only to specialized units. The use of force policy shall clearly define and describe each force option and the factors officers should consider in determining which use of such force is appropriate. The use of force policy will incorporate the use of force principles and factors articulated above and shall specify that the use of unreasonable force will subject officers to discipline, possible criminal prosecution, and/or civil liability.”**

#### Methodology

APD achieved Primary Compliance on all the requirements set forth in this paragraph with monitor approval of three core force-related policies in early 2016: SOP 2-52 Use of Force; SOP 2-53 Electronic Control Weapons (ECW); and SOP 2-54 Use of Force Reporting and Supervisory Force Investigations. The approved policies served as the basis for development of both the 40-hour Use of Force Curriculum and the 24-hour Supervisory Use of Force Investigations Curriculum, which were presented in the first half of 2016. During its site visit in June 2016 the monitoring team provided specific recommendations that we believed should be considered to either address or close gaps that will support the CASA requirements and help APD reach operational compliance. During its November 2016 site visit the monitoring team met with APD personnel and city attorneys, to discuss their policy development process and modifications APD intended to propose for SOP 2-52. We were told that APD’s intent was to include several recommendations we gave during our previous visit. APD’s use of force suite of policies were due for a scheduled review and revision in December 2016. However, the updated policies have yet to be approved by the monitor and several significant issues continue to be unresolved that have a direct impact on APD compliance with this paragraph.

The monitoring team requested information from APD to determine if they closed the gap on training issues that were identified and documented in IMR - 4. The monitoring team was provided with several interoffice memoranda, Special Orders and training curriculum to review in response to our data request. The



information that was provided was reviewed by the monitoring team to determine whether or not the specific gaps that were identified in IMR – 4 were remediated, through supplemental training. Our assessment of the information provided is detailed below.

## Results

During the monitoring team's June 2016 site visit, we identified a set of concerns that bear directly on the issue of Secondary Compliance, which expressly requires that "[t]he use of force policy shall clearly define and describe each force option...." In our view, the 40-hour Use of Force Curriculum left certain policy provisions unclear and, therefore, Secondary Compliance was not given until supplemental training was developed and delivered to clarify those provisions.<sup>17</sup> We reviewed APD's response to our request for data to evaluate APD's follow up activities to determine if they have adequately addressed the training gaps we documented in IMR – 4. It is important to note that at the beginning of 2016 the monitoring team had an opportunity to review the training curriculum APD intended to deliver in its 40-hour Use of Force training and its 24-hour supervisory use of force training. We provided extensive feedback in both written documentation and in-person meetings. Also, during one site visit the monitoring team sat through the 40-hour course to assess compliance and to assess the quality of the training. Likewise, the monitoring team has previously reviewed videotaped portions of the 24-hour supervisory use of force course.<sup>18</sup> Following our review of the 40-hour training course we met with and discussed specific concerns that we had with the training curriculum content and delivery. APD was responsive to the feedback and adjusted the training curriculum midstream. We cautioned that by doing this APD created two populations of people, one that received the original curriculum and the second that received updated material. We alerted APD, at that time, that it would be critical for them to identify those two populations of people and determine how they would mitigate the inconsistent information delivered to the two groups. To the best of our understanding that has never occurred. Issues such as these inform the treatment of supervisory training in Paragraph 209

An example: The delivery of the concept of "minimum amount of force necessary" was conducted with the monitoring team present. APD's use of force expert (who is a very skilled instructor) explained "minimum amount of force

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<sup>17</sup> The areas of concern have been communicated to APD on several occasions both before, during and after the delivery of the courses that are cited.

<sup>18</sup> This course occurred outside a normal site visit. It was through the review of the videotaped 24-hour Supervisory Use of Force Course that we found blocks of instruction not associated with the topic, instructors including information not contained in lesson plans and ad hoc comments inconsistent with the CASA. These items were all reported in IMR – 4.

necessary” to the class in a manner that was meaningful to the audience and consistent with the CASA. However, that explanation did not appear in the training materials that were provided to the monitoring team. We also know that more than one training session occurred before the monitoring team’s visit. To reach compliance APD needs to reconcile the two audiences of people that received different training curriculum. Alternatively, at this point, APD could have addressed these training gaps directly through their 2017 In-service training. It is our determination that the training gaps identified in IMR – 4 still exist and we provide the following feedback:

Show of Force – APD’s definition of show of force, to wit: pointing a firearm at a person and “acquiring a target” has yet to be addressed and remediated through training. As noted extensively in Paragraph 14, there are still significant procedural, policy, and training issues to be reconciled. We previously reported that there is a conflict between the interpretation of this provision and what is actually taught in APD firearms instruction (i.e. Low-ready / “high-low ready”). We note that in the 2017 Use of Force Review lesson plan there is a good explanation and definition of show of force, except that it does not reconcile the “acquiring a target” issue that is apparently going to be addressed in the SOP 2-52 policy revisions. Likewise, it does not reconcile issues surrounding reporting and investigating show force cases. Also, the 2017 Use of Force Review training did not begin until the very end of the monitoring period.<sup>19</sup> Therefore, that training program will be evaluated during the next monitoring period.<sup>20</sup> Finally, as noted in Paragraph 14, APD promulgated SO16-98 that put in place investigation and reporting procedures for show of force incidents. Those procedures have not been approved by the monitor. Issues such as these inform the treatment of supervisory training in Paragraph 209.

1. TWO SCOTUS firearms cases were included in the instruction of the 40-hour Use of Force training, though they do not align closely with APD use of force policy. As we noted in IMR – 4, we asked APD for their perspective, reviewed the instructor’s explanation for their inclusion and re-checked the course documentation to assess whether adequate qualifications were made to put them in proper context. After doing so, because of the significance of provisions of Paragraph 22, we believed *that some form of supplemental training was required to resolve any confusion and reiterate the stricter APD policy provision.* Note – The monitoring team evaluates training not only on the content but also on the quality of delivery, since the quality of training can have a direct impact on the ability of officers to implement policy and CASA requirements. For

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<sup>19</sup> We were advised training dates occurred on January 24, 26 and 31, 2017.

<sup>20</sup> It is also important to note that this training program was not provided to the monitoring team prior to it being delivered, thus the review is *ex post facto*.



instance, when the monitoring team reviewed the 24-hour training program for IMR – 4, we found that information and materials not included in the curriculum were injected into the program. The inclusion of information that is not found within lesson plans, and use of *ad hoc* statements by an instructor, can change the meaning and context of the training material. As a consequence, CASA compliance can be impacted.

The issue concerning the inclusion of two SCOTUS cases, but in particular *Plumhoff*, was specifically noted IMR – 4. We flagged this issue before the training program ever commenced and communicated our concerns directly to APD in written form. Likewise, while on site and having sat through the block of instruction, we provided further feedback. In response to our comments in IMR – 4, we were provided with an interoffice memorandum, dated October 24, 2016, from the instructor of that block of instruction. Instead of taking cognizance of the feedback provided by the monitoring team in IMR - 4, and simply mitigating the issue with some form of supplemental training, APD provided this memorandum to justify the initial delivery of the training. We note that on page 2 of the memorandum, the instructor specifically discusses how the APD policy provision concerning discharging a firearm at or from a moving vehicle was addressed. That explanation did not exist within the training materials provided to the monitoring team prior to the delivery of the class. It is possible that the instructor included that specific provision *after* APD received feedback from the monitoring team’s visit, and after the training had already commenced, thus creating a training gap between two populations of people. As we noted earlier, we are aware that certain course revisions occurred mid-stream to the training and the fact that it created potential training gaps was communicated to academy staff members.

2. Distraction Strikes – As we noted in IMR – 4, there is significant confusion about their place in APD’s tactical array and their classification as a reportable use of force. The monitoring team reviewed an interoffice memorandum dated January 24, 2017, that addressed the issue of distraction strikes. The memorandum appears to have been developed in response to a monitoring team data request for information concerning how distraction strikes, and training gaps associated with them, have been resolved.<sup>21</sup> Within the same memorandum, the monitoring team was advised, “The action plan is to provide supplemental training during the 2017 Use of Force training in the defensive tactics portion of the training.” The monitoring team reviewed the lesson plan entitled, “Use of Force

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<sup>21</sup> We know that APD intends to include distraction strikes within SOP 2-52, however, that policy remains pending and not approved by the monitor.

2017 Defensive Tactics Instructor or Student Guide” as it relates to distraction strikes. We found the content pertaining to distraction strikes to be entirely insufficient to reach Secondary compliance. In fact, the lesson plan does not adequately define what a distraction strike is, what types of strikes are prohibited, if any, under what circumstances distraction strikes are permissible, and an explicit declaration that a distraction strike constitutes a use of force.<sup>22</sup> These are all issues that are directly related to problems the monitoring team has identified during its reviews of APD use of force cases, notwithstanding the fact that this information must be committed to policy and approved by the monitor. The block of instruction we reviewed is principally a tactical block, probably not intended to clarify policy and procedures, and as a consequence, it fails to connect the operational application of a distraction strike to any policy or procedure.

3. Un-resisted handcuffing and escort holds still require further clarification. As noted in IMR – 4, the term “secondary action” was used in the 24-hour Supervisory Use of Force Investigations Curriculum in an attempt to demarcate the point at which those two techniques escalate to a reportable use of force or a serious use of force. We reviewed the lesson plan entitled, “General Review of Use of Force Policy 2-52” and found that it contained the policy and CASA provisions relevant to this issue, but it does not expound upon the issue to provide better clarity for the officers. The 2017 Use of Force In-Service was delivered on January 24, 26 and 31, 2017, and continued into the following monitoring period. Therefore, the determination of whether that training remediates this particular issue will be addressed in the next report after having an opportunity to review videos of the training and discuss it with academy staff. We note that APD previously prepared a video on the issue of un-resisted handcuffing, which we reviewed, and we found it to be generally well done. In an interoffice memorandum, dated January 20, 2017, entitled, “40-hour Course Gaps and Supplemental Training” the monitoring team was advised that a second version of this video was waiting on a finalized version of SOP 2-52.

APD is now in Primary Compliance, but will not achieve Secondary Compliance until the open issues enumerated above and in other sections of this report are settled with appropriate supplemental training. Issues such as these inform the treatment of supervisory training in Paragraph 209. The reader is reminded of the differences in training for patrol officers (addressed here) and for supervisory personnel

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<sup>22</sup> We have reported extensively how APD has used different euphemistic terms such as pain compliance, pain compliance pinch, distraction strike, and open-hand distraction technique.

(addressed in Paragraph 209). While errors made by patrol officers related to neck holds are one distinct issue, failure of supervisors to note and correct patrol officers' behavior are a distinct and separate matter, even though they involve the same tactic, e.g., neck holds.

Primary: In Compliance  
Secondary: Not In Compliance  
Operational: Not In Compliance

***Recommendation 4.7.2a: Clearly define in operational and understandable terms “pointing a firearm.” The monitoring team suggests that anything above “low ready,” e.g., APD’s unique use of “high-low ready,” is simply confusing and unenforceable: the difference between “high-low ready” (a phrase coined by APD via “Special Order” and not shared with the monitoring team), and “pointing a firearm” at a suspect or person is minute enough as to be indistinguishable in the review, via OBRD, of actions in the field.***

***Recommendation 4.7.2b: Share all “Special Orders” related to actions covered by the CASA with the monitoring team.***

***Recommendation 4.7.2c: Immediately stop the use of Special Orders to change or otherwise modify the impact of CASA-controlled policy issues. We note elsewhere, for example, that APD seems to have modified its policy on supervisory review of OBRDs via a Special Order that directly contradicted monitor-approved policy.***

***Recommendation 4.7.d: Define “distraction technique” by policy—approved by the monitor— and supplemental training for all line personnel, or discontinue its use in training and operations.***

***Recommendation 4.7.e: Close out any remaining issues on “un-resisted handcuffing” via clear, specific, trainable, and evaluable policy guidance re same.***

#### 4.7.3 Assessing Compliance with Paragraph 16: Weapons Protocols

Paragraph 16 stipulates:

**“In addition to the overarching use of force policy, APD agrees to develop and implement protocols for each weapon, tactic, or use of force authorized by APD, including procedures for each of the types of force addressed below. The specific use of force protocols shall be consistent with the use of force principles in Paragraph 14 and the overarching use of force policy.”**

Methodology

With the exception of Electronic Control Weapons (ECW), APD retrained policy and procedures for all of the tools and techniques approved for field use within the body of SOP 2-52 Use of Force (January 21, 2016; Revised April 1, 2016), which is APD's overarching, main directive on the use of force. The Department included a four-hour block of instruction on ECW policy and procedures in its 40-hour Use of Force Curriculum that was presented in the first half of 2016. The monitoring team also reviewed training materials for a course entitled "Standardizing Use of Force Investigations" and materials for the "2017 Use of Force Review".

## Results

The monitoring team attended one of the four-hour blocks of instruction during a previous site visit. As was the preceding instruction on the use of force generally, the instructor was well qualified and a skilled presenter. Notwithstanding concerns with other elements of APD training, in IMR – 4 the monitoring team found that APD is in both Primary and Secondary Compliance on the requirements in Paragraph 16. Operational compliance will require evidence that APD is thoughtfully, routinely and effectively responding to events not in compliance with use of force issues that should be noted and corrected at the field (sergeant's) and managerial (lieutenant and commander) level. Concerns with "show of force" issues discussed elsewhere in this report militate for an addition of a policy dealing with this issue, or modification of APD's use of force policy.

Primary: In Compliance  
Secondary: In Compliance  
Operational: Not In Compliance

***Recommendation 4.7.6a: Resolve the "low-ready and high-low ready show of force conundrum with policy and training revisions.***

### 4.7.4 Assessing Compliance with Paragraph 17: Weapons Modifications

Paragraph 17 stipulates:

**"Officers shall carry only those weapons that have been authorized by the Department. Modifications or additions to weapons shall only be performed by the Department's Armorer as approved by the Chief. APD use of force policies shall include training and certification requirements that each officer must meet before being permitted to carry and use authorized weapons."**

## Methodology

The monitoring team reviewed more than two hundred entries on APD's SharePoint database for supervisors' monthly inspection reports. No indications

were found regarding an officer carrying non-agency or altered/modified firearms or ammunition. Based on the information provided to the monitor to date, APD appears not to have a formalized audit/review/reporting policy or process for these data. The reader is reminded that simply not reporting a violation of policy does not mean that the policy is in effect. We have no documentation indicating that inspections were done by supervisors related to this paragraph, simply that none were reported. Thus, the SharePoint database may have simply reflected that supervisors were not looking for non-agency or modified firearms. The City's comments on this paragraph, as well as 18 and 19 indicate a need for "clarification on how this assessment relates to the compliance definition and sources" from the Methodology. The "sources" identified in the Methodology are: policy, training, officer-supervisor UoF statements, OBRD reviews, and supervisor UoF statements and field observations. The monitor's comments in Para 16, above, notes no formalized audit/review/reporting or process" for authorized and non-modified weapons.

## Results

The City's comments on this paragraph, as well as paragraphs 18 and 19 indicate a need for "clarification on how this assessment relates to the compliance definition and sources" from the Methodology. The "sources" identified in the Methodology are: policy, training, officer-supervisor UoF statements, OBRD reviews, and supervisor UoF statements and field observations. The monitor's comments in Paragraph 16 above note no formalized audit/review/reporting or process" for authorized and non-modified weapons.

Secondary Compliance would require APD to be able to point to specific *training* for supervisors related to how they are expected to review this requirement (by roll-call inspection, by "drive-by" in-field inspections, by OBRD review comments, etc.) The monitoring team is not aware of any APD training, policy or other mechanism currently established to effect such inspection, review, and remediation, other than some policy and practice processes that require official inspection of firearms used in officer-involved shootings. After-the-fact inspections are not routinely viewed as acceptable policy.

No such formalized audit- and reporting process appears to be present at this time. Without it, APD has no way of knowing what weapons are being carried by its personnel in the field.

Primary:	In Compliance
Secondary:	Not In Compliance
Operational:	Not In Compliance

***Recommendation 4.7.4a: APD should evaluate modalities for developing formal audit/review/reporting policy for "carry and use" assessments and inspections regarding modified or altered weapons outlined in this paragraph, including known "successful"***

***similar programs in other police agencies, using modalities established for Completed Staff Work (CSW)<sup>23</sup>.***

***Recommendation 4.7.4b: APD should transition to a routinely reported “inspections and audit” process responsive to this paragraph’s requirements.***

#### 4.7.5 Assessing Compliance with Paragraph 18: On-duty Weapons

Paragraph 18 stipulates:

**“Officers shall carry or use only agency-approved firearms and ammunition while on duty.”**

#### Methodology

The monitoring team reviewed more than two hundred entries on APD’s SharePoint database for supervisors’ monthly inspection reports. No indications were found regarding an officer carrying non agency-approved firearms or ammunition. APD, however, based on the information provided to the monitor to date, appears not to have a formalized audit/review/reporting policy or process for this data.

#### Results

Primary: In Compliance  
Secondary: Not In Compliance  
Operational: Not In Compliance

***Recommendation 4.7.5a: APD should evaluate modalities for developing formal audit/review/reporting policy for “carry and use” assessments and inspections regarding modified or altered weapons outlined in this paragraph, including known “successful” similar programs in other police agencies, using modalities established for Completed Staff Work.***

***Recommendation 4.7.5b: APD should transition to a routinely reported “inspections and audit” process responsive to this paragraph’s requirements.***

#### 4.7.6 Assessing Compliance with Paragraph 19: On Duty Weapons

Paragraph 19 stipulates:

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<sup>23</sup> The monitor has provided APD with an example of CSW applied to law enforcement issues, and recommends this format be followed in all CSW recommendations contained in this—and future—reports. All suggested CSW documents should be submitted to, and reviewed and annotated by, the Chief of Police prior to submission to the monitor.



**“APD issued Special Order 14-32** requiring all officers to carry a Department- issued handgun while on duty. APD shall revise its force policies and protocols to reflect this requirement and shall implement a plan that provides: (a) a timetable for implementation; (b) sufficient training courses to allow officers to gain proficiency and meet qualification requirements within a specified period; and (c) protocols to track and control the inventory and issuance of **handguns.”**

## Methodology

Paragraph 19, sub-section b) requires APD to provide sufficient training courses to allow officers to gain proficiency and meet qualification requirements. APD Range Staff was changing the range hours one day a week to enable officers to practice firearms in a low-light environment. The monitoring team sees this as another positive example of a staff making changes in order to meet the requirements of the CASA.

Paragraph 19, sub-section c) requires APD to develop a protocol to “track and control the inventory and issuance of handguns.” The monitoring team was provided a copy of an Interoffice Memorandum from an APD Fiscal Officer to the APD Planning unit, dated January 8, 2016, that verified that the required tracking system is fully in place. APD also continues to work with the City Department of Technology to upgrade the current system to enhance security and streamline annual inventory procedures. During future site visits, the monitoring team will meet with the appropriate personnel and conduct a walk-through of the system to further validate and/or elevate compliance levels under the planned new system.

The monitoring team also reviewed APD Administrative Order 3-75 Department Property, dated November 6, 2012, which set forth detailed procedures for the issuance and control of Department property, including all items within the Department’s Tactical Array. APD has reviewed and updated this order to ensure that it is consistent with any changes to related policies and CASA requirements.

## Results

A database for the Supervisors Monthly Inspection Report has been created and is in use by APD Supervisors. Monthly firearm inspection is included in this database; however, APD has not created a review/audit/reporting process for the data. Collecting the inspections into a database is only the first step. The monitoring team expects APD to utilize the data to identify and correct violations of policy, if any, would be required to attain Operational Compliance.

Primary: In Compliance  
Secondary: In Compliance



Operational: Not In Compliance

***Recommendation 4.7.6a: APD should evaluate modalities for developing formal audit/review/reporting policy for “on duty weapons” assessments and inspections regarding modified or altered weapons outlined in this paragraph, including known “successful” similar programs in other police agencies, using modalities established for Completed Staff Work.***

***Recommendation 4.7.6b: APD should transition to a routinely reported “inspections and audit” process responsive to this paragraph’s requirements.***

4.7.7 Assessing Compliance with Paragraph 20: Weapons Qualifications

Paragraph 20 stipulates:

**“Officers shall be required to successfully qualify with each firearm that they are authorized to use or carry on-duty at least once each year. Officers who fail to qualify on their primary weapon system shall complete immediate remedial training. Those officers who still fail to qualify after remedial training shall immediately relinquish APD-issued firearms on which they failed to qualify. Those officers who still fail to qualify within a reasonable time shall immediately be placed in an administrative assignment and will be subject to administrative and/or disciplinary action, up to and including termination of employment.”**

Methodology

Members of the monitoring team reviewed firearms training records related to this paragraph. A total of 45 officers failed to qualify, and all of those officers were re-trained according to established policy. Unfortunately, 11 of the 45 were re-trained outside the established policy timelines for the retraining process. This constitutes a failure rate of more than 24 percent, well outside the permissible five percent.

Results

Based on comments received in response to our last monitor’s report, and based on our review of Course of Business (COB) documentation related to this paragraph, the APD seems unclear as to how routine police operations should be subjected to a problem-identification, needs assessment, response planning, implementation, evaluation, and reassessment process. The APD’s response to paragraphs 16- 20 indicate a need for the agency to re-think how it identifies problem, sorts through potential solutions, and implements and evaluates those

solutions. Failure to re-train within required time parameters, on something as serious as firearms training is a serious oversight.

Primary: In Compliance  
Secondary: Not In Compliance  
Operational: Not In Compliance

***Recommendation 4.7.7a: APD should transition to a routinely reported “inspections and audit” process responsive to this paragraph’s requirements, using Completed Staff Work to guide development and reporting of same.***

***Recommendation 4.7.7b: Timely response to establish policy requirements should be emphasized to firearms training staff and supervisors.***

#### 4.7.8 Assessing Compliance with Paragraph 21: Firearms Training

Paragraph 21 stipulates:

**“APD training shall continue to require and instruct proper techniques for un-holstering, drawing, or exhibiting a firearm.”**

#### Methodology

APD’s approved Use of Force policy covers the requirements of this paragraph. The monitoring team also reviewed a Basic Academy lesson plan, “Handgun Training and Certification,” that provides detailed instruction on holstering, un-holstering, and re-holstering a firearm. Finally, the monitoring reviewed training records for the APD 116 Cadet class. Members of the monitoring team met with Academy staff that are responsible for implementing the provisions of this paragraph. As with past visits we found the Academy staff to be engaged and fully committed to their work.

#### Results

The lesson plan that we were provided breaks down the various steps for on holstering, drawing, exhibiting a firearm, and placing a firearm in a “low-ready” position. During academy classes cadets are required to pass a Limited Scope Performance Test (LSPT) where they must demonstrate their proficiency in this area. The LSPT is a practical examination where each cadet is expected to demonstrate their skills, and is provided two opportunities to do so while being observed by an academy instructor. The results of the instructor’s observations are captured on a performance scoring sheet, where instructors indicate whether a cadet passed a performance competency on the first or second attempt, and provide

written comments where necessary. The monitoring team reviewed training records for 34 cadets of the 116<sup>th</sup> class and found that 33 of the 34 cadets passed the performance competencies on either the first or second attempt.<sup>24</sup> Throughout the training records the monitoring team saw examples of the academy documenting cadets needing more than one attempt to pass different performance competencies, and examples of instructors providing comments of their observations of a recruit's performance. For one recruit that failed to adequately demonstrate competencies on either the first or second attempt, they were provided a remedial date where they ultimately passed the LSPT.<sup>25</sup>

We note that within the lesson plan we reviewed was the definition of "low – ready" which, as noted in IMR-4 and elsewhere in this report, has had direct relevance to APD's performance with respect to show of force. As noted in IMR-4, the APD lesson plan is clear that a "low-ready" position means "... The handgun is driven forward and downward at an approximate 45 degree angle (below the level of the feet of the target, or so the muzzle does not cover anything you have made the decision to destroy), depending on the proximity to the suspect being challenged, or the terrain being searched."<sup>26</sup> While the academy cadets have been addressed with the proper training, as noted elsewhere in this report, *the issue of show of force has to be remediated through both policy and training for the wider audience of APD officers since it is clearly a method of "exhibiting" a firearm.*

Primary: In Compliance  
 Secondary: Not In Compliance  
 Operational: Not In Compliance

***Recommendation 4.7.8a: APD should complete expeditiously a Completed Staff Work document related to paragraph 21 compliance, outlining compliance issues and developing recommendations to remedy those activities. This document should be provided to the Chief of Police.***

4.7.9 Assessing Compliance with Paragraph 22: Firearm Discharges from Moving Vehicles

Paragraph 22 stipulates:

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<sup>24</sup> The tests were conducted on September 16, 2016.

<sup>25</sup> The monitoring team reviewed records dated September 26, 2016.

<sup>26</sup> The monitoring teams noted the awkward and confusing language in the definition. It was mentioned to the academy staff during the November 2016 site visit and will be revisited again during the next site visit.

**“APD shall adopt a policy that prohibits officers from discharging a firearm from a moving vehicle or at a moving vehicle, including shooting to disable a moving vehicle, unless an occupant of the vehicle is using lethal force, other than the vehicle itself, against the officer or another person, and such action is necessary for self-defense, defense of other officers, or to protect another person. Officers shall not intentionally place themselves in the path of, or reach inside, a moving vehicle.”**

## Methodology

APD apparently has no individual record-keeping elements for “firearms discharges from moving vehicles,” and thus data for this paragraph’s assessment are unclear and difficult to find and interpret. For example, for this paragraph the monitoring team reviewed known “discharge events” to assess whether or not the “discharge” may have been from a moving vehicle. We found two such events from the 16-sampled use of force cases we reviewed this period. Both of those were within policy.

## Results

We are concerned at the lack of record keeping for “firearms discharges from moving vehicles,” as articulated by the CASA. This lack of routinized record keeping and reporting exposes APD to the vagaries of “narrative report review” as its only mechanism to identify, review, assess, categorize, and report various firearms discharges. As a general occurrence, it appears to the monitoring team that APD’s review mechanism for Officer-Involved-Shootings (OIS), is unnecessarily delayed, resulting in 13 of 17 OIS cases over the last two years (2015 and 2016) taking more than a year to complete and submit to the DA for review and decision-making.

In addition, we found two cases of discharges “at a vehicle,” which is controlled by the policy prohibition of officers placing themselves in front of a moving vehicle, then claiming they shot because they were in danger. We found two instances in which APD officers fired at a moving vehicle. There was no evidence or discussion in either of these cases indicating whether or not the officers had deliberately put themselves “in harm’s way” by moving in front of the vehicle before they fired. Based on current performance, APD is in primary compliance with this part of Paragraph 22.

Primary: In Compliance  
Secondary: Not In Compliance  
Operational: Not In Compliance

***Recommendation 4.7.9a: APD should produce a piece of Completed Staff Work assessing why it has been unable to meet the requirements of paragraph 22, and recommending a way forward on***

***this critical oversight paragraph. The CSW should be presented to the Chief of Police for review, comment and action.***

#### 4.7.10 Assessing Compliance with Paragraph 23: Tracking Firearm Discharges

Paragraph 23 stipulates:

**“APD shall track all critical firearm discharges. APD shall include all critical firearm discharges and discharges at animals in its Early Intervention System and document such discharges in its use of force annual report.”**

#### Methodology

As in the last two monitoring reports, we note that APD was building a comprehensive Early Intervention and Reporting System (EIRS) and an accompanying EIRS policy to meet the requirements of Paragraph 23. As of the end of this monitoring period APD, had not yet submitted a workable EIRS policy that the monitor could approve. APD will remain out of compliance with this task until this issue is resolved.

#### Results

The proper implementation of a comprehensive Early Intervention Reporting System (EIRS) will undoubtedly impact workloads across the organization. It is critical that the EIRS be fully operational, in terms of reliable data entry into the system, and that it provide routine alerts based upon established and monitor-approved thresholds. We have commented extensively in past reports that APD’s EIRS will be only a part of an overarching performance and force oversight system. It is not intended to be a “catch all” solution. That said, the proper adoption and implementation of a meaningful EIRS is essential to APD’s overall compliance, particularly in terms of operational performance in the field. The monitor has advised APD on numerous occasions that their proposed review frequencies do not comply with national standards, yet we continue to be faced with resistance in revising the policy to meet acceptable standards.

Primary: In Compliance<sup>27</sup>  
Secondary: Not In Compliance  
Operational: Not In Compliance

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<sup>27</sup> APD will maintain compliance based on the extant policy, which was approved by the monitor, as long as there are no recurrences of “trigger shutdowns,” etc. are noted again by the monitor.

***Recommendation 4.7.10a: Write a revised EIRS policy that can be approved by the Parties and the monitor as responsive to established policy in the field, e.g., New Orleans PD and Seattle PD.***

#### 4.7.11 Assessing Compliance with Paragraph 24: Use of ECWs

Paragraph 24 stipulates:

**“ECWs shall not be used solely as a compliance technique or to overcome passive resistance. Officers may use ECWs only when such force is necessary to protect the officer, the subject, or another person from physical harm and after considering less intrusive means based on the threat or resistance encountered. Officers are authorized to use ECWs to control an actively resistant person when attempts to subdue the person by other tactics have been, or will likely be, ineffective and there is a reasonable expectation that it will be unsafe for officers to approach the person within contact range.”**

#### Methodology

During past reporting periods, the monitoring team conducted in-depth reviews of APD use of force cases that involved the use of ECWs. The results of those case reviews were communicated to APD for consideration as they continued to implement new policy provisions through training and operational oversight. APD’s subsidiary policy on Electronic Control Weapons (ECW) was approved by the monitor and DOJ in January 2016, bringing APD into policy compliance on CASA requirements in Paragraphs 24 through 36. We note that the regular review of that policy was due to occur in December 2016; however, updated policy provisions for APD’s use of force policies remained unresolved as of the end of the monitoring period.

The monitoring team previously reviewed APD training materials for a Use of Force Training Program that was delivered to APD personnel throughout the first half of 2016 and found the training incorporated the provisions of this paragraph. The monitoring team requested copies of all reports and associated materials related to ten (10) ECW cases, which constituted 15% of an entire data set over a five-month period. A comprehensive review and assessment was conducted of each reported case, and a comparison was made between the activities of APD officers, with respect to ECW use, and the provisions of this paragraph.

#### Results

Our review of APD’s operational ECW practices indicated that across reviews of eight known uses of ECWs this reporting period, APD officers’ performance with the ECW application and use conformed with

established policy and training 100 percent of the time. Out of the reviewed cases, we found no instances in which APD personnel used an ECW as a pain compliance instrument, nor any indications that APD personnel used ECWs to overcome passive resistance. In none of the eight incidents involving ECW applications did we find it used for any reason other than to protect the officer or others. Similarly, we found each of the ECW uses to contain evidence that other, less intrusive means were considered prior to use of the ECW, e.g., verbal de-escalation, etc. Further, we found ECWs to have been used to control overt resistance only, as required by best practices and APD policy on Electronic Control Weapons. ECW uses were 100 percent in compliance with the requirements of policy and training, and were used in lieu of other techniques more likely to cause injury to the suspect.

We commend APD on its integration of ECWs into its force continuum, and recommend the process of that integration be used with other, still-pending, use of force policies and practices. Figure 4.7.11, below, reports in detail the compliance elements and performance of APD's ECW integration, as noted by our assessments this reporting period.

The results of our analysis for this paragraph are included in Table 4.7.11, below.

Table 4.7.11

Case No.	ECW not used as pain compliance	ECW not used to overcome passive resistance	ECW used to protect officer or other	Less intrusive means considered	ECW used to control active resistance	# in Compliance	% in Compliance	In Compliance
IMR-5-001	1	1	1	1	1	5	100%	Y
IMR-5-002	1	1	1	1	1	5	100%	Y
IMR-5-003	1	1	1	1	1	5	100%	Y
IMR-5-004	1	1	1	1	1	5	100%	Y
IMR-5-005	1	1	1	1	1	5	100%	Y
IMR-5-006	1	1	1	1	1	5	100%	Y
IMR-5-007	1	1	1	N/A	1	4	100%	Y
IMR-5-008	1	1	1	1	1	5	100%	Y
							% In Compliance	100%



Primary: In Compliance  
 Secondary: In Compliance  
 Operational: In Compliance

#### 4.7.12 Assessing Compliance with Paragraph 25: ECW Verbal Warnings

Paragraph 25 stipulates:

**“Unless doing so would place any person at risk, officers shall issue a verbal warning to the subject that the ECW will be used prior to discharging an ECW on the subject. Where feasible, the officer will defer ECW application for a reasonable time to allow the subject to comply with the warning.”**

#### Methodology

During past reporting periods, the monitoring team conducted in-depth reviews of APD use of force cases that involved the use of ECWs. The results of those case reviews were communicated to APD for consideration as they continued to implement new policy provisions through training and operational oversight. APD’s subsidiary policy on Electronic Control Weapons (ECW) was approved by the monitor and DOJ in January 2016, bringing APD into policy compliance on CASA requirements in Paragraphs 24 through 36. We note that the regular review of that policy was due to occur in December 2016; however, updated policy provisions for APD’s use of force policies remained unresolved as of the end of the monitoring period.

#### Results

Table 4.7.12, below depicts the results of the monitoring team’s assessment of APD’s performance on verbal warnings and deferring ECW use for a reasonable time, again showing 100 percent compliance across the eight ECW uses this reporting period.

Table 4.7.12

Case Number	Issued verbal warning prior to discharging ECW	Defer ECW for a reasonable amount of time	# In compliance	% In compliance	In compliance
IMR-5-001	1	1	2	100%	Y
IMR-5-002	1	1	2	100%	Y
IMR-5-003	1	1	2	100%	Y
IMR-5-004	1	1	2	100%	Y
IMR-5-005	1	1	2	100%	Y
IMR-5-006	1	1	2	100%	Y
IMR-5-007	1	N/A	N/A	100%	Y
IMR-5-008	1	1	2	100%	Y
				% in Compliance	100%

Primary: In Compliance  
 Secondary: In Compliance  
 Operational: In Compliance

#### 4.7.13 Assessing Compliance with Paragraph 26: ECW Limitations

Paragraph 26 stipulates:

**“ECWs will not be used where such deployment poses a substantial risk of serious physical injury or death from situational hazards, except where lethal force would be permitted. Situational hazards include falling from an elevated position, drowning, losing control of a moving motor vehicle or bicycle, or the known presence of an explosive or flammable material or substance.”**

#### Methodology

APD’s subsidiary policy on Electronic Control Weapons (ECW) was approved by the monitor and DOJ in January 2016, bringing APD into policy compliance on CASA requirements in Paragraphs 24 through 36. We note that the regular review of that policy was due to occur in December 2016, however, updated policy provisions for APD’s use of force policies remained unresolved as of the end of the monitoring period.

The monitoring team previously reviewed APD training materials for a Use of Force Training Program that was delivered to APD personnel throughout the first half of 2016 and found the training incorporated the provisions of this paragraph. The monitoring team requested copies of all reports and associated materials related to ten (10) ECW cases, which constituted 15% of an entire data set over a five-month period. A comprehensive review and assessment was conducted of each reported case, and a comparison was made between the activities of APD officers, with respect to ECW use, and the provisions of this paragraph.

#### Results

Table 4.7.13

Case Number	ECW not used where substantial risk of physical injury or death, only when lethal force permitted.	# In Compliance	% In Compliance	In Compliance
IMR-5-001	1	1	100%	Y
IMR-5-002	1	1	100%	Y
IMR-5-003	1	1	100%	Y
IMR-5-004	1	1	100%	Y
IMR-5-005	1	1	100%	Y
IMR-5-006	1	1	100%	Y
IMR-5-007	1	1	100%	Y
IMR-5-008	1	1	100%	Y
			% in Compliance	100%

Primary: In Compliance  
Secondary: In Compliance  
Operational: In Compliance

#### 4.7.14 Assessing Compliance with Paragraph 27: ECW Cycling

Paragraph 27 stipulates:

**“Continuous cycling of ECWs is permitted only under exceptional** circumstances where it is necessary to handcuff a subject under power. Officers shall be trained to attempt hands-on control tactics during ECW applications, including handcuffing the subject during ECW application (i.e., handcuffing under power). After one standard ECW cycle (5 seconds), the officer shall reevaluate the situation to determine if subsequent cycles are necessary. Officers shall consider that exposure to the ECW for longer than 15 seconds (whether due to multiple applications or continuous cycling) may increase the risk of death or serious injury. Officers shall also weigh the risks of subsequent or continuous cycles against other force options. Officers shall independently justify each cycle or continuous cycle of five seconds against the subject in Use of **Force Reports.**”

#### Methodology

The monitoring team previously reviewed APD training materials for a Use of Force Training Program that was delivered to APD personnel throughout the first half of 2016 and found the training incorporated the provisions of this paragraph. The monitoring team requested copies of all reports and associated materials related to ten (10) ECW cases, which constituted 15% of an entire data set over a five-month period. A comprehensive review and assessment was conducted of each reported case, and a comparison was made between the activities of APD officers, with respect to ECW use, and the provisions of this paragraph. As noted earlier, there was a discrepancy in initial reporting into cases reviewed by the monitoring team. Therefore, for purposes of this paragraph we report the results of 8 ECW cases.

#### Results

APD’s performance related to this paragraph, as evidenced in the Table 4.7.14 below, shows that they have met operational compliance in each of the cases reviewed by the monitoring team. In each of the cases reviewed by the monitoring team, APD officers were faced with sometimes complex sets of circumstances, but were observed to use their ECW in a manner that complied with APD policy, legal standards and conformed with this paragraph.

Table 4.7.14

Case Number	Issued verbal warning prior to discharging ECW	Defer ECW for a reasonable amount of time	# In compliance	% In compliance	In compliance
IMR-5-001	1	1	2	100%	Y
IMR-5-002	1	1	2	100%	Y
IMR-5-003	1	1	2	100%	Y
IMR-5-004	1	1	2	100%	Y
IMR-5-005	1	1	2	100%	Y
IMR-5-006	1	1	2	100%	Y
IMR-5-007	1	N/A	N/A	100%	Y
IMR-5-008	1	1	2	100%	Y
				% in Compliance	100%

Primary: In Compliance  
 Secondary: In Compliance  
 Operational: In Compliance

#### 4.7.15 Assessing Compliance with Paragraph 28: ECW Drive-Stun Mode

Paragraph 28 stipulates:

**“ECWs shall not be used solely in drive-stun mode as a pain compliance technique. ECWs may be used in drive-stun mode only to supplement the probe mode to complete the incapacitation circuit, or as a countermeasure to gain separation between officers and the subject, so that officers can consider another force option.”**

#### Methodology

APD’s subsidiary policy on Electronic Control Weapons (ECW) was approved by the monitor and DOJ in January 2016, bringing APD into policy compliance on CASA requirements in Paragraphs 24 through 36. We note that the regular review of that policy was due to occur in December 2016, however, updated policy provisions for APD’s use of force policies remained unresolved as of the end of the monitoring period.

The monitoring team previously reviewed APD training materials for a Use of Force Training Program that was delivered to APD personnel throughout the first half of 2016 and found the training incorporated the provisions of this paragraph. The monitoring team requested copies of all reports and associated materials related to ten (10) ECW cases, which constituted 15% of an entire data set over a five-month period. A comprehensive review and assessment was conducted of each reported case, and a comparison was made between the activities of APD officers,

with respect to ECW use, and the provisions of this paragraph. As noted earlier, there was a discrepancy in initial reporting into cases reviewed by the monitoring team. Therefore, for purposes of this paragraph we report the results of 8 ECW cases.

## Results

APD's performance related to this paragraph, as evidenced in the table below, shows that they have met operational compliance in each of the cases reviewed by the monitoring team. In each of the cases reviewed by the monitoring team, APD officers were faced with sometimes complex sets of circumstances, but were observe to use their ECW in a manner that complied with APD policy and conformed with the provisions of this paragraph.<sup>28</sup>

Table 4.7.15

Case Number	ECW not used in drive stun solely for pain compliance	ECW used in drive stun to supplement probe mode, or gain separation	# In Compliance	% In Compliance	In Compliance
IMR-5-001	1	N/A	1	100%	Y
IMR-5-002	1	N/A	1	100%	Y
IMR-5-003	1	N/A	1	100%	Y
IMR-5-004	1	N/A	1	100%	Y
IMR-5-005	1	N/A	1	100%	Y
IMR-5-006	1	N/A	1	100%	Y
IMR-5-007	1	N/A	1	100%	Y
IMR-5-008	1	N/A	1	100%	Y

Primary: In Compliance  
 Secondary: In Compliance  
 Operational: In Compliance

### 4.7.16 Assessing Compliance with Paragraph 29: ECW Reasonableness Factors

Paragraph 29 stipulates:

**“Officers shall determine the reasonableness of ECW use based upon all circumstances, including the subject’s age, size, physical condition, and the feasibility of lesser force options. ECWs should generally not be used against visibly pregnant women, elderly persons, young children, or visibly frail persons. In some cases, other control techniques may be more appropriate as determined by the subject’s threat level to themselves or others. Officers shall be trained on the increased risks that ECWs may present to the above-listed vulnerable populations.”**

<sup>28</sup> In IMR-3 & IMR-4 we reported on an incident that involved an officer using an ECW in drive stun for pain compliance (IMR-5-067). APD was asked to provide documentation as to the steps they took to remediate the performance in that case. Their efforts to properly address the monitoring team’s concerns remain deficient after several notifications, and are reported on later in this report.

## Methodology

APD's subsidiary policy on Electronic Control Weapons (ECW) was approved by the monitor and DOJ in January 2016, bringing APD into policy compliance on CASA requirements in Paragraphs 24 through 36. We note that the regular review of that policy was due to occur in December 2016, however, updated policy provisions for APD's use of force policies remained unresolved as of the end of the monitoring period.

The monitoring team previously reviewed APD training materials for a Use of Force Training Program that was delivered to APD personnel throughout the first half of 2016 and found the training incorporated the provisions of this paragraph. The monitoring team requested copies of all reports and associated materials related to ten (10) ECW cases, which constituted 15% of an entire data set over a five-month period. A comprehensive review and assessment was conducted of each reported case, and a comparison was made between the activities of APD officers, with respect to ECW use, and the provisions of this paragraph. As noted earlier, there was a discrepancy in initial reporting into cases reviewed by the monitoring team. Therefore, for purposes of this paragraph we report the results of 8 ECW cases.

## Results

APD's performance related to this paragraph, as evidenced in the table below, shows that they have met operational compliance in each of the cases reviewed by the monitoring team. In each of the cases reviewed by the monitoring team, APD officers were faced with sometimes complex sets of circumstances, but were observe to use their ECW in a manner that complied with APD policy, legal standards and conformed with the provisions of this paragraph.

Results of the analysis for this paragraph are presented in the table shown below.

Table 4.7.16

Case Number	ECW not used against visible pregnant woman, elderly person, child of visibly frail person	ECW used reasonably based upon all circumstances including the feasibility of lesser force options	# In Compliance	% In Compliance	In Compliance
IMR-5-001	1	1	2	100%	Y
IMR-5-002	1	1	2	100%	Y
IMR-5-003	1	1	2	100%	Y
IMR-5-004	1	1	2	100%	Y
IMR-5-005	1	1	2	100%	Y
IMR-5-006	1	1	2	100%	Y
IMR-5-007	1	1	2	100%	Y
IMR-5-008	1	1	2	100%	Y
				% in Compliance	100%

Primary: In Compliance

Secondary: In Compliance  
Operational: In Compliance

#### 4.7.17 Assessing Compliance with Paragraph 30: ECW Targeting

Paragraph 30 stipulates:

**“Officers shall not intentionally target a subject’s head, neck, or genitalia, except where lethal force would be permitted, or where the officer has reasonable cause to believe there is an imminent risk of serious physical injury.”**

#### Methodology

APD’s subsidiary policy on Electronic Control Weapons (ECW) was approved by the monitor and DOJ in January 2016, bringing APD into policy compliance on CASA requirements in Paragraphs 24 through 36. We note that the regular review of that policy was due to occur in December 2016, however, updated policy provisions for APD’s use of force policies remained unresolved as of the end of the monitoring period.

The monitoring team previously reviewed APD training materials for a Use of Force Training Program that was delivered to APD personnel throughout the first half of 2016 and found the training incorporated the provisions of this paragraph. The monitoring team requested copies of all reports and associated materials related to ten (10) ECW cases, which constituted 15% of an entire data set over a five-month period. A comprehensive review and assessment was conducted of each reported case, and a comparison was made between the activities of APD officers, with respect to ECW use, and the provisions of this paragraph. As noted earlier, there was a discrepancy in initial reporting into cases reviewed by the monitoring team. Therefore, for purposes of this paragraph we report the results of 8 ECW cases.

#### Results

APD’s performance related to this paragraph, as evidenced in the table below, shows that they have met operational compliance in each of the cases reviewed by the monitoring team. In each of the cases reviewed by the monitoring team, APD officers were faced with sometimes complex sets of circumstances, but were observe to use their ECW in a manner that complied with APD policy, legal standards and conformed with the provisions of this paragraph.

Results for APD’s compliance efforts are presented in Table 4.7.17, below, and depict a 100 percent compliance rate for activities related to paragraph 30, ECW Targeting.



Table 4.7.17

Case Number	Officer did not target the subject's head, neck or genitalia	If yes, was lethal force justified or was there reasonable cause to believe there was imminent risk of serious physical injury	# In Compliance	% In Compliance	In Compliance
IMR-5-001	1	N/A	1	100%	Y
IMR-5-002	1	N/A	1	100%	Y
IMR-5-003	1	N/A	1	100%	Y
IMR-5-004	1	N/A	1	100%	Y
IMR-5-005	1	N/A	1	100%	Y
IMR-5-006	1	N/A	1	100%	Y
IMR-5-007	1	N/A	1	100%	Y
IMR-5-008	1	N/A	1	100%	Y
				% in Compliance	100%

Primary: In Compliance  
 Secondary: In Compliance  
 Operational: In Compliance

#### 4.7.18 Assessing Compliance with Paragraph 31: ECW Restrictions

APD's subsidiary policy on Electronic Control Weapons (ECW) was approved by the monitor and DOJ in January 2016, bringing APD into on CASA requirements in Paragraphs 24 through 36. We note that the regular review of that policy was due to occur in December 2016, however, updated policy provisions for APD's use of force policies remained unresolved as of the end of the monitoring period.

The monitoring team previously reviewed APD training materials for a Use of Force Training Program that was delivered to APD personnel throughout the first half of 2016 and found the training incorporated the provisions of this paragraph. The monitoring team requested copies of all reports and associated materials related to ten (10) ECW cases, which constituted 15% of an entire data set over a five-month period. A comprehensive review and assessment was conducted of each reported case, and a comparison was made between the activities of APD officers, with respect to ECW use, and the provisions of this paragraph. As noted earlier, there was a discrepancy in initial reporting into cases reviewed by the monitoring team. Therefore, for purposes of this paragraph we report the results of 8 ECW cases.

#### Results

APD's performance related to this paragraph, as evidenced in the table below, shows that they have met operational compliance in each of the cases reviewed by the monitoring team. In each of the cases reviewed by the monitoring team, APD officers were faced with sometimes complex sets of circumstances, but were observed to use their ECW in a manner

that complied with APD policy, legal standards and conformed with the provisions of this paragraph.

Table 4.7.18

Case Number	ECW not used on handcuffed person?	If yes, necessary to prevent them causing serious physical injury to themselves and lesser attempts would have been ineffective	# In Compliance	% In Compliance	In Compliance
IMR-5-001	1	N/A	1	100%	Y
IMR-5-002	1	N/A	1	100%	Y
IMR-5-003	1	N/A	1	100%	Y
IMR-5-004	1	N/A	1	100%	Y
IMR-5-005	1	N/A	1	100%	Y
IMR-5-006	1	N/A	1	100%	Y
IMR-5-007	1	N/A	1	100%	Y
IMR-5-008	1	N/A	1	100%	Y
				% in Compliance	100%

Primary: In Compliance  
 Secondary: In Compliance  
 Operational: In Compliance

#### 4.7.19 Assessing Compliance with Paragraph 32: ECW Holster

Paragraph 32 stipulates:

**“Officers shall keep ECWs in a weak-side holster to reduce the chances of accidentally drawing and/or firing a firearm.”**

#### Methodology

Members of the monitoring team have observed scores of APD sworn personnel during site visits to Area Commands and in multiple reviews of On Body Recording Device video. We noted no instances of violations of this requirement during this reporting period.

#### Results

Primary: In Compliance  
 Secondary: In Compliance  
 Operational: In Compliance

#### 4.7.20 Assessing Compliance with Paragraph 33: ECW Certifications

Paragraph 33 stipulates:

**“Officers shall receive annual ECW certifications, which should consist of physical competency; weapon retention; APD policy, including any policy changes; technology changes’ and scenario- and judgment-based training.”**

##### Methodology

APD’s subsidiary policy on Electronic Control Weapons (ECW) was approved by the monitor and DOJ in January 2016, bringing APD into policy compliance on CASA requirements in Paragraphs 24 through 36. We note that the regular review of that policy was due to occur in December 2016, however, updated policy provisions for APD’s use of force policies remained unresolved as of the end of the monitoring period. The monitoring team reported in IMR-4 that is reviewed APD training materials for a use of force training program that was delivered to APD personnel throughout the first half of 2016. We found the training incorporated the provisions of this paragraph. We are also aware that APD has launched its 2017 Use of Force training program that incorporates ECW recertification. Because that training commenced at the end of the monitoring period, and continued into the next, the training statistics for that training will be assembled and calculated during the next report.

Additionally, during its November 2016 site visit members of the monitoring team interacted with APD officers in a host of settings, including conducting visits at Area Commands, meetings at headquarters, and informal observations of APD uniformed officers during site visits. We found no instances of violations of approved ECW provisions during those video reviews or site visits.

##### Results

Based on previous performance, APD remains in compliance with this task; however, annual retraining will need to be delivered this year to maintain that compliance level.

Primary: In Compliance  
Secondary: In Compliance  
Operational: In Compliance

#### 4.7.21 Assessing Compliance with Paragraph 34: ECW Annual Certification

Paragraph 34 stipulates:

**“Officers shall be trained in and follow protocols developed by** APD, in conjunction with medical professionals, on their responsibilities following ECW use, including:

- a) removing ECW probes, including the requirements described in Paragraph 35;
- b) understanding risks of positional asphyxia, and training officers to use restraint techniques that do not impair the **subject’s respiration following an ECW application;**
- c) monitoring all subjects of force who have received an ECW application while in police custody; and
- d) informing medical personnel of all subjects who: have been subjected to ECW applications, including prolonged applications (more than 15 seconds); are under the influence of drugs and/or exhibiting symptoms associated with excited delirium; or were kept in prone restraints after ECW use.”

#### Methodology

APD’s subsidiary policy on Electronic Control Weapons (ECW) was approved by the monitor and DOJ in January 2016, bringing APD into policy compliance on CASA requirements in Paragraphs 24 through 36. We note that the regular review of that policy was due to occur in December 2016, however, updated policy provisions for APD’s use of force policies remained unresolved as of the end of the monitoring period. The monitoring team reported in IMR-4 that is reviewed APD training materials for a use of force training program that was delivered to APD personnel throughout the first half of 2016. We found the training incorporated the provisions of this paragraph. We are also aware that APD has launched its 2017 Use of Force training program that incorporates ECW recertification. Because that training commenced at the end of the monitoring period, and continued into the next, the training statistics for that training will be assembled and calculated during the next report.

The monitoring team requested copies of all reports and associated materials related to ten (10) ECW cases, which constituted 15% of an entire data set over a five-month period. A comprehensive review and assessment was conducted of each reported case, and a comparison was made between the activities of APD officers, with respect to ECW use, and the provisions of this paragraph. As noted earlier, there was a discrepancy in initial reporting into cases reviewed by the monitoring team. Therefore, for purposes of this paragraph we report the results of 8 ECW cases.

Additionally, during its November 2016 site visit members of the monitoring team interacted with APD officers in a host of settings, including conducting visits at Area Commands.

## Results

APD's performance related to this paragraph, as evidenced in the table below, shows that they have met operational compliance in each of the cases reviewed by the monitoring team. The monitoring team would be remiss if not to note that the attention that officers demonstrated in ensuring follow-up medical treatment was provided for people exposed to an ECW was excellent. APD officers were seen to routinely, and immediately seek medical attention in cases involving ECW deployment. Results of the analysis of this paragraph are included in the table below.

Table 4.7.21

Case Number	Proper protocols followed concerning removal of ECW probes	Proper protocols followed concerning addressing risk of positional asphyxia	Proper protocols followed concerning monitoring persons subjected to an ECW	Proper protocols followed concerning informing medical personnel	# in compliance	% in compliance	In Compliance
IMR-5-001	N/A	1	1	1	3	100%	Y
IMR-5-002	N/A	1	1	1	3	100%	Y
IMR-5-003	N/A	1	1	1	3	100%	Y
IMR-5-004	N/A	1	1	1	3	100%	Y
IMR-5-005	N/A	1	1	1	3	100%	Y
IMR-5-006	N/A	1	1	1	3	100%	Y
IMR-5-007	N/A	1	1	1	3	100%	Y
IMR-5-008	N/A	1	1	1	3	100%	Y
						% in Compliance	100%

Primary: In Compliance

Secondary: In Compliance

Operational: In Compliance

### 4.7.22 Assessing Compliance with Paragraph 35

Paragraph 35 stipulates:

**“The City shall ensure that all subjects who have been exposed to ECW application shall receive a medical evaluation by emergency medical responders in the field or at a medical facility. Absent exigent circumstances, probes will only be removed from a subject's skin by medical personnel.”**

### Methodology

APD's subsidiary policy on Electronic Control Weapons (ECW) was approved by the monitor and DOJ in January 2016, bringing APD into policy compliance on CASA requirements in Paragraphs 24 through 36. We note that the regular review of that policy was due to occur in December 2016, however, updated policy provisions for APD's use of force policies remained unresolved as of the end of the monitoring period. The monitoring team reported in IMR-4 that is reviewed APD training materials for a use of force training program that was delivered to APD personnel throughout the first half of 2016. We found the training incorporated the provisions of this paragraph. We are also aware that APD has launched its 2017 Use of Force training program that incorporates ECW recertification. Because that training commenced at the end of the monitoring period, and continued into the next, the training statistics for that training will be assembled and calculated during the next report.

The monitoring team requested copies of all reports and associated materials related to ten (10) ECW cases, which constituted 15% of an entire data set over a five-month period. A comprehensive review and assessment was conducted of each reported case, and a comparison was made between the activities of APD officers, with respect to ECW use, and the provisions of this paragraph. As noted earlier, there was a discrepancy in initial reporting into two cases reviewed by the monitoring team. Therefore, for purposes of this paragraph we report the results of 8 ECW cases.

## Results

APD's performance related to this paragraph, as evidenced in the table below, shows that they have met operational compliance in each of the cases reviewed by the monitoring team. The monitoring team would be remiss not to note that the attention that officers demonstrated by ensuring follow-up medical treatment was provided for people exposed to an ECW was excellent. APD officers were seen to routinely, and immediately seek medical attention in cases involving ECW deployment. Evaluation of this paragraph is depicted below in tabular form.

Table 4.7.22

Case Number	Subject of ECW received medical evaluation by EMS	If probes removed by non-EMS did exigent circumstances exist	# In Compliance	% In Compliance	In Compliance
IMR-5-001	1	N/A	1	100%	Y
IMR-5-002	1	N/A	1	100%	Y
IMR-5-003	1	N/A	1	100%	Y
IMR-5-004	1	N/A	1	100%	Y
IMR-5-005	1	N/A	1	100%	Y
IMR-5-006	1	N/A	1	100%	Y
IMR-5-007	1	N/A	1	100%	Y
IMR-5-008	1	N/A	1	100%	Y
				% in Compliance	100%

Primary: In Compliance  
 Secondary: In Compliance  
 Operational: In Compliance

#### 4.7.23 Assessing Compliance with Paragraph 36: ECW Notifications

Paragraph 36 stipulates:

**“Officers shall immediately notify their supervisor and the communications command center of all ECW discharges (except for training discharges).”**

#### Methodology

APD’s subsidiary policy on Electronic Control Weapons (ECW) was approved by the monitor and DOJ in January 2016, bringing APD into policy compliance on CASA requirements in Paragraphs 24 through 36. We note that the regular review of that policy was due to occur in December 2016, however, updated policy provisions for APD’s use of force policies remained unresolved as of the end of the monitoring period. The monitoring team reported in IMR-4 that is reviewed APD training materials for a use of force training program that was delivered to APD personnel throughout the first half of 2016. We found the training incorporated the provisions of this paragraph. We are also aware that APD has launched its 2017 Use of Force training program that incorporates ECW recertification. Because that training commenced at the end of the monitoring period, and continued into the next, the training statistics for that training will be assembled and calculated during the next report.

The monitoring team requested copies of all reports and associated materials related to ten (10) ECW cases, which constituted 15% of an entire data set over a five-month period. A comprehensive review and assessment was conducted of each reported case, and a comparison was made between the activities of APD officers, with respect to ECW



use, and the provisions of this paragraph. As noted earlier, there was a discrepancy in initial reporting into cases reviewed by the monitoring team. Therefore, for purposes of this paragraph we report the results of 8 ECW cases.

Additionally, during its November 2016 site visit members of the monitoring team interacted with APD officers in a host of settings, including conducting visits at Area Commands.

## Results

Results for compliance outcomes are reported in Table 4.7.23, below.

Table 4.7.23

Case number	Officer's immediately notified supervisor and communications of ECW discharge	# In Compliance	% In Compliance	In Compliance
IMR-5-001	1	1	100%	Y
IMR-5-002	1	1	100%	Y
IMR-5-003	1	1	100%	Y
IMR-5-004	1	1	100%	Y
IMR-5-005	1	1	100%	Y
IMR-5-006	1	1	100%	Y
IMR-5-007	1	1	100%	Y
IMR-5-008	1	1	100%	Y
				100%

Primary: In Compliance  
 Secondary: In Compliance  
 Operational: In Compliance

### 4.7.24 Assessing Compliance with Paragraph 37: ECW Safeguards

Paragraph 37 stipulates:

**“APD agrees to develop and implement integrity safeguards on the use of ECWs to ensure compliance with APD policy. APD agrees to implement a protocol for quarterly downloads and audits of all ECWs. APD agrees to conduct random and directed audits of ECW deployment data. The audits should compare the downloaded data to the officer’s Use of Force Reports. Discrepancies within the audit should be addressed and appropriately investigated.”**

#### Methodology

APD’s subsidiary policy on Electronic Control Weapons (ECW) SOP 2-53 was approved in January 2016, but the specific provisions of this paragraph were not included. APD’s use of force suite of policies, which included SOP 2-53, was scheduled for a review and update in December 2016. SOP 2-53 was submitted to the monitor for review and approval at the latter part of this monitoring period, however, the policies have not yet been approved due to unresolved issues. During its November 2017 site

visit members of the monitoring team met with APD representatives responsible for this paragraph to discuss their progress with respect to conducting random and directed audits of ECW data. APD COB documentation was also reviewed and compared against the requirements of this paragraph. APD submitted to the monitoring team an internal memo dated August 29, 2016, that was directed to the Chief of Police outlining an audit agenda for downloaded ECW data. We were also provided with an audit methodology APD developed for an "audit program" that was dated August 30, 2016. Finally, the monitoring team reviewed a comprehensive memorandum, dated September 30, 2016, from APD's Audit Coordinator that was directed to the Chief of Police. These documents were all reviewed and compared against the provisions of this paragraph to conduct a qualitative determination if APD has met a compliance standard with the provisions of Paragraph 37.

## Results

The monitoring team reviewed the data and based on that review we believe APD has developed a comprehensive matrix and protocol to conduct directed, quarterly audits of ECW data. Likewise, APD's Audit Coordinator delivered a comprehensive assessment of audit findings to the Chief of Police in the form of an internal memo entitled, "Electronic Control Weapon Download Data Audit." The memorandum specifically indicated that the purpose of the audit was to assess compliance with department policies and procedures as they relate to quarterly ECW downloads, spark test protocols, and the comparison of ECW download data to use of force reports.<sup>29</sup> The Chief of Police was provided specific, actionable recommendations based on the outcome of the assessment.

If replicated and continued, this audit methodology and findings stand as a strong foundation for APD to demonstrate operational compliance with respect to *directed audits* conducted at the organizational level. The report presented to the monitoring team included an outline of its methodology, a summary of findings, specific objectives, and comparison data that were used to assess reported use and show of force reports. The report contained specific findings that led to recommendations to the Chief of Police concerning potential follow-up actions he could take. The monitoring team is interested to see what follow-up activities occurred as a result of this audit, specifically, what APD did in response to the recommendations of ECW use audit. The ultimate value of the audit will be found in follow-up activities wherein APD should demonstrate they have "closed the loop" on their assessment. The follow-up activities will show if APD has the capacity to replicate this process in the future, and reveal if the program has a meaningful place in an overarching oversight

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<sup>29</sup> We note that the audit included comparisons of downloaded ECW data against show of force cases as well.

and accountability process. In its methodology APD's Audit Coordinator made one notation that concerns staffing resources that were available to conduct the audit. This oversight mechanism will be critical to the future success of APD with respect to ECW usage. During its next site visit, the monitoring team will again meet with personnel responsible for the provisions of this paragraph to determine what, if any, efforts have been made to address staffing levels within their auditing unit.

Work remains for APD to reach compliance with this paragraph. While APD have developed the makings of a comprehensive, directed audit program, the steps they took need to be codified in policy, and followed up by implementation and routinization of current and suggested policy and practice. Absent these steps, their positive activities could end up being an *ad hoc* assessment and not a required and routine process. Also, the monitoring team has not been provided evidence (as of the close of this reporting period) that procedures and policy have been developed for random reviews of ECW data. It is important to note, that during its November 2016 site visit, the monitoring team found APD's auditing team to be engaged, and invested in the development of procedures to meet the provisions of Paragraph 37. That said, APD still has unresolved issues regarding "random and directed audits:" processes need to be developed, articulated in written policy, and supported with protocols that guide the audit unit as it compares operational requirements with operational practice, allowing the audit unit to identify and address any discrepancies in audit reports via recommendation of training or retraining, follow-up, or discipline, if necessary and appropriate. The table below outlines "checkpoints" for the work remaining to be done.

Table 4.7.24

Pending Process	Develop Integrity Audit Processes	Articulate Audit Protocols	Develop Random and Directed Audit Protocols	Comparison of Downloaded Data viz. a viz UoF Reports	Address and Investigate Discrepancies Download v. Report
Implement Y/N?	N	N	N	N	N
Report Y/N	N	N	N	N	N
Follow-up & Evaluate Y/N	N	N	N	N	N

Primary: In Compliance  
 Secondary: Not In Compliance  
 Operational: Not In Compliance

***Recommendation 4.7.24a: Develop needs assessments, articulate needed improvements in written policy, and support with protocols that guide the audit unit as it compares operational requirements with operational practice, allowing the audit unit to identify and address any discrepancies in audit reports via recommendation of training or retraining, follow-up, or discipline, if necessary and appropriate.***

#### 4.7.25 Assessing Compliance with Paragraph 38: ECW Reporting

Paragraph 38 stipulates:

**“APD agrees to include the number of ECWs in operation and assigned to officers, and the number of ECW uses, as elements of the Early Intervention System. Analysis of this data shall include a determination of whether ECWs result in an increase in the use of force, and whether officer and subject injuries are affected by the rate of ECW use. Probe deployments, except those described in Paragraph 30, shall not be considered injuries. APD shall track all ECW laser painting and arcing and their effects on compliance rates as part of its data collection and analysis. ECW data analysis shall be included in APD’s use of force annual report.”**

#### Methodology

APD’s subsidiary policy on Electronic Control Weapons (ECW) 2-53 was approved by the monitor and DOJ in January 2016; however, the provisions of this paragraph were not addressed. APD’s use of force suite of policies, which included SOP 2-53, was scheduled for a review and update in December 2016. SOP 2-53 was submitted to the monitor for review and approval at the latter part of this monitoring period; however, the policies have not yet been approved due to unresolved issues. During its November 2017 site visit, members of the monitoring team met with APD representatives responsible for this paragraph to discuss their progress with respect to conducting random and directed audits of ECW data. APD COB documentation was also reviewed and compared against the requirements of this paragraph. The monitoring team reviewed an internal memorandum entitled, "Electronic Control Weapons Analysis (CASA paragraph 38), dated October 28, 2016, that was prepared by APD's Quality Assurance Auditor.

#### Results

As noted in previous monitoring reports, Paragraph 38 stipulates that APD conduct several types of analyses to determine the level of ECW use over time, the rate of suspect and officer injuries in relation to the rate of ECW use, and the effect of ECW “painting and arcing” on compliance rates. The type of analytical capabilities to perform such assessments

require specific skill sets and training. While statistical computations may be possible, the analytic assessment of the data (i.e. determining what the data mean) requires an expertise in data analysis. As we noted in IMR – 4, we believe there are APD personnel capable of doing the required analysis with appropriate direction, training, and expert support. However, because of the type of assessments being conducted, the mere use of statistics, without a deeper review of the individual circumstances behind the use of an ECW during an event, will likely not reveal meaningful information that the organization can act upon.

We have previously reported the lack of credibility of APD’s use and show of force data, and that relying on that data for purposes of determining CASA compliance will not be possible until such time that the department expends its full effort toward greater accountability in its reporting of use of force. The monitoring team reviewed a total of ten (10) ECW uses of force for this reporting period. We found that two of the events reported as ECW cases did not actually include the use of an ECW against a person. It is unclear how that type of discrepancy would be routinely identified and/or resolved based on the scope of analysis we were provided.

The collection of data is important, but what the data tell APD is equally critical to APD’s success. Our review of the memorandum provided, outlining APD’s proposed methodology, suggests that it is not likely that the proposed changes will produce a system that will meet the requirements of this paragraph. Finally, with the components of APD’s EIRS still unresolved in both policy and practice, this paragraph remains not in compliance. During our next site visit, and in interim discussions, we will discuss APD’s progress toward meeting the requirements of this paragraph and any methodologies they construct.

Table 4.7.25

Reporting Period No.	# ECWs Assigned	ECW Uses/Mo	Use Data in EIRS	Analysis of ECW Effect on Force Rate	Impact of ECW on Injuries	Track Painting & Arcing	ECW Use in Annual Report
IMR-5	No	No	No	No	No	No	No

Primary: In Compliance  
 Secondary: Not In Compliance  
 Operational: Not In Compliance

**Recommendation 4.7.25a: APD should either commission externally or complete internally a focused, thoughtful and meaningful**

**“Completed Staff Work” document analyzing this problem and submit it to the Chief of Police for review, assessment and action.**<sup>30</sup>

#### 4.7.26 Assessing Compliance with Paragraph 39: Crowd Control Policies

Paragraph 39 stipulates:

**“APD shall maintain crowd control and incident management policies that comply with applicable law and best practices. At a minimum, the incident management policies shall:**

- a) **define APD’s mission during mass demonstrations, civil disturbances, or other crowded (sic) situations;**
- b) **encourage the peaceful and lawful gathering of individuals and include strategies for crowd containment, crowd redirecting, and planned responses;**
- c) **require the use of crowd control techniques that safeguard the fundamental rights of individuals who gather or speak out legally; and**
- d) **continue to prohibit the use of canines for crowd control.”**

#### Methodology

APD SOP 1-46 Emergency Response Team (ERT) was approved by the monitor and DOJ on May 12, 2016, bringing the Department into primary compliance on the requirements in Paragraph 39. Although a brief block of instruction was provided in the 40-hour Use of Force Curriculum, that was based upon a single-page directive (this appeared to be a Field Services Bureau (FSB) SOP) that was outdated and extremely limited in content. We noted in IMR-3 that the single-page directive was superseded by a more extensive FSB dated March 10, 2016, which also met all of the requirements in Paragraph 39. The ERT SOP has been retitled as *Response to First Amendment Assemblies* and was approved by the monitor on May 23, 2016. We note here the need for supplemental training based upon the approved, more extensive FSB policy in our review of the 40-hour Use of Force Curriculum later in this report. *Incidents occurring after the policy was approved, related to a political rally in Albuquerque, seem to mitigate forcefully for specific, well-planned, effective training on that policy.*

#### Results

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<sup>30</sup> The monitor has previously provided APD with nationally accepted formats and “product” for these CSW projects, so that they can be familiar with expectations of such documents. We recommend a format similar to the one the monitor provided APD from the Tyler, Texas Police Department. *We see it as entirely conceivable that individuals from APD command and staff levels may need external training on this process, which they should contract for with reputable outside consultants and trainers.*



The Albuquerque Journal reported in an article on August 15, 2016, that APD's Critical Incident Review Team (CIRT) would be conducting a review of the May 24, 2016 Trump Rally demonstration that "spun out of control", leading to a complaint from the Albuquerque Police Officers Association (APOA) that officers were not properly equipped and that the Department mishandled the demonstration. The monitoring team agrees strongly that a formal review is imperative in view of apparent failures and the need to extract every lesson that the Department can glean from the experience. However, we question whether CIRT is the appropriate body to conduct such a review, in light of the high level of incident command knowledge, skills, and experience required. We are also aware of conflicting claims made by key officials in the riot's aftermath that might warrant an independent review to accommodate those differences fairly. It may well be, given the complex nature of the event in question and the police response, that external "peer review" of the incident is the appropriate way to handle these issues.

The Trump Rally incident underscores the fact that well-conceived and well-written policies are not self-executing. The breakdowns that have been implicated appear to have occurred at multiple levels of responsibility and raise serious questions about APD's ability to translate high-level doctrine into effective street-level practice in the case of volatile civil protests. The breakdowns also are a prime example of how a cascade of low-level failures can escalate rapidly, placing officers at risk and necessitating the use of significant force to regain control. Weaknesses in pre-event preparation and incident command shortfalls<sup>31</sup>, in the monitoring team's judgment, will surface quickly as major contributing factors in APD's failed response.

The monitoring team did review an internal After-Action Review of the Trump Rally/Protest prepared by an ERT Lieutenant, which, as with many APD documents, is undated, and thus unusable as a true "course of business" document. The report is a reasonable effort, but appears written solely from the perspective of the APD Lieutenant. There is no section explaining the report's methodology, no listing of the participants who provided input on its content, and no specifics regarding key decisions and the responsible decision-makers. Based upon our review, we highlight a number of significant points.

- The pre-event planning, consisting of several meetings two days before the event, did involve representatives from both local and Federal agencies, but did not apparently include the NMSP.

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<sup>31</sup> Standard questions would focus on the nature and extent of any pre-event planning, the experience levels of the assigned commanders, incident command structure, clarification of roles, rules of engagement, equipment, operational intelligence, and the level of interagency coordination before, during, and after the event.



- The After-Action Report (AAR) notes that BCSO agreed to provide their ERT to assist as “an immediate action team”, which proved to be a highly consequential point of confusion in the midst of the protest.
- APD Executive and Command Staff conducted a walkthrough prior to the event and were provided copies of the action plan for the event (commonly termed an Operations Plan). The creation of a “free speech zone” was discussed and barricades were ordered to restrict protesters to the designated area.
- Lastly, a pre-deployment briefing with assigned supervisors was held and the rules of engagement for the event were covered. An overall briefing involving all assigned units was held on the afternoon of the event. APD assigned units were fully in place by 1400 hours for an event that was officially to begin at 1600 hours.
- It is obvious from the event chronology in the report that the protest immediately took on a dynamic feature that called for constant adjustments by on-scene officers and incident command.
- At one point, the ERT Lieutenant linked up with the protest organizer<sup>32</sup> and she assisted in moving protesters to the designated free speech zone. This is a critical aspect of effective protest management and without question a “best practice” in the discipline.
- As the protest grew and became unruly, the ERT Lieutenant asked BCSO ERT to deploy in support of APD’s efforts to control the protesters at the front of the Convention Center. The BCSO ERT Lieutenant advised him that he was under orders to deploy only as a “cut team to address protester devices”. A BCSO Captain affirmed the Lieutenant’s understanding. Shortly thereafter, protesters surged from the protest zone, jumped the barricades in place, and rushed the front doors of the Convention Center.
- From the number of protesters described in the report, this did not appear to be an unusually large group with which to contend. However, contemporary protest is far different than what police have dealt with historically. The ratio of officers to protesters appears fairly high. The challenge, however, is to discriminate between relatively small groups of aggressive protesters---highly mobile, linked by lightning-quick social media, and adhering to well scripted “operational tactics”<sup>33</sup>--- imbedded in

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<sup>32</sup> Experience has shown that more aggressive, unaligned protesters embed themselves within larger, usually peaceful groups, from which they engage in hit-and-run tactics and shield themselves from police efforts to control them. Linked by social media, these small groups or individuals possess the ability to change locations and tactics instantaneously.

<sup>33</sup> These tactics often are both planned and emergent.

a body of peaceful protesters. These challenges demand that the police response feature both static and mobile elements, along with an incident command process that tracks contingencies in real time, adjusts quickly to them, and often anticipates the trajectory of the protest.

- Staffing decisions diverted trained ERT officers from front-line assignments and placed them in “softer” internal security roles. As a result, they did not have ready access to protective equipment that had been left at another, distant location. This made it difficult to transition quickly to crowd control duties and left them unprotected from foreseeable risks from projectiles thrown by the demonstrators. The lack of gas masks also precluded the use of gas munitions to control the most aggressive portions of the crowd. Proper crowd control tactics were difficult to implement because of ERT’s degraded staffing and the intermixture of ERT and non-ERT officers.
- The operations command post appeared to have been sited in an unsuitable location and functioned poorly during the event.

We repeat that the ERT Lieutenant’s AAR was a reasonable effort and attempted to cover numerous critical issues. It remains, however, a single-source perspective on a multi-agency, rapidly unfolding, complex event that was tense, stressful, uncertain, and, at times, dangerous. The problems experienced were not novel; rather they have reappeared time and time again as policing attempts to cope with increasingly sophisticated and aggressive protest elements while protecting the rights of persons to assemble and engage in free speech. They do, however, demand capable, adaptive incident commanders who understand the dynamics of contemporary protest movements. APD’s current policies on after-action critiques of responses to Civil Disorder appear to need substantial review and revision, particularly where they deal with multi-agency responses and organized civil unrest. APD will not be in Secondary Compliance or Operational Compliance on the requirements in Paragraph 39 until a full review of the Trump Rally response is completed and appropriate actions are taken, including incident command training, to improve its capabilities to plan for, manage, and extract important lessons from each experience. Any remediation should include authentic, scenario-based incident command exercises that stress advance planning and preparation, command post operations, and large-scale tactical maneuvering to respond to dynamic aspects of modern-day protests while operating within Constitutional bounds.

## Results

See Table 4.7.26 below.

Table 4.7.26

Topic	Yes	No	Comment
1. Define Mission Statement	1		Achieved in policy 1-46
2. Encourage Peaceful & Lawful Gatherings	1		Achieved in policy 1-46
3. Safeguard Fundamental Rights	1		Achieved in policy 1-46
4. Prohibit Canines for Crowd Control	1		Achieved in policy 1-46
5. "Train" the Policy	0	1	We are <b>unaware</b> of salient, acceptable training product related to SOP 1-46
6. After-action Event Assessments		1 <sup>34,35</sup>	
7. After-action upgrades and revisions to policy and training	0 <sup>36</sup>	1	
8. After-action modifications to practice based on event assessments, policy revisions and training	0 <sup>3</sup>	1	
N, %=Y/N	.50	.50	

Primary: In Compliance  
Secondary: Not In Compliance  
Operational: Not In Compliance

***Recommendation 4.7.26a: APD should complete a multi-agency (including Rio Rancho PD, BCSO, and NMSP participants) review and assessment of the incidents surrounding the Trump rally, focusing on policy guidance for after-action event assessments, after-action upgrades to policy, training, and multi-agency responses, and develop policy that is responsive to partner-agency concerns guiding after-action reviews, assessments, and revisions to existing policy. That policy should be submitted to partner agencies for review and comment, and changes made to accommodate partner agency concerns (or explain why changes were not made).***

#### 4.7.27 Assessing Compliance with Paragraph 40: After-Action Reviews

Paragraph 40 stipulates:

<sup>34</sup> According to APD, this event has been assigned to CIRT for review and comment. We question whether CIRT is the appropriate body to conduct such a review, in light of the high level of incident command knowledge, skills, and experience required, and in light of specific issues we know have been raised by command-levels of agencies that supported APD in this incident.

<sup>35</sup> Given that this was a multi-agency response, it would appear to the monitor that a multi-agency "assessment" would be necessary, including BCSO, RRPD, and NMSP.

<sup>36</sup> We are aware of no multi-agency assessment as outlined in "2" above, nor are we aware of any after-action upgrades to departmental capacity for response to civil demonstrations in the form of revised policy, improved Multi-Agency response planning, or incident evaluation-assessment-critique-practice modification.

**“APD shall require an after-action review of law enforcement activities following each response to mass demonstrations, civil disturbances, or other crowded situations to ensure compliance with applicable laws, best practices, and APD policies and procedures.”**

## Methodology

Although APD was found in Primary Compliance in IMR-2 on the requirement to conduct after-action reviews for any response to public protests, no events had occurred until the May 2016 Trump Rally. Hence, the monitoring team had no prior opportunities to assess compliance with this provision in practice.

## Results

It is our understanding that the Critical Incident Review Team (CIRT) has been tasked with conducting a comprehensive after-action review of the May 24, 2016 event and the police response. We have several major concerns regarding tasking CIRT with this review. First, from our contacts and selected reviews of CIRT reports, the monitoring team believes that CIRT detectives do not possess the requisite knowledge, skills, and command-level perspectives required to conduct such a complex, multi-factorial, multi-agency review. Second, because of conflicting claims about the police response and its management among the four agencies involved that evening, an independent inquiry that accommodates all of the agencies inputs fairly and objectively is essential.<sup>37</sup>

APD will achieve Secondary and Operational Compliance only on the requirements in Paragraph 40 when it demonstrates that it has in place standardized procedures to conduct objective, thorough reviews of protest events and the police response to each, and appropriate training incorporating that policy. Consequently, the Trump Rally-Riot review will serve as a major test of APD’s capability to rigorously assess its performance in managing civil protests---especially with respect to certain critical functions like pre-event planning, incident command, crowd control tactics, command post operations, and inter-agency coordination. Painfully obvious in its absence, currently, is any solicited input by APD from its partner law enforcement agencies in the Trump rally response: Rio Rancho, PD; BCSO; and NMSP.

Primary: In Compliance  
Secondary: Not In Compliance  
Operational: Not In Compliance

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<sup>37</sup> The appearance (and reality) of independence and neutrality is of fundamental importance to such reviews.

***Recommendation 4.7.27a: APD should complete a multi-agency review and assessment of the incidents surrounding the Trump rally, focusing on policy guidance for after-action event assessments, after-action upgrades to policy, training, and multi-agency responses, and develop policy that is responsive to partner-agency concerns guiding after-action reviews, assessments, and revisions to existing policy. That policy should be submitted to partner agencies for review and comment, and changes made to accommodate partner agency concerns (or explain why changes were not made).***

#### 4.7.28 Assessing Compliance with Paragraph 41-59: Supervisory Review of Use of Force Reporting (Overview)

The series of related Paragraphs 41 through 59 encompasses requirements for reporting, classifying, and investigating uses of force that require a supervisory-level response based upon the type and extent of force used. Over the course of our engagement with APD, our reviews have revealed serious deficiencies in the oversight and accountability process, particularly with respect to supervisory-level investigations and chain of command reviews, which we reported on in IMR-2, IMR-3, IMR-4, as well as in a Special Report that was first provided to APD on August 19, 2016.

The CASA breaks this larger group of paragraphs down into three separate sub-groups: Use of Force Reporting, Paragraphs 41-45; Force Investigations, Paragraphs 46-49; and Supervisory Force Investigations, Paragraphs 50-59. The monitoring team requested the data set for supervisory level use of force cases that were reported between August 1, 2016 and December 31, 2016, to conduct a comprehensive review of a sample of those cases. The purpose was to assess the quality of force reporting and supervisory force investigations in the field that occurred after APD's 2016 use of force training.<sup>38</sup> The review and results of those cases serves as a baseline for future determinations of APD operational compliance.<sup>39</sup> The data set we were provided included sixty-five (65) separate and distinct case numbers for reported uses of force, though many of the cases involved more than one type of force (i.e. An ECW deployment with some type of additional physical force) and perhaps more than one officer. The monitoring team decided to conduct a comprehensive review of all ECW cases that were reported between August and December 2016. In addition, we chose a random sample of six (6) additional supervisory use of force investigations that were conducted during that same timeframe. We note, that of the 16 cases reviewed by the monitoring team several included more than one type of force

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<sup>38</sup> The monitoring team notes that these cases principally occur in the various area commands and represent the highest number of force reports by APD.

<sup>39</sup> We note that the decision to review the use of force cases was done to provide APD with feedback on the quality of compliance the monitoring team has seen in relation to several CASA paragraphs, while they continue to resolve training gaps we have previously identified.

that we could assess. It is also important to point out that following our review of the 10 ECW cases we found that two were improperly reported as such [IMR-5-011 and IMR-5-012]. Those cases, instead, involved a type of force different than an ECW deployment. Likewise, we found one case that was reported as an ECW deployment that had three additional uses of force that went unreported by APD [IMR-5-008].

As noted elsewhere in this report, there are lingering training issues that need to be resolved before APD can achieve Secondary Compliance in the following paragraphs. The purpose of our reviews was to provide a snapshot of the current compliance rates at the operational level, notwithstanding the fact that APD cannot reach Operational Compliance until they first achieve Secondary Compliance. When interpreting the tables in the following paragraphs consider that there were common issues we encountered during our reviews. Often, something missed in one area had a direct impact on compliance in several other paragraphs. For example, when a front-line supervisor fails to conduct a canvass of the area surrounding a use of force --- and that failure is neither documented satisfactorily or addressed at the multiple levels within the chain of command --- that failure also had an impact on compliance with paragraphs concerned with chain of command reviews. That said, it is important to note that the monitoring team has seen an increase in quality during chain of command reviews as compared to previous monitoring periods. We have seen instances where legitimate "added value" is occurring as a use of force investigation moved through the chain of command. The lack of legitimate oversight at the command levels was something we have written about extensively, therefore, we wanted to acknowledge here that an increase in quality was evident while reviewing the cases in this data set. Because we reviewed use of force reports from multiple locations throughout the city, the evidence of good work being done was seen in more than one Area Command. Also, we noted certain lieutenants and commanders that did particularly good work and deserve recognition. The monitoring team will be sure to address those commanders during the next site visit. A couple of positive examples worth highlighting:

- In one case the monitoring team was highly impressed with the engagement by a lieutenant and the commander, where they identified specific performance deficiencies on the part of a sergeant who investigated a use of force. Although they did not identify all the issues that may have existed with the case, they did recognize that the sergeant was having difficulty identifying the proper factors to evaluate a force event against, and that the underlying justification an officer provided for an arrest was incorrect (The officer focused on the fact he was dealing with a stolen vehicle that was unknown to him until after the force was used). In that case, the combined added value that the



lieutenant and commander provided is exactly what the monitoring team has been opining about since our engagement with APD began. While there were areas of concern in the investigation that were not addressed, which took some paragraphs out of compliance, this should not diminish the quality of engagement by the lieutenant and commander. Also of note was the fact that the lieutenant recognized that the quality of the interviews conducted by the sergeant were deficient. We agree, and appreciate that this fact was brought to the sergeant's attention through counseling.

- In another case, there was an excellent review of a use of force where the chain of command identified specific tactical and training needs for an officer and benchmarked their review against 2 separate APD SOP's (Handling persons with mental health problems and UOF).
- Within the chain reviews it appears (through the Blue Team system) that there is routine back-and-forth between supervisors, officers and command level personnel. However, we note, that most frequently we saw comments like "see me" and "corrections made" which tell us and APD management as well, little about issues that may have been identified through the chain that would be good to highlight and refer to the training academy. APD could be confining their comments for convenience or expediency, or because they see the back and forth of reports as an unapproved, internal work product. That said, in most instances, the monitoring team, nor in all probability, APD command, cannot readily evaluate the quality of the oversight (in this area) based on the information available through current reporting and assessment systems at APD.<sup>40</sup>

We also saw better structure and content within the reviews as force cases moved through the chain of command. Supervisors were separating their reports into sections that made reviews much more meaningful and easier to evaluate. While many of the reviews are incorporating the specific language within the CASA, there are still variations among the cases that we reviewed. In reports we reviewed, APD investigators and command personnel commonly submitted force reviews in a "bond paper" format, as opposed to an official APD review form, and those reviews went unsigned and at times unattributed to a particular supervisor. The monitoring team, at times, had to guess who completed the review because the electronic file had been labeled, as

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<sup>40</sup> We requested COB documentation that captured the audit of such movement of cases through the chain of command, but did not receive such information in response. There was an effort to provide the monitoring team access to Blue Team to conduct our own queries, which would have been helpful, but due to IT issues the connection could not be established in time for this report. Nonetheless, APD should understand that this is an APD responsibility, and it cannot be shunted to the monitoring team.



“Sergeant Review”.<sup>41</sup> That said, we are hopeful that the training course that was provided in December 2016, “Standardizing Use of Force Investigations”, that included the distribution of checklists, will positively impact the standardization of investigations across the organization. It is unfortunate that incorporating these checklists took so long, when the monitoring team has been recommending them since June of 2015.

Some general, but common, issues we observed had an impact on compliance with various paragraphs and included:

- A significant issue is the manner supervisors approach suspects to get statements concerning the use of force. We saw witnesses and suspects being asked questions concerning an underlying event, but not specific questions concerning the use of force and whether the actions (in the opinion of the witness) was appropriate. We also saw a situation (that was particularly troubling) where, in our opinion, the supervisor’s approach and demeanor toward the suspect would not reasonably lead to the suspect providing a statement concerning the use of force. The suspect articulated on two separate occasions (that we saw) that he didn’t know what was going on when the supervisor read him his Miranda warnings.<sup>42</sup> The supervisor took a hardline position that he was not going to answer any questions (posed by the suspect) until the suspect waived his rights. The sergeant’s demeanor and hardline stance had a chilling effect on the ability to get a suspect to provide meaningful information concerning the force that the officers used. Simply explaining the purpose of his presence to the suspect, if he was interested in getting information concerning the force the officers used, may have led to the suspect cooperating.
- We encountered instances where all uses of force within a same event were not reported and investigated as force.
- Canvasses are not being conducted and/or properly reported.
- Failure by supervisors to rigorously investigate a case, including locating initial callers/victims/witnesses.
- Failures to document contact information for witnesses or victims.
- We saw instances where the focus of an investigation was on an ECW deployment and there was a failure to document physical force in the same event.
- We found two cases that were reported as ECW deployments that were not ECW cases.
- Failures to address how an officer conducted the initial contact and how that may have contributed to the need to use force.

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<sup>41</sup> Those same reports didn’t have a name listed in the document.

<sup>42</sup> The suspect clearly understood he had been arrested. While he may have been feigning confusion, this does not alleviate the supervisor’s responsibility to make legitimate efforts to obtain a statement.

- Failure to address tactical issues in a timely manner. In one case, a specific officer failed to properly control a situation by separating a suspect from potential victims/witnesses. The issue was addressed at a roll call nearly 3 months after the event (The fact that APD decided to address the issue at a roll call is not inappropriate). However, the records we reviewed failed to show that all of the specific officers with the identified performance deficiency were ever personally counseled or trained. In the same event, the officer lost control of the suspect and then lost sight of him. That loss of control of the situation was a contributing factor to him ultimately resorting to an ECW deployment.
- Some information in reports was not consistent with the videos we reviewed, for instance, in one case the officer documented that he asked to pat a suspect down, when in fact he told the suspect he was going to pat him down. This same officer did not identify what his RAS was to believe that the suspect was armed with a weapon.<sup>43</sup>
- Sergeants indicating that de-escalation tactics were used by an officer, but failing to adequately articulate what those tactics *were*.
- Supervisors failing to collect handwritten statements, or encourage victims or witnesses to provide handwritten statements.
- Specific determinations of preponderance of evidence or credibility were not made.
- The “bond paper” approach to reviews continued to be problematic in some instances. Reports are not signed by chain of command personnel and then saved as documents. They are sometimes unattributed to specific sergeants, lieutenants or Commanders, leaving it to a reader to decipher who prepared a report since it didn't identify the author.
- Physical use of force on a handcuffed subject is still an issue of concern as is articulating how these uses of force are identified by supervisors.
- There were examples of boilerplate language that were missed or not addressed during the force investigation, and then not addressed in the chain of command reviews.
- Supervisors not addressing officer videos that stop in the middle of conversations.
- Supervisors/officers conducting interviews before the audio turns on.
- A senior officer, not the supervisor, interviewed the officers and witnesses at the scene of a use of force.
- In one case, there was a clearly intoxicated and combative subject that had force used against them. Later in the event, the subject had to be placed in Passive Restraint System when taken from the patrol vehicle for EMS. The officers failed to capture this activity on video, despite the fact it made sense due to the suspect's earlier fighting with the officers.
- In a case involving a highly-intoxicated person, while placing the suspect in the back of the patrol car (while handcuffed) the suspect's face struck the top

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<sup>43</sup> We saw in more than one case that officers fail to properly articulate their RAS for conducting a frisk.

of the door frame and he fell to the ground. The officer should have taken more care after the initial incident, but didn't, and when trying to put the person in the back of the car their face hit the top of the door frame a second time. This was not properly addressed during the chain of command reviews.

- A supervisor failed to look further into, and obtain, copies of an exterior surveillance video that was confirmed to exist by an employee at the establishment of an arrest.
- In one case supervisors at every level failed to adequately reconcile an injury to a suspect's eye against officer actions that were obvious on an officer's lapel video.<sup>44</sup>
- In several cases officers were involved in a use of force before ever talking to people who initially called in the incident.<sup>45</sup>
- Failing to follow up with the original caller.
- Little or no effort trying to identify witnesses.
- A commander indicated that a case was "delayed" due to him being 37 use of force cases behind.
- Requests for extensions to complete cases are the norm. When requests are granted by commanders, we saw no examples where firm deadlines were given. Some cases carried on for many weeks before being completed in Blue Team.
- A supervisor and the chain of command missed a material inconsistency in a report. One officer documented in his report that a suspect (who had resisted arrest and was handcuffed) lunged at the door with his head while being walked outside a business establishment in handcuffs. We saw on a lapel video that the suspect apparently struck the door with his face/head area, and that there was a vocal reaction by the suspect, but it was not identified or addressed by the supervisor or chain of command.<sup>46</sup> That factor and inconsistency among reports was not found and addressed at any level of supervision. We also noted that it is documented in one report but not in the reports of other officers that were in the position to see it.

One issue that the monitoring team encountered is important to note and highlight here. While conducting its case reviews we saw that in each of the use of force cases the investigating supervisor failed to record the

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<sup>44</sup> The officer's actions in the case were not unreasonable, but the chain of command seemed predisposed to attribute an injury to an event that occurred prior to the officers arriving on the scene. At an absolute minimum, the officer's actions had to be addressed and discussed as a possible contributing factor to the injury.

<sup>45</sup> We note that in several instances this was unavoidable. However, in one case the officer's force was reasonable but the underlying reason for his presence was ultimately not pursued by the original caller.

<sup>46</sup> The event itself was obvious to the monitoring team when watching the lapel video of an officer walking behind two officers that were escorting the suspect outside. It is unknown how it could be missed by the chain of command, especially because it was specifically noted in one of the officer's reports.

interviews of the officers involved (to that point in time). Also, that failure was not caught and addressed during subsequent chain of command reviews. As expected, those failures had an impact on multiple paragraphs in terms of compliance. However, while conducting the review of one case, we took note of a comment made by a lieutenant in his review that led us to believe that lapel videos may exist for that case.<sup>47</sup>

The monitoring team decided to reach back out to APD to ensure we had all the lapel videos for each of the force cases we requested. It was at that time we were told that based on legal advice to APD, lapel video statements of officers were being diverted away from the main case file at the IA level. As a consequence, the monitoring team was not provided lapel videos of statements taken by supervisors of officers at scenes where force was used.<sup>48</sup> During our conversation, and in a follow-up email, the monitoring team made APD aware that the failure to have the lapel videos would have an impact on compliance. At the same time APD reportedly directed an email to the city attorney's office for clarification. While the monitoring team was provided the videos for the specific case that we called about, no other lapel videos were ever provided.<sup>49</sup> There are several areas that are impacted by a supervisor not taking a lapel video statement. For instance: We cannot assess the quality of the interview, whether appropriate questions and follow up questions are asked, whether leading or open ended questions are asked or whether individual or group interviews are being conducted with the officers. Likewise, when video statements of officers do not exist, it has an impact on the assessment whether the chain of command ensured a complete and thorough investigation was conducted.

For future reference, the City is hereby put on notice that any failure to provide to the monitoring team legitimately requested information related to compliance issues, absent a clear and convincing legal reason supporting that decision, will result in an automatic non-compliance finding for that paragraph. We consider this an act of deliberate non-compliance.<sup>50</sup>

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<sup>47</sup> The lack of lapel video statements of officers during force investigations has not been uncommon in the past; therefore, the fact that several cases did not have taped officer statements was not surprising to that point.

<sup>48</sup> It is also possible that statements taken of witnesses against the accused officer were diverted away from the main file.

<sup>49</sup> The monitoring team did review one case where the officers' taped statements were supplied.

<sup>50</sup> We note that after the closing date for data for this monitor's report, and after the City had received the monitor's draft report, the City did provide the requested data; however, it was received well past the date that would allow the monitoring team to review the data and incorporate that review into the monitor's report. We express grave concern that such non-responsiveness seriously restricts the monitoring team's access to timely data for preparation of its reports to the Court.

In the following paragraphs the monitoring team provides a tabular computation of compliance. The information in each paragraph provides a snapshot of where APD currently is in terms of performance based on the data set we reviewed.

#### 4.7.28 Assessing Compliance with Paragraph 41: Use of Force Reporting Policy

Paragraph 41 stipulates:

**“APD shall develop and implement a use of force reporting policy and Use of Force Report Form that comply with applicable law and comport with best practices. The use of force reporting policy will require officers to immediately notify their immediate, on-duty supervisor within their chain of command following any use of force, prisoner injury, or allegation of any use of force. Personnel who have knowledge of a use of force by another officer will immediately report the incident to an on-duty supervisor. This reporting requirement also applies to off-duty officers engaged in enforcement action.”**

#### Methodology

The requirements in Paragraph 41 are included in APD’s approved suite of force-related policies. The monitoring team previously reviewed and commented on training materials for a 40-hour Use of Force Curriculum and 24-hour Supervisory Use of Force Investigations Curriculums, which were completed in June 2016. We note that the use of force polices were due for review and revision in December 2016, but APD have not yet completed that review or received monitor approval. Substantive issues need to be resolved with respect to APD policies related to use of force (i.e. Distraction strikes, the definition of neck holds, and show of force procedures) before the policies can be approved. We reviewed training materials APD provided for a course entitled, “Standardizing Use of Force Investigations,” that was designed to introduce standardized checklists for front line supervisor investigations and chain of command reviews. Likewise, APD presented course materials for their 2017 Use of Force Review, which launched on January 24, 2017.<sup>51</sup> We reviewed departmental SO 16-99, dated December 22, 2016, entitled "Mandatory Use of Force Job-Aids" and SO 16-91, dated November 23, 2016, entitled, “Use of Force Video Review”. Based on our review of materials,

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<sup>51</sup> Three training dates were held within this monitoring period, which would result in an insufficient number of attendees to calculate a compliance rate. We note that the training materials were not provided to the monitoring team before it was delivered and an initial review of the materials revealed that some information contained within the program implicate policies that are under review by the parties. We defer a complete review of that training to the next reporting period, until such time that the monitoring team has an opportunity to review video of the training and discuss it with the academy staff.

APD remains in Primary Compliance with respect to this paragraph, and additional work is needed to bring all related use of force training into alignment with the CASA.

## Results

Previously we noted that APD's "blank sheet" approach to report writing lacked the structure commonly used to ensure reporting consistency and completeness in a wide range of settings. While much more work is needed to refine the structure and standardized content of use of force reports, during this reporting period the monitoring team encountered a much better quality of content and analysis on the part of the chain of command. Quality control is difficult and time-consuming for the supervisors and command-level personnel. Based on the progress we have seen and the implementation of checklists, the monitoring team remains hopeful that positive progress will occur. We also note that SO 16-99 made mandatory the use of the job aids (checklists) that were introduced during the "Standardizing Use of Force Investigations" course that was delivered in December 2016.

With respect to SO 16 – 91, APD is reducing the workload burden at the commander level by only requiring that they review "bookmarked" sections of video that was viewed by a first-line supervisor. We are sensitive to the workload that falls upon command level personnel. That said, we have found, and continue to find, during our reviews of cases that only through a complete review of lapel videos can a commander truly be confident that all relevant issues they are responsible to oversee are properly accounted for in their reviews. We have commented in past reports on the importance of reviewing a complete record of lapel videos at the command level as well as with the Force Review Board. By only requiring bookmarked sections to be reviewed, APD's reliance upon frontline and chain of command reviews that occur before the command level will be critically important to their operational compliance. *We caution APD that this could ultimately impact them in the future and see this as something essential for them to regularly assess and consider fully as they move forward.*

During past reporting periods, the monitoring team conducted in-depth reviews of APD use of force cases that involved various types of force. The results of those case reviews were communicated to APD for consideration as they continued to implement new policy provisions through training and operational oversight. We provide the following assessment of their compliance for Paragraph 41 for their consideration as they continue to assess field performance and refine reporting, investigation and oversight of use of force events. Results for this paragraph are reported in the table below.



Table 4.7.28

Case Number	Officers immediately notified supervisors following UOF, prisoner injury or allegation of UOF	Each officer reported knowledge of a UOF to an on-duty supervisor	# In Compliance	% In Compliance	In Compliance
IMR-5-001	1	1	2	100%	Y
IMR-5-002	1	1	2	100%	Y
IMR-5-003	1	1	2	100%	Y
IMR-5-004	1	1	2	100%	Y
IMR-5-005	1	1	2	100%	Y
IMR-5-006	1	1	2	100%	Y
IMR-5-007	0	0	0	0%	N
IMR-5-008	0	0	0	0%	N
IMR-5-009	1	1	2	100%	Y
IMR-5-013	1	0	1	50%	N
IMR-5-015	1	1	2	100%	Y
IMR-5-030	1	1	2	100%	Y
IMR-5-031	1	1	2	100%	Y
IMR-5-010	0	0	0	0%	N
IMR-5-012	1	1	2	100%	Y
IMR-5-011	1	1	2	100%	Y
				% in Compliance	75%

Primary: In Compliance  
 Secondary: Not In Compliance  
 Operational: Not In Compliance

***Recommendation 4.7.28a: Ensure that all lapel video is viewed at some point by trained and effective review staff, and that any noted “policy outliers” are noted, in writing, and forwarded up the chain of command.***

***Recommendation 4.7.28b: Ensure that Area Commanders consider and track these “policy outliers” as part of their command oversight function, e.g., increasing “review rates,” increasing supervisory field contacts with triggered personnel, increasing report review and assessment frequency for triggered personnel, assigning remedial training, ordering increased review frequencies, etc.***

#### 4.7.29 Assessing Compliance with Paragraph 42: Force Reporting Policy

Paragraph 42 stipulates:

**“The use of force reporting policy shall require all officers to provide a written or recorded use of force narrative of the facts leading to the use of force to the supervisor conducting the investigation. The written or recorded narrative will include: (a) a detailed account of the incident from the officer’s perspective; (b) the reason for the initial police presence; (c) a specific description of the acts that led to the use of force, including the subject’s behavior; (d) the level of resistance encountered; and (e) a description of each type of force used and justification for each use of force. Officers shall not merely use boilerplate or conclusory language but must include specific facts and circumstances that led to the use of force.”**



## Methodology

The requirements in Paragraph 42 are included in APD's approved suite of force-related policies. The monitoring team previously reviewed and commented on training materials for a 40-hour Use of Force Curriculum and 24-hour Supervisory Use of Force Investigations Curriculums, which were completed in June 2016. We note that the use of force policies were due for review and revision in December 2016, but APD have not yet completed that review or received monitor approval. Substantive issues need to be resolved with respect to APD policies related to use of force (i.e. Distraction strikes, the definition of neck holds, and show of force procedures) before the policies can be approved. Based on our review of materials, APD remains in Primary (policy) Compliance with respect to this paragraph, and additional work is needed to bring all related use of force training into alignment with the CASA.

## Results:

The requirements in Paragraph 42 are included in APD's approved suite of force-related policies that remain under review and are pending approval. During past reporting periods, the monitoring team conducted in-depth reviews of APD use of force cases that involved the various types of force. The results of those case reviews were communicated to APD for consideration as they continued to implement new policy provisions through training and operational oversight.

Tabular results for this paragraph are depicted on Table 4.7.29 which is included on the following page.

Table 4.7.29

Case Number	All officers provided a written or recorded UOF narrative to supervisor	Narrative included detailed account	Narrative included reason for initial police presence	Narrative Included specific description of acts that led to UOF	Narrative Included level of resistance encountered	Narrative included description and justification of each UOF	Officers did not use boilerplate or conclusory language	# In Compliance	% In Compliance	In Compliance
IMR-5-001	1	1	1	1	1	0	1	6	86%	N
IMR-5-002	1	0	1	1	1	1	1	6	86%	N
IMR-5-003	1	0	1	0	0	0	0	2	29%	N
IMR-5-004	1	1	1	1	1	1	1	7	100%	Y
IMR-5-005	1	1	1	1	1	1	1	7	100%	Y
IMR-5-006	1	1	1	1	1	0	1	6	86%	N
IMR-5-007	0	0	1	0	1	0	0	2	29%	N
IMR-5-008	0	0	1	0	1	0	0	2	29%	N
IMR-5-009	1	0	1	1	1	1	0	5	71%	N
IMR-5-013	0	0	1	0	1	0	0	2	29%	N
IMR-5-015	1	1	1	1	1	1	1	7	100%	Y
IMR-5-030	1	1	1	1	1	1	1	7	100%	Y
IMR-5-031	1	0	1	1	1	1	0	5	71%	N
IMR-5-010	0	1	1	0	1	0	1	4	57%	N
IMR-5-012	1	1	1	1	1	1	1	7	100%	Y
IMR-5-011	1	1	1	1	1	1	1	7	100%	Y
									% in Compliance	38%

Primary: In Compliance  
 Secondary: Not In Compliance  
 Operational: Not In Compliance

**Recommendation 4.7.29a: Prioritize the most frequent and most serious use of force “misses,” and develop a response plan, using the Completed Staff Work model, and present the results to the Chief of Police for review, comment, and action.**

**Recommendation 4.7.29b: Continue these prioritized reviews until the error rate drops below five percent.**

4.7.30 Assessing Compliance with Paragraph 43: Reporting Use of Force Injuries

Paragraph 43 stipulates:

**“Failure to report a use of force or prisoner injury by an APD officer shall subject officers to disciplinary action.”**

Methodology

The requirements in Paragraph 43 are included in APD’s approved suite of force-related policies. The monitoring team previously reviewed and

commented on training materials for a 40-hour Use of Force Curriculum and 24-hour Supervisory Use of Force Investigations Curriculums, which were completed in June 2016. We note that the use of force policies were due for review and revision in December 2016, but APD have not yet completed that review or received monitor approval. Substantive issues need to be resolved with respect to APD policies related to use of force (i.e. Distraction strikes, the definition of neck holds, and procedures) before the policies can be approved. Based on our review of materials, APD remains in Primary Compliance with respect to this paragraph; however, APD needs to consider and respond to the issues identified in the paragraph as it works to revise its use of force policies (a process currently under way) as noted above, additional work is needed to bring all related use of force training into alignment with the CASA.

## Results

The requirements in Paragraph 43 are included in APD's approved suite of force-related policies that remain under review and are pending approval. During past reporting periods, the monitoring team conducted in-depth reviews of APD use of force cases that involved the various types of force. The results of those case reviews were communicated to APD for consideration as they continued to implement new policy provisions through training and operational oversight. We provide the following assessment of their compliance for Paragraph 43 for their consideration as they continue to evaluate field performance and refine reporting, investigation and oversight of use of force events. Specific results for this paragraph are included in Table 4.7.30, below, and indicate that APD is not in compliance with the requirements of this paragraph, scoring 75% on a function that requires 95% performance for compliance.

Table 4.7.30

Case Number	Appropriately reported a UOF or prisoner injury	# In Compliance	% In Compliance	In Compliance
IMR-5-001	1	1	100%	Y
IMR-5-002	1	1	100%	Y
IMR-5-003	1	1	100%	Y
IMR-5-004	1	1	100%	Y
IMR-5-005	1	1	100%	Y
IMR-5-006	1	1	100%	Y
IMR-5-007	0	0	0%	N
IMR-5-008	0	0	0%	N
IMR-5-009	1	1	100%	Y
IMR-5-013	0	0	0	N
IMR-5-015	1	1	100%	Y
IMR-5-030	1	1	100%	Y
IMR-5-031	1	1	100%	Y
IMR-5-010	0	0	0%	N
IMR-5-012	1	1	100%	Y
IMR-5-011	1	1	100%	Y
			% in Compliance	75%

Primary: In Compliance  
 Secondary: Not In Compliance  
 Operational: Not In Compliance

***Recommendation 4.77.30a: Identify, in routine monthly reports, officers who failed to report, or incompletely reported, a given Use of Force, and supervisors who missed that failure, and provide appropriate progressive discipline to the officers, supervisors, and commanders.***

***Recommendation 4.77.30b: Reports responsive to this recommendation should be compiled as part of APD's CASA-required reports, along with a listing of corrective responses required by APD.***

#### 4.7.31 Assessing Compliance with Paragraph 44: Medical Services and Force Injuries

Paragraph 44 stipulates:

**“APD policy shall require officers to request medical services immediately when an individual is injured or complains of injury following a use of force. The policy shall also require officers who transport a civilian to a medical facility for treatment to take the safest and most direct route to the medical facility. The policy shall further require that officers notify the communications command center of the starting and ending mileage on the transporting vehicle.”**

#### Methodology

The requirements in Paragraph 44 are included in APD's approved suite of force-related policies. The monitoring team previously reviewed and commented on training materials for a 40-hour Use of Force Curriculum and 24-hour Supervisory Use of Force Investigations Curriculums, which were completed in June 2016. We note that the use of force policies were due for review and revision in December 2016, but APD have not yet completed that review or received monitor approval. Substantive issues need to be resolved with respect to APD policies related to use of force (i.e. Distraction strikes, the definition of neck holds, and procedures) before the policies can be approved. Based on our review of materials, APD remains in Primary Compliance with respect to this paragraph, and additional work is needed to bring all related use of force training into alignment with the CASA.

#### Results

The requirements in Paragraph 44 are included in APD's approved suite of force-related policies that remain under review and are pending approval. During past reporting periods, the monitoring team conducted in-depth reviews of APD use of force cases that involved the various types of force. The results of those case reviews were communicated to APD

for consideration as they continued to implement new policy provisions through training and operational oversight. We provide the following assessment of APD compliance for Paragraph 44 for their consideration as they continue to evaluate field performance and refine reporting, investigation and oversight of use of force events. Generally, the many case reviews we've conducted in the past year have revealed that APD officers are diligent in addressing medical needs of people they arrest or who are subject to force during an arrest.

Results for this paragraph are reported in Table 4.7.31, below. The table shows APD not in compliance with this paragraph.

Table 4.7.31

Case Number	Officers requested medical attention for a subject injured or complaining of injury	Officers transported person to medical facility took most direct route. Provide starting and ending mileage	Officer (s) provided starting and ending mileage	# In Compliance	% In Compliance	In Compliance
IMR-5-001	1	N/A	N/A	1	100%	Y
IMR-5-002	1	N/A	N/A	1	100%	Y
IMR-5-003	1	N/A	N/A	1	100%	Y
IMR-5-004	1	N/A	N/A	1	100%	Y
IMR-5-005	1	N/A	N/A	1	100%	Y
IMR-5-006	1	N/A	N/A	1	100%	Y
IMR-5-007	1	N/A	N/A	1	100%	Y
IMR-5-008	1	N/A	N/A	1	100%	Y
IMR-5-009	N/A	N/A	N/A	N/A	N/A	N/A
IMR-5-013	N/A	N/A	N/A	N/A	N/A	N/A
IMR-5-015	1	N/A	N/A	1	100%	Y
IMR-5-030	1	0	0	1	50%	N
IMR-5-031	1	N/A	N/A	1	100%	Y
IMR-5-010	1	N/A	N/A	1	100%	Y
IMR-5-012	N/A	N/A	N/A	N/A	N/A	N/A
IMR-5-011	1	N/A	N/A	1	100%	Y
					% in Compliance	92%

Primary: In Compliance  
 Secondary: Not In Compliance  
 Operational: Not In Compliance

***Recommendation 4.7.31a: Compliance statistics are near full compliance, and outliers appear to be unusual, which would mitigate for counseling of the individual officers(s) involved, rather than full-scale organizational or unit interventions.***

#### 4.7.32 Assessing Compliance with Paragraph 45: OBRD Recording Regimens

**“APD shall require officers to activate on-body recording systems and record all use of force encounters. Consistent with Paragraph 228 below, officers who do not record use of force encounters shall be subject to discipline, up to and including termination.”**

#### Methodology

Members of the monitoring team reviewed SOP 1-39 Use of On-Body Recording Devices, and subjected it to best established-practices in the field, and to the requirements stipulated in the CASA. The monitoring team provided extensive technical assistance to APD to guide development of policies that would meet the provisions of the CASA. Results for this paragraph are reported in Table 4.7.32, below, and show APD not in compliance with this task.

## Results

Table 4.7.32

Case Number	All officers involved in the UOF activated body cameras		# In Compliance	% In Compliance	In Compliance
IMR-5-001	1	N/A	1	100%	Y
IMR-5-002	1	N/A	1	100%	Y
IMR-5-003	1	N/A	1	100%	Y
IMR-5-004	0	1	1	50%	N
IMR-5-005	1	N/A	1	100%	Y
IMR-5-006	1	N/A	1	100%	Y
IMR-5-007	1	N/A	1	100%	Y
IMR-5-008	1	N/A	1	100%	Y
IMR-5-009	0	1	1	50%	N
IMR-5-013	1	N/A	1	100%	Y
IMR-5-015	1	N/A	1	100%	Y
IMR-5-030	1	N/A	1	100%	Y
IMR-5-031	1	N/A	1	100%	Y
IMR-5-010	0	1	1	50%	N
IMR-5-012	1	N/A	1	100%	Y
IMR-5-011	1	N/A	1	100%	Y
				% in Compliance	81%

Primary: In Compliance  
 Secondary: Not In Compliance  
 Operational: Not In Compliance

**Recommendation 4.7.32a:** *Assess available data to determine if failure to activate occurs among specific units or shifts etc. and, if so, “retrain” those units and shifts’ supervisory and command personnel in the requirements of this paragraph. If not, “retrain” the specific officers involved, and their supervisory and command personnel regarding the requirements of this paragraph. Document all remedial training by unit, individual officer, supervisor, or command officer, date and issue. Review these data quarterly to identify needed further intervention if necessary.*

**Recommendation 4.7.32b:** *Develop policy changes to APD’s use of force policy that address distraction strikes, neck holds, and shows of force and include these topics in follow-up training to all personnel.*

### 4.7.33 Compliance with Paragraph 46: Force Investigations

Paragraph 46 stipulates:

**“All uses of force by APD shall be subject to supervisory force investigations as set forth below. All force investigations shall comply with applicable law and comport with best practices. All force investigations shall determine whether each involved officer’s conduct was legally justified and complied with APD policy.”**

## Methodology

The requirements in Paragraph 46 are included in APD’s approved suite of force-related policies. The monitoring team previously reviewed and commented on training materials for a 40-hour Use of Force Curriculum and 24-hour Supervisory Use of Force Investigations Curriculums, which were completed in June 2016. We note that the use of force policies were due for review and revision in December 2016, but APD have not yet completed that review or received monitor approval. Substantive issues need to be resolved with respect to APD policies related to use of force (i.e. distraction strikes, the definition of neck holds, and show of force procedures) before the policies can be approved.

## Results

The requirements in Paragraph 46 are included in APD’s approved suite of force-related policies that remain under review and are pending approval. During past reporting periods, the monitoring team conducted in-depth reviews of APD use of force cases that involved the various types of force. The results of those case reviews were communicated to APD for consideration as they continued to implement new policy provisions through training and operational oversight. We provide the following assessment of APD compliance for Paragraph 46 for their consideration as they continue to evaluate field performance and refine reporting, investigation and oversight of use of force events. Based on our review of materials, APD remains in Primary Compliance with respect to this paragraph, and substantial additional work is needed to bring all related use of force training into alignment with the CASA.

Results for the monitoring team’s assessment of compliance with this task are depicted in Table 4.7.33, below, and show APD in only 13 percent compliance with the tasks required in this paragraph.

See Table 4.7.33 below.



Table 4.7.33

Case Number	UOF event was investigated (as set forth policy)	The UOF investigation comport with applicable law and best practices	The force was determined to be legally justified and comply with APD policy	# In Compliance	% In Compliance	In Compliance
IMR-5-001	1	1	1	3	100%	Y
IMR-5-002	0	0	1	1	33%	N
IMR-5-003	0	0	0	0	0%	N
IMR-5-004	0	0	1	1	33%	N
IMR-5-005	0	0	1	1	33%	N
IMR-5-006	0	0	1	1	33%	N
IMR-5-007	0	0	0	0	0%	N
IMR-5-008	0	0	0	0	0%	N
IMR-5-009	0	0	1	1	33%	N
IMR-5-013	0	0	0	0	0%	N
IMR-5-015	0	0	1	1	33%	N
IMR-5-030	0	0	1	1	33%	N
IMR-5-031	0	1	1	2	66%	N
IMR-5-010	0	0	0	0	0%	N
IMR-5-012	0	0	1	1	33%	N
IMR-5-011	1	1	1	3	100%	Y
					% in Compliance	13%

Primary: In Compliance  
 Secondary: Not In Compliance  
 Operational: Not In Compliance

**Recommendation 4.7.33a:** *Given the broad scope of the failure rate on these cases, it is highly unlikely they are supervisor or command specific; however, APD should carefully assess where these errors occurred, what supervisory and command structure permitted them, and should design a carefully thought out response plan to ensure that the errors are communicated to the appropriate command, that the command(s) assess(es) the errors and submit(s) to the Chief of Police realistic responses designed to eliminate an 87% error rate in such a critical process' oversight, review and remediation.*

**Recommendation 4.7.33b:** *The Chief of Police should track changes in these data results quarterly, and take corrective action where necessary if reporting accuracy does not improve.*

**Recommendation 4.7.33c:** *APD should issue public, quarterly reports to Council, CPOA, and POB regarding the outcomes of their efforts to correct errant Command-level classifications and decisions on use of force.*

**Recommendation 4.7.33d:** *Develop policy changes to APD's use of force policy that address distraction strikes, neck holds, and show of force and include these topics in follow-up training to all personnel.*

4.7.34 Assessing Compliance with Paragraph 47: Quality of Supervisory Force Investigations

The quality of supervisory force investigations shall be taken into account in the performance evaluations of the officers performing such reviews and investigations.

## Methodology

Members of the monitoring team reviewed multiple copies of APD proposed Use of Force Policies, including SOP 2-54 Use of Force Reporting and Supervisory Investigation Requirements, and subjected them to best established pattern and practice in the field, and to the requirements stipulated in the CASA. The monitoring team provided extensive technical assistance to assist APD in developing force policies that would meet the provisions of the CASA. During the fourth site visit, members of the monitoring team attended "Talent Management" (Performance Evaluations) training.

## Results

This requirement is included in approved APD SOP 2-54 Use of Force Reporting and Supervisory Force Investigation Requirements, which moved the Department into Primary Compliance. The automated Performance Evaluation system was scheduled to debut in October 2016, with all training having been completed. Initial review of the system and the training indicate that it meets these requirements. During future site visits, the monitoring team will assess whether this provision is being reflected in performance reviews when a supervisor continues to conduct sub-standard use of force investigations, such as those we noted in Section 4.7.33, above.

Primary: In Compliance  
Secondary: Not In Compliance  
Operational: Not In Compliance

***Recommendation 4.7.34a: Given the scope of the failure rate on the cases noted in 4.7.33 above, it is highly unlikely they are supervisor or command specific; however, APD should carefully assess, through Completed Staff Work processes, where these errors occurred, what supervisory and command structure permitted them, and should design a carefully thought out response plan to ensure that the errors are communicated to the appropriate command, that the command(s) assess(es) the errors and submit(s) to the Chief of Police realistic responses designed to eliminate an 87% error rate in such a critical process' oversight, review and remediation.***

***Recommendation 4.7.34b: Develop policy changes to APD's use of force policy that address distraction strikes, neck holds, and show***

***of force and include these topics in follow-up training to all personnel.***

#### 4.7.35 Assessing Compliance with Paragraph 48: Force Classification Procedures

Paragraph 48 stipulates:

APD agrees to develop and implement force classification procedures that include at least two categories or types of force that will determine the force investigation required. The categories or types of force shall be based on the level of force used and the risk of injury or actual injury from the use of force. The goal is to **optimize APD's supervisory and investigative resources on uses of force**. As set forth in Paragraphs 81-85 below, APD shall continue to participate in the Multi-Agency Task Force, pursuant to its Memorandum of Understanding, in order to conduct criminal investigations of at least the following types of force or incidents: (a) officer-involved shootings; (b) serious uses of force as defined by the Memorandum of Understanding; (c) in-custody deaths; and (d) other incidents resulting in death at the discretion of the Chief.

#### Methodology

The requirements in Paragraph 48 are included in APD's approved suite of force-related policies. The monitoring team previously reviewed and commented on training materials for a 40-hour Use of Force Curriculum and 24-hour Supervisory Use of Force Investigations Curricula, which were completed in June 2016. We note that the use of force policies were due for review and revision in December 2016, but APD have not yet completed that review or received monitor approval. Substantive issues need to be resolved with respect to APD policies related to use of force (i.e. Distraction strikes, the definition of neck holds, and show of force procedures) before the policies can be approved. APD continues to participate in the Multi-Agency Task Force (MATF) under the terms of the original agreement.

#### Results

The requirements in Paragraph 48 are included in APD's approved suite of force-related policies that remain under review and are pending approval. During past reporting periods, the monitoring team conducted in-depth reviews of APD use of force cases that involved the various types of force. The results of those case reviews were communicated to APD for consideration as they continued to implement new policy provisions through training and operational oversight. We provide the following assessment of APD compliance for Paragraph 48 for their consideration as they continue to evaluate field performance and refine reporting, investigation and oversight of use of force events. Based on our review of

materials, APD remains in Primary Compliance with respect to this paragraph, and additional work is needed to bring all related use of force training into alignment with the CASA.

Table 4.7.35

Case Number	If a serious UOF, was it investigated by IA	If a criminal investigation, investigated by MATF, IA conducted Admin investigation	Were UOF applications not in policy accurately noted and IA	Use of force not serious or criminal was investigated by the chain of command of the officer using force	# In Compliance	% In Compliance	In Compliance
IMR-5-001	N/A	N/A	N/A	1	1	100%	Y
IMR-5-002	N/A	N/A	N/A	1	1	100%	Y
IMR-5-003	N/A	N/A	N/A	1	1	100%	Y
IMR-5-004	N/A	N/A	N/A	1	1	100%	Y
IMR-5-005	N/A	N/A	N/A	1	1	100%	Y
IMR-5-006	N/A	N/A	N/A	1	1	100%	Y
IMR-5-007	N/A	N/A	N/A	1	1	100%	Y
IMR-5-008	N/A	N/A	N/A	1	1	100%	Y
IMR-5-009	N/A	N/A	N/A	1	1	100%	Y
IMR-5-013	N/A	N/A	N/A	1	1	100%	Y
IMR-5-015	N/A	N/A	N/A	1	1	100%	Y
IMR-5-030	N/A	N/A	N/A	1	1	100%	Y
IMR-5-031	N/A	N/A	N/A	1	1	100%	Y
IMR-5-010	N/A	N/A	N/A	1	1	100%	Y
IMR-5-012	N/A	N/A	N/A	1	1	100%	Y
IMR-5-011	N/A	N/A	N/A	1	1	100%	Y
						% in Compliance	100%

None of the use-of-force cases assessed in the monitor’s random selection of cases were serious or criminal. Until APD processes outstanding issues in use of force protocols, i.e., distraction strikes, the definition/elimination of neck holds, and show of force procedures, they will continue to have issues with their management oversight related to the requirements of this paragraph.

Primary: In Compliance  
 Secondary: Not In Compliance  
 Operational: Not In Compliance

***Recommendation 4.7.35a: Develop policy guidance on outstanding issues in use of force protocols, i.e., distraction strikes, the definition/elimination of neck holds, and show of force procedures that conform to national standards and are acceptable to the monitor.***

4.7.36 Assessing Compliance with Paragraph 49

Paragraph 49 stipulates:

Under the force classification procedures, serious uses of force shall be investigated by the Internal Affairs Bureau, as described below. When a serious use of force or other incident is under criminal investigation by the Multi-Agency Task Force, APD’s

Internal Affairs Bureau will conduct the administrative investigation. Pursuant to its Memorandum of Understanding, the Multi-Agency Task Force shall periodically share information and coordinate with the Internal Affairs Bureau, as appropriate and in accordance with applicable laws, to ensure timely and thorough administrative investigations of serious uses of force. Uses of force that do not rise to the level of serious uses of force or that do not indicate apparent criminal conduct by an officer will be reviewed by the chain of command of the officer using force.

## Methodology

The requirements in Paragraph 49 are included in APD's approved suite of force-related policies. The monitoring team previously reviewed and commented on training materials for a 40-hour Use of Force Curriculum and 24-hour Supervisory Use of Force Investigations Curriculums, which were completed in June 2016. We note that the use of force policies were due for review and revision in December 2016, but APD have not yet completed that review or received monitor approval. Substantive issues remain to be resolved with respect to APD policies related to use of force (i.e. Distraction strikes, the definition of neck holds, and show of force procedures) before the policies can be approved. APD continues to participate in the Multi-Agency Task Force (MATF) under the terms of the original agreement.

## Results

The requirements in Paragraph 49 are included in APD's approved suite of force-related policies that remain under review and are pending approval. During past reporting periods, the monitoring team conducted in-depth reviews of APD use of force cases that involved the various types of force. The results of those case reviews were communicated to APD for consideration as they continued to implement new policy provisions through training and operational oversight. We provide the following assessment of APD compliance for Paragraph 49 for their consideration as they continue to evaluate field performance and refine reporting, investigation and oversight of use of force events. Based on our review of materials, APD remains in Primary Compliance with respect to this paragraph, and additional work is needed to bring all related use of force training into alignment with the CASA. While APD is in compliance with current policy, Until APD processes outstanding issues in use of force protocols, i.e., distraction strikes, the definition/elimination of neck holds, and show of force procedures, they will remain out of compliance with this policy provision.

Table 4.7.36

Case Number	If a serious UOF, was it investigated by IA	If a criminal investigation, investigated by MATF, IA conducted Admin investigation	Were UOF applications not in policy accurately noted and IA	Use of force not serious or criminal was investigated by the chain of command of the officer using force	# In Compliance	% In Compliance	In Compliance
IMR-5-001	N/A	N/A	N/A	1	1	100%	Y
IMR-5-002	N/A	N/A	N/A	1	1	100%	Y
IMR-5-003	N/A	N/A	N/A	1	1	100%	Y
IMR-5-004	N/A	N/A	N/A	1	1	100%	Y
IMR-5-005	N/A	N/A	N/A	1	1	100%	Y
IMR-5-006	N/A	N/A	N/A	1	1	100%	Y
IMR-5-007	N/A	N/A	N/A	1	1	100%	Y
IMR-5-008	N/A	N/A	N/A	1	1	100%	Y
IMR-5-009	N/A	N/A	N/A	1	1	100%	Y
IMR-5-013	N/A	N/A	N/A	1	1	100%	Y
IMR-5-015	N/A	N/A	N/A	1	1	100%	Y
IMR-5-030	N/A	N/A	N/A	1	1	100%	Y
IMR-5-031	N/A	N/A	N/A	1	1	100%	Y
IMR-5-010	N/A	N/A	N/A	1	1	100%	Y
IMR-5-012	N/A	N/A	N/A	1	1	100%	Y
IMR-5-011	N/A	N/A	N/A	1	1	100%	Y
							100%

Primary: In Compliance  
Secondary: Not In Compliance  
Operational: Not In Compliance

***Recommendation 4.7.36a: Resolve outstanding issues related to neck holds, distraction strikes and show of force through revised policies and training.***

#### 4.7.37 Assessing Compliance with Paragraph 50: Supervisory Response to Use of Force

Paragraph 50 stipulates:

**“The supervisor of an officer using force shall respond to the scene of the use of force to initiate the force investigation and ensure that the use of force is classified according to APD’s force classification procedures. For serious uses of force, the supervisor shall ensure that the Internal Affairs Bureau is immediately notified and dispatched to the scene of the incident.”**

#### Methodology

The requirements in Paragraph 50 are included in APD’s approved suite of force-related policies. The monitoring team previously reviewed and commented on training materials for a 40-hour Use of Force Curriculum and 24-hour Supervisory Use of Force Investigations Curriculums, which were completed in June 2016. We note that the use of force polices were due for review and revision in December 2016, but APD have not yet completed that review or received monitor approval. Substantive issues need to be resolved with respect to APD policies related to use of force

(i.e. distraction strikes, the definition of neck holds, and show of force procedures) before the policies can be approved.

## Results

The requirements in Paragraph 50 are included in APD's approved suite of force-related policies that remain under review and are pending approval. During past reporting periods, the monitoring team conducted in-depth reviews of APD use of force cases that involved the various types of force. The results of those case reviews were communicated to APD for consideration as they continued to implement new policy provisions through training and operational oversight. We provide the following assessment of APD compliance for Paragraph 50 for their consideration as they continue to evaluate field performance and refine reporting, investigation and oversight of use of force events. Based on our review of materials, APD remains in Primary Compliance with respect to this paragraph, and additional work is needed to bring all related use of force training into alignment with the CASA. Failure of a supervisor to "respond" and categorize a use of force is a significant and obvious failure.

Table 4.7.37

Case Number	Supervisor immediately reported to the scene of a UOF and properly categorized the force	For a Serious UOF, the supervisor immediately notified IA	# In Compliance	% In Compliance	In Compliance
IMR-5-001	1	N/A	1	100%	Y
IMR-5-002	1	N/A	1	100%	Y
IMR-5-003	1	N/A	1	100%	Y
IMR-5-004	1	N/A	1	100%	Y
IMR-5-005	1	N/A	1	100%	Y
IMR-5-006	1	N/A	1	100%	Y
IMR-5-007	1	N/A	1	100%	Y
IMR-5-008	0	N/A	0	0%	N
IMR-5-009	1	N/A	1	100%	Y
IMR-5-013	1	N/A	1	100%	Y
IMR-5-015	1	N/A	1	100%	Y
IMR-5-030	1	N/A	1	100%	Y
IMR-5-031	1	N/A	1	100%	Y
IMR-5-010	1	N/A	1	100%	Y
IMR-5-012	1	N/A	1	100%	Y
IMR-5-011	1	N/A	1	100%	Y
				% in Compliance	94%

Primary: In Compliance  
 Secondary: Not In Compliance  
 Operational: Not In Compliance

**Recommendation 4.7.37a: Conduct a point-by-point analysis of use of force training to ensure that field supervisors have been provided sufficient training and oversight to be cognizant of their responsibilities under this section. Either revise training protocols or "re-train" supervisory personnel who are not adhering to established and approved policy.**



***Recommendation 4.7.37b: Develop policy changes to APD's use of force policy that address distraction strikes, neck holds, and show of force and include these topics in follow-up training to all personnel.***

***Recommendation 4.7.37c: If more than 5 percent of the issues that should have been covered in the training, by topic, have not been covered, revise the training as necessary to give appropriate guidance and repeat it to the entire population of affected sergeants.***

***Recommendation 4.7.37d: Conduct an after-action review of uses of force*** involved in [IMR-5-006], and provide remedial training, counseling, or other action as indicated by the results of the investigation.

#### 4.7.38 Assessing Compliance with Paragraph 51: Self-Review of Use of Force

Paragraph 51 stipulates

**"A supervisor who was involved in a reportable use of force, including by participating in or ordering the force being reviewed, shall not review the incident or Use of Force Reports for approval."**

#### Methodology

The requirements in Paragraph 51 are included in APD's approved suite of force-related policies. The monitoring team previously reviewed and commented on training materials for a 40-hour Use of Force Curriculum and 24-hour Supervisory Use of Force Investigations Curriculums, which were completed in June 2016. We note that the use of force policies were due for review and revision in December 2016, but APD have not yet completed that review or received monitor approval. Substantive issues need to be resolved with respect to APD policies related to use of force (i.e. Distraction strikes, the definition of neck holds, and show of force procedures) before the policies can be approved.

#### Results

The requirements in Paragraph 51 are included in APD's approved suite of force-related policies that remain under review and are pending approval. During past reporting periods, the monitoring team conducted in-depth reviews of APD use of force cases that involved various types of force. The results of those case reviews were communicated to APD for consideration as they continued to implement new policy provisions through training and operational oversight. Based on our review of

materials, APD remains in Primary Compliance with respect to this paragraph, and additional work is needed to bring all related use of force training into alignment with the CASA. See Table 4.7.38, below.

Table 4.7.38

Case Number	A supervisor who was involved in a reportable use of force, including by participating in or ordering the force being reviewed, did NOT review the incident or Use of Force Report	# In Compliance	% In Compliance	In Compliance
IMR-5-001	N/A	N/A	N/A	N/A
IMR-5-002	N/A	N/A	N/A	N/A
IMR-5-003	N/A	N/A	N/A	N/A
IMR-5-004	N/A	N/A	N/A	N/A
IMR-5-005	1	1	100%	Y
IMR-5-006	N/A	N/A	N/A	N/A
IMR-5-007	1	1	100%	Y
IMR-5-008	N/A	N/A	N/A	N/A
IMR-5-009	N/A	N/A	N/A	N/A
IMR-5-013	N/A	N/A	N/A	N/A
IMR-5-015	N/A	N/A	N/A	N/A
IMR-5-030	N/A	N/A	N/A	N/A
IMR-5-031	N/A	N/A	N/A	N/A
IMR-5-010	N/A	N/A	N/A	Y
IMR-5-012	N/A	N/A	N/A	N/A
IMR-5-011	1	1	100%	Y
			% in Compliance	100%

Primary: In Compliance  
 Secondary: Not In Compliance  
 Operational: Not In Compliance

***Recommendation 4.7.38a: Develop policy changes to APD's use of force policy that address distraction strikes, neck holds, and show of force and include these topics in follow-up training to all personnel.***

#### 4.7.39 Assessing Compliance with Paragraph 52: Supervisory Force Review

Paragraph 52 stipulates:

**“For all supervisory investigations of uses of force, the supervisor shall:**

- a) Respond to the scene, examine all personnel and subjects of use of force for injuries, interview the subject(s) for complaints of pain after advising the subject(s) of his or her rights, and ensure that the officers and/or subject(s) receive medical attention, if applicable
- b) Identify and collect all relevant evidence and evaluate that evidence to determine whether the use of force was consistent with APD policy and identifies any policy, training, tactical, or equipment concerns;

- c) Ensure that all evidence to establish material facts related to the use of force, including audio and video recordings, photographs, and other documentation of injuries or the absence of injuries is collected;
- d) Ensure that a canvass for, and interview of, witnesses is conducted. In addition, witnesses are to be encouraged to provide and sign a written statement in their own words;
- e) Ensure that all officers witnessing a use of force incident by another officer provide a use of force narrative of the facts leading to the use of force;
- f) Separate all officers involved in a use of force incident until each has been interviewed and never conduct group interviews of these officers;
- g) Ensure that all Use of Force Reports identify all officers who were involved in the incident, witnessed the incident, or were on the scene when it occurred;
- h) Conduct investigations in a rigorous manner designed to determine the facts and, when conducting interviews, avoid asking leading questions and never ask officers or other witnesses any questions that may suggest legal justifications **for the officers' conduct**;
- i) Utilize on-body recording systems to record all interviews;
- j) Review all use of force narratives and ensure that all Use of Force Reports include the information required by this Agreement and APD policy;
- k) Consider all relevant evidence, including circumstantial, direct, and physical evidence, as appropriate, and make credibility determinations, if feasible;
- l) Make all reasonable efforts to resolve material inconsistencies between the officer, subject, and witness statements, as well as inconsistencies between the level of force described by the officer and any injuries to personnel or subjects;
- m) Obtain a unique tracking number; and
- n) Where a supervisor determines that there may have been misconduct in the use of force, immediately notify the Area **Commander and the Internal Affairs Bureau."**

## Methodology

The requirements in Paragraph 52 are included in APD's approved suite of force-related policies. The monitoring team previously reviewed and commented on training materials for a 40-hour Use of Force Curriculum and 24-hour Supervisory

Use of Force Investigations Curriculums, which were completed in June 2016. We note that the use of force policies were due for review and revision in December 2016, but APD have not yet completed that review or received monitor approval. Substantive issues need to be resolved with respect to APD policies related to use of force (i.e. Distraction strikes, the definition of neck holds, and procedures relative to show of force) before the policies can be approved.<sup>52</sup>

## Results

The requirements in Paragraph 52 are included in APD's approved suite of force-related policies that remain under review and are pending approval. During past reporting periods, the monitoring team conducted in-depth reviews of APD use of force cases that involved the various types of force. The results of those case reviews were communicated to APD for consideration as they continued to implement new policy provisions through training and operational oversight.

We provide the following assessment of APD compliance for Paragraph 52 for their consideration as they continue to evaluate field performance and refine reporting, investigation and oversight of use of force events. Based on our review of materials, APD remains in Primary Compliance with respect to this paragraph, and additional work is needed to bring all related use of force training into alignment with the CASA.

APD's performance on this paragraph yields some of the poorest scores seen to date. Of the 15 elements required of supervisors responding to use of force incidents, APD's supervisory cadre is in compliance on only three of those elements (one-fifth). This represents a significant and worrying level of non-compliance, and questions the quality of related training, oversight, and management of the requirements relating to supervisory and managerial response to incidents of use of force at APD.

(See Table of Results for Paragraph 52, depicted below). Some use of force factors, relating to supervisory review of use of force, score as low as seven percent compliance, with the most often reported compliance level (mode) of only thirteen percent. See Table 4.7.39, below.

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<sup>52</sup> The monitoring team expects that the implementation of the checklists developed by APD and delivered in the "Standardizing Use of Force Investigations" course will positively influence the scores associated with Paragraph 52. However, APD needs to ensure that a standard reporting language exists across their investigations that aligns with the language within APD policy and the CASA. The monitoring team does not assume that a supervisor "meant" something related to APD policy or CASA requirement during their investigations. We cannot be left guessing what the intent of a supervisor or officer was when articulating what they did or said in a specific case, or how those actions relate to a policy and CASA requirement.

Table 4.7.39

Task/Case #	IMR-5-001	IMR-5-002	IMR-5-003	IMR-5-004	IMR-5-005	IMR-5-006	IMR-5-007	IMR-5-008	IMR-5-009	IMR-5-013	IMR-5-015	IMR-5-030	IMR-5-031	IMR-5-010	IMR-5-012	IMR-5-011
Supervisor reports to the scene & exam'd p/n & subj. for injuries	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
interviewed subject(s) fre pain & advise subj. t of rights. provide medical attention	1	1	0	1	0	1	0	0	0	1	1	1	0	0	1	0
ID and collect E/D & determine if UOF was within Policy	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1
Ensure all req'd E/D is collected	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1
Canvass & interview witnesses. Encourage written witness stmnts	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	1
All PO wit . ID facts leading to UOF	1	1	1	1	1	1	0	1	1	0	1	1	1	0	1	1
Separate witness officers	0	NA	NA	0	0	0	0	0	0	1	NA	0	0	0	0	0
All UOF rpts ID POs involved in or witnessing incident	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
Conduct rigorous inv.	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Use OBRD to record PO interviews	0	0	0	1	0	0	0	0	0	1	0	0	0	0	0	0
Ensure all officer UOF reports include req'd info	0	0	0	0	1	0	0	0	0	0	1	1	1	0	1	1
Consider all relevant ED	0	0	0	1	1	0	0	0	0	0	0	0	0	0	1	1
Resolve material inconsistencies	NA	NA	NA	NA	NA	0	0	0	0	0	NA	NA	NA	0	NA	NA
Obtain unique tracking #	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
If misconduct determined, notify Area Commander and IAB	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
# in Compliance	5	5	4	9	6	5	3	4	4	6	6	6	5	3	7	10
% in Compliance	39%	39%	33%	69%	54%	36%	21%	29%	29%	43%	50%	46%	38%	21%	54%	77%

Primary: In Compliance  
Secondary: Not In Compliance  
Operational: Not In Compliance

***Recommendation 4.7.39a: APD should carefully assess the training and oversight it has provided supervisory and management levels of the organization regarding follow up on use of force incidents by sworn personnel. In the monitor's experience, such global failures can be attributed to either poor training, poor oversight, or both. This should include:***

- i. A complete and thorough review of not only use of force lesson plans, but also in-class delivery, including ancillary "off page" comments, etc.***
- ii. Point-by-point, clear assessments, by CASA requirement, of the modalities used to "transfer" knowledge and understanding re: acceptable use of force (this would entail breaking down each element of a given CASA requirement, finding the portions of the supervisory training provided to date that are responsive to each of those elements, and assessing the efficacy of the training and testing modalities designed to deliver and assess the effectiveness of each given component<sup>53</sup>;***
- iii. Review past monitor's reports to ensure that problematic training modalities noted therein have been addressed and corrected;***
- iv. Develop a written failure analysis for past training delivered; and***
- v. Develop and implement a plan for remediating problematic errors and/or omissions in past training processes related to Paragraph 52 and related training paragraphs.***

***Recommendation 4.7.39b: Submit the results of this training review (which should incorporate past monitor's training assessments) to the Chief of Police for review, comment, and development of an implementation plan for remediation.***

***Recommendation 4.7.39c: Determine if the "failures" noted are due to training or supervision;***

***Recommendation 4.7.39d: The Chief of Police should forward to the Training Academy the results of 4.7.39b above for assessment and remedial action.***

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<sup>53</sup> We note that the monitoring team has completed three monitor's reports that have focused heavily on training processes at APD, and each has included recommendations for change. APD has a less than adequate history of responding to those recommendations.

***Recommendation 4.7.39e: APD should assess whether or not the remedial processes it implemented have corrected at least 95 percent of the problems identified with training, and***

***Recommendation 4.7.39f: APD should repeat the process identified above until failure rates in the field are below five percent.***

#### 4.7.40 Assessing Compliance with Paragraph 53: Force Review Timelines

Paragraph 53 stipulates:

Each supervisor shall complete and document a supervisory force investigation Force Report within 72 hours of completing the on-scene investigation. Any extension of this 72-hour deadline must be authorized by a Commander. This Report shall include:

- a) all written or recorded use of force narratives or statements provided by personnel or others;
- b) documentation of all evidence that was gathered, including names, phone numbers, and addresses of witnesses to the incident. In situations in which there are no known witnesses, the report shall specifically state this fact. In situations in which witnesses were present but circumstances prevented the author of the report from determining the identification, phone number, or address of the witnesses, the report shall state the reasons why. The report should also include all available identifying information for anyone who refuses to provide a statement;
- c) the names of all other APD employees witnessing the use of force;
- d) **the supervisor's narrative evaluating the use of force, based on the supervisor's analysis of the evidence gathered, including a determination of whether the officer's actions complied with APD policy and state and federal law; and an assessment of the incident for tactical and training implications, including whether the use of force could have been avoided through the use of de-escalation techniques or lesser force options; and**
- e) documentation that additional issues of concern not related to the use of force incident have been identified and addressed by separate memorandum.

#### Methodology

The requirements in Paragraph 53 are included in APD's approved suite of force-related policies. The monitoring team previously reviewed and commented on



training materials for a 40-hour Use of Force Curriculum and 24-hour Supervisory Use of Force Investigations Curricula, which were completed in June 2016. We note that the use of force policies were due for review and revision in December 2016, but APD have not yet completed that review or received monitor approval. Substantive issues need to be resolved with respect to APD policies related to use of force (i.e. distraction strikes, the definition of neck holds, and show of force procedures) before the policies can be approved.

## Results

The requirements in Paragraph 53 are included in APD's approved suite of force-related policies that remain under review and are pending approval. During past reporting periods, the monitoring team conducted in-depth reviews of APD use of force cases that involved the various types of force. The results of those case reviews were communicated to APD for consideration as they continued to implement new policy provisions through training and operational oversight. Based on our review of materials, APD remains in Primary Compliance with respect to this paragraph, *and additional work is needed to bring all related use of force training into alignment with the CASA.*

The monitoring team continues to note that commanders grant extensions to front line supervisors and lieutenants where there are no specific deadlines set. As a consequence, some cases linger for long periods of time before they are finalized in Blue Team.

Primary: In Compliance  
Secondary: Not In Compliance  
Operational: Not In Compliance

***Recommendation 4.7.40a: Establish, by policy, a standard deadline for supervisory review of uses of force incidents by APD personnel.***

***Recommendation 4.7.40b: Build in an audit system to ensure those deadlines are either adhered to or are accompanied by a command-level extension of existing deadlines, noting specific, salient reasons for the granting of extensions.***

### 4.7.41 Assessing Compliance with Paragraph 54: Command Review of Force

Paragraph 54 stipulates:

Upon completion of the Use of Force Report, investigating supervisor shall forward the report through his or her chain of command to the Commander, who shall review the report to ensure that it is complete and that the findings are supported using the preponderance of the evidence standard. The Commander shall order additional investigation when it appears that there is

additional relevant evidence that may assist in resolving inconsistencies or improving the reliability or credibility of the findings.

## Methodology

The requirements in Paragraph 54 are included in APD's approved suite of force-related policies. The monitoring team previously reviewed and commented on training materials for a 40-hour Use of Force Curriculum and 24-hour Supervisory Use of Force Investigations Curriculums, which were completed in June 2016. We note that the use of force policies were due for review and revision in December 2016, but APD have not yet completed that review or received monitor approval. Substantive issues need to be resolved with respect to APD policies related to use of force (i.e. distraction strikes, the definition of neck holds, and show of force procedures) before the policies can be approved.

## Results

The requirements in Paragraph 54 are included in APD's approved suite of force-related policies that remain under review and are pending approval. During past reporting periods, the monitoring team conducted in-depth reviews of APD use of force cases that involved the various types of force. The results of those case reviews were communicated to APD for consideration as they continued to implement new policy provisions through training and operational oversight. Based on our review of materials, APD remains in Primary Compliance with respect to this paragraph, and additional work is needed to bring all related use of force training into alignment with the CASA.

Based on documents reviewed by the monitor, the APD is in substantial non-compliance with respect to this paragraph, based on the monitor's review of 16 applicable cases. Compliance rates are at zero (for the cases reviewed) relating to ensuring review of sergeants' UOF reviews for completeness of submitted reports, and ordering additional investigations where appropriate.

See table 4.7.41 on the following page.

Table 4.7.41

Case Number	Supervisor investigating the UOF forwarded the report through their chain of command	Commander reviewed the report and ensured it was complete and the findings were supported by a preponderance of evidence	Commander ordered additional investigation when it appeared that there was additional relevant evidence that may assist in resolving inconsistencies or improving the reliability or credibility of the findings.	# In Compliance	% In Compliance	In Compliance
IMR-5-001	1	0	0	1	33%	N
IMR-5-002	1	0	0	1	33%	N
IMR-5-003	1	0	0	1	33%	N
IMR-5-004	1	0	0	1	33%	N
IMR-5-005	1	0	0	1	33%	N
IMR-5-006	1	0	0	1	33%	N
IMR-5-007	1	0	0	1	33%	N
IMR-5-008	1	0	0	1	33%	N
IMR-5-009	1	0	0	1	33%	N
IMR-5-013	1	0	0	1	33%	N
IMR-5-015	1	0	0	1	33%	N
IMR-5-030	1	0	0	1	33%	N
IMR-5-031	1	0	0	1	33%	N
IMR-5-010	1	0	0	1	33%	N
IMR-5-012	1	0	0	1	33%	N
IMR-5-011	1	0	0	1	33%	N
	16				% in Compliance	0%

Primary: In Compliance  
Secondary: Not In Compliance  
Operational: Not In Compliance

**Recommendation 4.7.41a: Establish by policy, training, and internal monitoring specific requirements for command review of supervisory force reviews, ensuring that the new policy, training and internal monitoring conform to the requirements of the CASA for this paragraph.**

**Recommendation 4.7.41b: Ensure that policy outliers are brought to the attention of commanders failing to conform, and to their immediate superiors and the Chief of Police.**

**Recommendation 4.7.41c: Require commanders who fail to conform with Paragraph 54's requirements to undergo retraining in policy requirements and to develop a correction-plan for ensuring that policy adherence is achieved.**

**Recommendation 4.7.41d: Executive-level personnel for those commanders completing such retraining and corrective planning measures should monitor commanders under their supervision to ensure they meet the requirements of Paragraph 54's stipulations relative to are brought into compliance.**

***Recommendation 4.7.41e: Executive-level personnel so tasked should develop quarterly reviews of commanders under their chains of command, stating their levels of compliance with Paragraph 54's requirements. Those reviews should be forwarded to the Chief of Police, for development of actions plans to remedy identified issues.***

#### 4.7.42 Assessing Compliance with Paragraph 55: Force Review Evidence Standard

Paragraph 55 stipulates:

**“Where the findings of the Use of Force Report are not supported by a preponderance of the evidence, the supervisor’s chain of command shall document the reasons for this determination and shall include this documentation as an addendum to the original investigation. The supervisor’s superior shall take appropriate action to address the inadequately supported determination and any investigative deficiencies that led to it. Commanders shall be responsible for the accuracy and completeness of Use of Force Reports prepared by supervisors under their command. “**

#### Methodology

The requirements in Paragraph 55 are included in APD’s approved suite of force-related policies. The monitoring team previously reviewed and commented on training materials for a 40-hour Use of Force Curriculum and 24-hour Supervisory Use of Force Investigations Curriculums, which were completed in June 2016. We note that the use of force policies were due for review and revision in December 2016, but APD have not yet completed that review or received monitor approval. Substantive issues need to be resolved with respect to APD policies related to use of force (i.e. distraction strikes, the definition of neck holds, and show of force procedures) before the policies can be approved. The monitoring team requested COB documentation that captures the movement of use of force cases throughout the chain of command. They attempted to provide the monitoring team access to the Blue Team system to conduct its own inquiries (which could not be established due to IT issues).

#### Results

As noted in IMR – 4, when determining compliance APD will be asked to produce course of business documentation that captures the movement of cases from level to level where investigative deficiencies are noted by command level reviewers. The monitoring team has identified and documented many examples of investigative deficiencies in previous reports we’ve reviewed. Those reports provide a wealth of guidance for APD to consider as they move into the compliance stage of assessment. We noted within more recent use of force reports that the movement of cases throughout the chain of command is captured in Blue Team and

published with their reports. However, we commonly saw ambiguous comments like “corrections made” or “see me” which provides no understanding of performance deficiencies that may be associated with the corrections, or how APD aggregates the frequency that an officer, lieutenant or sergeant has their report “kicked back” for corrections, or the reasons it occurred.<sup>54</sup> Likewise, it does not appear APD conducts any internal analysis or audit, at either the organizational or Area Command levels, to identify officers or supervisors that commonly submit reports through Blue Team that are incomplete, contain deficiencies or need better articulation. These are all areas that need to be explored if APD is ever to connect individual performance (related to use of force or force investigations) to employee work plans. Presumably this type of internal assessment is possible with the adoption of Blue Team. The monitoring team will follow this up with APD during its next site visit.

The requirements in Paragraph 55 are included in APD’s approved suite of force-related policies that remain under review and are pending approval. During past reporting periods, the monitoring team conducted in-depth reviews of APD use of force cases that involved the various types of force. The results of those case reviews were communicated to APD for consideration as they continued to implement new policy provisions through training and operational oversight. Based on our review of materials, APD remains in Primary Compliance with respect to this paragraph, and additional work is needed to bring all related use of force training into alignment with the CASA.

Results for this paragraph are presented in Table 4.7.42, below.

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<sup>54</sup> There were a few examples where there was sufficient articulation within Blue Team, but those instances were not the norm.

Table 4.7.42

Case Number	Where the findings of the UOF Report were not supported by a preponderance of the evidence, the supervisor's chain of command documented the reasons for this determination and included this documentation as an addendum to the original investigation.	The supervisor's superior took appropriate action to address the inadequately supported determination and any investigative deficiencies that led to it.	Commander ordered additional investigation when it appeared that there was additional relevant evidence that may assist in resolving inconsistencies or improving the reliability or credibility of the findings.	Investigations completed by an immediate supervisor that are reported inaccurately, contain deficiencies or that failed to use a preponderance of the evidence standard, and are not noted by the sergeant's commander, resulted in some form of corrective action with the commander in question. Completeness and accuracy.	# In Compliance	% In Compliance	In Compliance
IMR-5-001	N/A	N/A	0	1	1	50%	N
IMR-5-002	N/A	N/A	0	1	1	50%	N
IMR-5-003	N/A	N/A	0	0	0	0%	N
IMR-5-004	N/A	N/A	0	1	1	50%	N
IMR-5-005	N/A	N/A	0	0	0	0%	N
IMR-5-006	N/A	N/A	0	0	0	0%	N
IMR-5-007	N/A	N/A	0	0	0	0%	N
IMR-5-008	N/A	N/A	0	0	0	0%	N
IMR-5-009	N/A	N/A	0	0	0	0%	N
IMR-5-013	N/A	N/A	0	0	0	0%	N
IMR-5-015	N/A	N/A	0	0	0	0%	N
IMR-5-030	N/A	N/A	0	0	0	0%	N
IMR-5-031	N/A	N/A	0	0	0	0	N
IMR-5-010	N/A	N/A	0	0	0	0%	N
IMR-5-012	N/A	N/A	0	0	0	0%	N
IMR-5-011	N/A	N/A	1	1	2	100%	Y
						% in Compliance	6%

Primary: In Compliance  
Secondary: Not In Compliance  
Operational: Not In Compliance

**Recommendation 4.7.42a: Identify the factors causing the most errors in command review and require a completed CSW document that proposes specific, tangible, and evaluable policy revisions, supervisory and commander re-training or discipline to rectify given error categories.**

**Recommendation 4.7.42b: Forward the CSW document to the Chief of Police for review, assessment and implementation of remedial processes.**

**Recommendation 4.7.42c: Require follow-up and analysis to determine if recommended processes have alleviated the identified problems, and repeat steps a through c until issues have been reduced to less than 95 percent.**

4.7.43 Assessing Compliance with Paragraph 56: Force Review Quality

Paragraph 56 stipulates:

“Where a supervisor repeatedly conducts deficient supervisory force investigations, the supervisor shall receive the appropriate corrective and/or disciplinary action, including training, demotion, and/or removal from a supervisory position in accordance with performance evaluation procedures and consistent with any existing collective bargaining agreements, personnel rules, Labor Management Relations Ordinance, Merit System Ordinance, regulations, or administrative rules. Whenever a supervisor or Commander finds evidence of a use of force indicating apparent criminal conduct by an officer, the supervisor or Commander shall suspend the supervisory force investigation immediately and notify the Internal Affairs Bureau and the Chief. The Internal Affairs Bureau **shall immediately take over the administrative.**”

## Methodology

The requirements in Paragraph 55 are included in APD’s approved suite of force-related policies. The monitoring team previously reviewed and commented on training materials for a 40-hour Use of Force Curriculum and 24-hour Supervisory Use of Force Investigations Curriculums, which were completed in June 2016. We note that the use of force policies were due for review and revision in December 2016, but APD have not yet completed that review or received monitor approval. Substantive issues need to be resolved with respect to APD policies related to use of force (i.e. distraction strikes, the definition of neck holds, and show of force procedures) before the policies can be approved. The monitoring team requested COB documentation that captures the movement of use of force cases throughout the chain of command. They attempted to provide the monitoring team access to the Blue Team system to conduct its own inquiries (which could not be established due to IT issues).

## Results

As noted in Paragraph 56, we noted within more recent use of force reports that the movement of cases throughout the chain of command is captured in Blue Team and published with their reports. However, we commonly saw ambiguous comments like “corrections made” or “see me” which provides no understanding of performance deficiencies that may be associated with the corrections; how APD aggregates the frequency that an officer, lieutenant or sergeant has their report “kicked back” for corrections; or how often an officer or supervisor has a report sent back for a specific reason.<sup>55</sup> Likewise, it does not appear APD conducts any internal analysis or audit, at either the organizational or Area Command levels, to identify officers or supervisors that commonly submit reports

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<sup>55</sup> There were a few examples where there was sufficient articulation within Blue Team, but those instances were not the norm.



through Blue Team that are incomplete, contain deficiencies or need better articulation (For example). These are all areas that need to be explored if APD is ever to connect individual performance (related to use of force or force investigations) to employee work plans. Presumably this type of internal assessment is possible with the adoption of Blue Team. The monitoring team will follow this up with APD during its next site visit.

The requirements in Paragraph 56 are included in APD's approved suite of force-related policies that remain under review and are pending approval. During past reporting periods, the monitoring team conducted in-depth reviews of APD use of force cases that involved the various types of force. The results of those case reviews were communicated to APD for consideration as they continued to implement new policy provisions through training and operational oversight. Based on our review of materials, APD remains in Primary Compliance with respect to this paragraph, and additional work is needed to bring all related use of force training into alignment with the CASA.

We note that during our reviews of 16 use of force cases we encountered no instances where a supervisor or commander was required to suspend an investigation and contact IA because they identified apparent criminal conduct on the part of an APD officer. The monitoring team requested COB documentation (i.e. audits to identify performance deficiencies) that captures the movement of use of force cases throughout the chain of command. The intent was to conduct an assessment to determine if APD had mechanisms in place to meet operational compliance in the future. They attempted to provide the monitoring team access to the Blue Team system to conduct its own inquiries (which could not be established due to IT issues). That said, it does not appear these types of internal audits of performance exist and are connecting to a performance evaluation system—had they been in existence, some form of documentation should be available. This deficiency perhaps helps explain why APD's performance on this, and the immediately preceding paragraphs has been so deficient.

Primary: In Compliance  
Secondary: Not In Compliance  
Operational: Not In Compliance

***Recommendation 4.7.43a: Ensure that APD automated systems relating to paragraphs 41-56 are supported by a meaningful recording, assessment, and tracking system to ensure that each incident of a noted failure to comply within the command structure is documented, addressed, and followed up to ensure such errors are mitigated and reduced to a level below five percent.***

***Recommendation 4.7.43b: Ensure that deficiencies in APD’s systems relating to paragraphs 41-56 are monitored and noted, and result in corrective action taken with the responsible command and supervisory personnel.***

***Recommendation 4.7.43c: If necessary, consult with external resources to design a formalized system of monitoring supervisory and command-level responses to policy violations.***

#### 4.7.44 Assessing Compliance with Paragraph 57: Force Review Board

Paragraph 57 stipulates that:

**“When the Commander finds that the supervisory force investigation is complete and the findings are supported by the evidence, the investigation file shall be forwarded to the Force Review Board. The Force Review Board shall review the supervisory force investigation to ensure that it is complete and that the findings are supported by the evidence. The Force Review Board shall ensure that the investigation file is forwarded to the Internal Affairs Bureau for recordkeeping.”**

#### Methodology

The requirements in Paragraph 57 are included in APD’s approved suite of force-related policies and were covered in presentations of both the 24-hour Supervisory Use of Force Investigations Curriculum and the 40-hour Use of Force Curriculum, which were completed in June 2016. The “Force Review Board” SOP 3-67 has been recast as SOP 2-56, which better aligns it within the use of force suite of SOPs. We note that the regular review of that series of policies was due to occur in December 2016, however, updated policy provisions remained unresolved as of the end of the monitoring period. During our November 2016 site visit we met with APD representatives responsible for this paragraph. Finally, the monitoring team reviewed FRB reports for six (6) separate supervisory use of force reports that they assessed.

#### Results

As we noted in IMR -4, the first requirement in this paragraph appears to conflict with the Force Review Board’s (FRB) practice of reviewing a 10% sample of supervisory force investigations every 90 days.<sup>56</sup> The language in this paragraph states that the FRB shall review the supervisory force investigation “to ensure that it is complete and that the findings are supported by the evidence”. We have

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<sup>56</sup> Based on data we were provided the FRB appears to have only conducted one review of supervisory force investigations during the last half of 2016 (August 23, 2016).

previously noted that the wording of this provision denotes a requirement that the FRB review 100% of these investigations. However, through discussions with the Parties that issue has been resolved and was reiterated during our November 2016 site visit. The Parties agreed that the review of a 10% random sample of use of force cases is acceptable dependent upon the quality of the methodology to select those cases.

Secondary compliance for this paragraph is not attained due to items missing or incorrectly completed during the Use of Force and Supervisory Investigation of Use of Force training.<sup>57</sup> These items will need to be remediated before APD achieves secondary compliance with this paragraph. Until Secondary compliance is attained Operational compliance will remain pending.

We have provided information that APD can consider when assessing its current Operational compliance posture with respect to this paragraph. Paragraphs 54 and 78 provide insight to APD that suggests work must be done with respect to the use of force investigations that are submitted by commanders in the field. Like other paragraphs, this one includes several components that need to be independently evaluated. APD cannot presuppose that because the FRB is in possession of a supervisory force investigation that it is complete and that the findings are supported by the evidence that was available to Commander. Therefore, any case reviewed by the FRB must first be assessed for those criteria.

The monitoring team reviewed six (6) FRB reports from their August 23, 2016, meeting. FRB reports include the assessments, "Was this UOF [report] complete?" and "Were the findings supported by a preponderance of evidence?" We found the data to be incomplete because APD does not report its own internal analysis of the responses it receives from FRB members. For instance, we saw examples where the FRB documented seven board members determined a use of force finding was not complete (with one board member "refraining from answering"), but it is unknown if any feedback or remediation occurs with the Commander that submitted the case, i.e., feedback, if any, is not provided back to the Commander who originally triggered the case. Likewise, with the same case, two members of the FRB determined that the use of force findings were not supported by a preponderance of evidence and five board members "refrained from answering". These types of results, without further critique, analysis and feedback to a Commander make the board findings perfunctory and irrelevant in terms

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<sup>57</sup> The training gaps were communicated to APD in IMR – 4. While some gaps were addressed, there are lingering issues that are outlined in Paragraph 88.

of mitigating performance deficiencies at the Command level.<sup>58</sup> Likewise, it's unclear if the responses for each category are aggregated and analyzed in any way to identify patterns of poor performance or whether broader training issues exist for the organization. Whether the instances of FRB members "refraining from answering" are oversights, or are purposeful, is an open question. The fact that we have seen "refrained from answering" on more than one occasion and during more than one FRB meeting is disconcerting. This will be followed up during our next site visit, when the monitoring team will discuss how the APD conducts quality control to capture data related to the criteria of this paragraph and how Command level personnel are addressed when cases are submitted that are incomplete or are not supported by a preponderance of evidence.

Primary: In Compliance  
 Secondary: Not In Compliance  
 Operational: Not In Compliance

***Recommendation 4.7.44a: APD should ensure that the FRB process is integrated and methodical, requiring each "out of policy" action to be assessed for causes, remaining issues, and recommended responses to ensure that organization-wide implications are addressed in their problem response modalities as well as officer-specific, supervisor-specific and command-specific responses;***

***Recommendation 4.7.44b: APD should assess other similar processes in other police agencies known to be effective at dealing with such issues and review their processes for "lessons learned" that can be applied to APD's processes.***

***Recommendation 4.7.44c: APD should make it clear that "refrain from answering" is not a viable response. If APD cannot get a decision about a given use of force issue at this level, it suggests either a lack of training, a lack of structuring of the process, or a lack of commitment to improving.***

***Recommendation 4.7.44d. APD should assess its FRB panelists to ensure they understand current policy and practice and are clear about the FRB's purpose. To the extent that they find members who continually "refrain from answering" they should be re-trained or removed from FRB participation, with appropriate notation why in their APD personnel files.***

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<sup>58</sup> We note that in one case eleven (11) FRB members determined that the findings were not supported by a preponderance of evidence. It seems reasonable that some type of remedial action with the Commander was appropriate.

#### 4.7.45 Assessing Compliance with Paragraph 58: Reassignment of Force Review

Paragraph 58 stipulates that:

**“At the discretion of the Chief, a supervisory force investigation may be assigned or re-assigned to another supervisor, whether within or outside of the Command in which the incident occurred, or may be returned to the original supervisor for further investigation or analysis. This assignment or re-assignment shall be explained in writing.”**

#### Methodology

The requirements in Paragraph 58 are included in APD SOP 2-54-3-A-10 which is within the approved suite of force-related policies. The provisions were covered in presentations of both the 24-hour Supervisory Use of Force Investigations Curriculum and the 40-hour Use of Force Curriculum, which were completed in June 2016. We note that the regular review of that series of policies was due to occur in December 2016, however, updated policy provisions remained unresolved as of the end of the monitoring period. During our November 2016 site visit we met with APD representatives responsible for this paragraph.

#### Results

The monitoring team noted that when reviewing serious use of force cases that were presented to the FRB that on one occasion [IMR-5-014] the Assistant Chief returned an investigation because he was "unsatisfied with chain recommendations." Based on the information provided to the monitoring team, it is unclear what the source of dissatisfaction was and whether there was accompanying documentation back to the Area Commander. We note this case here because it began as a supervisory use of force investigation but escalated to a serious use of force case after being highlighted by the monitoring team. As the case moved through the chain of command following a more comprehensive investigation we saw this notation.

Secondary compliance is not attained due to items missing or incorrectly done during the Use of Force and Supervisory Investigation of Use of Force training.<sup>59</sup> These items will need to be remediated before APD achieves secondary compliance with this paragraph.

Primary: In Compliance  
Secondary: Not In Compliance

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<sup>59</sup> See Paragraph 88.

Operational: Not In Compliance

***Recommendation 4.7.45a: APD should initiate a systems-wide failure analysis regarding this case and determine at what points the most critical systems failed to perform as expected or required.***

***Recommendation 4.7.45b: Once the failure points are identified, a thorough review of any cases with similar fact circumstances, similar command reviews, or other similar issues are noted.***

***Recommendation 4.7.45c: Once the failure analysis is complete, APD should identify lessons learned and recommend policy, training, systemic, supervisory, and/or management oversight systems that need to be revised, upgraded, or otherwise modified.***

***Recommendation 4.7.45d: Assessments outlined above should not be restricted to the case giving rise to these recommendations, but should address all similarly situated FRB reviews.***

***Recommendation 4.7.45e: Revise policy, training, supervision and command issues reflecting similar outcomes accordingly.***

4.7.46 Assessing Compliance with Paragraph 59: Abuse of Force Discipline

Paragraph 59 stipulates:

**“Where, after a supervisory force investigation, a use of force is found to violate policy, the Chief shall direct and ensure appropriate discipline and/or corrective action. Where the use of force indicates policy, training, tactical, or equipment concerns, the Chief shall also ensure that necessary training is delivered and that policy, tactical, or equipment concerns are resolved.”**

Methodology

The requirements in Paragraph 59 are included in APD’s approved suite of force-related policies and were covered in presentations of both the 24-hour Supervisory Use of Force Investigations Curriculum and the 40-hour Use of Force Curriculum, which were completed in June 2016.

Results

Operational compliance is not calculated for this paragraph because of outstanding training issues. However, we note that this paragraph builds upon information that would be gleaned from data contained in earlier paragraphs of the CASA. APD can gain insight as to their current



Operational compliance posture by reviewing the information provided in the tables of earlier paragraphs.

Secondary compliance is not attained due to items missing or incorrectly done during the Use of Force and Supervisory Investigation of Use of Force training. These items will need to be remediated before APD achieves secondary compliance with this paragraph.

Primary: In Compliance  
Secondary: Not In Compliance  
Operational: Not In Compliance

***Recommendation 4.7.46a: APD should initiate a systems-wide failure analysis regarding this case and determine at what point the most critical systems failed to perform as expected or required.***

***Recommendation 4.7.46b: Once the failure points are identified, a thorough review of any cases with similar fact circumstances, similar command reviews, or other similar issues are noted.***

***Recommendation 4.7.46c: Once the failure analysis is complete, APD should identify lessons learned and recommend policy, training, systemic, supervisory, and/or management oversight systems that need to be revised, upgraded, or otherwise modified.***

***Recommendation 4.7.46d: Assessments outlined above should not be restricted to the case giving rise to these recommendations, but should address all similarly situated FRB reviews.***

***Recommendation 4.7.456e: Revise policy, training, supervision and command issues reflecting similar outcomes accordingly.***

Paragraphs 60 through 77 encompass a series of requirements relating to the policy, procedures, and practices of APD's Professional Accountability Bureau (PAB). The PAB oversees the Internal Affairs Division (IAD), which has two subordinate units, the Internal Affairs Section and Critical Incident Review Team (CIRT) Unit, and also, the Force Investigation Team (FIT). CIRT handles all Administrative Investigations, focusing on "lessons learned" from its case reviews and is the initial IA responder to investigate serious uses of force. We note that at the inception of the CASA, CIRT was not contemplated since it was not a formal entity within APD, however, APD has functionally placed it in the center of the duties and responsibilities it carries with respect to CASA compliance.

CIRT carries a significant workload related to training development and delivery, and the preparation of presentations to the Force Review



Board.<sup>60</sup> During this monitoring period, CIRT assigned a new lieutenant to address many of the concerns we have documented in the past. Members of the monitoring team have had several interactions with this new member of CIRT and believe his contribution will be significant. We typically refrain from making such specific comments, however, in this instance we feel it is appropriate. It is our understanding that because of his performance in the field, he was brought into CIRT to specifically address gaps with CASA compliance we identified in previous monitor reports. Of special note is the fact that almost immediately he began to construct "checklists" (that are now required by APD) to be used at each level of a force investigation up to and including Command level reviews. During our November 2016 site visit we sat with him and provided feedback on the content of his initial draft of the checklists. It was clear that he took cognizance of our comments and intended to incorporate our feedback in the final product. As we have written extensively in each of the monitoring reports, the use of checklists should help APD better organize and standardize its work product in the field during the investigation of uses of force. We are hopeful that this introduction of "checklists" will be a benefit to APD.

APD uses its Force Investigation Team (FIT; formerly the Investigative Response Team –IRT) to investigate all criminal implications of uses of force, the underlying incident that led to a specific serious use of force, Officer-involved Shootings (OIS), or In-custody Deaths, and is APD's representative on the Multi-Agency Task Force (MATF). FIT SOP 7-3-5-A states, "FIT and CIRT are both within the Professional Accountability Bureau, which is under the supervision of the Assistant Chief of Police. Both units typically respond to the same incidents but for different purposes." The monitoring team has commented in past reports and during site visits on the extraordinary workload that is often placed on CIRT and FIT. In the opinion of the monitoring team, the workload and staffing levels in those units have had a direct impact on the timeliness of investigations, the quality of investigations, the timeliness of FRB reviews, the remediation of performance deficiencies in the field, and has placed an enormous burden on the individuals tasked with those responsibilities. We discussed the staffing levels with both FIT and CIRT during our last site visit and were told that APD intended to increase staffing in both units. While what the "right" staffing level is for each unit remains an open question, the monitoring team is not confident that the increases discussed will have a large impact if they continue to organize their workload in the same manner.

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<sup>60</sup> As we document later, the workload shifted to CIRT has resulted in significant lags in the timeliness of serious use of force investigations. We also note the introduction of FIT into the investigative process and how it creates an additional investigative layer that many times delays the ability of APD to complete an investigation.

As has been the custom of the monitoring team over the last several reports, we turned to members of IA/CIRT to provide us with an understanding of the follow-up activities APD took with respect to three specific use of force cases.<sup>61</sup> These cases, all of which include the use of an ECW, were first reported in Paragraph 46 for IMR-3, then reiterated in IMR-4, wherein the monitoring team expressed deep concerns over the content and accuracy of the initial reports by the officers and follow-up investigation conducted by their supervisors. Initially, the monitoring team intended to address these cases during its June 2016 site visit, but in fairness to IA/CIRT they had just received IMR-3 days before the visit and did not have an opportunity to review our comments.<sup>62</sup> We deferred our discussion for a later time with the expectation that APD would appropriately address the cases, and our concerns, in some legitimate fashion. In preparation for our site visit in November 2016, we provided APD with a proposed schedule and indicated within that schedule that we wanted to discuss the same three cases. When we met with members of IA/CIRT it was apparent that they were unfamiliar with the cases, but more importantly, it was immediately clear to the monitoring team that nothing had been done to address them. Instead, we were referred to the Area Commands to determine what had been done with the cases, but there was no indication that any referral had been made back to the Area Commands (following our previous reports). Since the issue was not reconciled during the site visit we followed up that meeting with an additional data request in preparation for IMR-5. In response, we were provided with a two-page interoffice memorandum from APD, dated January 23, 2017. The memoranda acknowledged the conversation that occurred while the monitoring team was at APD in November 2016 and the fact that these three cases were discussed. APD's response to the three cases is as follows:

[IMR-5-022]: *This case was not appropriately followed up by APD.*

APD Response: "The IMT did point out what they consider deficiencies in the original UoF investigation as well as concerns over performance of the involved officer (IMR-3). They also questioned involved officer's statement of

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<sup>61</sup> This practice has been the most effective because of the significant interrelationship IA/CIRT has with all use of force investigations.

<sup>62</sup> Excerpt from Paragraph 46, IMR-4: "With respect to the Use of Force and Show of Force cases reported in IMR-3, the monitoring team notes that APD did not have an adequate amount of time to read and assess the information in that report prior to our June 2016 site visit --- since the report had only been provided a few days before that visit. Typically, the monitoring team will review the cases it comments on with APD, particularly if cases had significant deficiencies. Since the monitoring team provided sufficient detail in IMR-3 for APD to self-assess and make determinations as to the proper follow up actions that may be necessary in each case, we will review these cases in detail during our November 2016 site visit to determine any follow up activities APD has conducted and report on those activities in IMR-5."

events citing the lapel footage as differing from the officer's report."

"Internal Affairs and/or CIRT did not receive a request from FRB to investigate this case for any misconduct or conduct further investigation into the use of force itself. Therefore, there is no official follow-up on the investigation from Internal Affairs. Since receiving (the monitoring team's) data request, I contacted Quality Assurance Auditor (APD employee). He has informed me he sent an email about these three cases to both FRB Majors on November 10, 2016 but he is unaware of how they may have responded. As stated, Internal Affairs was not requested to investigate this case and I cannot find any other documentation in IAPro to suggest FRB conducted any further investigation or follow-up themselves."

In IMR -3, the monitoring team identified several significant issues related to this case, two of which include:

1. "Early in the event the suspect began to walk away and into his garage, against the commands of the sergeant, at which time the sergeant transitioned to his Taser and fired it at the suspect from behind. Based on the totality of circumstances, and observations that can be seen on the lapel videos, in the monitoring team's opinion that level of force did not appear proportionate to the circumstances and level of resistance that was encountered.
2. The sergeant documented that the suspect "...began to run into his garage," which is inconsistent with the lapel video footage."

In its response, APD indicated that our comments were used as part of a needs assessment for an updated course of instruction they delivered to APD supervisors; however, there are clear and specific officer reporting discrepancies, supervisory deficiencies and training needs associated with this case that, to our knowledge, have never been addressed by APD. Likewise, based on the training records we reviewed it is unclear how the specific issues in this case were addressed through training.

[IMR-5-023]: *APD adequately addressed our concerns that a serious use of force went uninvestigated.*<sup>63</sup>

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<sup>63</sup> Notwithstanding the fact that APD failed to address potential training and counseling needs for both the officer and supervisor in this case.

[IMR-5-024]: *This case was not appropriately followed up by APD after the monitoring team brought specific issues to their attention.*

APD's response to the monitoring team's concerns was ineffectual, at best, responding: "The IMT points out several concerns: performance issues of the involved officers as well as issues with the supervisory investigation and subsequent chain of command reviews. As with previous cases, this was a case investigated and reviewed by Field Services. Internal Affairs was not requested to specifically investigate this case or any of the IMT's concerns. We note that the supervisory investigation and review concerns were common prior to the training<sup>64</sup> and have even been addressed again through the 2-hour supervisor block and development of job aids. To the best of my knowledge, no other follow-up to these specific cases has occurred." We note no intent was expressed regarding fixing the problems we pointed out to APD.

In IMR-3 the monitoring team identified 10 separate points of concern associated with this case, including the fact that an officer used an ECW in drive stun mode as a means of pain compliance, issues with the force investigation, and several significant tactical concerns. As for the latter, the tactical concerns we identified raised many officer safety issues that we would expect APD to want to consider.

It is nearly incomprehensible that after five attempts<sup>65</sup> to prompt a legitimate follow-up on cases that the monitoring team has identified as problematic, two of the three remain unresolved after nine months! It is unknown where the fault lies when these types of internal breakdowns occur at APD. At a minimum, these findings denote a basic failure to receive and comprehend information the monitoring team provides (either through monitoring reports, Special Reports or in-person meetings), break that information down into tasks to be addressed by members of the department, address issues meaningfully, ensure that proper remediation of performance deficiencies occurs, and document the process. Aside from the fact that these cases include issues with improper reporting (which obviously impacts the legitimacy of APD use and show of force data reporting), it is critically important that these instances be documented in the event the same officers and supervisors repeat their unacceptable performance in the future. Probably the most disconcerting aspect of this breakdown by APD is that it reinforces what we have commented on in past reports. APD views these types of events as

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<sup>64</sup> The training referenced is the 40-hour Use of Force and 24-hour Supervisory Use of Force training programs that were delivered during the first half of 2016. Both of those training programs still have outstanding gaps that have yet to be reconciled.

<sup>65</sup> 1) Reported in IMR-3; 2) Discussed during our June 2016 site visit; 3) Listed in our proposed November site visit schedule; 4) Discussed at our November 2016 site visit; 5) Requested any follow up in preparation for IMR-5.

“water under the bridge,” not cases to be reviewed *objectively* and addressed appropriately even when missed initially within the department. At this point we believe we are faced with deliberate non-compliance with CASA articulated—and even APD articulated—requirements relating to serious allegations of misuse of force and supervisory, command, and executive review, assessment, and remediation of such issues.

#### 4.7.47 Assessing Compliance with Paragraph 60: IAB Force Review

Paragraph 60 stipulates that:

**“The Internal Affairs Bureau shall respond to the scene and** conduct investigations of serious uses of force, uses of force indicating apparent criminal conduct by an officer, uses of force by APD personnel of a rank higher than sergeant, or uses of force reassigned to the Internal Affairs Bureau by the Chief. In cases where the Internal Affairs Bureau initiates a criminal investigation, it shall ensure that such investigation remains separate from and independent of any administrative investigation. In instances where the Multi-Agency Task Force is conducting the criminal investigation of a serious use of force, the Internal Affairs Bureau shall conduct **the administrative investigation.**”

#### Methodology

The Internal Affairs suite of policies have been re-numbered, and now include policies covering several different entities interconnected to the administrative and/or criminal investigation of uses of force, misconduct that may be identified as a result of those investigations and the imposition of discipline. SOP 2-05 has been recast as SOP 7-1, IA has instituted a handbook, the Critical Incident Review Team (CIRT) responsibilities are now codified in SOP 7-2, the Force Investigation Team (FIT) responsibilities or now codified in SOP 7-3, Complaints Involving Department Policy or Personnel is now codified in SOP 3-41 and the Discipline System is now codified SOP 3-46. We note that the Investigative Response Team (IRT) has reverted back to its previous name, the Force Investigation Team.<sup>66</sup> Because these policies provide the foundation for training and field implementation, the monitoring team requested copies of any documentation of training PAB personnel have received with respect to their relevant SOP's.<sup>67</sup> The monitoring team was provided with two lesson plans and PowerPoint presentations<sup>68</sup>,

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<sup>66</sup> Although the SOP's for IAS and CIRT were promulgated on the same date as the FIT SOP, they still refer to IRT.

<sup>67</sup> The materials requested included training records, certificates and attendance records for courses attended internally and externally (by outside vendors), as well as documentation that demonstrates APD has vetted outside course (s) content.

<sup>68</sup> The monitoring team cannot tell when these lesson plans were created, whether they were ever approved internally, or whether they were ever delivered to APD personnel (We were not

PowerDMS records<sup>69</sup> related to a number of IA related policies and also and interoffice memorandum dated October 12, 2016, entitled "Garrity Advisements" authored by the commander of IAD to his personnel. We were provided with numerous certificates of attendance, primarily originating from courses developed outside of APD, which we expect were intended to demonstrate their personnel were appropriately trained. We were also provided with a series of interoffice memorandums that were prepared by a member of FIT. These memorandums were assessments of exterior training courses that were attended by FIT, presumably with the intention of demonstrating that the content of the courses met certain provisions of the CASA.

## Results

With respect to Compliance levels with this paragraph, the monitoring team notes that Primary compliance was achieved during IMR-4. APD accomplishes their responsibilities through a multi-unit response model that primarily combines the efforts of FIT and CIRT. We have discussed conducting a criminal investigation following every serious use of force with APD on multiple occasions. Initiating an "automatic" criminal investigation is a procedure APD has implemented on their own. To the extent it complicates and exacerbates APD staffing levels and workloads, the monitoring team reiterates here that there is no CASA requirement that a criminal investigation *automatically* be conducted into every serious use of force. While APD has created administrative "hand-off" points for cases through the investigative process, we also note consternation by the APOA over this issue. During our last site visit, the monitoring team had an opportunity to meet with APOA representatives who reiterated their concerns in this and other areas of APD's approach to CASA compliance. We received mixed information as to whether "automatic" criminal investigations are having an impact on the cooperation of APD officers when providing statements to administrative investigators. We will continue to monitor this aspect of APD's investigative response to serious uses of force.

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provided attendance records). The lessons appear to be created for an in-person lecture, not a PowerDMS presentation of materials. The PowerPoints and lesson plans indicated they addressed SOP's 3-43 – 3-47, and SOP 2-05 (7-1), but not SOPs 7-2 – 7-3. That said, the documents we were provided failed to adequately address SOP 2-05 (7-1).

<sup>69</sup> These records were in the form of PowerDMS records. The records are limited in scope and fail to demonstrate that the policies they list have been delivered in the form of training, or if they were simply policy "sign off" records, which is another purpose for PowerDMS. The monitoring team is familiar with the PowerDMS platform, which can be used for policies to be delivered for a simple "sign off" or expanded into a training program that has specific training objectives and level two measurements to ensure there was a transfer of knowledge to the end user. We asked for follow up information to get a clearer understanding of the records, but received no response.



To reach Secondary compliance, APD must first demonstrate that it adequately trained PAB personnel on its own policies and protocols. (Included with those policies is a handbook – or System Manual - that was created by IA.) In preparation of this report the monitoring team requested records that would allow us to evaluate Secondary compliance. Based on the records we reviewed, APD has not demonstrated that they have developed adequate training to deliver the content of their governing policies, procedures and handbook. We were, however, provided extensive documentation in the form of attendance certificates for a host of different external training programs that have been attended by members of IA, CIRT and FIT.

While the records we reviewed demonstrate a legitimate and sincere commitment on the part of APD to provide IA/CIRT/FIT members with training related to their jobs, it is still unclear to the monitoring team whether the training programs they attend are properly vetted prior to attending them. Likewise, it is unclear whether any remedial discussion occurs with a member of APD if/when they attend an outside course that provides instruction that is inconsistent with their own policies and the CASA. These measures are important because the oversight of organizational training is critical to APD's success.<sup>70</sup> The monitoring team has had multiple conversations, with multiple units, within APD and discussed the importance of the oversight of outside training programs. We have also provided our perspective on the prospects of having outside programs (which are not customized to the specific needs of APD) meet the specific provisions within each paragraph of the CASA. If it is APD's intention to advance outside training programs as evidence they meet each of the specific provisions of the CASA paragraphs, it is their responsibility to collect and organize all the training materials (not certificates or course syllabus alone) and highlight how the content of programs directly addresses the CASA requirements.

We have communicated to APD, on multiple occasions, that their success may be best found by developing their training internally so that the curriculum can be directly customized and targeted to fit their needs. Reviewing certificates, or training bulletins, is insufficient to determine if outside training meets APD's requirements. We repeat, that the importance of proper vetting of materials before attending a course, and ensuring that APD officers are not being trained in a way that is inconsistent with the CASA is crucial. We understand that in some cases outside vendors will not share their proprietary information, thus making difficult the ability to review course materials before attending a course. In

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<sup>70</sup> Training that may be acceptable to another police agency is not necessarily good training for APD since the CASA, and consequently their own policies, place requirements on the department different than other departments. Most vendor training programs will not be customized and/or may provide content that conflicts with APD's responsibilities.



those instances, it may be appropriate for APD to allow a supervisor to attend an outside course to assess the content ahead of allocating any additional resources. In those cases, it is crucial that the training be looked at with a critical eye. APD still maintains the responsibility to train their own policies and procedures to reach Secondary compliance. We discussed the prospect of training its own policies during our last site visit and at the time APD was unsure how they would approach the issue.

In previous meetings with FIT, a Commander took interest when we discussed the concept of vetting outside training programs and ensuring that they meet the provisions of the CASA. It was not surprising that the monitoring team was provided nine (9) separate internal memorandums<sup>71</sup> that were submitted by FIT wherein they assessed outside training programs that were attended by a FIT supervisor. The FIT supervisor identified the name of each course, the dates the course was attended, the location where it was attended and provided some basic, broad topical areas the course addressed. In each of the memorandums we reviewed, the FIT representative stated, "After participating in this course I conclude that this course did in fact fulfill requirements set forth in Paragraph 64 to have Internal Affairs Bureau personnel received training in investigative protocols."<sup>72</sup> The monitoring team reviewed this documentation and appreciated the effort that the FIT supervisor took to evaluate the relevance of the courses. Building upon these efforts by building and refining a training oversight system and vetting training programs will be a genuine benefit to APD as they progress. However, based on the records we were provided, we believe that (at least some of) these courses addressing "investigative protocols" relative to APD use of force investigations is probably a very liberal assessment. For instance, one memorandum concluded that attending a "Child Homicide Investigator Course" "...did in fact fulfill..." CASA training requirements pertaining to Paragraph 64, which deals with training requirements for IAB personnel.<sup>73</sup> While the course may have a tangential relationship to force investigations, to suggest that it meets training needs related to APD force "investigative protocols" is a reach. We do not concur with this assessment, and it brings into question the level of sophistication and "tough-mindedness" on critical CASA issues necessary to support APD's use of these external training processes as sole compliance measures.

The monitoring team requested data on serious use of force investigations that occurred between August 1, 2016, and December 31, 2016 and reviewed records compiled by FIT and CIRT. FIT reported 33 separate events during that timeframe and provided information concerning how

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<sup>71</sup> All nine memorandums were completed between October 24 and November 1, 2016. We were not provided with a course syllabus or training materials the memorandums were based upon.

<sup>72</sup> We note the reference to a different CASA paragraph, but the point is relevant here.

<sup>73</sup> Ibid.

many "days (it took) to complete" for 26 of those events. The average amount of time it took FIT to complete their investigation was 14 days from an event date.<sup>74</sup> During our site visit, the monitoring team discussed different contributing factors to the overall delay of serious use of force investigations being submitted and CIRT noted that the initial investigation conducted by FIT has had a direct impact on their ability to complete the administrative investigation into a specific case.

CIRT reported 31 separate, serious-use-of-force investigations during the same timeframe, involving 47 APD officers. We observed that the cases were initiated between April 20, 2016 and December 21, 2016, all of which were still pending investigation at the time of our data request. A separate COB document we reviewed was a ledger of cases that were closed by CIRT between August 1, 2016 and December 31, 2016. In that date range CIRT reported 18 separate, serious use of force cases being closed. Of those 18 cases, only 2 were completed within two months, which calculates to an 11% compliance rate with the CASA. We noted that 13 cases took more than 4 months to complete and 9 cases extended past 6 months until their completion by CIRT. This type of turnaround time for the completion of a serious use of force investigation, which does not include the amount of time it takes to schedule the case for an FRB review, has a profound impact on the timely remediation of performance deficiencies, identification of training needs and the imposition of discipline, when appropriate.

We have noted repeatedly that our impression is that staffing currently may be sub-optimal to handle the present workload, based upon the work flow data we have reviewed. As we have noted previously, this causes concern for several reasons: First, timely feedback is delayed, which means that deficiencies take longer to detect and remediate. We have noted that this is especially crucial during early stages of an organizational reform process. Although the Force Review Board (FRB) does review a small sample of investigations, the monitoring team does not regard that as a sufficiently robust level of oversight. During our site visit we were told that a proposal to create a "Central Oversight Unit" has been submitted that may address some of these issues. Whether that unit has been implemented is unknown at this time, but will be followed up in the coming months.

## Results

Primary: In Compliance  
Secondary: Not In Compliance  
Operational: Not In Compliance

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<sup>74</sup> The case completion rate ranged from 0 to 86 days.

***Recommendation 4.7.47a: Complete an externally developed and executed manpower needs assessment for CIRT and FIT. The assessment should be completed using hard data regarding workload, average time to complete investigative phases, supervision levels required, and managerial processes that may be implemented to “work smarter” while maintaining the ability to meet established goals.***

***Recommendation 4.7.47b: Once the needs assessment is complete, commit to optimum staffing within six months.***

***Recommendation 4.7.47c: Report the goals, timelines, milestones, and quality control points suggested by the study, and effectiveness CIRT/IRT in meeting operational objectives to the Chief of Police and through the chief to Council.***

4.7.48 Assessing Compliance with Paragraph 61: Criminal and Civil Force Investigations

Paragraph 61 stipulates:

**“The Internal Affairs Bureau will be responsible for conducting both criminal and administrative investigations, except as stated in Paragraph 60. The Internal Affairs Bureau shall include sufficient personnel who are specially trained in both criminal and administrative investigations.”**

Methodology

PAB SOP 2-05 was approved by the monitor on June 5, 2016, bringing APD into Primary Compliance on the requirements in Paragraph 61. The Internal Affairs suite of policies have been re-numbered, and now include policies covering several different entities interconnected to the administrative and/or criminal investigation of uses of force, misconduct that may be identified as a result of those investigations and the imposition of discipline. SOP 2-05 has been recast as SOP 7-1, the Critical Incident Review Team (CIRT) responsibilities are now codified in SOP 7-2, the Force Investigation Team (FIT) responsibilities are now codified in SOP 7-3, Complaints Involving Department Policy or Personnel is now codified in SOP 3-41 and the Discipline System is now codified SOP 3-46. We note that FIT, previously referred to as the Investigative Response Team (IRT), has reverted back to its previous name.<sup>75</sup> Because these policies provide the foundation for training and field implementation, the monitoring team

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<sup>75</sup> Although the SOP's for IAS and CIRT were promulgated on the same date as the FIT SOP, they still refer to IRT.

requested copies of any documentation of training PAB personnel have received with respect to their relevant SOP's.<sup>76</sup> The monitoring team was provided with PowerDMS records related to these policies and also an interoffice memorandum dated October 12, 2016, entitled "Garrity Advisements" authored by the Commander of IAD to his personnel. We were provided with numerous certificates of attendance, primarily originating from courses developed outside of APD, which we expect were intended to demonstrate their personnel were appropriately trained. We were also provided with a series of interoffice memorandums that were prepared by FIT. These memorandums were internal assessments of exterior training courses that were attended by FIT detectives, again we expect with the intention of demonstrating that the content of the courses met certain provisions of the CASA. Finally, during its November 2016 site visit the monitoring team met with IA personnel to discuss how APD intended to address the training requirements related to delivering the content of their internal policies and handbook.

As we have noted previously, from our reviews and discussions with both FIT, CIRT and IA staff, APD has erected a strong firewall that permits a one-way flow from FIT to IA, but not the reverse. During our November 2016 site visit the monitoring team discussed information breakdowns that occurred in a specific, previously reported, serious use of force case and how a FIT investigation into potential criminal liability was hindered (even diminished) because they were not privy to the same information as another organizational entity. The monitoring team respects APD's desire to segregate the information between a criminal and administrative investigations, and the differences between voluntary and compelled statements. That said, all roads of information meet eventually under the same APD command structure. How APD will reconcile one lane of information that may contradict, or hinder the effectiveness of the other, is an open question. However, it is a question that has been asked on more than one occasion by the monitoring team without resolution. We were told that APD continues to refine the interaction between FIT and CIRT and have discussed extensively how the two units will interact and share information appropriately and within policy.

## Results

To reach Secondary compliance, APD must first demonstrate that it adequately trained PAB personnel on the unit's own policies and protocols. (Included with those policies is a handbook – or System Manual - that was created by IA.) In preparation of this report the monitoring team requested records that would allow us to evaluate Secondary compliance. Based on the records we reviewed, APD has not

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<sup>76</sup> The materials requested included lesson plans, training orders and attendance records.

demonstrated that they have developed adequate training to deliver the content of their governing policies, procedures and handbook. We were, however, provided extensive documentation in the form of attendance certificates for a host of different external training programs that have been attended by members of IA, CIRT and FIT. We note that the City contends this paragraph “doesn’t require training” in its comments to the draft of this report. We are bewildered by this comment. Some form of formalized delivery of content and testing (even if it is done in the routine daily course of business via enhanced supervisory review and intervention) is required for any major policy change. Such contentions reinforce our concerns that APD is out-of-touch with normally accepted police practices. The “read and understand” statement regarding policies has been eschewed by effective police agencies for decades.

While the records we reviewed demonstrate a legitimate and sincere commitment on the part of APD to provide IA/CIRT/FIT members with training related to their jobs, it is still unclear to the monitoring team whether the training programs they attend are properly vetted prior to attending them. Likewise, it is unclear whether any remedial discussion occurs with a member of APD if/when they attend an outside course that provides instruction that is inconsistent with their own policies and the CASA. These measures are important because the oversight of organizational training is critical to APD’s success.

Primary: In Compliance  
 Secondary: Not In Compliance  
 Operational: Not In Compliance

***Recommendation 4.7.48a: Perform a careful, comprehensive, inclusive Job-Task Analysis of all currently assigned IA job classes (this may require external assistance).***

***Recommendation 4.7.48b: Once the JTA is complete, develop a listing of needed skills and competencies;***

***Recommendation 4.7.48c: Identify current skill-sets possessed by current IA personnel, and conduct a “Gap Analysis;”***

***Recommendation 4.7.48d: Determine what missing skill-sets need to be developed;***

***Recommendation 4.7.48e: Assess external training modalities to identify in advance which ones train and develop the missing skill sets;***

***Recommendation 4.7.48f: Either develop the needed training in-house or procure it by sending IAB personnel to external training events that are known to provide effectively needed skill sets that will fill IAB's skill-set deficiencies. Make no assignments to external training unless APD can verify that the training venue or provider actually has a plan and or course syllabus that includes an effective treatment of the designated skill set.***

***Recommendation 4.7.48g: Maintain records regarding skill set deficiencies and external training events skills training, and follow-up with post-training analyses of each externally trained employee's ability to meet performance goals related to "new" skill sets.***

#### 4.7.49 Assessing Compliance with Paragraph 62: Revision of IAB Manual

Paragraph 62 stipulates:

**"Within** six months from the Effective Operational Date, APD shall revise the Internal Affairs Bureau manual to include the following:

- a) definitions of all relevant terms;
- b) procedures on report writing;
- c) procedures for collecting and processing evidence;
- d) procedures to ensure appropriate separation of criminal and administrative investigations in the event of compelled subject officer statements;
- e) **procedures for consulting with the District Attorney's** Office or the USAO, as appropriate, including ensuring that administrative investigations are not unnecessarily delayed while a criminal investigation is pending;
- f) scene management procedures; and
- g) **management procedures."**

#### Methodology

PAB SOP 2-05 was approved by the monitor on June 5, 2016, bringing APD into Primary Compliance on the requirements in Paragraph 62. The Internal Affairs suite of policies have been re-numbered, and now include policies covering several different entities interconnected to the administrative and/or criminal investigation of: uses of force, misconduct that may be identified as a result of those investigations and the imposition of discipline. SOP 2-05 has been recast as SOP 7-1, the Critical Incident



Review Team (CIRT). Responsibilities for CIRT are now codified in SOP 7-2. Force Investigation Team (FIT) responsibilities are now codified in SOP 7-3. Complaints Involving Department Policy or Personnel is now codified in SOP 3-41 and the Discipline System is now codified SOP 3-46.

We note that FIT, previously referred to as the Investigative Response Team (IRT), has reverted back to its previous name.<sup>77</sup> Because these policies provide the foundation for training and field implementation, the monitoring team requested copies of any documentation of training PAB personnel have received with respect to their relevant SOP's.<sup>78</sup> The monitoring team was provided with PowerDMS records related to these policies and also an interoffice memorandum dated October 12, 2016, entitled "Garrity Advisements" authored by the commander of IAD to his personnel. We were provided with numerous certificates of attendance, primarily originating from courses developed outside of APD, which were intended to demonstrate their personnel were appropriately trained. We were also provided with a series of interoffice memorandums that were prepared by FIT. These memorandums were internal assessments of exterior training courses that were attended, with the intention of demonstrating that the content of the courses met certain provisions of the CASA. Finally, during its November 2016 site visit the monitoring team met with IA personnel to discuss how APD intended to address the training requirements related to delivering the content of their internal policies and handbook.

## Results

To reach Secondary compliance APD must first demonstrate that it adequately trained PAB personnel on its own policies and protocols. (Included with those policies is a handbook – or System Manual - that was created by IA) In preparation of this report the monitoring team requested records that would allow us to evaluate Secondary compliance. Based on the records we reviewed, APD has not demonstrated that they have developed adequate training to deliver the content of their governing policies, procedures and handbook. We were, however, provided extensive documentation in the form of attendance certificates for a host of different external training programs that have been attended by members of IA, CIRT and FIT. We note that the City contends this paragraph “doesn’t require training” in its comments to the draft of this report. We are bewildered by this comment. Some form of formalized delivery of content and testing (even if it is done in the routine daily course of business via enhanced supervisory review and intervention) is required

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<sup>77</sup> Although the SOP's for IAS and CIRT were promulgated on the same date as the FIT SOP, they still refer to IRT. This type of administrative oversight demonstrates a lack of attention to detail when managing policies.

<sup>78</sup> The materials requested included lesson plans, training orders and attendance records.



for any major policy change. Such a contention reinforces our concerns that APD is out-of-touch with normally accepted police practices. The “read and understand” statement regarding policies has been eschewed by effective police agencies for decades.

Primary: In Compliance  
Secondary: Not In Compliance  
Operational: Not In Compliance

***Recommendation 4.7.49a: Perform a careful, comprehensive, inclusive Job-Task Analysis of all currently assigned IA job classes (this may require external assistance).***

***Recommendation 4.7.49b: Once the JTA is complete, develop a listing of needed skills and competencies;***

***Recommendation 4.7.49c: Identify current skill-sets possessed by current IA personnel, and conduct a “Gap Analysis;”***

***Recommendation 4.7.49d: Determine what missing skill-sets need to be developed;***

***Recommendation 4.7.49e: Assess external training modalities to identify in advance which ones train and develop the missing skill sets;***

***Recommendation 4.7.49f: Either develop the needed training in-house or procure it by sending IAB personnel to external training events that are known to provide effectively needed skill sets that will fill IAB’s skill-set deficiencies. Make no assignments to external training unless APD can verify that the training venue or provider actually has a plan and or course syllabus that includes an effective treatment of the designated skill set.***

***Recommendation 4.7.49g: Maintain records regarding skill set deficiencies and external training events skills training, and follow-up with post-training analyses of each externally trained employee’s ability to meet performance goals related to “new” skill sets.***

4.7.50 Assessing Compliance with Paragraph 63: Staffing IAB

Paragraph 63 stipulates:

“Within ten months from the Effective Date, APD shall ensure that there are sufficient trained personnel assigned to the Internal Affairs Bureau to fulfill the requirements of this Agreement. APD shall ensure that all serious uses of force are investigated fully and

fairly by individuals with appropriate expertise, independence, and investigative skills so that uses of force that are contrary to law or policy are identified and appropriately resolved; that policy, training, equipment, or tactical deficiencies related to the use of force are identified and corrected; and that investigations of sufficient quality are conducted so that officers can be held accountable, if necessary. At the discretion of the Chief, APD may hire and retain personnel, or reassign current APD employees, with **sufficient expertise and skills to the Internal Affairs Bureau.**"

## Methodology

PAB SOP 2-05 was approved by the monitor on June 5, 2016, bringing APD into Primary Compliance on the requirements in Paragraph 62. The Internal Affairs suite of policies have been re-numbered, and now include policies covering several different entities interconnected to the administrative and/or criminal investigation of: uses of force, misconduct that may be identified as a result of those investigations and the imposition of discipline. SOP 2-05 has been recast as SOP 7-1, the Critical Incident Review Team (CIRT). Responsibilities for CIRT are now codified in SOP 7-2. Force Investigation Team (FIT) responsibilities are now codified in SOP 7-3. Complaints Involving Department Policy or Personnel is now codified in SOP 3-41 and the Discipline System is now codified SOP 3-46.

## Results

To reach Secondary compliance APD must first demonstrate that it adequately trained PAB personnel on its own policies and protocols. (Included with those policies is a handbook – or System Manual - that was created by IA) In preparation of this report the monitoring team requested records that would allow us to evaluate Secondary compliance. Based on the records we reviewed, APD has not demonstrated that they have developed adequate training to deliver the content of their governing policies, procedures and handbook. We were, however, provided extensive documentation in the form of attendance certificates for a host of different external training programs that have been attended by members of IA, CIRT and FIT.

The monitoring team requested data on serious use of force investigations that occurred between August 1, 2016, and December 31, 2016 and reviewed records compiled by FIT and CIRT. FIT reported 33 separate events during that timeframe and provided information concerning how many "days (it took) to complete" for 26 of those events. The average amount of days it took FIT to complete their investigation was 14 from an event date.<sup>79</sup> During our site visit the monitoring team discussed different contributing factors to the overall delay of serious use of force

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<sup>79</sup> The case completion rate ranged from 0 to 86 days.

investigations being submitted and CIRT noted that the initial investigation conducted by FIT has a direct impact on their ability to complete the administrative investigation into a specific case.

CIRT reported 31 separate serious use of force investigations during the same timeframe, involving 47 APD officers. We observed that the cases were initiated between April 20, 2016, and December 21, 2016, all of which were still pending investigation at the time of our data request. A separate COB document we reviewed was a ledger of cases that were closed by CIRT between August 1, 2016 and December 31, 2016. In that date range CIRT reported 18 separate serious use of force cases being closed. Of those 18 cases, only 2 were completed within two months which calculates to an 11% compliance rate with the CASA. We noted that 13 cases took more than 4 months to complete and 9 cases extended past 6 months until their completion by CIRT.

The monitoring team assumes that the question of whether IAD has sufficient trained personnel to handle its workload, to ensure the timely processing of force investigations and CIRT reviews, is a continual APD assessment. As noted earlier, we see adequate staffing and training for IAS personnel as a critical issue in the compliance process.

Primary: In Compliance  
Secondary: Not In Compliance  
Operational: Not In Compliance

***Recommendation 4.7.50a: Perform a careful, comprehensive, inclusive Job-Task Analysis of all currently assigned IA job classes (this may require external assistance).***

***Recommendation 4.7. 50b: Once the JTA is complete, develop a listing of needed skills and competencies;***

***Recommendation 4.7. 50c: Identify current skill-sets possessed by current IA personnel, and conduct a “Gap Analysis;”***

***Recommendation 4.7.50d: Determine what missing skill-sets need to be developed;***

***Recommendation 4.7. 50e: Assess external training modalities to identify in advance which ones train and develop the missing skill sets;***

***Recommendation 4.7. 50f: Either develop the needed training in-house or procure it by sending IAB personnel to external training events that are known to provide effectively needed skill sets that***

***will fill IAB's skill-set deficiencies. Make no assignments to external training unless APD can verify that the training venue or provider actually has a plan and or course syllabus that includes an effective treatment of the designated skill set.***

***Recommendation 4.7. 50g: Maintain records regarding skill set deficiencies and external training events skills training, and follow-up with post-training analyses of each externally trained employee's ability to meet performance goals related to "new" skill sets.***

#### 4.7.51 Assessing Compliance with Paragraph 64: Training IAB Personnel

Paragraph 64 stipulates:

**"Before performing force investigations, Internal Affairs Bureau personnel shall receive force investigation training that includes, at a minimum, the following areas: force investigation procedures; call-out and investigative protocols; proper roles of on-scene counterparts such as crime scene technicians, the Office of the Medical Investigator, District Attorney staff, the Multi-Agency Task Force, City Attorney staff, and Civilian Police Oversight Agency staff; and investigative equipment and techniques. Internal Affairs Bureau personnel shall also receive force investigation annual in-service training."**

#### Methodology

PAB SOP 2-05 was approved by the monitor on June 5, 2016, bringing APD into Primary Compliance on the requirements in Paragraph 64. The Internal Affairs suite of policies have been re-numbered, and now include policies covering several different entities interconnected to the administrative and/or criminal investigation of uses of force, misconduct that may be identified as a result of those investigations and the imposition of discipline. SOP 2-05 has been recast as SOP 7-1, the Critical Incident Review Team (CIRT) responsibilities are now codified in SOP 7-2, the Force Investigation Team (FIT) responsibilities or now codified in SOP 7-3, Complaints Involving Department Policy or Personnel is now codified in SOP 3-41 and the Discipline System is now codified SOP 3-46. We note that FIT, previously referred to as the Investigative Response Team (IRT), has reverted back to its previous name, the Force Investigation Team.<sup>80</sup>

Because these policies provide the foundation for training and field implementation, the monitoring team requested copies of any

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<sup>80</sup> Although the SOP's for IAS and CIRT were promulgated on the same date as the FIT SOP, they still refer to IRT. This type of administrative oversight demonstrates a lack of attention to detail when managing policies.

documentation of training PAB personnel have received with respect to their relevant SOP's.<sup>81</sup> The monitoring team was provided with PowerDMS records related to these policies and also an interoffice memorandum dated October 12, 2016, entitled "Garrity Advisements" authored by the commander of IAD to his personnel. We were provided with numerous certificates of attendance, primarily originating from courses developed outside of APD, which were intended to demonstrate their personnel were appropriately trained. We were also provided with a series of interoffice memorandums that were prepared by FIT. These memorandums were internal assessments of exterior training courses that were attended, with the intention of demonstrating that the content of the courses met certain provisions of the CASA. Finally, during its November 2016 site visit the monitoring team met with IA personnel to discuss how APD intended to address the training requirements related to delivering the content of their internal policies and handbook.

## Results

With respect to Compliance levels with this paragraph, the monitoring team notes that Primary compliance was achieved during IMR-4. APD accomplishes their responsibilities through a multi-unit response model that primarily combines the efforts of FIT and CIRT. We have discussed conducting a criminal investigation following every serious use of force with APD on multiple occasions. Initiating an "automatic" criminal investigation is a provision APD has implemented on their own. To the extent it complicates and exacerbates APD staffing levels and workloads, the monitoring team reiterates here that there is no automatic CASA requirement that a criminal investigation be conducted into every serious use of force. While APD has created administrative "hand-off" points for cases through the investigative process, we also note consternation that has been exhibited by the APOA over this issue. During our last site visit the monitoring team had an opportunity to meet with APOA representatives who reiterated their concerns in this and other areas of APD's approach to CASA compliance. We received mixed information as to whether "automatic" criminal investigations are having an impact on the cooperation of APD officers when providing statements to investigators. We will continue to monitor this aspect of APD's investigative response to serious uses of force.

To reach Secondary compliance APD must first demonstrate that it adequately trained PAB personnel on its own policies and protocols. (Included with those policies is a handbook – or System Manual - that was created by IA) In preparation of this report the monitoring team requested records that would allow us to evaluate Secondary compliance. Based on the records we reviewed, APD has not demonstrated that they have

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<sup>81</sup> The materials requested included lesson plans, training orders and attendance records.

developed adequate training to deliver the content of their governing policies, procedures and handbook. We were, however, provided extensive documentation in the form of attendance certificates for a host of different external training programs that have been attended by members of IA, CIRT and FIT.

While the records we reviewed demonstrate a legitimate and sincere commitment on the part of APD to provide IA/CIRT/FIT members with training related to their jobs, it is still unclear to the monitoring team whether the training programs they attend are properly vetted prior to attending them. Likewise, it's unclear whether any remedial discussion occurs with a member of APD if/when they attend an outside course that provides instruction that is inconsistent with their own policies and the CASA. These measures are important because the oversight of organizational training is critical to APD's success. The monitoring team has had multiple conversations, with multiple units, within APD and discussed the importance of the oversight of outside training programs. We have also provided our perspective on the prospects of having outside programs (which are not customized to the specific needs of APD) meet the specific provisions within each paragraph of the CASA. If it is APD's intention to advance outside training programs as evidence they meet each of the specific provisions of the CASA paragraphs, it is their responsibility to collect and organize all the training materials (not certificates alone) and highlight how *the content* of programs directly addresses the CASA requirements.

The monitoring team was provided nine (9) separate internal memoranda<sup>82</sup> that were submitted by FIT wherein they assessed outside training programs that were attended by a FIT supervisor. In each memorandum, the FIT supervisor identified the name of the course, the dates the course was attended, the location where it was attended and provided some basic, broad topical areas the course addressed. In each of the memorandums we reviewed, the FIT representative stated, "After participating in this course I conclude that this course did in fact fulfill requirements set forth in Paragraph 64 to have Internal Affairs Bureau personnel received training in investigative protocols." The monitoring team reviewed this documentation and appreciates the effort that the FIT supervisor took to evaluate the relevance of the courses. However, based on the record we were provided, without more, we believe these courses addressing "investigative protocols" relative to APD use of force investigations is probably a liberal assessment. For instance, one memorandum concluded that attending a "Child Homicide Investigator Course" did in fact fulfill... CASA training requirements pertaining to Paragraph 64. While the course may have a tangential relationship to

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<sup>82</sup> All nine memorandums were completed between October 24 and November 1, 2016. We were not provided with a course syllabus or training materials the memorandums were based upon.



force investigations, to suggest that it meets training needs related to APD force "investigative protocols" appears to us to be a significant reach.

#### Results

Primary: In Compliance  
Secondary: Not In Compliance  
Operational: Not In Compliance

***Recommendation 4.7.51a: Perform a careful, comprehensive, inclusive Job-Task Analysis of all currently assigned IA job classes (this may require external assistance).***

***Recommendation 4.7. 51b: Once the JTA is complete, develop a listing of needed skills and competencies;***

***Recommendation 4.7. 51c: Identify current skill-sets possessed by current IA personnel, and conduct a "Gap Analysis;"***

***Recommendation 4.7.51d: Determine what missing skill-sets need to be developed;***

***Recommendation 4.7. 51e: Assess external training modalities to identify in advance which ones train and develop the missing skill sets;***

***Recommendation 4.7. 51f: Either develop the needed training in-house or procure it by sending IAB personnel to external training events that are known to provide effectively needed skill sets that will fill IAB's skill-set deficiencies. Make no assignments to external training unless APD can verify that the training venue or provider actually has a plan and or course syllabus that includes an effective treatment of the designated skill set.***

***Recommendation 4.7. 51g: Maintain records regarding skill set deficiencies and external training events skills training, and follow-up with post-training analyses of each externally trained employee's ability to meet performance goals related to "new" skill sets.***

4.7.52 Assessing Compliance with Paragraph 65: Referral of Force Investigations to MATF

Paragraph 65 stipulates:

**"Where appropriate to ensure the fact and appearance of impartiality and with the authorization of the Chief, APD may refer a**



serious use of force or force indicating apparent criminal conduct by an officer to the Multi-Agency Task **Force for investigation.**”

## Methodology

All MATF-related cases reviewed for this reporting period were classified as “still pending.” We were unable to evaluate this paragraph at this time.

## Results

To reach Secondary compliance APD must first demonstrate that it adequately trained PAB personnel on its own policies and protocols. (Included with those policies is a handbook – or System Manual - that was created by IA) In preparation of this report the monitoring team requested records that would allow us to evaluate Secondary compliance. Based on the records we reviewed, APD has not demonstrated that they have developed adequate training to deliver the content of their governing policies, procedures and handbook. We were, however, provided extensive documentation in the form of attendance certificates for a host of different external training programs that have been attended by members of IA, CIRT and FIT.

The monitoring team requested data for any serious use of force cases that were referred to and/or investigated by the MATF between August 1, 2016, and December 31, 2016. We were provided an internal case ledger that included two separate case events (A critical firearms discharge and an OIS). It is our understanding that these cases are still pending a complete review by APD, prior to referral to MATF, thus referral to MATF is not feasible until that review is complete.

Primary: In Compliance  
Secondary: Not Able to Evaluate  
Operational: Not Able to Evaluate

### 4.7.53 Assessing Compliance with Paragraph 66: MATF Assistance to IAB

Paragraph 66 stipulates:

**“To ensure that criminal and administrative investigations remain separate, APD’s Violent Crimes Section may support the Internal Affairs Bureau or the Multi-Agency Task Force in the investigation of any serious use of force, as defined by this Agreement, including critical firearm discharges, in-custody deaths, or police-initiated actions in which a death or serious physical injury occurs.”**

## Methodology

The monitoring team requested data for any serious use of force cases that were referred to and/or investigated by the MATF between August 1, 2016, and December 31, 2016. We were provided an internal case ledger that included two separate case events (A critical firearms discharge and an OIS). It is our understanding that these cases are still pending a complete review by APD, prior to referral to MATF, thus referral to MATF is not feasible until that review is complete.

## Results

During our November 2016 site visit the monitoring team discussed information breakdowns that occurred in a specific, previously reported, serious use of force case and how an APD investigation into potential criminal liability was hindered (even diminished) because involved units were not privy to the same information. The monitoring team respects APD's desire to segregate the information between a criminal and administrative investigations, and the differences between voluntary and compelled statements. That said, all roads of information meet eventually under the same APD command structure. How APD will reconcile one lane of information that may contradict, or hinder effectiveness, of the other is an open question. It is a question that has been asked on more than one occasion by the monitoring team without complete resolution.

We were told that APD continues to refine the interaction between FIT and CIRT and have discussed extensively how the two units will interact and share information appropriately and within policy. We sense a hypersensitivity to information security, which is important. Since the CIRT administrative investigation is expected to continue concurrently with the FIT investigation, we express our observations for consideration before a complex, unanticipated situation occurs where two tracks of information may be inconsistent.

To reach Secondary compliance APD must first demonstrate that it adequately trained PAB personnel on its own policies and protocols. (Included with those policies is a handbook – or System Manual - that was created by IA) In preparation of this report the monitoring team requested records that would allow us to evaluate Secondary compliance. Based on the records we reviewed, APD has not demonstrated that they have developed adequate training to deliver the content of their governing policies, procedures and handbook. We were, however, provided extensive documentation in the form of attendance certificates for a host of different *external training programs* that have been attended by members of IA, CIRT and FIT.

The monitoring team requested data for any serious use of force cases that were referred to and/or investigated by the MATF between August 1, 2016, and December 31, 2016. We were provided an internal case ledger that included two separate case events (A critical firearms discharge and an OIS). It is our understanding that these cases are still pending investigation or a complete review by APD.

Primary: In Compliance  
Secondary: Not In Compliance  
Operational: Not In Compliance

***Recommendation 4.7.53a: Perform a careful, comprehensive, inclusive Job-Task Analysis of all currently assigned IA job classes (this may require external assistance).***

***Recommendation 4.7. 53b: Once the JTA is complete, develop a listing of needed skills and competencies;***

***Recommendation 4.7. 53c: Identify current skill-sets possessed by current IA personnel, and conduct a “Gap Analysis;”***

***Recommendation 4.7.53d: Determine what missing skill-sets need to be developed;***

***Recommendation 4.7. 53e: Assess external training modalities to identify in advance which ones train and develop the missing skill sets;***

***Recommendation 4.7.53f: Either develop the needed training in-house or procure it by sending IAB personnel to external training events that are known to provide effectively needed skill sets that will fill IAB’s skill-set deficiencies. Make no assignments to external training unless APD can verify that the training venue or provider actually has a plan and or course syllabus that includes an effective treatment of the designated skill set.***

***Recommendation 4.7. 53g: Maintain records regarding skill set deficiencies and external training events skills training, and follow-up with post-training analyses of each externally trained employee’s ability to meet performance goals related to “new” skill sets.***

4.7.54 Assessing Compliance with Paragraph 67: Notice to External Agencies of Criminal Conduct in Use of Force

Paragraph 67 stipulates:

**“The Chief shall notify and consult with the District Attorney’s Office, the Federal Bureau of Investigation, and/or the USAO, as appropriate, regarding any use of force indicating apparent criminal conduct by an officer or evidence of criminal conduct by an officer discovered during a misconduct investigation.”**

## Methodology

The monitoring team requested that APD provide copies of any documentation that demonstrates that they are consulting with either the District Attorney’s Office or the US Attorney’s Office. The request was to determine whether APD, during the course of a serious use of force investigation, seeks an opinion where there is potential criminal liability for an APD officer. The monitoring team was provided two documents: 1) An internal FIT memorandum, dated August 29, 2016, that documented steps a FIT detective took [IMR-5-002] to seek an opinion of the District Attorney’s Office; and 2) A letter from the District Attorney’s Office, dated August 24, 2016, that was directed back to FIT wherein they indicate that an officer’s actions did not constitute grounds for a criminal charge. The monitoring team was not provided with copies of the reports or videos that were associated with this request.

We note that this investigation was reportedly assigned to the FIT detective on July 28, 2016, and his original request was directed to the District Attorney’s Office on August 11, 2016. Based on the documentation that was provided to the monitoring team it is unclear specifically what documents and videos were provided to the District Attorney’s Office for review, although there is some description in the letter that is communicated back to APD by the District Attorney that reviewed the case. That said, we expect that the District Attorney made their determination based on a sufficient record. In the future, we will request from APD a more specific record of information that exists for a case, and compare it against the information that is submitted to the prosecutorial entity that renders an opinion. Finally, we commented in previous reports, as well as in Paragraph 22 of this report on the significant delays with APD submitting OIS cases to the District Attorney’s Office, and the delays APD experiences getting responses back.<sup>83</sup> While we appreciate the complexity of those investigations as compared to most others. The monitoring team is cognizant of these delays since many of the same investigators or involved with the submissions to the District Attorney’s Office.

To reach Secondary compliance APD must first demonstrate that it adequately trained PAB personnel on its own policies and protocols. (Included with those policies is a handbook – or System Manual - that was

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<sup>83</sup> We have also commented on the extensive amount of time it takes for APD to complete investigations and submit them to the DA’s office for review.

created by IA) In preparation of this report the monitoring team requested records that would allow us to evaluate Secondary compliance. Based on the records we reviewed, APD has not demonstrated that they have developed adequate training to deliver the content of their governing policies, procedures and handbook. We were, however, provided extensive documentation in the form of attendance certificates for a host of different external training programs that have been attended by members of IA, CIRT and FIT. APD clearly places a premium on providing training to their personnel. As noted elsewhere, the proper vetting, management and oversight of that training is crucial. We have not seen any documentation that APD currently has in place a standardized method of approval for outside training.

Primary: In Compliance  
 Secondary: Not In Compliance  
 Operational: Not In Compliance

***Recommendation 4.7.54a: APD should develop policy and training requiring such referrals to track the exact inventory of items that go back and forth for these reviews and provide more specificity.***<sup>84</sup>

#### 4.7.55 Assessing Compliance with Paragraph 68: Consultation with External Agencies and Compelled Statements

**“If the Internal Affairs Bureau determines that a case will proceed criminally, or where APD requests a criminal prosecution, the Internal Affairs Bureau will delay any compelled interview of the target officer(s) pending consultation with the District Attorney’s Office or the USAO, consistent with Paragraph 186. No other part of the investigation shall be held in abeyance unless specifically authorized by the Chief in consultation with the agency conducting the criminal investigation.”**

#### Methodology

PAB SOP 2-05 was approved by the monitor on June 5, 2016, bringing APD into Primary Compliance on the requirements in Paragraph 68. The Internal Affairs suite of policies have been re-numbered, and now include policies covering several different entities interconnected to the administrative and/or criminal investigation of uses of force, misconduct that may be identified as a result of those investigations and the imposition of discipline. SOP 2-05 has been recast as SOP 7-1, the Critical Incident Review Team (CIRT) responsibilities are now codified in SOP 7-2, the Force Investigation Team (FIT) responsibilities are now codified in SOP 7-3, Complaints Involving Department Policy or Personnel is now codified in SOP 3-41 and the Discipline System is now

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<sup>84</sup> Receipts of information may exist but they were not provided to the monitoring team.

codified SOP 3-46. We note that FIT, previously referred to as the Investigative Response Team (IRT), has reverted back to its previous name, the Force Investigation Team.<sup>85</sup> Because these policies provide the foundation for training and field implementation, the monitoring team requested copies of any documentation of training PAB personnel have received with respect to their relevant SOP's.<sup>86</sup> The monitoring team was provided with PowerDMS records related to these policies and also an interoffice memorandum dated October 12, 2016, entitled "Garrity Advisements" authored by the commander of IAD, to his personnel. We were provided with numerous certificates of attendance, primarily originating from courses developed outside of APD, which were intended to demonstrate their personnel were appropriately trained. We were also provided with a series of interoffice memorandums that were prepared by FIT. These memorandums were internal assessments of exterior training courses that were attended, with the intention of demonstrating that the content of the courses met certain provisions of the CASA. Finally, during its November 2016 site visit the monitoring team met with IA personnel to discuss how APD intended to address the training requirements related to delivering the content of their internal policies and handbook.

The monitoring team requested copies of any documentation that demonstrated that APD are consulting with either the District Attorney's Office or the US Attorney's Office and were provided COB documentation.

## Results

Cases that implicate the consultation requirement with the DA clearly should call for high-level review and approval. It is unclear, to the monitoring team, at what level this decision is currently being made, since the documentation we reviewed was between a FIT detective and a lieutenant. Whether the documentation went higher in the organization is unknown, but if not, we find that to be a significant concern. As we noted in IMR – 4, if the decision is never elevated expressly to the Chief Executive's level, it will be impossible for APD to comply with the requirements in Paragraphs 67 and 68.<sup>87</sup> Thus policy work remains to be done.

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<sup>85</sup> Although the SOP's for IAS and CIRT were promulgated on the same date as the FIT SOP, they still refer to IRT. This type of administrative oversight demonstrates a lack of attention to detail when managing policies.

<sup>86</sup> The materials requested included lesson plans, training orders and attendance records.

<sup>87</sup> Paragraph 186 requires the approval of the Chief, after consulting with a prosecuting attorney, before taking a compelled statement.



To reach Secondary compliance APD must first demonstrate that it adequately trained PAB personnel on its own policies and protocols. (Included with those policies is a handbook – or System Manual - that was created by IA) In preparation of this report the monitoring team requested records that would allow us to evaluate Secondary compliance. Based on the records we reviewed, APD has not demonstrated that they have developed adequate training to deliver the content of their governing policies, procedures and handbook. We were, however, provided extensive documentation in the form of attendance certificates for a host of different external training programs that have been attended by members of IA, CIRT and FIT. APD clearly places a premium on providing training to their personnel. As noted elsewhere, the proper vetting, management and oversight of that training is crucial. We do not believe that APD currently has in place a standardized, acceptable method of approval for outside training.

Primary: In Compliance  
Secondary: Not In Compliance  
Operational: Not In Compliance

***Recommendation 4.7.55a: Document via lesson plans, attendance records, and test scores training related this paragraph as it relates to internal policies;***

***Recommendation 4.7.55b: The solution to IA external training conundrum is simple. Perform a careful, comprehensive, inclusive Job-Task Analysis of all currently assigned IA job classes (this may require external assistance).***

***Recommendation 4.7. 55c: Once the JTA is complete, develop a listing of needed skills and competencies;***

***Recommendation 4.7. 55d: Identify current skill-sets possessed by current IA personnel, and conduct a “Gap Analysis;”***

***Recommendation 4.7.55e: Determine what missing skill-sets need to be developed;***

***Recommendation 4.7. 55f: Assess external training modalities to identify in advance which ones train and develop the missing skill sets;***

***Recommendation 4.7. 55g: Either develop the needed training in-house or procure it by sending IAB personnel to external training events that are known to provide effectively needed skill sets that will fill IAB’s skill-set deficiencies. Make no assignments to external***



***training unless APD can verify that the training venue or provider actually has a plan and or course syllabus that includes an effective treatment of the designated skill set.***

***Recommendation 4.7. 55h: Maintain records regarding skill set deficiencies and external training events skills training, and follow-up with post-training analyses of each externally trained employee's ability to meet performance goals related to "new" skill sets.***

#### 4.7.56 Assessing Compliance with Paragraph 69: IAB Responsibilities in Serious Uses of Force

Paragraph 69 stipulates:

**"In conducting its investigations of serious uses of force, as defined in this Agreement, the Internal Affairs Bureau shall:**

a) respond to the scene and consult with the on-scene supervisor to ensure that all personnel and subject(s) of use of force have been examined for injuries, that subject(s) have been interviewed for complaints of pain after advising the subject(s) of his or her rights, and that all officers and/or subject(s) have received medical attention, if applicable;

b) ensure that all evidence to establish material facts related to the use of force, including but not limited to audio and video recordings, photographs, and other documentation of injuries or the absence of injuries is collected;

c) ensure that a canvass for, and interview of, witnesses is conducted. In addition, witnesses should be encouraged to provide and sign a written statement in their own words;

d) ensure, consistent with applicable law, that all officers witnessing a serious use of force by another officer provide a use of force narrative of the facts leading to the use of force;

e) ensure that all officers involved in a use of force incident remain separated until each has been interviewed and never conduct group interviews of these officers;

f) review all Use of Force Reports to ensure that these statements include the information required by this Agreement and APD policy;

g) ensure that all Use of Force Reports identify all officers who were involved in the incident, witnessed the incident, or were on the scene when it occurred;

h) conduct investigations in a rigorous manner designed to determine the facts and, when conducting interviews, avoid asking leading questions and never ask officers or other witnesses any questions that may suggest legal **justifications for the officers' conduct;**

i) record all interviews;

j) consider all relevant evidence, including circumstantial, direct, and physical evidence, as appropriate, and make credibility determinations, if feasible;

k) make all reasonable efforts to resolve material inconsistencies between the officer, subject, and witness statements, as well as inconsistencies between the level of force described by the officer and any injuries to personnel or subjects; and

l) train all Internal Affairs Bureau force investigators on the factors to consider when evaluating credibility, incorporating credibility instructions **provided to jurors.**"

## Methodology

The monitoring team was provided with PowerDMS records related to these policies and also an interoffice memorandum dated October 12, 2016, entitled "Garrity Advisements" authored by the commander of IAD to his personnel. In addition, we were also provided with numerous certificates of attendance, primarily originating from courses developed outside of APD, which were intended to demonstrate their personnel were appropriately trained. We were also provided with a series of interoffice memorandums that were prepared by FIT. These memorandums were internal assessments of exterior training courses that were attended, with the intention of demonstrating that the content of the courses met certain provisions of the CASA. Finally, during its November 2016 site visit the monitoring team met with IA personnel to discuss how APD intended to address the training requirements related to delivering the content of their internal policies and handbook.

## Results

To reach Secondary compliance APD must first demonstrate that it adequately trained PAB personnel on its own policies and protocols. (Included with those policies is a handbook – or System Manual - that was created by IA) In preparation of this report the monitoring team requested records that would allow us to evaluate Secondary compliance. Based on the records we reviewed, APD has not demonstrated that they have developed adequate training to deliver the content of their governing policies, procedures and handbook.

Primary: In Compliance  
Secondary: Not In Compliance  
Operational: Not In Compliance

***Recommendation 4.7.56a: Document via lesson plans, attendance records, and test scores training related this paragraph as it relates to internal policies;***

***Recommendation 4.7.56b: The solution to IA external training conundrum is simple. Perform a careful, comprehensive, inclusive Job-Task Analysis of all currently assigned IA job classes (this may require external assistance).***

***Recommendation 4.7. 56c: Once the JTA is complete, develop a listing of needed skills and competencies;***

***Recommendation 4.7. 56d: Identify current skill-sets possessed by current IA personnel, and conduct a “Gap Analysis;”***

***Recommendation 4.7. 56e: Determine what missing skill-sets need to be developed;***

***Recommendation 4.7. 56f: Assess external training modalities to identify in advance which ones train and develop the missing skill sets;***

***Recommendation 4.7. 56g: Either develop the needed training in-house or procure it by sending IAB personnel to external training events that are known to provide effectively needed skill sets that will fill IAB’s skill-set deficiencies. Make no assignments to external training unless APD can verify that the training venue or provider actually has a plan and or course syllabus that includes an effective treatment of the designated skill set.***

***Recommendation 4.7. 56h: Maintain records regarding skill set deficiencies and external training events skills training, and follow-up with post-training analyses of each externally trained employee’s ability to meet performance goals related to “new” skill sets.***

4.7.57 Assessing Compliance with Paragraph 70: Use of Force Data Reports

Paragraph 70 stipulates:

**“The Internal Affairs Bureau shall complete an initial Use of Force Data Report through the chain of command to the Chief as soon as possible, but in no circumstances later than 24 hours after learning of the use of force.”**

Methodology

Members of the monitoring team reviewed IAB training records related to completion of the Initial Use of Force Data Report.

## Results

PAB SOP 2-05 was approved by the monitor on June 5, 2016, bringing APD into Primary Compliance on the requirements in Paragraph 70. The Internal Affairs suite of policies have been re-numbered, and now include policies covering several different entities interconnected to the administrative and/or criminal investigation of uses of force, misconduct that may be identified as a result of those investigations and the imposition of discipline. SOP 2-05 has been recast as SOP 7-1, the Critical Incident Review Team (CIRT) responsibilities are now codified in SOP 7-2, the Force Investigation Team (FIT) responsibilities are now codified in SOP 7-3, Complaints Involving Department Policy or Personnel is now codified in SOP 3-41 and the Discipline System is now codified SOP 3-46.

To reach Secondary compliance APD must first demonstrate that it adequately trained PAB personnel on its own policies and protocols. (Included with those policies is a handbook – or System Manual - that was created by IA). In preparation of this report the monitoring team requested records that would allow us to evaluate Secondary compliance. Based on the records provided by the department, APD has not demonstrated that they have developed adequate training to deliver the content of their governing policies, procedures and handbook.

Primary: In Compliance  
 Secondary: Not In Compliance  
 Operational: Not In Compliance

***Recommendation 4.7.57: Formalize and document IAB training protocols relative to internal policy requirements. Such training cannot be outsourced to external training providers unless they are specifically tailored to APD IAB internal policy requirements.***

### 4.7.58 Assessing Compliance with Paragraph 71: IAS Investigative Timelines

Paragraph 71 stipulates:

“The Internal Affairs Bureau shall complete administrative investigations within two months after learning of the use of force. Any request for an extension to this time limit must be approved by the commanding officer of the Internal Affairs Bureau through consultation with the Chief or by the Chief. At the conclusion of each use of force investigation, the Internal Affairs Bureau shall prepare an investigation report. The report shall include:

a) a narrative description of the incident, including a precise description of the evidence that either justifies or fails to justify the

**officer's conduct based on the Internal Affairs Bureau's**

independent review of the facts and circumstances of the incident;

b) documentation of all evidence that was gathered, including names, phone numbers, addresses of witnesses to the incident, and all underlying Use of Force Data Reports. In situations in which there are no known witnesses, the report shall specifically state this fact. In situations in which witnesses were present but circumstances prevented the author of the report from determining the identification, phone number, or address of those witnesses, the report shall state the reasons why. The report should also include all available identifying information for anyone who refuses to provide a statement;

c) the names of all other APD officers or employees witnessing the use of force;

d) **the Internal Affairs Bureau's narrative evaluating the use of force**, based on the evidence gathered, including a determination of **whether the officer's actions complied with APD policy and state** and federal law; and an assessment of the incident for tactical and training implications, including whether the use of force could have been avoided through the use of de-escalation techniques or lesser force options;

e) if a weapon was used by an officer, documentation that the **officer's certification and training for the weapon were current at** the time of the incident; and

f) the complete disciplinary history of the target officers involved in the use of force.”

## Methodology

PAB SOP 2-05 was approved by the monitor on June 5, 2016, bringing APD into Primary Compliance on the requirements in Paragraph 71. The Internal Affairs suite of policies have been re-numbered, and now include policies covering several different entities interconnected to the administrative and/or criminal investigation of uses of force, misconduct that may be identified as a result of those investigations and the imposition of discipline. SOP 2-05 has been recast as SOP 7-1, the Critical Incident Review Team (CIRT) responsibilities are now codified in SOP 7-2, the Force Investigation Team (FIT) responsibilities or now codified in SOP 7-3, Complaints Involving Department Policy or Personnel is now codified in SOP 3-41 and the Discipline System is now codified SOP 3-46. We note that FIT, previously referred to as the Investigative Response Team (IRT), has reverted back to its previous

name, the Force Investigation Team.<sup>88</sup> Because these policies provide the foundation for training and field implementation, the monitoring team requested copies of any documentation of training PAB personnel have received with respect to their relevant SOP's.<sup>89</sup> The monitoring team was provided with PowerDMS records related to these policies and also an interoffice memorandum dated October 12, 2016, entitled "Garrity Advisements" authored by the commander of IAD to his personnel. We were provided with numerous certificates of attendance, primarily originating from courses developed outside of APD, which were intended to demonstrate their personnel were appropriately trained. Finally, during its November 2016 site visit the monitoring team met with IA personnel to discuss how APD intended to address the training requirements related to delivering the content of their internal policies and handbook.

## Results

The monitoring team requested data on serious use of force investigations that occurred between August 1, 2016, and December 31, 2016 and reviewed records compiled by FIT and CIRT. FIT reported 33 separate events during that timeframe and provided information concerning how many "days to complete" were recorded for 26 of those events. The average amount of days it took FIT to complete their investigation was 14 days from an event date.<sup>90</sup> The monitoring team discussed different contributing factors to the overall delay of serious use of force investigations being submitted and CIRT noted that the initial investigation conducted by FIT has a direct impact on their ability to complete the administrative investigation into a specific case.

APD CIRT reported 31 separate serious use of force investigations during the same timeframe, involving 47 APD officers. We observed that the cases were initiated between April 20, 2016, and December 21, 2016, all of which are still pending investigation. In a separate document reviewed by the monitoring team we were provided with a list of cases that were closed between August 1, 2016 and December 31, 2016. In that date range CIRT reported 18 separate serious use of force cases being closed. Of those 18 cases, only 2 were completed within two months which calculates to an 11% compliance rate with the CASA. We noted that 13 cases took more than 4 months to complete and 9 cases extended past 6 months until their completion by CIRT. This type of turnaround time for the completion of a serious use of force investigation, which does not include the amount of time it takes to schedule the case for an FRB review, has a profound impact on the timely remediation of performance deficiencies and imposition of discipline, when appropriate.

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<sup>88</sup> Although the SOP's for IAS and CIRT were promulgated on the same date as the FIT SOP, they still refer to IRT. This type of administrative oversight demonstrates a lack of attention to detail when managing policies.

<sup>89</sup> The materials requested included lesson plans, training orders and attendance records.

<sup>90</sup> The case completion rate ranged from 0 days to 86 days.



The monitoring team has previously commented on several significant concerns that we believe are general in nature. These issues have included APD improperly extending *Garrity* provisions to witness officers, and extending *Garrity* provisions much earlier than required by case law or standard practice in the field. During our June 2016 site visit we became aware that IA was extending *Garrity* to witness officers during their investigations.<sup>91</sup> It was unclear under what procedural, policy, contractual or prosecutorial authority *Garrity* was being extended, therefore, the monitoring team requested APD to provide an explanation.

In addition, the monitoring team requested that APD provide: "Any/all document, record or collective bargaining agreement (CBA) provision that requires the application of *Garrity* provisions to witness officers in use of force or IA investigations."

In response to that request APD reported to the monitoring team that they were unaware of any documentation that mandated *Garrity* be extended to witness officers in use of force or IA investigations. However, the monitoring team was advised that IA has had a long-standing practice of extending *Garrity* to witness officers and that the APOA has an expectation of APD officers receiving *Garrity*. The monitoring team was further advised that, internally, APD had been discussing the application of *Garrity* to witness officers and that as of July 21, 2016, IAS investigators had been instructed to no longer read *Garrity* to witness officers in IAS investigations. The monitoring team reviewed an interoffice memorandum from the Commander of IAD (To all IAD Personnel), dated October 12, 2016, wherein he directed that, "In July, I instructed you to cease reading *Garrity* advisements to witnesses in administrative investigations. Given our Legal Division's interpretation of the paragraph and the existing SOP, IAD will currently not be giving *Garrity* advisements in administrative investigations unless there is a reasonable likelihood of criminal investigation or prosecution of the subject employee." He also stated, "IAD personnel are reminded to notify their chain of command when there is a reasonable likelihood of criminal investigation or prosecution of the subject employee. The interview of the affected employee will not take place until I have consulted with the Chief. If clearance is given to proceed, the *Garrity* advisement will be issued."<sup>92</sup> While the requirement to consult with the appropriate prosecuting agency was omitted from the

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<sup>91</sup> We have also expressed concern over the way APD trained the use of *Garrity* before and during the 2016 Use of Force Training.

<sup>92</sup> We note that SOP 7-1-8-E-5 States, "When an APD employee refuses to give a voluntary statement and the investigator has reason to believe that the person has committed a crime, the investigator consults with the appropriate prosecuting agency and seeks the approval of the Chief, through the chain of command before taking a compelled statement."



memorandum, we acknowledge the Commander appropriately addressed his personnel on the issue.

We previously documented *Garrity* improperly being addressed during the 2016 24-hour Supervisory Use of Force Investigation training. In IMR-4 we stated, “Based on our review of that training, in the opinion of the monitoring team, the topic of *Garrity* is anything but clarified, in particular for field supervisors. In the opinion of the monitoring team the instructor conflated a number of related, but incongruous factors. The instructor (of the course) stated that officers are ‘...technically being compelled’ and that supervisors can compel an officer to answer questions and to provide a statement concerning their use of force.” The instructor of the course also stated, “In regular supervisory force investigations<sup>93</sup> we don’t want you guys reading officers *Garrity*, it’s understood that the statement is coerced, they have to provide their statement and we don’t want you guys reading them their *Garrity* rights...that’s kind of implied.” In the opinion of the monitoring team the topic of *Garrity* is a significant issue. APD must research and properly resolve its use at all levels of the organization.” In December 2016, CIRT delivered a supervisor course entitled, “Standardizing Use of Force Investigations” wherein the application of *Garrity* was addressed.<sup>94</sup>

On September 6, 2016, the monitoring team was asked by APD to review and comment on a training video they prepared concerning the department’s use of *Garrity* in its business processes. It was our understanding that the video would be shared with the entire department. The monitoring team saw the video as a major step in the right direction for APD, and should be recognized as such. We believed the video accurately sets forth the state of the law and more closely reflected the requirements of the CASA than the prior practice APD employed. We also noted the quality of tone and the professional delivery of the material by the instructor. While most major points were correctly addressed, there were refinements that we felt were necessary and would further clarify APD’s use of *Garrity* in the future. We were never provided a subsequent version of the video and are unaware of it ever being disseminated to the department as a whole.

While it remains to be seen whether actions in the field are properly influenced, the combination of the supervisor training provided in December 2016, and the memorandum completed by the IAD Commander, adequately addressed the issue for this moment and

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<sup>93</sup> We understand “regular supervisory force investigations” to mean investigations into non-serious uses of force that are conducted in the field.

<sup>94</sup> APD did not supply a lesson plan, with clear learning objectives, or indicate whether there is a test to verify a transfer of learning. This is a serious, recurring problem with current APD training regimens.

resulted in the *Garrity* training issue being removed from the list of training gaps in Paragraph 88. The monitoring team will continue to evaluate APD's use of *Garrity* to ensure it is applied properly during use of force investigations.

To reach Secondary compliance APD must first demonstrate that it adequately trained PAB personnel on its own policies and protocols. (Included with those policies is a handbook – or System Manual - that was created by IA) In preparation of this report the monitoring team requested records that would allow us to evaluate Secondary compliance. Based on the records we reviewed, APD has not demonstrated that they have developed adequate training to deliver the content of their governing policies, procedures and handbook.

Primary: In Compliance  
Secondary: Not In Compliance  
Operational: Not In Compliance

***Recommendation 4.7.58a: Develop specific, direct, and cogent policy provisions that conform to the requirements of Paragraph 71.***

***Recommendation 4.7.58b: Develop and train the policy provisions related to this policy provisions, supplemented by appropriate testing and evaluation to determine effectiveness;***

4.7.59 Assessing Compliance with Paragraph 72: IAB Report Review

Paragraph 72 stipulates:

**“Upon completion of the Internal Affairs Bureau investigation report, the Internal Affairs Bureau investigator shall forward the report through his or her chain of command to the commanding officer of the Internal Affairs Bureau. The Internal Affairs Bureau commanding officer shall review the report to ensure that it is complete and that, for administrative investigations, the findings are supported using the preponderance of the evidence standard. The Internal Affairs Bureau commanding officer shall order additional investigation when it appears that there is additional relevant evidence that may assist in resolving inconsistencies or improve the reliability or credibility of the findings.”**

Methodology

PAB SOP 2-05 was approved by the monitor on June 5, 2016, bringing APD into Primary Compliance on the requirements in Paragraph 72. The Internal Affairs suite of policies have been re-numbered, and now include policies covering several different entities interconnected to the administrative and/or criminal investigation of uses of force, misconduct

that may be identified as a result of those investigations and the imposition of discipline. SOP 2-05 has been recast as SOP 7-1, the Critical Incident Review Team (CIRT) responsibilities are now codified in SOP 7-2, the Force Investigation Team (FIT) responsibilities are now codified in SOP 7-3, Complaints Involving Department Policy or Personnel is now codified in SOP 3-41 and the Discipline System is now codified SOP 3-46.

## Results

To reach Secondary compliance APD must first demonstrate that it adequately trained PAB personnel on its own policies and protocols. (Included with those policies is a handbook – or System Manual - that was created by IA) In preparation of this report the monitoring team requested records that would allow us to evaluate Secondary compliance. Based on the records we reviewed, APD has not demonstrated that they have developed adequate training to deliver the content of their governing policies, procedures and handbook.

Primary: In Compliance  
Secondary: Not In Compliance  
Operational: Not In Compliance

***Recommendation 4.7.59a: Develop a needs assessment informing the curriculum that is necessary to meet the requirements of the process of applying internal investigations processes to conform to federal and state law and practice, and to conform with the requirements of this paragraph;***

***Recommendation 4.7.59b: Develop lesson plans outlining the planned course of instruction that identifies specific and measurable goals, objectives, methods of delivery and methods of testing learning responsive to the needs assessment stipulated in 4.7.59a;***

***Recommendation 4.7.59c: Deliver the training as planned to all IAB personnel and those charged with directly or indirectly supporting IAB on this topic;***

***Recommendation 4.7.59d: Test all involved officers and supervisory personnel to ensure the information delivered was “learned;”***

***Recommendation 4.7.59e: Re-train any officers or supervisors who did not achieve a passing score, and retest. Retrain and retest until 95% or more have achieved a passing score.***

#### 4.7.60 Compliance with Paragraph 73: IAB Findings Not Supported by Preponderance of the Evidence

Paragraph 73 stipulates:

**“For administrative investigations, where the findings of the Internal Affairs Bureau investigation are not supported by a preponderance of the evidence, the Internal Affairs Bureau commanding officer shall document the reasons for this determination and shall include this documentation as an addendum to the original investigation report. The commanding officer of the Internal Affairs Bureau shall take appropriate action to address any inadequately supported determination and any investigative deficiencies that led to it. The Internal Affairs Bureau commanding officer shall be responsible for the accuracy and completeness of investigation reports prepared by the Internal Affairs Bureau.”**

#### Methodology

PAB SOP 2-05 was approved by the monitor on June 5, 2016, bringing APD into Primary Compliance on the requirements in Paragraph 73. The Internal Affairs suite of policies have been re-numbered, and now include policies covering several different entities interconnected to the administrative and/or criminal investigation of uses of force, misconduct that may be identified as a result of those investigations and the imposition of discipline. SOP 2-05 has been recast as SOP 7-1, the Critical Incident Review Team (CIRT) responsibilities are now codified in SOP 7-2, the Force Investigation Team (FIT) responsibilities are now codified in SOP 7-3, Complaints Involving Department Policy or Personnel is now codified in SOP 3-41 and the Discipline System is now codified SOP 3-46.

#### Results

To reach Secondary compliance APD must first demonstrate that it adequately trained PAB personnel on its own policies and protocols. (Included with those policies is a handbook – or System Manual - that was created by IA) In preparation of this report the monitoring team requested records that would allow us to evaluate Secondary compliance. Based on the records we reviewed, APD has not demonstrated that they have developed adequate training to deliver the content of their governing policies, procedures and handbook.

Primary: In Compliance  
Secondary: Not In Compliance  
Operational: Not In Compliance

***Recommendation 4.7.60a: Ensure that >95% of all IAB investigators score at least a passing score on the issued exam process outlined in 4.7.59, above.***

#### 4.7.61 Assessing Compliance with Paragraph 74: IAB Quality Control

Paragraph 74 stipulates:

**“Where a member of the Internal Affairs Bureau repeatedly conducts deficient force investigations, the member shall receive the appropriate corrective and/or disciplinary action, including training or removal from the Internal Affairs Bureau in accordance with performance evaluation procedures and consistent with any existing collective bargaining agreements, personnel rules, Labor Management Relations Ordinance, Merit System Ordinance, regulations, or administrative rules.”**

#### Methodology

PAB SOP 2-05 was approved by the monitor on June 5, 2016, bringing APD into Primary Compliance on the requirements in Paragraph 74. The Internal Affairs suite of policies have been re-numbered, and now include policies covering several different entities interconnected to the administrative and/or criminal investigation of uses of force, misconduct that may be identified as a result of those investigations and the imposition of discipline. SOP 2-05 has been recast as SOP 7-1, the Critical Incident Review Team (CIRT) responsibilities are now codified in SOP 7-2, the Force Investigation Team (FIT) responsibilities are now codified in SOP 7-3, Complaints Involving Department Policy or Personnel is now codified in SOP 3-41 and the Discipline System is now codified SOP 3-46.

#### Results

To reach Secondary compliance APD must first demonstrate that it adequately trained PAB personnel on its own policies and protocols. (Included with those policies is a handbook – or System Manual - that was created by IA) In preparation of this report the monitoring team requested records that would allow us to evaluate Secondary compliance. Based on the records we reviewed, APD has not demonstrated that they have developed adequate training to deliver the content of their governing policies, procedures and handbook.

Primary: In Compliance  
Secondary: Not In Compliance  
Operational: Not In Compliance

***Recommendation 4.7.61: Comply with recommendations in sections 4.7.59-4.7.60, above.***

#### 4.7.62 Assessing Compliance with Paragraph 75: IAB Quality Control

Paragraph 75 stipulates:

**“When the commanding officer of the Internal Affairs Bureau determines that the force investigation is complete and the findings are supported by the evidence, the investigation file shall be forwarded to the Force Review Board with copy to the Chief.”**

## Methodology

PAB SOP 2-05 was approved by the monitor on June 5, 2016, bringing APD into Primary Compliance on the requirements in Paragraph 75. The Internal Affairs suite of policies have been re-numbered, and now include policies covering several different entities interconnected to the administrative and/or criminal investigation of uses of force, misconduct that may be identified as a result of those investigations and the imposition of discipline. SOP 2-05 has been recast as SOP 7-1, the Critical Incident Review Team (CIRT) responsibilities are now codified in SOP 7-2, the Force Investigation Team (FIT) responsibilities are now codified in SOP 7-3, Complaints Involving Department Policy or Personnel is now codified in SOP 3-41 and the Discipline System is now codified SOP 3-46.

## Results

To reach Secondary compliance APD must first demonstrate that it adequately trained PAB personnel on its own policies and protocols. (Included with those policies is a handbook – or System Manual - that was created by IA) In preparation of this report the monitoring team requested records that would allow us to evaluate Secondary compliance. Based on the records we reviewed, APD has not demonstrated that they have developed adequate training to deliver the content of their governing policies, procedures and handbook.

***Recommendation 4.7.62a: Train or re-train IAB personnel based on the expectations for performance related to SOPs 2-05, SOP 7-1, SOP 7-2, SOP 7-3 and SOP 3-41, and test for learning as outlined in sections 4.7.59-4.7.60, above.***

Primary: In Compliance  
Secondary: Not In Compliance  
Operational: Not In Compliance

4.7.63 Assessing Compliance with Paragraph 76: Force Investigations by MATF or FBI

Paragraph 76 stipulates:

**“At the discretion of the Chief, a force investigation may be assigned or re- assigned for investigation to the Multi-Agency Task Force or the Federal Bureau of Investigations, or may be returned to the Internal Affairs Bureau for further investigation or analysis. This assignment or re-assignment shall be confirmed in writing.”**

## Methodology

PAB SOP 2-05 was approved by the monitor on June 5, 2016, bringing APD into Primary Compliance on the requirements in Paragraph 76. The Internal Affairs suite of policies have been re-numbered, and now include policies covering several different entities interconnected to the administrative and/or criminal investigation of uses of force, misconduct that may be identified as a result of those investigations and the imposition of discipline. SOP 2-05 has been recast as SOP 7-1, the Critical Incident Review Team (CIRT) responsibilities are now codified in SOP 7-2, the Force Investigation Team (FIT) responsibilities or now codified in SOP 7-3, Complaints Involving Department Policy or Personnel is now codified in SOP 3-41 and the Discipline System is now codified SOP 3-46.

## Results

The monitoring team requested data for any serious use of force cases that were referred to and/or investigated by the MATF between August 1, 2016 and December 31, 2016. We were provided an internal case ledger that included two separate case events (A critical firearms discharge and an OIS). It is our understanding that these cases are still pending investigation or a complete review by APD.

To reach Secondary compliance APD must first demonstrate that it adequately trained PAB personnel on its own policies and protocols. (Included with those policies is a handbook – or System Manual - that was created by IA) In preparation of this report the monitoring team requested records that would allow us to evaluate Secondary compliance. Based on the records we reviewed, APD has not demonstrated that they have developed adequate training to deliver the content of their governing policies, procedures and handbook.

Primary: In Compliance  
Secondary: Not In Compliance  
Operational: Not In Compliance

***Recommendation 4.7.63a: Train or re-train IAB personnel based on the expectations for performance related to SOPs 2-05, SOP 7-1,***



**SOP 7-2, SOP 7-3 and SOP 3-41, and test for learning as outlined in sections 4.7.59-4.7.60, above.**

4.7.64 Assessing Compliance with Paragraph 77: Discipline on Sustained Investigations

Paragraph 77 stipulates:

**“Where, after an administrative force investigation, a use of force is found to violate policy, the Chief shall direct and ensure appropriate discipline and/or corrective action. Where a force investigation indicates apparent criminal conduct by an officer, the Chief shall ensure that the Internal Affairs Bureau or the Multi-Agency Task Force consults with the District Attorney’s Office or the USAO, as appropriate. The Chief need not delay the imposition of discipline until the outcome of the criminal investigation. In use of force investigations, where the incident indicates policy, training, tactical, or equipment concerns, the Chief shall ensure that necessary training is delivered and that policy, tactical, or equipment concerns are resolved.”**

Methodology

PAB SOP 2-05 was approved by the monitor on June 5, 2016, bringing APD into Primary Compliance on the requirements in Paragraph 77. The Internal Affairs suite of policies have been re-numbered, and now include policies covering several different entities interconnected to the administrative and/or criminal investigation of uses of force, misconduct that may be identified as a result of those investigations and the imposition of discipline. SOP 2-05 has been recast as SOP 7-1, the Critical Incident Review Team (CIRT) responsibilities are now codified in SOP 7-2, the Force Investigation Team (FIT) responsibilities or now codified in SOP 7-3, Complaints Involving Department Policy or Personnel is now codified in SOP 3-41 and the Discipline System is now codified SOP 3-46.

Results

The monitoring team requested that APD provide copies of any documentation that demonstrates that they are consulting with either the District Attorney's Office or the US Attorney's Office. The request was made to determine whether APD, during the course of a serious use of force investigation, seeks an opinion where there is potential criminal liability for an APD officer. The monitoring team was provided two documents: 1) An internal FIT memorandum, dated August 29, 2016, that documented steps a FIT detective took regarding case IMR-5-002 to seek an opinion of the District Attorney's Office, and 2) A letter from the District Attorney's Office, dated August 24, 2016, that was directed back to FIT wherein they indicate that an officer's actions did not constitute grounds for a criminal

charge. The monitoring team did not request, and was not provided with, copies of the reports or videos that were associated with this request.

We note that this investigation was reportedly assigned to the FIT detective on July 28, 2016, and his original request was directed to the District Attorney's Office on August 11, 2016. Based on the documentation that was provided to the monitoring team it is unclear specifically what documents and videos were provided to the District Attorney's Office for review, although there is some description in the letter that is communicated back to APD by the District Attorney that reviewed the case. In the future, it would be advisable that APD track the inventory of items going back and forth for these reviews with more specificity. Without more specific records, and copies of those records, it remains unclear

To reach Secondary compliance APD must first demonstrate that it adequately trained PAB personnel on its own policies and protocols. (Included with those policies is a handbook – or System Manual - that was created by IA) In preparation of this report the monitoring team requested records that would allow us to evaluate Secondary compliance. Based on the records we reviewed, APD has not demonstrated that they have developed adequate training to deliver the content of their governing policies, procedures and handbook.

Primary: In Compliance  
Secondary: Not In Compliance  
Operational: Not In Compliance

***Recommendation 4.7.65a: Train or re-train IAB personnel based on the expectations for performance related to SOPs 2-05, SOP 7-1, SOP 7-2, SOP 7-3 and SOP 3-41, and test for learning as outlined in sections 4.7.59-4.7.60, above.***

***Recommendation 4.7.65b: APD should commission an in-depth review of FRB policy, staffing, leadership and operations to ensure that the issues addressed in the paragraph are assessed internally, and, for each issue identified above, APD should craft a thoughtful, detailed, and effective piece of Completed Staff Work.***

***Recommendation 4.7.65c: APD should reach out to other similarly situated police agencies to discuss successful modalities for overcoming such critical issues as we have observed with the FRB.***

***Recommendation 4.7.65d: APD should conduct a careful needs assessment of the skill sets needed for FRB participation, and develop training to ensure that FRB members receive this training prior to assuming their FRB-related duties.***

#### 4.7.65 Assessing Compliance with Paragraph 78: Force Review Board Responsibilities

Paragraph 78 stipulates that:

**“APD shall develop and implement a Force Review Board to review all uses of force. The Force Review Board shall be comprised of at least the following members: Assistant Chief of the Professional Accountability Bureau, the Deputy Chief of the Field Services Bureau, the Deputy Chief of the Investigations Bureau, a Field Services Major, the Training Director, and the Legal Advisor. The Force Review Board shall conduct timely, comprehensive, and reliable reviews of all use of force investigations. The Force Review Board shall:**

- a) review each use of force investigation completed by the Internal Affairs Bureau within 30 days of receiving the investigation report to ensure that it is complete and, for administrative investigations, that the findings are supported by a preponderance of the evidence;
- b) hear the case presentation from the lead investigator and discuss the case as necessary with the investigator to gain a full understanding of the facts of the incident. The officer(s) who used the force subject to investigation, or who are otherwise the subject(s) of the Internal Affairs Bureau investigation, shall not be present;
- c) review a sample of supervisory force investigations that have been completed and approved by Commanders every 90 days to ensure that the investigations are complete and timely and that the findings are supported by a preponderance of the evidence;
- d) order additional investigation when it appears that there is additional relevant evidence that may assist in resolving inconsistencies or improve the reliability or credibility of the force investigation findings. For administrative investigations, where the findings are not supported by a preponderance of the evidence, the Force Review Board shall document the reasons for this determination, which shall be included as an addendum to the original force investigation, including the specific evidence or analysis supporting their conclusions;
- e) determine whether the use of force violated APD policy. If the use of force violated APD policy, the Force Review Board shall refer it to the Chief for appropriate disciplinary and/or corrective action;
- f) determine whether the incident raises policy, training, equipment, or tactical concerns, and refer such incidents to the appropriate unit within APD to ensure the concerns are resolved;

g) document its findings and recommendations in a Force Review Board Report within 45 days of receiving the completed use of force investigation and within 15 days of the Force Review Board case presentation, or 15 days of the review of sample supervisory force investigation; and

h) review and analyze use of force data, on at least a quarterly basis, to determine significant trends and to identify and correct **deficiencies revealed by this analysis.**"

## Methodology

APD SOP 3-67 Force Review Board (FRB) was approved by the monitor on April 25, 2016, which brought the Department into Primary Compliance on the requirements in Paragraph 78. That policy was recast as SOP 2-56 as APD continues to refine its SOP cataloguing system. The monitoring team reported extensively on FRB activities in IMR-3 and IMR 4, and attended the June 8, 2016, meeting to view its operation.<sup>95</sup> The monitoring team met with representatives of the FRB during its November 2016 site visit to discuss the status of the FRB and any revisions they have made to their processes. Finally, the monitoring team requested records for supervisory and serious use of force cases that were reviewed by the FRB between the dates of August 1, 2016 and December 31, 2016 and were provided a number of records.

## Results

During its November 2016 site visit monitoring team met with representatives of the FRB to discuss its status. We were told that FRB has resumed its normal activities with respect to holding meetings and reviewing use of force cases.<sup>96</sup> The following are basic points taken from our site visit meeting:

1. The FRB maintains a narrowly focused approach to its force oversight, meaning, *it is principally concerned with reviewing cases*. We discussed with APD a number of different additional ways that the FRB could have a direct impact on operational compliance, but for now it appears that APD's use of the Force Review Board will stay focused on case reviews.<sup>97</sup>

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<sup>95</sup> We note that the FRB meeting we attended was focused on SOD operations. That is an important distinction because SOD operations have repeatedly demonstrated a high degree of engagement with CASA reforms.

<sup>96</sup> We were told that meetings concerning SOD activations continued through the summer and aside from one missed meeting there has been no interruption in reviewing their cases. However, aside from records from an August 23, 2016, FRB meeting, wherein supervisory use of force investigations were evaluated, there did not appear to be another meeting before the end of 2016. If so, the monitoring team was not provided records from that meeting. We found subsequent meetings did occur to review CIRT investigations of serious uses of force.

<sup>97</sup> We see this as a critical missed opportunity if the scope of influence the FRB maintains is over case reviews alone. While they can potentially make recommendations for training and policy revisions, records we reviewed show non-specific guidance being pushed out to IA and area

2. Evaluation forms completed by members of the FRB are distilled down into a "Force Review Board Recommendation", when necessary, and sent to a specific command for follow-up action. This could include an Area Command or Internal Affairs, or a referral to the training Academy. As the FRB evolves, they intend to read recommendations (from previous meetings) back into the record of the next FRB meeting to determine what the status is and what was done by a particular command.<sup>98</sup>
3. We were advised that APD intended to assign six (6) new sergeants to conduct case reviews to increase the number of use of force cases that are reviewed under the umbrella of the FRB. The assignment of those six sergeants was pending at the time of our site visit, so we will follow this potential activity up during our next monitoring period to see if it ever occurred.
4. The FRB is considering including the Commander and/or sergeant of an officer whose force is being reviewed in future meetings. The purpose would be to provide real-time feedback for investigations that were done properly or had performance deficiencies. Again, this concept will be followed up during the next monitoring period.

The monitoring team requested records for supervisory and serious use of force investigations that were reviewed by the FRB between the dates of August 1, 2016 and December 31, 2016, and were provided a number of records. On August 23, 2016, the FRB conducted a review of six (6) separate supervisory use of force investigations. Reviews of a total of seven (7) serious use of force cases conducted by CIRT were completed on September 28 and 29, and December 1, 2016.<sup>99</sup> SOP 2-56 dictates that FRB representatives will be provided "case packets" one week before a meeting.<sup>100</sup> Their responsibilities include reviewing the written case report and during the meeting each case is presented by a lead investigator from CIRT. Among the many obligations the FRB has, as per SOP 2 – 56, include reviewing each case to determine:

1. Whether it is thorough and complete;
2. Whether the force was consistent or inconsistent with department policy and training;
3. Whether the investigator's findings are supported by a preponderance of evidence; and
4. Whether there are equipment, tactical, training, policy or supervision considerations that need to be addressed.

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commanders to follow up. This will undoubtedly result in disparate handing of similar issues at Area Commands.

<sup>98</sup> During our meeting with the FRB representatives we were shown records of five (5) pending FRB recommendations.

<sup>99</sup> Three cases were scheduled for September 28, two cases on September 29 and two cases on December 1, 2016.

<sup>100</sup> Based on our conversations with APD it appears that the "case packets" do not include a complete inventory of officer and supervisor lapel videos.

The FRB also considers whether the chain of command appropriately identified and took actions to correct deficiencies in the way a particular incident was handled; whether the chain of command properly identified and took actions to correct deficiencies in the investigation report; and to confirm that uniform standards were applied in a use of force investigation or discipline. Finally, SOP 2-56 codified that seven (7) members of the FRB constitute a quorum in the decision-making and recommendation process. Case presentations occur at the meetings and members of the FRB fill out a "Force Review Board Evaluation Form". The form includes categories that each member is expected to evaluate actual case events with. These categories are consistent with the FRB policy. Based on the records reviewed by the monitoring team it appears that members of the FRB complete these forms during the meeting and their observations and recommendations are handwritten on the form. The presentation FRB members receive from the presenter on any given cases is in the form of a PowerPoint, and they also view an abbreviated portion of an officer's lapel video of an incident.

The monitoring team reviewed 50% (three of six cases) of the supervisory use of force investigations and 43% (three of seven) serious use of force cases that the FRB reviewed within our data set.<sup>101</sup> We made several key observations that demonstrated the FRB still has work ahead of it before it demonstrates the capacity to provide meaningful oversight of all force related issues facing APD.

Compliance data for this Paragraph are presented in Table 4.7.65, below.

Table 4.7.65

Case #	Review each UoF invest. finished by IAB w/in 30 days of receipt & ensure complete findings w/ preponderance of evidence	Hear case presentation; discuss case as needed to gain a full understanding of the facts of the incident	Sample completed supervisor force investigations - every 90 days; ensure complete, timely & findings are supported by a preponderance of the e/d	Order investigation when appropriate.	If inv. not supported by appropriate evidence, FRB documents reasons in addendum to original investigation, including specific supporting facts	If the use of force violated APD policy, the Force Review Board refers it to Chief for appropriate action	Determine if incident raises policy, training, equipment, or tactical concerns, & refer to the appropriate unit within APD to ensure resolution	Document findings & recs in a FRB Report w/in 45 days of receipt and within 15 days of the FRB case presentation, or 15 days of the review of sample supervisory force investigation	# in Comp	% In Comp	In Comp
IMR-5-016	N/A	N/A	0	0	0	0	0	0	0	0%	N
IMR-5-017	N/A	N/A	1	1	1	1	0	0	4	67%	N
IMR-5-018	N/A	N/A	0	0	0	0	0	0	0	0%	N
IMR-5-014	1	1	N/A	N/A	1	1	1	1	6	100%	Y
IMR-5-019	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
IMR-5-021	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
										% in Comp	25%

<sup>101</sup> We purposely chose three supervisory use of force investigations that the FRB reviewed that occurred at the end of, or after, APD's 40-hour Use of Force and Supervisory Use of Force training courses concluded.



We share the following to provide some context to the table above:

1. The monitoring team continues to see involvement in the FRB and note the meeting turnout and the participation of high-ranking members. We also note that APD use-of-force subject matter experts were present and participated fully. These continue to be important factors in the Board's success.
2. One supervisory use of force investigation the FRB reviewed [IMR-5-025] was deficient at every level. In our opinion, the case was improperly handled from the initial response by the officers up to and including the FRB. We felt this case was an example where a direct referral to APD internal affairs was appropriate. We noted that after the question, "Are any tactical concerns raised" on the FRB Recommendation form, nine (9) board members identified an issue related to tactics and under the heading "Concern" stated, "Multiple officer safety *and possible violation of constitutional rights issues*. Same as training (see above)." In another area of the same report, one FRB member wrote, "Wrong subject had UoF done on them". The possible violation of constitutional rights issue was apparently not referred to Internal Affairs, instead, it was returned to the Area Command and Academy for follow up. So, to be clear, this deeply deficient investigation was referred back to the same Area Command from which it came for resolution. The monitoring team believes that this referral defies logic.

After the question, "Were any supervisory concerns raised" only six board members identified issues of concern related supervision. Based on our read of the record provided to us, it is incomprehensible that every member of the FRB did not recognize supervisory and Constitutional issues. In fact, it appeared clear the supervisor who initially investigated the use of force didn't even responded to the scene, which, on its face, is a supervisory issue.

3. The second case we reviewed [IMR-5-017] also had significant issues throughout the chain of command. However, this case stood in stark contrast to the first case, because of the FRB's decision to advance the case to Internal Affairs. In each of the review categories the FRB makes a direct referral to Internal Affairs, however, there are no instructions and there is no indication that a referral was made to the training Academy as well.<sup>102</sup> Based on the FRB's review and comments, the failure by the FRB to refer the case to the Academy for remedial training is inconsistent with what the monitoring team would expect under the circumstances.

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<sup>102</sup> It appears to the monitoring team that immediate remedial training was required for the officer involved in the event, but also the supervisor and chain of command reviewers.



4. The third supervisory force case reviewed [IMR-5-018] was very familiar to the monitoring team because on September 10, 2016, APD requested an opinion if, in our opinion, the case constituted a use of force. (Note – The case involved force used against a handcuffed person) Prior to sending the case to the monitoring team, the FRB reviewed the circumstances of the case and, in their opinion, determined that the case did not constitute force. After requesting a complete record of the case<sup>103</sup> we prepared a comprehensive, nine-page memorandum back to APD wherein we determined that the case did involve a use of force. It is important to point out that this case involved force against a handcuffed person, since this issue has been encountered on several occasions when reviewing APD use of force cases. We reiterate APD's difficulty in understanding and implementing use of force procedures in situations involving people that are handcuffed or are being handcuffed.<sup>104</sup> Finally, within the memorandum we identified twenty (20) specific points that went unaddressed by the FRB since their review was narrowly focused on the issue of force. Instead of conducting a comprehensive review of the case, and leaving open the possibility that they could independently identify collateral policy, tactical and/or performance deficiencies, *the case remained pending an opinion by the monitoring team*. It is unclear whether any follow-up actions took place on the part of APD following our opinion being communicated back to them on October 11, 2016. That lingering issue will be followed up in the next monitoring period. *The monitor states again that APD should not depend on the monitoring team to perform APDs day-to-day functions*. For a body like the FRB to miss completely categorizing a use of force against a handcuffed individual is incomprehensible, and speaks to a mindset of deliberate indifference.
5. One serious use of force case reviewed by the FRB [IMR-5-014] was very familiar to the monitoring team, as it was interrelated to a Special Report APD was presented during the summer of 2016. The original event occurred on December 3, 2015, and was mishandled from the beginning. We will not comment further on the case itself because, in the opinion of the monitoring team, we have long since passed the point of diminished returns with respect to feedback to APD regarding this case. The FRB's response to the final CIRT investigation report appears adequate, with

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<sup>103</sup> We reiterate again that the FRB reviews an abbreviated portion of a lapel video to makes its determinations. We have commented on several occasions that failing to review a complete record of lapel videos leaves APD vulnerable to missing critical elements of a case. This is another example where a review of the complete inventory of lapel videos would have possible been beneficial.

<sup>104</sup> It is for this reason we have left open the requirement that APD remediate their training in this area. (See Paragraph 88) The concept of un-resisted handcuffing, and APD's requirement to report and investigate force above that threshold is an open training issue.

efforts evident to review and comment on the case.<sup>105</sup> Finally, the FRB acknowledged several policy and training concerns/issues associated with the case. In his review of the CIRT investigation, the IA Commander identified seven (7) separate and distinct issues with the handling of this case. One such issue was under the section “Discipline” where he stated, “The window for effective and timely corrective action in this case has passed. Significant issues were dealt with in a manner inappropriate for the specific officer. Issues with the specific officer are being addressed in more current cases. The opportunity for early intervention lay with the chain of command, and the commander who set the tone for that command is ultimately responsible. We note the commander is no longer with the Department. We have also noted the current Southeast area commander has made significant efforts to address these types of issues and has referred several cases for further review.” The monitoring team concurs with the IA commander’s assessment. APD should now work tirelessly to ensure that other members of APD command and supervisory ranks adopt the same attitude toward what constitutes prima facie evidence of policy violations.

6. The monitoring team reviewed a case from the September 28, 2016, meeting [IMR-5-019] but was provided an incomplete record to make a determination as to whether the findings of the FRB were appropriate.<sup>106</sup> However, the FRB report for the case documented some meaningful observations by FRB members concerning the improper handling of an ECW by the officer associated with the case and the fact that mandatory training was needed for the officer. The monitoring team reviewed a Force Review Board Referral form, dated October 17, 2016, associated with the case, wherein a specific request for follow-up training for the officer involved in the event was directed to the Academy. A November 15, 2016 interoffice memorandum we reviewed demonstrated that the Academy conducted the training and alerted the officer’s Commander that training took place, and the topics that were covered. This is an excellent example of legitimate follow-up on the part of the FRB to address performance deficiencies through Academy training. The follow-up documentation is also an excellent example and will hopefully be a trend the monitoring team sees in the future.
7. The monitoring team reviewed a case from the September 29, 2016, meeting [IMR-5-021] but was provided an incomplete record to make a determination as to whether the findings of the FRB were based on a

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<sup>105</sup> We note that following the question “Were there any policy concerns raised” the FRB incorrectly stated, “This incident initially happened pre-CASA”.

<sup>106</sup> The monitoring team was not provided videos or the underlying reports associated with the investigation. We were able to review the FRB report and CIRT presentation only.

complete record and were appropriate.<sup>107</sup> That said, the monitoring team is familiar with the case based on data reviewed during previous monitoring periods. While the case could not be tabulated for compliance in this report due to insufficient data, we do see that the FRB report noted in several places that there is a need for clarity on the definition of a "neck hold". This open issue exists both in APD's failure to submit a satisfactory update to SOP 2 – 52, and is also an open training issue from their 2016 40-hour Use of Force training.<sup>108</sup> Also, based on our understanding of the case, and a review of the FRB report, it is unlikely FRB adequately addressed all the issues and concerns associated with this case.

8. When reviewing cases, we saw several instances where FRB members "refrained from answering" (without providing a reason or qualification) critical questions in the review process. For instance, when answering the question "Where the findings supported by a preponderance of evidence" we saw an instance where two board members determined that the use of force findings were not supported by a preponderance of evidence and five board members refrained from answering the question at all. Likewise, in the same case, after the question, "Was the UOF consistent with department policy and training", seven board members determined that the use of force incident was consistent with department policy and training and five board members "refrained from answering".
9. Three cases were reviewed during the September 28, 2016, meeting. We noted that the language within the FRB reports, at times, make it unclear to the monitoring team how many FRB members voted in each of the evaluation categories. For instance, one place in a report the FRB indicated "nine board members" determined a specific evaluation criteria, where in other locations in the same report it indicated that "all board members determine" a specific evaluation criteria existed (i.e. Whether the CIRT report was thorough and complete, or if the findings were supported by a preponderance of evidence). The report failed to indicate if dissents existed in those cases, and made no reference to FRB members "refraining" from voting as with other reports we reviewed.
10. Referrals from the FRB lacked specificity and direction for commanders to follow.
11. While important, there was a "lean" toward identifying tactical issues instead of addressing policy violations, supervision deficiencies, or collateral issues, and not targeting specific training needs.

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<sup>107</sup> The monitoring team was not provided videos or the underlying reports associated with the investigation. We were able to review the FRB report and CIRT presentation only.

<sup>108</sup> Noted again in Paragraph 88.

12. In a case with a multitude of supervision issues, and after the question, "Were any supervisory concerns raised" on the FRB Recommendation form, only six board members identified issues of concern related supervision. Based on our read of the same record, it's incomprehensible that every member of the FRB did not recognize supervisory issues. In fact, it seemed evident the supervisor that initially investigated the use of force didn't even responded to the scene.
  
13. We noted within the documentation several references to "under use of force" (sic) associated with a case. *In IMR -4 we wrote extensively and expressed deep concerns over an internal memorandum, dated June 1, 2016, that was generated by CIRT concerning the topic. It is alarming that this terminology revealed itself in the very forum that is responsible for the proper analysis of APD uses of force.* In IMR-4 and in discussions with APD CIRT personnel and management staff, we went to great lengths to debunk this myth with APD and CIRT, but it appears to no avail. In IMR-4, we wrote: "This [the underuse of force issue] is clearly an issue calling for a knowledge-based, measured approach based upon a careful analysis of the evidence and consultation with both field officers and SMEs. The monitoring team urges APD to commission a high-level review (possibly drawing from external expertise) to address these and other questions to ensure that its officers work under the safest of conditions." In our summary to IMR-4, we noted that this concept had been included in APD training on use of force. More alarmingly, the underuse of force issue appears to have been generated by the CIRT unit! Also in IMR-4, the monitoring team provided FRB four specific recommendations for dealing with the "Underuse of Force" (sic) report. These included the following: a) FRB "reports should be based upon representative events... based upon a thorough trend analysis; b) develop and implement a vetting process for the development and issuance of these reports; [ensure] the reports are subjected to multiple levels of review; reduce to writing a thorough debrief of each use of force incident's dynamics, and judge tactics based on circumstances; (c) carefully monitor trends based on "data generated by CIRT's systems, regular examination of video evidence by SMEs [Subject Matter Experts], and through officer surveys and focus groups. The triangulation of multiple sources is essential to create a trustworthy incident database" (IMR-4, p. 127). We further noted the "Underuse (sic) of Force Report represents a faint, ambiguous type of signal--- generated without proper vetting and engagement by higher command and SMEs--- that is open to wide interpretation, which may affect field practices adversely" (p. 130). *We have seen no evidence during the IMR-5 reporting period that any of these recommendations have been implemented. We will continue to watch for a response to our recommendations.*

14. The monitoring team notes again that PowerPoint presentations and abbreviated lapel video reviews are, by themselves, “thin” representations of any incident. To appreciate each incident in detail, it is essential that the officer’s reports, the supervisor’s investigation, and the chain of command reviews be read in conjunction with complete video reviews.

In terms of the timeliness of the reviews the FRB conducts of serious use of force cases, we provide the following table to illustrate the significant gaps between the date of an event and the FRB’s review of that same event.<sup>109</sup> We see this as a significant shortcoming in the APD force oversight system and the legitimacy of the FRB’s place in that system. Based on our experience with APD, we attribute the delays to inadequate staffing in CIRT and other investigative entities like FIT, which result in elongated investigative and administrative cycles for a case.

The monitoring team views all but one of these case review delays excessive. We will continue to examine how the Board documents and follows up on use of force issues in IMR-6.

Table 4.7.64

Case Number	Date of Initial Event	Date Reviewed by the FRB	Months Until FRB Review
IMR-5-026	12/30/15	09/28/16	9
IMR-5-027	05/11/16	09/28/16	4
IMR-5-019	01/27/16	09/28/16	8
IMR-5-028	02/01/16	09/29/16	7
IMR-5-021	02/17/16	09/29/16	7
IMR-5-014	12/03/15	12/01/16	12
IMR-5-029	12/04/15	12/01/16	12

Primary: In Compliance  
 Secondary: Not In Compliance  
 Operational: Not In Compliance

***Recommendation 4.7.65a: APD should commission an in-depth review of FRB policy, staffing, leadership and operations to ensure that the issues addressed in the paragraph are assessed internally, and, for each issue identified above, APD should craft a thoughtful, detailed, and effective piece of Completed Staff Work.***

***Recommendation 4.5.65b: The monitor views the discussion in 4.7.65 as mission critical. Results of the assessment, including any and all recommendations made to remediate the failures noted here should be staffed with APD command and executive leadership for comment before APD begins implementation of those recommendations.***

<sup>109</sup> We approximate the number of months it took APD to complete FRB reviews under the heading “Months Until FRB Review”.

***Recommendation 4.7.65c: APD should reach out to other similarly situated police agencies to discuss successful modalities for overcoming such critical issues as we have observed with the FRB.***

***Recommendation 4.7.65d: APD should conduct a careful needs assessment of the skill sets needed for FRB participation, and develop training to ensure that FRB members receive this training prior to assuming their FRB-related duties.***

#### 4.7.66 Assessing Compliance with Paragraph 79: Annual Use of Force Report

Paragraph 79 stipulates that:

**“At least annually, APD shall publish a Use of Force Annual Report. At a minimum, the following information should be included in the Annual Use of Force Report:**

- a) number of calls for service;
- b) number of officer-initiated actions;
- c) number of aggregate uses of force;
- d) number of arrests;
- e) number of custodial arrests that involved use of force;
- f) number of SWAT deployments by type of call out;
- g) number of incidents involving officers shooting at or from moving vehicles;
- h) number of individuals armed with weapons;
- i) number of individuals unarmed;
- j) number of individuals injured during arrest, including APD and other law enforcement personnel;
- k) number of individuals requiring hospitalization, including APD and other law enforcement personnel;
- l) demographic category; and
- m) geographic data, including street, location, or Area Command.”

Methodology



The provisions of this Paragraph were contained within SOP 2-05 which was approved by the monitor in June 2016 and was recast as SOP 7-1-14C as APD continues to change its cataloging system. The monitoring team previously reviewed the data reported for 2015<sup>110</sup> and determined that it failed to meet the provisions Paragraph 79. We requested APD provide us with their Annual Use of Force Report for 2016 but were instead provided an interoffice memorandum, dated February 1, 2017, which we reviewed.

The monitoring team requested the data set for supervisory level use of force cases that were reported between August 1, 2016 and December 31, 2016, to conduct a comprehensive review of a sample of those cases. While the purpose was to assess the quality of force reporting and supervisory force investigations in the field that occurred after APD's 2016 use of force training, we also obtained valuable information that has a direct impact on the quality of data reporting.

Until officers accurately report their uses of force, and until supervisors review those reports with an eye toward adherence to established policy (and eventually training), the APD's use of force "statistics" will remain problematic, in the monitor's view. For example, as of the end of this reporting period, we have seen no official "push back" from the APD management cadre regarding the CIRT "under-use of force" "policy" missive, although upon review of our draft, APD leadership commented that it would "... *continue to carefully examine how it it [sic] develops awareness reports and make sure the evidence is well documented.*" While we appreciate this sentiment, we are concerned that current monitoring systems allowed this problematic report to survive the managerial process, and are uncertain how this level of review will serve to mitigate the forces behind CIRT's "underuse of force" report.

## Results

The results of our review of the Annual Use of Force Report for 2015 were reported extensively in IMR – 4, so our comments will not be reiterated here. However, as APD prepares their 2016 report we expect they will take cognizance of the feedback they previously received.

After reviewing the interoffice memorandum APD supplied, we learned that APD is still collecting field data to prepare their 2016 report, and advised the monitoring team that they expect the results to be published in May or June 2016.<sup>111</sup> They indicated that they are not only collecting the data, but are taking

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<sup>110</sup> We reported our finding in IMR – 4.

<sup>111</sup> The monitoring team acknowledges that this type of delay is not uncommon when an organization is attempting to compile and deliver a comprehensive and professional report.



steps to verify the validity of the data before completing their report, though it's unknown what steps are going to be taken.

The monitoring team has provided extensive feedback concerning the quality of APD use and show of force reporting over the past year and a half. Included in that feedback has been commentary on examples of APD officers failing to accurately report force they used and supervisors throughout the chain of command missing use and show of force during their investigations and reviews. As we have noted in the past, until officers accurately report their uses of force, and until supervisors review those reports with an eye toward adherence to established policy (and eventually training), the APD's use of force "statistics" will remain problematic, inaccurate and virtually un-useable in the monitor's view.<sup>112</sup>

As we report earlier in this document, for this report the monitoring team completed a comprehensive review of sixteen (16) use of force cases that APD documented for the months of August through December 2016. The review and results of those cases serves as a baseline for future determinations of APD operational compliance.<sup>113</sup> The data set we were provided included sixty-five (65) separate and distinct case numbers for reported uses of force, though many of the cases involved more than one type of force (i.e. An ECW deployment with some type of additional physical force) and perhaps more than one officer. The monitoring team decided to conduct a comprehensive review of all ECW cases that were reported between August and December 2016. In addition, we chose a random sample of six (6) additional supervisory use of force investigations that were conducted during that same timeframe. We note, that of the 16 cases reviewed by the monitoring team, several included more than one type of force that we could assess. It is also important to point out that following our review of the 10 ECW cases we found that two were improperly reported as such [Cases IMR-5-011 and IMR-5-012]. Those cases, instead, involved a type of force different than an ECW deployment. Likewise, we found one case that was reported as an ECW deployment that had three additional uses of force that went unreported by APD [IMR-5-008]. None of these issues were noted or corrected by APD's supervisory or management cadres prior to the time we brought it to their attention.

We highlight the review of these cases again here because in the past, as reported on extensively in other monitoring reports, the quality of force reporting has a direct impact of the validity of force they report publicly. The quality of APD reporting of force has increased, but there is obviously work to be done. As internal analysts assess the quality of their data, we will be interested to see what legitimate quality assurance measures are in place. The issue of validity will always be aligned to the ability of APD supervisors and chain of command

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<sup>112</sup> Reiterated from IMR – 4.

<sup>113</sup> We note that the decision to review the use of force cases was done to provide APD with feedback on the quality of compliance the monitoring team has seen in relation to several CASA paragraphs, while they continue to resolve training gaps we have previously identified.

personnel to properly categorize and catalog all uses of force, by all officers, for all use of force events. Only then will they be able to champion the validity of their force reporting.

There are no substantive training requirements associated with this paragraph. Primary Compliance was established previously and the provisions of this paragraph are now found in SOP 7-1-14C. Therefore, the monitoring team will assess Operational Compliance in the next monitoring period to determine if APD can adjust their Annual Report consistent with previous feedback they have received, and that legitimate and effective quality assurance mechanisms have been put in place to address the reoccurring issue of accurate force reporting.

Primary: In Compliance  
Secondary: Not Applicable  
Operational: Not In Compliance

***Recommendation 4.7.66a: Clearly and officially assess the veracity and validity of the “under use of force” (sic) report, and replace it with a clear, comprehensive, and cogent review that reflects national standards, case law, “best practices” in the field, and current (approved) APD policy and training.***

***Recommendation 4.7.66b: Develop and/or revise specific, cogent, policy-relevant to further production of such reports, including recommended methodologies for use of force assessment viz a viz “best practices” and (approved) APD policy;***

***Recommendation 4.7.66c: Ensure that the newly organized and structured Use of Force Report is used in APD’s recruit and in-service training on use of force.***

***Recommendation 4.7.66d: Establish a process for “peer review” of the results reported in the Use of Force Report by external use of force SMEs until APD clearly establishes it is capable of producing such documents that are clear, instructive, and responsive to national, and state law and “best practices.”***

4.7.67 Assessing Compliance with Paragraph 80: Tracking System for Officer Use of Force

Paragraph 80 stipulates that:

APD shall be responsible for maintaining a reliable and accurate tracking **system on all officers’ use of force; all force investigations carried out by supervisors, the Internal Affairs Bureau, or Multi-Agency Task Force; and all force reviews conducted by the Force Review Board.** APD shall integrate the use of force tracking system with the Early Intervention System

database and shall utilize the tracking system to collect and analyze use of force data to prepare the Use of Force Annual Report and other reports, as necessary.

## Methodology

During its November 2016 site visit the monitoring team met members of APD responsible for the provision of this paragraph. APD's Blue Team implementation was discussed to determine what the current status of its operational use was in the Area Commands. We also reviewed an Excel spreadsheet of a "Paragraph 298H Blue Team Communication Review" report for the date range of August 1, 2016 and January 1, 2017. Finally, we note here that APD's EIRS policy is still being revised and has not been approved by the monitor.

## Results

The monitoring team learned that beginning in April 2016, APD initiated a pilot of their Blue Team system wherein all use of force and show of force cases would be reported and investigated. A pilot program began in the Northeast Command, which made sense because of the volume of APD calls for service that originate there. Blue Team was rolled out in increments to the rest of the Area Commands over the course of the ensuing summer months. The monitoring team was advised that there were still some old Use of Force Data Reports being submitted up to August 2016; however, by our November 2016 site visit each of the Area Commands were fully operational with Blue Team. We learned that there are still some operational and system glitches being worked out; however, APD sees this as a great opportunity to enhance the quality of their data collection and analysis. We agree, but recognize that organizational growth may impede operational compliance. While reviewing a number of use of force cases during this monitoring period, we noted several administrative issues (reported elsewhere in this report) that need to be resolved that directly impact the usefulness of Blue Team. That said, the benefits Blue Team brings should provide APD with more efficient data collection and analysis in the years to come.

During our meeting with APD, the monitoring team provided feedback concerning the system and inquired if APD have considered enhancements that would benefit the department. It appears there are certain vendor restrictions which may preclude enhancements APD would find helpful. If accurate, that is a point of concern that can only be reconciled by the intent and resolve of APD command staff.

The monitoring team reviewed a "Paragraph 298H Blue Team Communication Review" report for the date range of August 1, 2016 and January 1, 2017. This is a report that was run from within the Blue Team

system which allows APD to capture data concerning the movement of use and show of force cases through the chain of command. The report provided two views of information:

- 1) "Communication Summary by Month" that gave a summary of data as follows: by year, number of incidents, incidents with no problems, number of problems detected, number of transactions.
- 2) "Communication Detail by Incident" that provided a summary of information by each APD incident number. The data included: the date an incident occurred, the number of "bounce backs", the number of communications, and the number of participants involved in those communications.

The statistics contained in the report are meaningful, and allow APD to get a general overview of the movement of cases throughout the chain of command and the number of times a case is moved back and forth because of issues within the report. Like any statistic, the report is limited in its utility to the command staff and its ability to make operational and administrative decisions. As we have noted in previous monitoring reports, the value of statistical data will be found by asking the question, "what does this information mean"? For instance, it would be equally important to segregate this information not only by incident number but also by officer, supervisor and commander. APD may find positive or negative performance trends, pockets of excellence at various commands, or problematic officers or supervisors. That type of detailed and meaningful review of the data would allow APD to identify personnel who were experiencing performance deficiencies in their reporting and/or investigation of use of force or show of force events. This process allows the isolation of data and APD can strategically focus its resources to address specific issues.

The report we were provided identified the average number of transactions (per incident) for the reporting months that ranged from 7.27 (January 2017) to 12.18 (August 2016). While the statistics show a significant trend downward, that does not necessarily denote a better report or investigation. However, this trend data could be exploited to find operational successes and build upon them. Contrastingly, the fact that Blue Team captures a statistic in the "number of problems detected" category that is important, but the magnitude (or significance) of that "problem" is as important the fact that problem existed.

The monitoring team will meet with personnel responsible for managing Blue Team again during its next site visit. We will discuss the evolution of the Blue Team system and how APD is maturing in its use and leveraging data within the system to identify specific and general performance deficiencies. They may include identifying training needs and communicating that information to academy staff, and how the Blue

Team data is being used to impact operational compliance.

Compliance with this paragraph is intrinsically connected to the reliability of information that is collected in the field and investigated by an officer's chain of command. As noted elsewhere in this report, while conducting use of force case reviews the monitoring team identified instances where the accuracy of force reporting in the field was deficient. This is not inconsistent with our observations during past monitoring periods, and the reliability and accuracy of the Blue Team system (now that it has been operationalized) will only be as dependable as the information it is fed. If not, the "down-stream" implications will be significant if APD is to ever rely on EIRS triggers, CIRT data or Force Review Board recommendations when attempting to remediate performance in the field or develop meaningful training. Likewise, APD's Annual of Force reporting will be adversely impacted.

Primary: In Compliance<sup>114</sup>  
 Secondary: Not In Compliance  
 Operational: Not In Compliance

***Recommendation 4.7.67: Subject APD's proposed Blue Team policy and procedures to "peer review" from other department's that have previously met the standards for effective force-review processes, e.g., New Jersey State Police, Pittsburgh Bureau of Police, Seattle Police, and New Orleans Police, and ensure the proposed mechanism meets current standards in the field***

4.7.68 Assessing Compliance with Paragraph 81: MATF Participation by APD

Paragraph 81 of the CASA stipulates:

**"APD shall continue to participate in the Multi-Agency Task Force for as long as the Memorandum of Understanding continues to exist. APD agrees to confer with participating jurisdictions to ensure that inter-governmental agreements that govern the Multi-Agency Task Force are current and effective. APD shall ensure that the inter-governmental agreements are consistent with this CASA."**

Methodology

No changes in the MATF requirements and agreement have been made since the last reporting period. APD remains in compliance based on past performance.

Results

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<sup>114</sup> The existing EIS policy remains operational until approval of the new policy is attained.

Primary: In Compliance  
Secondary: In Compliance  
Operational: In Compliance

#### 4.7.69 Assessing Compliance with Paragraph 82: Investigative Protocols for the MATF

Paragraph 82 stipulates that:

**“APD agrees to consult with participating jurisdictions to establish** investigative protocols for the Multi-Agency Task Force. The protocols shall clearly define the purpose of the Multi-Agency Task Force; describe the roles and responsibilities of participating agencies, including the role of the lead investigative agency; and provide for ongoing coordination among participating agencies and **consultation with pertinent prosecuting authorities.”**

No changes in the MATF requirements and agreement have been made since the last reporting period. APD remains in compliance based on past performance.

#### Results

Primary: In Compliance  
Secondary: In Compliance  
Operational: In Compliance

#### 4.7.70 Assessing Compliance with Paragraph 83: Coordination with MATF

Paragraph 83 stipulates:

**“APD agrees to consult and coordinate with the Multi-Agency Task Force** on the release of evidence, including video recordings of uses of force, and dissemination of information to preserve the **integrity of active criminal investigations involving APD personnel.”**

No changes in the MATF requirements and agreement have been made since the last reporting period. APD remains in compliance based on past performance.

#### Results

Primary: In Compliance  
Secondary: In Compliance  
Operational: In Compliance

#### 4.7.71 Assessing Compliance with Paragraph 84: Briefing with MATF

Paragraph 84 of the CASA stipulates:

**“APD agrees to participate in all briefings of incidents involving APD personnel that are investigated by the Multi-Agency Task Force.”**

No changes in the MATF requirements and agreement have been made since the last reporting period. APD remains in compliance based on past performance.

#### Results

Primary: In Compliance  
Secondary: In Compliance  
Operational: In Compliance

#### 4.7.72 Assessing Compliance with Paragraph 85: Expiration of MOU re MATF

Paragraph 85 stipulates:

**“If the Memorandum of Understanding governing the Multi-Agency Task Force expires or otherwise terminates, or APD withdraws from the Multi-Agency Task Force, APD shall perform all investigations that would have otherwise been conducted pursuant to the Memorandum of Understanding. This Agreement does not prevent APD from entering into other investigative Memoranda of Understanding with other law enforcement agencies to conduct criminal investigation of officer-involved shootings, serious uses of force, and in- custody deaths.”**

No changes in the MATF requirements and agreement have been made since the last reporting period. APD remains in compliance based on past performance.

#### Results

Primary: In Compliance  
Secondary: In Compliance  
Operational: In Compliance

#### 4.7.73 Assessing Compliance with Paragraph 86: Review of Use of Force Policies and Training

Paragraph 86 stipulates:



**“APD will review all use of force policies and training to ensure they incorporate, and are consistent with, the Constitution and provisions of this Agreement. APD shall also provide all APD officers with 40 hours of use of force training within 12 months of the Operational Date, and 24 hours of use of force training on at least an annual basis thereafter, including, as necessary, training on developments in applicable law and APD policy.”**

## Methodology

APD SOP 2-52 Use of Force was approved by the monitor in January 2016. APD’s policies on the use of Electronic Control Weapons and the reporting and investigation of use of force incidents have also been approved, which put APD in Primary Compliance. As of June 1, 2016, APD had completed all presentations of a 40-hour Use of Force Curriculum. Over the past year, the monitoring team has provided extensive feedback, in both written format<sup>115</sup> and during site visits, to APD on the content of that course as well as the quality of use of force reporting and supervisory investigations. During its site visit in June 2016, the monitoring team provided specific policy recommendations that we believed should be considered to either address or close gaps that will support the CASA requirements and help APD reach operational compliance.

During its November 2016 site visit the monitoring team met with APD personnel, and city attorneys, to discuss their policy development process and modifications APD intended to propose for SOP 2-52. We were told that APD’s intent was to include many of the recommendations we made during our June 2016 visit. APD’s use of force suite of policies were due for review and revision in December 2016. However, the updated policies have yet to be approved by the monitor and several significant issues continue to be unresolved (i.e. Definition of neck hold, distraction strikes, and show of force procedures) that have a direct impact on APD Operational Compliance. We were provided with training materials for APD’s 24-hour 2017 Use of Force Review (in-service training program) in response to a data request for IMR-5.<sup>116</sup> Due to the timing that the course was launched, it will be reported on more extensively during the next monitoring period once the monitoring team has an opportunity to watch videos of the training and interview the academy staff.

## Results

Only through the collection of field implementation data will APD customize its training to the areas of the organization that have the closest influence on Operational Compliance with the CASA. Likewise, close attention to feedback in monitoring reports are essential. That process is

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<sup>115</sup> Written feedback was in the form of memos to the APD academy Director as well as IMR-3.

<sup>116</sup> The monitoring team was not provided with the training materials prior to APD beginning the training on January 24, 2017.

labor intensive and requires the academy staff to be diligent and precise when identifying implementation successes and failures in the field. Using lessons from the field, and understanding how to best collect that information, will be essential as APD enters future training cycles. The monitoring team has provided extensive feedback from case reviews we have conducted that are a trove of information that can be exploited for meaningful training topics. We are concerned because the 2017 Use of Force training commenced while certain critical issues (i.e., neck hold definition and distraction strikes) are still unresolved. We have been advised that certain mechanisms have been put into place for the APD academy to reach out into the organization to identify training needs (i.e. The implementation of a Training Committee and recommendations that come from the Force Review Board). To date we have seen no “product” from this process, and continue to express concerns about the rushed, piecemeal approach to training such critical topics as use of force.

We have given extensive feedback, in particular during the past year, as to effective ways to incorporate field data into training programs and enhance APD’s chances to meet Secondary and Operational Compliance. That said, the baseline of any training should be organizational policies and the associated law surrounding those policies. We are concerned that lingering policy and training issues remain from the 2016 40-hour Use of Force and 24-hour Supervisory Force training and may not have been addressed in the 2017 Use of Force Review. Since that training commenced at the very end of the monitoring period, it will be evaluated fully during the next period once we view videos of the training and discuss it with academy staff.

We have seen evidence that APD is beginning to appreciate the value of conducting training “needs assessments,” but the overall quality is underdeveloped at the current time.<sup>117</sup> That said, as time moves on, we expect APD will mature in their ability to not only identify broad topical areas to train, but to be precise when identifying specific performance gaps within those broad areas. This paragraph remains in Primary Compliance pending monitor approval of the revised use of force suite of policies. Secondary Compliance will occur once APD has satisfied to the monitoring team that they have adequately addressed training gaps previously identified for them in IMR – 4, and any new provisions in APD force SOPs are trained.

Primary: In Compliance

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<sup>117</sup> A newly assigned lieutenant to CIRT conducted a needs assessment prior to the delivery of the “Standardizing Use of Force Investigations” course that was delivered in December 2016. He also prepared a document entitled “Comprehensive Review and Recommendations” which, in our view, is the type of needs assessment APD should develop for all its training programs. The Review and Recommendations was of a high quality and should be replicated.

Secondary: Not In Compliance  
Operational: Not In Compliance

***Recommendation 4.7.73a: As we have suggested multiple times in the past, APD should develop a comprehensive training plan, based on information contained within the monitoring reports, and draw direct lines between policy, the CASA, training gaps identified by the monitoring team and the specific areas within their training curriculum where these issues are addressed.***

***Recommendation 4.7.73b Resolve at the soonest point possible outstanding issues regarding neck holds, distraction strikes, and show-of-force issues.***

#### 4.7.74 Assessing Compliance with Paragraph 87: Use of Force Training Based on Constitutional Principles

Paragraph 87 stipulates:

**“APD’s use of force training for all officers shall be based upon constitutional principles and APD policy and shall include the following topics:**

- a) search and seizure law, including the Fourth Amendment and related law;
- b) **APD’s use of force policy, use of force reporting requirements,** and the importance of properly documenting use of force incidents;
- c) use of force decision-making, based upon constitutional principles and APD policy, including interactions with individuals who are intoxicated, or who have a mental, intellectual, or physical disability;
- d) use of de-escalation strategies;
- e) scenario-based training and interactive exercises that demonstrate use of force decision-making and de-escalation strategies;
- f) deployment and use of all weapons or technologies, including firearms, ECWs, and on-body recording systems;
- g) crowd control; and
- h) **Initiating and disengaging foot pursuits.”**

Methodology

APD SOP 2-52 Use of Force was approved by the monitor in January 2016. APD's policies on the use of Electronic Control Weapons and the reporting and investigation of use of force incidents have also been approved, which put APD in Primary Compliance. As of June 1, 2016, APD had completed all presentations of the 40-hour Use of Force Curriculum, and 24-hour Supervisory Use of Force training. We noted several specific problems with the training programs as outlined elsewhere in this report.

## Results

After careful analysis and review, the monitoring team identified several open issues that require some follow-up or supplemental training --- we find APD not in Secondary Compliance. The monitoring team wants APD to understand that to achieve Secondary Compliance, APD has a continuing responsibility to address lingering or emerging use of force training issues.

Primary: In Compliance  
Secondary: Not In Compliance  
Operational: Not In Compliance

***Recommendation 4.7.74a: APD should implement a careful review of IMR-3, IMR-4, and IMR-5 and note gaps in provided training, policy, or supervision and develop, where appropriate, specific training modalities to positively affect remediation of those gaps. Application of the concept of "completed staff work" should be directed toward each identified gap, resulting in specific recommendations to the Chief of Police designed to remediate any training gaps.***

### 4.7.75 Assessing Compliance with Paragraph 88: Annual Supervisory In-Service Training

Paragraph 88 stipulates:

**Supervisors of all** ranks, including those assigned to the Internal Affairs Bureau, as part of their initial and annual in-service supervisory training, shall receive additional training that includes:

- a) conducting use of force investigations, including evaluating officer, subject, and witness credibility;
- b) strategies for effectively directing officers to minimize uses of force and to intervene effectively to prevent or stop unreasonable force;
- c) incident management; and
- d) supporting officers who report unreasonable or unreported

force, or who are retaliated against for using only reasonable **force or attempting to prevent unreasonable force.**"

## Methodology

As noted in IMR – 4, as of June 1, 2016, APD had completed all presentations of the 24-hour Supervisory Use of Force Investigations and 40-hour Use of Force Curriculums. The monitoring team attended sessions of the 40-hour course during one of its site visits and also reviewed videotapes from the 24-hour training course to determine if the course materials were adequately delivered. A great deal of insight was gained by reviewing the videotapes and comments by the monitoring team were previously provided. As noted extensively in IMR – 4, there were several outstanding issues that prevented APD from achieving Secondary Compliance. In preparation of this report the monitoring team reviewed the training curriculum for a two-hour block of instruction entitled, "Standardizing Use of Force Investigations" and discussed the curriculum with the lead instructor.<sup>118</sup> The monitoring team also reviewed interoffice memorandums, dated January 19, 2017, entitled, "24 Course Gaps and Supplemental Training" and January 20, 2017, entitled, "40 Hour Course Gaps and Supplemental Training". We also reviewed departmental Special Order 16 – 90 entitled "Mandatory Supervisor Use of Force Training". The course was delivered in five separate sessions in December 2016, with the makeup date that occurred on January 27, 2017.<sup>119</sup> Our assessment of the materials and APD's remediation of training gaps identified in IMR – 4 are found below.

## Results

In our data request to APD we specifically noted that during IMR -4 there were numerous paragraphs that did not meet training compliance and that either initial or supplemental use of force training was necessary. Over the course of the last year the monitoring team has brought up, more than once, (both in writing and during in person meetings) the value of developing training plans. That fact was reiterated in our data request. We asked for copies of any training plans that APD developed to address training gaps that were identified in IMR – 4. We were provided with interoffice memorandums dated in January 2017 that were prepared based on questions the monitoring team posed to APD in August 2016 while preparing IMR – 4, not based on an assessment of the content of the final IMR-4. Doing so would have been much more efficient for both APD and the monitoring team in determining when and how they addressed the specific gaps identified in the previous monitoring report. That said, through an assessment of the materials that were provided and conversations with APD personnel we find that training gaps still exist.

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<sup>118</sup> We note that APD also delivered a "New Supervisor's Course" in November 2016, but that course targeted a small group of new supervisors and not the broader population.

<sup>119</sup> The makeup date was communicated to the monitoring team during a discussion with the lead instructor.

We also note that on January 24, 2017 APD launched its 2017 Use of Force Review. That course of instruction, consisting of three 8 hour days, is apparently designed to address APD's requirement for 24-hours of annual in-service training on use of force. We also note that the training curriculum was delivered without having resolved several policy issues related to SOP 2 – 52. Because that training program occurred so late in the monitoring period it will be reported on more extensively in the next monitoring period, once the monitoring team has had an opportunity to review videotapes of the training and discuss the curriculum with APD personnel.

Having reviewed materials that were presented to the monitoring team, we still find open issues that require supplemental training to bring APD into Secondary Compliance with this paragraph. APD directed the monitoring team to the "Standardizing Use of Force Investigations" course as having addressed certain training gaps, but learned that the course was designed to implement supervisory force investigation "checklists," not to fill training gaps identified in IMR – 4. We were told that "some topics" that were identified as training gaps in IMR – 4 were brought up and discussed within the class, but were not specifically a part of the training curriculum. For that reason, it is impossible for the monitoring team to determine whether the specific training gaps were remediated uniformly across all the supervisory training dates. That is not meant to disparage the quality of the training delivered on those dates. In fact, a couple of outstanding issues were covered satisfactorily even though they were not the primary focus of the training program. We also note that the lead instructor for that training program completed a comprehensive Review and Recommendations report that he prepared when he was first assigned to CIRT. The monitoring team reviewed that report and find it to be an excellent example of a "needs assessment" that should be emulated by any training component within APD.

While some of the training gaps we previously found have been addressed, we find that Secondary Compliance is still pending on a number issues. Those are listed in the following table, along with an explanation of why the monitoring team believes more work remains to be done, and what that work is, in order for APD to reach satisfactory compliance status.

**Table 4.7.75: Assessment of Pending Issues in APD's 24-hour Supervisory Use of Force Investigation Course and the 40-Hour Use of Force Course**

Open Issues: 24-hour Supervisory Use of Force Investigation Course / 40-hour Use of Force Course	Status
1. Review of problematic FRB case involving profanity, serious use of force re-classification	<u>Still pending</u> follow-up training to remediate improper information that was provided during previous training.



2. Credibility determinations	Still <u>pending</u> follow-up training. The monitoring team reviewed the documentation provided by APD and found no direct treatment of this issue. As noted in IMR – 4, in our opinion APD does not address <u>how</u> supervisors go about conducting credibility determinations based on their investigations of force. For example, how supervisors make determinations based on the collection of statements, and the evaluation of facts and evidence is not directly addressed.
3. language confusion, i.e., “Pointing a firearm at a person...and acquiring a target”, procedures for reporting and investigation, and reconciling “low-ready,” and elimination of the concept of “high-ready”	This issue should be reconciled during the six-month review of SOP 2-52 and 2-54 to resolve the confusion. <sup>120</sup> Note: this is the issue we deal with frequently regarding “show of force”
4. Minimum amount of force necessary	Without clear-cut guidance on how to conduct these assessments, the resultant judgments are likely to be highly subjective. More “how-to” instruction is needed. APD responded to the monitoring team's request for data to demonstrate this gap was filled <u>by directing us back to the original training program we deemed was deficient</u> . We previously documented that APD's use of force expert did an excellent job explaining the concept of minimum amount of force necessary. Unfortunately, his explanation occurred spontaneously in the class and was not found in any APD curriculum. <sup>121</sup> Parenthetically, we reviewed

<sup>120</sup> During the monitoring team's June 2016 site visit APD candidly admitted that Show of Force was improperly instructed. Parenthetically, the monitoring team reviewed a portion of the 24-hour Supervisor's Course where Show of Force was discussed. It was clear to the monitoring team that *supplemental training is required* to ensure all APD officers are clear on what constitutes a “low-ready” weapon position and what constitutes a Show of Force. The “acquiring a target” concept was discussed extensively with APD, which is a contributing factor to the confusion. APD promulgated a Special Order that outlined how Show of Force events would be reported and investigated, and those procedures were included in the “Standardizing Use of Force Investigations” curriculum as a “stopgap”. It remains to be seen if those procedures will be acceptable and needs to be resolved during the review of APD's use of force policies.

<sup>121</sup> APD has asserted on more than one occasion that all the programs were delivered the same way by that instructor, even in training session that occurred before the monitoring team saw his explanation of minimum amount of force necessary. The monitoring team cannot rely on an



	the 2017 Use of Force Review and Update and find that a comprehensive review is conducted there. That training commenced at the very end of the monitoring period, therefore we will address the quality of the training once we have an opportunity to review videotapes of the training and discuss it with APD personnel.
5. Default to <i>Graham's</i> objective reasonableness (OR) standard	APD needs to explicitly treat APD standard as a three-part standard, <i>Graham's</i> test of OR being only one of the three parts. Otherwise, investigators and reviewers tend to rely solely upon the <i>Graham</i> test, which does not address APD's existing policy standard articulated in the new use of force policy.
6. Un-resisted handcuffing issue	APD developed a video that addressed this issue, but the video has not yet been disseminated. Discussions in the 24-hour course clearly indicate that confusion remains. Parenthetically, we reviewed the 2017 Use of Force Review and Update and find review of force involving handcuffed people is included there. However, clearly communicating what factors to consider when deciding if a case is above "un-resisted handcuffing" is not evident in the materials we reviewed. That training commenced at the very end of the monitoring period, therefore, we will address the quality of the training once we have an opportunity to review videotapes of the training and discuss it with APD personnel.
7. Preponderance of Evidence Standard	This issue is still pending. Without clear-cut guidance on how to interpret and apply this standard, supervisors and chain of command reviewers will have difficulty making the correct findings. More "how-to" instruction is needed, using actual examples.
8. De-escalation Assessment	Without clear-cut guidance on how to

assertion, since in our view the instructor's explanation occurred spontaneously when we saw it. The training lesson plans need to contain the information.

	conduct these assessments, the resultant judgments are likely to be highly subjective. More “how-to” instruction is needed.
12. Neck Holds	The definition of a neck hold is contained within the academy lesson plan and SOP 2-52. We note that the language concerning neck holds, even at this late date, remains an open issue in terms of reviewing and updating SOP 2-52. However, the monitoring team noted that in the lesson plans for the 2017 Annual Review APD included "proposed additions" concerning the definition of a neck hold. These are presumably “proposed additions” APD hopes to include in SOP 2-52. In our view, including this type of non-approved language in a training program, even when qualified as “proposed” is problematic and may lead to problems in the field.
13. Distraction Strikes	This topic requires proper development in policy, approval by the monitor and training.
14. SCOTUS Cases	Refer to Paragraph 15. This needs to be remediated through training.

As noted in previous reports, supervisory training curriculum is a key component of the strategy to improve the quality of both supervisory use of force investigations and chain of command reviews. We would be remiss if we did not specifically call attention the fact that the "Standardizing Use of Force Investigations" introduced checklists to APD supervisors at each supervisory level that is responsible for investigating uses of force. During our November 2016 site visit the monitoring team met with APD personnel responsible for developing these checklists and provided feedback on the content. We have noted on several occasions, and in several previous monitoring reports, that the use of checklists will be a substantive step in right direction as APD attempts to standardize force investigations and ensure that uses of force are properly reported in the field. We were encouraged to see this training program and the introduction of the checklists to APD supervisors.

As we previously noted, the issues of de-escalation, credibility assessments, the minimum amount of force necessary standard, the application of the preponderance of evidence standard, and the *Graham* test of objective reasonableness require supervisors and chain of command reviewers to make often-complicated, multi-factorial, difficult judgments about an officer's decision-making and actions. Without substantial guidance, these judgments risk being highly subjective and inconsistent. The foregoing open issues must be addressed if APD is to achieve Secondary Compliance.

## Results

Primary: In Compliance  
Secondary: Not In Compliance  
Operational: Not In Compliance

***Recommendation 4.7.75a: We reiterate, yet again, APD should consider developing a comprehensive training plan, based on information contained within what now is five monitor's reports, and draw direct lines between training gaps we identify and specific areas within their training curriculum. This process should result in a piece of completed staff work that identifies specific issues and recommends steps to resolve those issues and is submitted to the Chief of Police for action.***

***Recommendation 4.7.75b: We reiterate, yet again, APD should provide clear, concise and thorough course syllabi as part of their training plans, and those documents should be organized based on national standards that allow anyone needing to know the proposed content, process, and methods of the proposed training to consult the training plan and understand what the training's goals, objectives, modalities, and assessment of learning techniques will be. It may be that APD needs to contract with outside experts to find the expertise necessary to work through this process, as the monitor's numerous attempts at transferring this knowledge appear to have failed.<sup>122</sup>***

## 4.7.76 Assessing Compliance with Paragraph 89: Annual Firearms Training

Paragraph 89 stipulates:

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<sup>122</sup> We note that we have both provided training and detailed written guidance to APD's academy regarding nationally accepted standards for these documents, yet we continually receive "course outlines" that are obscure, not well identified or organized, and not in compliance with accepted practice.

**“Included in the use of force training set out above, APD shall deliver firearms training that comports with constitutional principles and APD policy to all officers within 12 months of the Operational Date and at least yearly thereafter. APD firearms training shall:**

- a) require officers to complete and satisfactorily pass firearms training and qualify for regulation and other service firearms, as necessary, on an annual basis;
- b) require recruits, officers in probationary periods, and officers who return from unarmed status to complete and satisfactorily pass firearm training and qualify for regulation and other service firearms before such personnel are permitted to carry and use firearms;
- c) incorporate professional low-light training, stress training (e.g., training in using a firearm after undergoing physical exertion), and proper use of force decision- making training, including continuous threat assessment techniques, in the annual in-service training program; and
- d) ensure that firearm instructors critically observe students and provide corrective instruction regarding deficient firearm techniques and failure to utilize safe gun handling procedures at all **times.”**

## Methodology

Members of the monitoring team consulted with staff from the Firearms Training Unit during the site visit for IMR-5 and found that based on our earlier interactions with them on this paragraph, the FTU had conducted a detailed after action report on the issues the monitoring team discussed with them earlier. Using the information regarding outstanding issues on this paragraph communicated to them, the FTU clearly and effectively addressed the “return to work” issue related to firearms training. They have developed an electronic form to document the remedial training process, and they have replaced Procedural Orders which appeared to be in conflict. Plans for the 2017 training cycle to meet the requirements of this paragraph are in development.

## Results

This Firearms Staff has compiled extensive data to document all that is required and all that they have accomplished in order to meet/exceed the CASA requirements. We view this as excellent work that easily could, and should be emulated by other APD staff as they consider how to respond to monitoring team findings.

Primary: In Compliance  
Secondary: In Compliance

## Operational: In Compliance

### 4.7.77 Assessing Compliance with Paragraph 90: Management of Specialized Units

Paragraph 90 stipulates:

**“To maintain high-level, quality service; to ensure officer safety and accountability; and to promote constitutional, effective policing,** APD shall operate and manage its specialized units in a manner that increases the likelihood of safely resolving critical incidents and high-risk situations, prioritizes saving lives in accordance with the totality of the circumstances, provides for effective command-level accountability, and ensures force is used in strict compliance with applicable law, best practices, and this Agreement. To achieve these outcomes, APD shall implement the requirements set out below.

#### Methodology

As noted in IMR-4, all the policies pertaining to the organization, staffing, and operation of APD’s tactical units were approved in May and June of 2016, bringing the Department into Primary Compliance with all the policy-related requirements in this and other paragraphs in this section. As we note later, the Special Operations Division continues to provide comprehensive records that demonstrate their commitment to providing services that meet or exceed APD policy, applicable law and best practices in law enforcement. We noted in IMR – 4, it is through the establishment of quality policies, processes and systems that high performance can be replicated in perpetuity. We noted that it was critical to SOD’s continued success that they sustain the quality of performance (that we have reported on in previous monitoring reports) by ensuring that the processes and systems put in place are not only set in policy, but become a part of the culture within SOD. That way performance survives changes in command. We have reported that over the past year SOD commanders have been exceptionally receptive to feedback and openly willing to implement business processes that meet CASA requirements. During this monitoring period, the SOD commander we have most regularly communicated with was promoted out of the unit, which we expect will test the stability of the processes and systems that have been put in place. Thus far, the information that has been provided to, and reviewed by, the monitoring team suggests that the quality of performance by SOD has continued. As we have noted in the past, the responsibilities of Special Operations units, and their practices relating to use of force, require deep consideration on the part of APD when they are deciding who can be assigned to those units, and more importantly, who can supervise those units. During our November 2016 site visit, members of the monitoring team had an opportunity to meet the new commanding officer and found him to be fully engaged and interested in continuing the positive progress SOD has enjoyed.

Because this paragraph only sets forth high-level operational goals, there is no extensive training required. However, as noted previously APD has created various mechanisms, such as the Search Warrant Risk Matrix, tactical activation consultation procedures, informative databases, and extensive unit-level review and reporting practices that constitute Secondary Compliance. Likewise, the monitoring team has reviewed COB documentation that shows SOD takes information gleaned from tactical operations and attempts to build it back into unit specific training opportunities. Finally, based upon documented field outcomes, the monitoring team finds that APD's specialized tactical units are in Operational Compliance.

## Results

Special Operations Division (SOD) staff continues to refine its operational capabilities to handle high-risk tactical incidents in a measured, adaptive, and risk-smart manner. The monitoring team was provided a COB document entitled, "Tactical Annual Policy/Operations/Training Review for 2016 that was dated January 25, 2017. The internal memorandum was from the new commanding officer for SOD to the Major of the Special Services Bureau. The document outlines the purpose of their annual review, including the fact that by conducting a review in this manner it allows SOD to look at trends that may develop over the course of the year that may have been missed when each incident was evaluated on its own. This type of critical review is crucial for the future success of SOD, and should serve as a model for other divisions within APD. The report that was provided and reviewed by the monitoring team included a review of Force Review Board recommendations that have occurred over the course of the year, an analytical review of the tactical operations for SOD, a section for analyzing training, and recent legal developments that have a direct impact on SOD operations.

The monitoring team has previously catalogued the many factors that underpin SOD's successes, which we will not repeat here, but one such example is noteworthy to list in this report because the monitoring team has seen how SOD practices have directly impacted the operation of other specialized units. Specifically, tactical activations have been based upon explicit risk criteria to minimize unnecessary activations. These risk criteria have been distilled into a Risk Matrix and used by SOD for more than a year. During our engagement with other organizational entities (i.e. the Special Investigations Division) we found they have incorporated the SOD Risk Matrix into their business practices and policies and rely upon it when making the decision whether to call out SOD. This is the type of exemplary result we hope to see across the organization when the monitoring team sees, and reports on, strong business practices at APD.

Primary: In Compliance  
Secondary: In Compliance  
Operational: In Compliance

#### 4.7.78 Assessing Compliance with Paragraph 91: Composition of Specialized Tactical Units

Paragraph 91 stipulates:

**“APD’s specialized tactical units shall be comprised of law enforcement officers who are selected, trained, and equipped to respond as a coordinated team to resolve critical incidents that exceed the capabilities of first responders or investigative units. The specialized tactical units shall consist of SWAT, Canine, and Bomb Squad/EOD.”**

#### Methodology

Special Operations has developed and implemented certain policies (Bomb SOP 4-03, Swat SOP 4-04, K-9 SOP 4-12, and CNT SOP 2-43) that have been reviewed and approved and address the requirements set forth in paragraph 91.

#### Results

Special Operations conducts regular, extensive training at numerous levels, including but not limited to: Individual, Unit, and Team. As a result, a review of the training conducted during the period of April 1<sup>st</sup>, 2016 through July 31<sup>st</sup>, 2016 took place. The Crisis Negotiation Team (CNT) has also been added as an internal unit.

The monitoring team also reviewed APD Personal Training Records, including:

- 4/7 Tactical Section along with CNT (Hostage Rescue/Active Shooter scenarios), Bomb Unit (Explosive Disposal);
- 4/12 SWAT Units (Firearms);
- 4/14 K-9 Unit (PSD Performances);
- 4/20 SWAT Units (Mechanical Breaching), Bomb Unit (PSD Performance), Bomb Unit (Explosive Disposal);
- 4/21 K-9 Unit (PSD Performance), Bomb Unit (Explosive Disposal); and
- 4/28 K-9 Unit (PSD Performance).

The monitoring team also reviewed training records for May, June, and July 2016. All reports document the proper dates, types of training, sign in sheets for training, operational functions trained in, location, overview of course, synopsis, and instructor.



Sixteen After-Action Reports (AARs) were received for the time frame documented in the Interoffice Memorandum. The AARs documented a synopsis of call, tactical response, considerations, as well as any policy, training, equipment, and tactics as required by CASA. A review of the AARs indicates that APD specialized units conform to best practices nation-wide, and to the specific requirements of this paragraph.

Primary: In Compliance  
Secondary: In Compliance  
Operational: In Compliance

#### 4.7.79 Assessing Compliance with Paragraph 92: Training of Specialized Tactical Units

Paragraph 92 stipulates:

**“APD shall ensure that specialized tactical units are sufficiently trained to complete the following basic operational functions: Command and Control; Containment; and Entry, Apprehension, and Rescue.”**

#### Methodology

A review of the Special Operations training conducted by the monitoring team confirmed that the operational functions included in this paragraph are regularly covered and documented. The monitoring team reviewed the Excel spread sheet (2016 Tactical Files) that displays training by officer, by unit, and by operational function trained that correspond to those listed in paragraph 92.

#### Results

See Table 4.7.79 below.

Table 4.7.79

Source	A. APD shall ensure that specialized tactical units are sufficiently trained to complete the basic operational function of Command and Control	B. To complete the basic operational function of Containment	C. To complete the basic operational function of Entry	D. To complete the basic operational function of Apprehension	E. To complete the basic operational function of Rescue	# in-compliance	% in Compliance
Training Documentation 8/16	1	1	1	1	1	5	100.0%
Training Documentation 9/16	1	1	1	1	1	5	100.0%
Training Documentation 10/16	1	1	1	1	1	5	100.0%
Training Documentation 11/16	1	1	1	1	1	5	100.0%
Training Documentation 12/16	1	1	1	1	1	5	100.0%
Training Documentation 1/17	1	1	1	1	1	5	100.0%
<b>Number in Compliance Total all Incidents</b>	<b>6</b>	<b>6</b>	<b>6</b>	<b>6</b>	<b>6</b>	<b>30</b>	
<b>% in Compliance Total by Category</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>		<b>100.0%</b>

Primary: In Compliance  
Secondary: In Compliance  
Operational: In Compliance

#### 4.7.80 Assessing Compliance with Paragraph 93: Tactical Unit Missions and Policies

Paragraph 93 stipulates:

**“Each specialized tactical unit shall have clearly defined missions and duties. Each specialized tactical unit shall develop and implement policies and standard operating procedures that incorporate APD’s agency-wide policies on use of force, force reporting, and force investigations.”**

## Methodology

All the SOD policies pertaining to the organization, staffing, and operation of APD's tactical units were approved in May and June of 2016, bringing the Department into Primary and Secondary Compliance on all the policy-related requirements in this and other paragraphs in this section. The monitoring team also reviewed COB documentation in the form of an internal memorandum dated January 25, 2017, entitled, "Tactical Annual Policy/Operations/Training Review for 2016." Finally, the monitoring team reviewed SWAT training records for the months of August – December 2016.

## Results

Based on our review of the documentation that was provided, we determined that SOD remains in operational compliance with this paragraph. The SOD Annual Review is a comprehensive assessment of the current state of the special operations division, and includes an assessment of SOD SOP's, incorporation of Force Review Board recommendations that resulted from their deployments, as well as an analytical assessment of their tactical deployments over the course of the year. Finally, and probably most impressive, was the affirmative step SOD took by requesting the Legal Department to conduct research on U.S. Supreme Court and 10<sup>TH</sup> Circuit, and New Mexico Supreme Court case law to determine if any recent decisions had a direct impact on their operations. The Annual Review concludes by stating, "We will continue to focus on the safest, most effective and most efficient way to resolve incidents through de-escalation when possible and always use a layered force response with many options. Our training requirements will result in the utilization of a highly disciplined, well-trained and well-equipped specialized unit."

The monitoring team reviewed SOD training records (developed "in-house") that directly resulted from deployments during this monitoring period. SOD maintains sign in sheets and provide a training overview and synopsis for each training event they deliver. As SOD continues to refine their business practices the monitoring team will look to see a more robust and detailed training curriculum. Meaning, that they incorporate some of the basic tenets of a lesson plan consistent with APD's training Academy.

Primary: In Compliance  
Secondary: In Compliance  
Operational: In Compliance

### 4.7.81 Assessing Compliance with Paragraph 94: Tactical Units Policy and Procedure

Paragraph 94 stipulates:

**“APD policies and procedures on specialized tactical units shall include the following topics:**

- a) Team organization and function, including command relationships with the incident commander, Field Services Bureau, other specialized investigative units, Crisis Negotiation Team, Crisis Intervention Unit, crisis intervention certified responders, and any other joint or support elements to ensure clear lines of responsibility;
- b) Coordinating and implementing tactical operations in emergency life-threatening situations, including situations **where an officer’s view may be obstructed;**
- c) Personnel selection and retention criteria and mandated physical and tactical competency of team members, team leaders, and unit commanders;
- d) Training requirements with minimum time periods to develop and maintain critical skills to include new member initial training, monthly training, special assignment training, and annual training;
- e) Equipment appropriation, maintenance, care, and inventory;
- f) Activation and deployment protocols, including when to notify and request additional services;
- g) Conducting threat assessments to determine the appropriate responses and necessary resources;
- h) Command and control issues, including a clearly defined command structure; and
- i) Documented after-**action reviews and reports.”**

## Methodology

All the policies pertaining to the organization, staffing, and operation of APD’s tactical units were approved in May and June of 2016, bringing the Department into Primary and Secondary Compliance on all the policy-related requirements in this and other paragraphs in this section. The monitoring team also reviewed COB documentation in the form of an internal memorandum dated January 25, 2017, entitled, “Tactical Annual Policy/Operations/Training Review for 2016.” The monitoring team also reviewed 11 SOD activations that occurred between August and December 2016.

## Results

Based on our review of the documentation that was provided, we determined that SOD remains in operational compliance with this paragraph. The SOD Annual Review is a comprehensive assessment of the current state of the SOD, and includes an assessment of SOD SOP's, incorporation of Force Review Board recommendations that resulted from their deployments, as well as an analytical assessment of their tactical deployments over the course of the year. Likewise, we found that in each instance that SOD was activated they prepared an operational plan and after action report detailing their activities. As it relates to this paragraph we note that in its Annual Review (conclusion) SOD stated, "In conclusion, throughout 2016 and into 2017 the training focus of the APD tactical

section will be the ability to build and conduct training based on real-life and world scenarios. This is accomplished by focusing on command-and-control, apprehension, entry, containment and rescue."

Based on our review, we have determined that SOD is in operational compliance with this paragraph.

Primary: In Compliance  
Secondary: In Compliance  
Operational: In Compliance

#### 4.7.82 Assessing Compliance with Paragraph 95: Annual Review of Tactical Policies

Paragraph 95 stipulates:

**"The policies and standard operating procedures of specialized tactical units shall be reviewed at least annually and revisions shall be based, at a minimum, on legal developments, training updates, operational evaluations examining actual practice from after-action reviews, and reviews by the Force Review Board or other advisory or oversight entities established by this Agreement."**

#### Methodology

All the policies pertaining to the organization, staffing, and operation of APD's tactical units were approved in May and June of 2016, bringing the Department into Primary and Secondary Compliance on all the policy-related requirements in this and other paragraphs in this section. The monitoring team also reviewed COB documentation in the form of an internal memorandum dated January 25, 2017, entitled, "Tactical Annual Policy/Operations/Training Review for 2016." The report was written well, organized logically, and covered substantive matters that directly relate to the success of SOD.

#### Results

In IMR-4, the monitoring team identified one Supreme Court case that was included in the Legal Review section of the Division's 2015 Annual Report that we deemed as problematic since it was without proper qualification.<sup>123</sup> We also noted concerns with how APD use of force training (during the 40-hour course) included *Plumhoff* without proper context.<sup>124</sup> We note that during the review for

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<sup>123</sup> *Mullenix v. Luna*, 136 S. Ct. 305 (2015) --- was included in the Legal Review section of SOD's 2015 Annual Report that was problematic without proper qualification. That case, similar to *Plumhoff*, which was included in the 40-hour Use of Force Curriculum, sets forth a standard for shooting at vehicles that is less restrictive than APD's use of force policy.

<sup>124</sup> APD was first alerted to training concerns the monitoring team had with their 40-hour use of force course, and the manner that *Plumhoff* was presented, in February 2016. After watching the training in-person the monitoring team provided feedback to APD reiterating those concerns

this year's Legal Developments, APD command staff reported meeting with assistant city attorneys to go over recent case decisions to determine if there was any need to recommend changes to policy or training. We note that after their assessment none of the recent cases they reviewed required a recommendation for the revision of any SOD policy or training.<sup>125</sup>

SOD has put in place a variety of standard management practices that are important factors in achieving and sustaining CASA-related reforms. During our November 2016 site visit we discussed the status for each SOD paragraph with its new commander along with the outgoing commander. It was clear to the monitoring team that the outgoing commander, who put many of the positive measures in place for SOD, was working to ensure that their business practices remained in place moving forward. The new commander's intended approach to running SOD appears to be congruent with the established business practices we have written about in past monitoring reports. Based on our review, we have determined that SOD is in operational compliance with this paragraph.

Primary: In Compliance  
 Secondary: In Compliance  
 Operational: In Compliance

#### 4.7.83 Assessing Compliance with Paragraph 96: Documentation of Tactical Activities

Paragraph 96 stipulates:

**“In addition to Use of Force Reports, APD shall require specialized tactical units to document their activities in detail, including written operational plans and after-action reports created after call-outs and deployments to critical situations. After-action reports shall address any areas of concern related to policy, training, equipment, or tactics.”**

#### Methodology

Special Operations has incorporated the requirements of Paragraph 96 at all compliance levels and its policies have been approved by the monitor and have subsequently been published. For the timeframe of August – December 2016, the monitoring team was provided with operational plans and after action reports for eleven (11) tactical deployments.

#### Results

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(among others). APD adjusted the training materials “mid-stream”, but concerns remain over how the different populations of class participants were reconciled.

<sup>125</sup> While not all the cases cited in the report deal directly with force, at least four cases do and should be considered for submission to the APD academy. In particular, *Pauly v. White*, which deals directly with case elements germane to the CASA.

The monitoring team reviewed the operational plans and after action reports for compliance with the provisions of this paragraph. There was an actual tactical deployment in only two of the situations [IMR-5-030 and IMR-5-041] and in each of those cases SOD prepared a detailed synopsis of their involvement in the event, and analyzed the deployment for policy, training, equipment and tactical issues/concerns. In the other nine (9) cases, SOD prepared an operations plan and after action report; however, they never deployed for the events. Based on the records provided to the monitoring team APD is in compliance with the provisions of this paragraph.

Primary: In Compliance  
Secondary: In Compliance  
Operational: In Compliance

#### 4.7.84 Assessing Compliance with Paragraph 97: Tactical Mission Briefings

Paragraph 97 stipulates:

**“APD shall require specialized tactical units to conduct mission briefings before an operation, unless exigent circumstances require an immediate deployment. APD shall also ensure that specialized tactical team members designate personnel to develop and implement operational and tactical plans before and during tactical operations. All specialized tactical team members should have an understanding of operational planning.”**

#### Methodology

As with past reports, the monitoring team verified Operational Compliance with this requirement by means of personal inspections, policy reviews, and discussions with the SOD commander. With the approval of all SOD policies in May-June 2016, APD is now in Policy Compliance as well. Likewise, SOD conducted an Annual Review of their policies and procedures on January 25, 2017. There are no significant training requirements in this paragraph.

#### Results

During the third monitoring period, the monitoring team wrote that no documentation was found that APD provided specific training in operational planning. The monitoring team, based upon case reviews, acknowledged that Tactical Sectional Commanders, Supervisors and Officers have a working knowledge of operational planning and apply that understanding and skill to actual operations. For the fourth site visit the monitoring team requested documentation from APD that supports if such training was being conducted. The monitoring team also requested any Operational Plans developed for this period.



**Table 4.7.84 Tactical “Call-Outs”**

Case Location	A. APD shall require specialized tactical units to conduct mission briefings before an operation, unless exigent circumstances require an immediate deployment	B. APD shall also ensure that specialized tactical team members designate personnel to develop and implement operational and tactical plans before and during tactical operations	C. All specialized tactical team members should have an understanding of operational planning	# in-compliance	% in Compliance
Ops Plan 1200 Dickerson SE	1	1	1	3	100.
Ops Plan ND Pipeline	1	1	1	3	100
Ops Plan Women's March	1	1	1	3	100
Ops Plan Pence Campaign	1	1	1	3	100
Ops Plan Million Mass March	1	1	1	3	100
Ops Plan Balloons	1	1	1	3	100
Ops Plan Trump Inauguration	1	1	1	3	100
Ops Plan UNM	1	1	1	3	100
<b>Number in Compliance Total all Incidents</b>	<b>8</b>	<b>8</b>	<b>8</b>	<b>24</b>	<b>100</b>

Primary: In Compliance  
Secondary: In Compliance  
Operational: In Compliance

#### 4.7.85 Assessing Compliance with Paragraph 98: Tactical Uniforms

Paragraph 98 stipulates:

**“All specialized tactical units shall wear uniforms that clearly identify them as law enforcement officers.”**

#### Methodology

As with past reports, the monitoring team verified Operational Compliance with this requirement by means of personal inspections, policy reviews, and discussions with the SOD commander. With the approval of all SOD policies in May-June 2016, APD is now in Policy Compliance as well. Likewise, SOD conducted an Annual Review of their policies and procedures on January 25, 2017. There are no significant training requirements in this paragraph.

## Results

SOD conducts regular monthly inspections to ensure that officers maintain uniform, equipment, and grooming standards. During its November 2016 site visit the monitoring team examined uniforms of select SOD personnel to verify compliance with the provisions of this paragraph. SOD has put in place a variety of standard management practices that are important factors in achieving and sustaining CASA-related reforms. Based on our review, we have determined that SOD remains in operational compliance with this paragraph.

Primary: In Compliance  
Secondary: In Compliance  
Operational: In Compliance

### 4.7.86 Assessing Compliance with Paragraph 99: Force Review Board Assessments

Paragraph 99 stipulates:

**“All specialized tactical unit deployments** shall be reviewed by the Force Review Board in order to analyze and critique specialized response protocols and identify any policy, training, equipment, or tactical concerns raised by the action. The Force Review Board shall identify areas of concern or particular successes and implement the appropriate response, including modifications to **policy, training, equipment, or tactics.**”

#### Methodology

The Force Review Board maintains strong attendance records by the command staff and members of specialized units. For Force Review Board meetings involving the review of SWAT activations cases are presented by commanders of SOD and, if applicable, a CNT commander. In all cases reviewed by the monitoring team, the Force Review Board evaluated the cases for appropriate response by SOD, including policy, training, equipment and tactical concerns.

As noted throughout this report, SOD has put in place a variety of standard management practices that are important factors in achieving and sustaining CASA-related reforms. The monitoring team has reviewed and discussed the status for each SOD paragraph with its commander during its November 2017 site visit. Based on our review, we have determined that SOD is in operational compliance with this paragraph.

Primary: In Compliance  
Secondary: In Compliance  
Operational: In Compliance

#### 4.7.87 Assessing Compliance with Paragraph 100: Eligibility Requirements for Tactical Teams

Paragraph 100 stipulates:

**“APD shall establish eligibility criteria for all team members, team leaders, and supervisors assigned to tactical units and conduct at least annual reviews of unit team members to ensure that they meet delineated criteria.”**

#### Results

The Special Operations Division, which oversees specialized tactical units, has established policies that set selection criteria for team membership and training requirements for all members. Table 4.7.87, below outlines the results of the monitoring team’s analysis of those policies.

Table 4.7.87

Unit	A. APD shall establish eligibility criteria for all team members assigned to tactical units	B. They shall establish eligibility criteria for all team leaders assigned to tactical units	C. They shall establish eligibility criteria for all supervisors assigned to tactical units	D. APD shall conduct at least annual reviews of unit team members to ensure that they meet delineated criteria	# in-Compliance	% in Compliance
Bomb Squad (4-03)	1	1	1	1	4	100
SWAT (4-04)	1	1	1	1	4	100
K-9 (4-12)	1	1	1	1	4	100
K-9 Unit Memorandum (8/16)	1	N/A	N/A	N/A	1	100
2017 Command Staff Performance Management	N/A	N/A	N/A	1	1	100
2017 K-9 Performance Management	N/A	N/A	N/A	1	1	100
2017 SWAT Performance Management	N/A	N/A	N/A	1	1	100
2017 Bomb Squad Performance Management	N/A	N/A	N/A	1	1	100
<b>Number in Compliance Total all Incidents</b>	<b>4</b>	<b>3</b>	<b>3</b>	<b>7</b>	<b>17</b>	
<b>% in Compliance Total by Category</b>	100	100	100	100		

These are listed in the Bureau SOPs that cover Bomb Squad (4-03), and SWAT (4-04), that have been approved. This unit policy is in compliance with the requirements of paragraph 100 and constitutes a best practice in the management of tactical units and personnel. APD has incorporated the “unit policies” into its formal policies related to these functions, making it compliant with this paragraph.

Primary: In Compliance  
Secondary: In Compliance  
Operational: In Compliance

#### 4.7.88 Assessing Compliance with Paragraph 101: Tactical Team Training

Paragraph 101 stipulates:

**“APD shall train specialized tactical units conducting barricaded gunman operations on competencies and procedures that include: threat assessment to determine the appropriate response and resources necessary, mission analysis, determination of criminal offense, determination of mental illness, requirements for search warrant prior to entry, communication procedures, and integration of the Crisis Negotiation Team, the Crisis Intervention Unit, and crisis intervention certified responders.”**

Methodology:

APD SOP 2-42 (Hostage, Barricaded, Suicidal Subjects and Tactical Threat Assessment) was approved and published May 27, 2016. The Tactical Section SOP’s were approved and published. The monitoring team has reviewed the Tactical Section training and found that all subjects required in Paragraph 101 are covered in a wide array of training contexts, including but not limited to scenario-based training. Throughout this review, it became evident that CNT has become an essential operational component in tactical activations. The Six-month review should have been scheduled for November 2016, and has not yet been forwarded to the monitoring team.

Training for the Tactical Section continues to be conducted on a regular basis in accord with national standards (NTOA) for high-risk tactical operations. APD tactical teams continued to demonstrate operational success in 2016. The monitoring team reiterates its concern that training for FSB officers, sergeants, lieutenants, and commanders is less adequate, given their responsibilities for responding to and handling the majority of these incidents. The revised SOP continues to contain language indicating that a command-level officer will respond to these incidents. The monitoring team will assess the nature and extent of supervisory and command-level field presence in future reports. While the tactical units are in full compliance with this paragraph, Field Service Bureau

units continue to lag behind in the training and supervision necessary to serve as first-responders in such events.

Results

Table 4.7.88 on the following page represents compliance levels for Paragraph 101.

Table 4.7.88

Case No.	A. train re conduct -ing barricaded gunman operations on competencies and procedures: threat assess.	B. train re conduct -ing barricaded gunman ops on competencies and mission analysis	C. train re conducting barricade gunman ops ID criminal offense	D. train re conducting barricade gunman ops & ID of mental illness	E. train re barri-caded gunman operations & procs: requirements for search warrant	F. train re conducting barricaded gunman operations and procedures: Com procedures	G. train re conducting barricaded gunman &: integration of the Crisis Negotiation Team	H. train re barricaded gunman OPS, competencies & procedures: integration of the Crisis Intervention Unit	I. Train re barricaded gunman operations on competencies and procedures: integration of crisis intervention certified responders	# in Compliance	% in Compliance
Training Doc 8/16	1	1	1	1	1	1	1	1	1	9	100
Training Doc 9/16	1	1	1	1	1	1	1	1	1	9	100
Training Doc 10/16	1	1	1	1	1	1	1	1	1	9	100
Training Doc11/16	1	1	1	1	1	1	1	1	1	9	100
Training Doc 12/16	1	1	1	1	1	1	1	1	1	9	100
Training Doc 1/17	1	1	1	1	1	1	1	1	1	9	100
<b>in Compliance Total</b>	<b>6</b>	<b>6</b>	<b>6</b>	<b>6</b>	<b>6</b>	<b>6</b>	<b>6</b>	<b>6</b>	<b>6</b>	<b>54</b>	
<b>% in Compliance</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>		<b>100</b>

Primary: In Compliance  
 Secondary: In Compliance  
 Operational: In Compliance

4.7.89 Assessing Compliance with Paragraph 102: K-9 Post Deployment Reviews

Paragraph 102 stipulates:

**“APD shall continue to require the Canine Unit to complete thorough post- deployment reviews of all canine deployments.”**

## Methodology:

All the policies pertaining to the organization, staffing, and operation of APD's tactical units were approved in May and June of 2016, bringing the Department into Primary Compliance on all the policy-related requirements in this and other paragraphs in this section. The monitoring team also reviewed COB documentation in the form of an internal memorandum dated January 25, 2017, entitled, "Tactical Annual Policy / Operations / Training Review for 2016." The report was written well, organized logically, and covered substantive matters that directly relate to the success of SOD. We also reviewed the "K-9 Ratio of Lights to Deployments" report as well as monthly COB documentation that captures K-9 deployments and apprehensions, and bite ratio calculations for the months of August – December 2016.

## Results

As noted in IMR – 4, APD limits post-deployment reviews to cases involving apprehensions, which are fully investigated as a serious use of force by the K-9 supervisor and Internal Affairs. The current procedure is for CIRT to respond to the scene and accompany the supervisor throughout the field investigation. The final report is then submitted to CIRT for review and concurrence.

In the opinion of the monitoring team, if APD were to conduct full after-action reviews of all K-9 deployments, the paperwork would overwhelm SOD staff. For instance, there were 409 total deployments between August and December 2016, with only six (6), or 1%, resulting in a bite. Moreover, the marginal value of such reviews does not appear to warrant the investment, as the majority of deployments are routine with no noteworthy information to assess. We believe the present practices within SOD provide the required oversight and accountability in K-9 operations. Additionally, all K-9 bites are reviewed by the Force Review Board as serious uses of force.

We illuminated the conflict between the written requirement and actual practice -- notwithstanding the monitoring team's assessment --- in IMR – 4. This issue requires further discussion among the parties to bring the language and practice into alignment. In this regard, it is important to note that DOJ determined that bite investigations were being conducted professionally and that K-9 operations were not flagged as an area of concern in its April 10, 2014 Findings Letter. In our judgment, based on our review of SOD practices with respect to K-9's, that finding remains valid. As we noted in IMR – 4 in the monitoring team's opinion, the CASA's "shall continue" language does not impart automatic compliance by APD, otherwise the paragraph would not have been included in the CASA. In its January 25, 2017 Annual Review, SOD documented the issue concerning the appropriate means of calculating bite ratios. They highlighted (citing the NTOA) various perspectives on the appropriate means for calculating bite ratios. We see the reconciliation of this issue as being an essential part in APD's success in reaching compliance with this paragraph.

The reader should note that the Parties have agreed to run concurrent reporting processes concerning “ratios” of bites, with a pending collaborative process to jointly select an appropriate method for calculating bite ratios. That decision has yet to be made. In the interim, absent an agreed upon methodology, we cannot confirm compliance for this paragraph. This is in no way a reflection on Special Operations planning, management or operations, but is merely a technical issue to be resolved by the Parties. Resolution on this issue is anticipated upon the Parties’ review of APD’s Canine Policy during 2017. The monitor will withhold compliance determination until such time as the Parties reach agreement on calculation of bite ratios.

Primary: In Compliance  
Secondary: Not In Compliance  
Operational: Not In Compliance

*Recommendations are pending final policy based on the above-mentioned review.*

#### 4.7.90 Assessing Compliance with Paragraph 103: Tracking K-9 Deployments

Paragraph 103 stipulates:

**“APD shall continue to track canine deployments and canine apprehensions, and to calculate and track canine bite ratios on a monthly basis to assess its Canine Unit and individual Canine teams.”**

#### Methodology

All the policies pertaining to the organization, staffing, and operation of APD’s tactical units were approved in May and June of 2016, bringing the Department into Primary Compliance on all of the policy-related requirements in this and other paragraphs in this section. The monitoring team also reviewed COB documentation in the form of an internal memorandum dated January 25, 2017, entitled, “Tactical Annual Policy / Operations / Training Review for 2016.” The report was written well, organized logically, and covered substantive matters that directly relate to the success of SOD. We also reviewed the "K-9 Ratio of Bites to Deployments" report as well as monthly COB documentation that captures K-9 deployments and apprehensions, and bite ratio calculations for the months of August – December 2016.

#### Results

K-9 Units respond to a variety calls that APD has broken down into several different categories ranging from armed searched, search assists, residential alarm calls and commercial alarm calls. They also capture how



many instances there are where a K-9 is muzzled and un-muzzled. As you would expect, the total number of K-9 bites, are again the smallest category reported by APD.<sup>126</sup> For instance, during the date range reviewed by the monitoring team, there were 484 total call-outs and only 6 bites reported. However, call-outs do not always result in the K-9 Unit being deployed for a law enforcement purpose, such as a building or area search. For that reason, deployments in our data set (409) were fewer than the number of call-outs (484). The total deployments resulted in 39 apprehensions, of which 6 involved a bite.

During our June visit, there was a discussion between APD and DOJ about the preferred means of calculating a bite ratio, as 20% has been set as the threshold that triggers a formal review of a K-9 team's performance and unit performance overall. APD argued that calculating the bite ratio as bites to apprehensions results in an artificially high ratio that would trigger numerous EIS false positives, i.e., an alert when there is no real underlying issue. Interestingly, in its January 25, 2017, annual review SOD noted that a low bite ratio does not necessarily mean a handler is utilizing their K-9 in a constitutional manner. That is a noteworthy perspective and has merit. We noted in IMR – 4 that there is merit to other SOD perspectives because the cell numbers concerning K-9 bites to apprehensions are so small. In its Annual Review, SOD specifically referenced the lingering issue of how to calculate bite ratios.

Because SOD's database is timely and comprehensive, it is easy to calculate bite ratios. Currently APD calculates a K-9 bite ratio by dividing searches by the total number of bites, and therefore the bite ratio for the data set reviewed by the monitoring team was below the 20% threshold for each handler. Overall, based upon our reviews over the course of our interaction with SOD, we believe that the present level of oversight and accountability exercised within SOD is exceptionally high and effective. The lingering issue of the calculation method for determining bite ratios is one of particular significance and needs to be resolved expeditiously, but the monitoring team is confident that the current oversight of this area of the organization remains strong.

The monitor has provisionally approved APD's canine deployment policy, pending detailed collection of deployment and bite data to better inform decision regarding how those events will be classified and tracked. Obviously, formal training cannot commence until policy issues are resolved.

Primary: In Compliance  
 Secondary: Not In Compliance  
 Operational: Not In Compliance

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<sup>126</sup> Again, we commend SOD staff on the quality and comprehensiveness of the database that it has created to track the activity and outcomes of APD's specialized tactical units.

***Recommendations are pending final review of canine “bite” data.***

4.7.91 Assessing Compliance with Paragraph 104: Tracking K-9 Bite Ratios

Paragraph 104 stipulates:

**“APD shall include canine bite ratios as an element of the Early Intervention System and shall provide for the review, pursuant to the protocol for that system, of the performance of any handler whose bite ratio exceeds 20 percent during a six-month period, or the entire unit if the unit’s bite ratio exceeds that threshold, and require interventions as appropriate. Canine data and analysis shall be included in APD Use of Force Annual Report.”**

Methodology:

All of the policies pertaining to the organization, staffing, and operation of APD’s tactical units were approved in May and June of 2016, bringing the Department into Primary Compliance on all of the policy-related requirements in this and other paragraphs in this section. The monitoring team also reviewed COB documentation in the form of an internal memorandum dated January 25, 2017, entitled, “Tactical Annual Policy / Operations / Training Review for 2016.” The report was written well, organized logically, and covered substantive matters that directly relate to the success of SOD. We also reviewed the “K-9 Ratio of Bites to Deployments” report as well as monthly COB documentation that captures K-9 deployments and apprehensions, and bite ratio calculations for the months of December-May 2016.

Results

We reiterate, the matter of calculating bite ratios and APD’s EIRS policy and implementation hinders compliance with this paragraph and need a concerted effort during the sixth reporting period to resolve these issues the Parties have identified with implementation.

Primary: In Compliance  
Secondary: Not In Compliance  
Operational: Not In Compliance

***Recommendations are pending final review of canine “bite” data.***

4.7.92 Assessing Compliance with Paragraph 105: Analyzing Tactical Deployments

Paragraph 105 stipulates:

**“APD agrees to track and analyze the number of specialized tactical unit deployments. The analysis shall include the reason for each tactical deployment and the result of each deployment, to include: (a) the location; (b) the number of arrests; (c) whether a forcible entry was required; (d) whether a weapon was discharged by a specialized tactical unit member; (e) whether a person or domestic animal was injured or killed; and (f) the type of tactical equipment deployed. This data analysis shall be entered into the Early Intervention System and included in APD’s annual reports.”**

## Methodology

The monitoring team reviewed the Division’s Tactical Unit Deployment Tracking Sheet for the time period of August 1, 2016 through January 31<sup>st</sup>, 2017. APD had 18 activations in 2016 and 7 through February 2017. The functionality and operation of APD’s SWAT unit has been reviewed in previous paragraphs. APD continues to track and analyze the number, type, and characteristics of deployments, and states a clear reason for each tactical deployment, as well as the number of arrestees in each deployment. Locations and APD remains in compliance for this task.

## Results

Primary: In Compliance  
Secondary: In Compliance  
Operational: In Compliance

### 4.7.93 Assessing Compliance with Paragraph 106: Specialized Unit Policies

Paragraph 106 stipulates:

**“Each specialized investigative unit shall have a clearly defined mission and duties. Each specialized investigative unit shall develop and implement policies and standard operating procedures that incorporate APD’s agency-wide policies on use of force, force reporting, and force investigations.”**

Investigative Bureau SOP 3-01 Special Investigations Division (SID) was approved by the monitor on June 5, 2016, which brought APD into Primary Compliance with the requirements of this paragraph. APD continues to recast its SOP cataloging system and SOP 3-01 is now SOP 5-01. As documented in IMR-4, SID has taken on the task of developing unit-level handbooks that set forth the unique standards, missions and duties for each of its subordinate units. Those handbooks serve several purposes, including SID incorporating and reinforcing APD’s use of force policies. During its November 2016 site visit members of the monitoring team met with SID commanders and were provided a series of updated handbooks

that took into consideration technical assistance the monitoring team previously provided. It was represented to the monitoring team that the handbooks have been designed to augment and standardize the operations of SID and its subordinate units, and meet the provisions of this paragraph.

## Results

In IMR-4 we commented that the Special Investigations Division (SID), like SOD, is actively engaged and making legitimate attempts to be responsive to the CASA. That engagement continues to be evident in this reporting period. Likewise, they continue to be exceptionally receptive to feedback they receive from the monitoring team. During our November site visit the monitoring team met with members of SID that are responsible for addressing the terms of this paragraph on two occasions. During the first meeting, the monitoring team was shown drafts of handbooks for each of SID's subordinate units. As noted in IMR-4, the monitoring team initially reviewed a prototype handbook for the Narcotics Section and commended the approach. We also provided extensive comments on a number of issues and made several suggestions on how to improve the handbook. SID had obviously taken cognizance of the feedback they were previously provided and expressed an interest in having their new, expanded handbooks reviewed for monitoring team comments. In addition to incorporating monitoring team feedback, SID had developed draft handbooks for each of their other units. A cursory review of the handbooks was conducted during our initial meeting and preliminary impressions were provided. SID agreed that copies of each of these unit level handbooks would be provided to the monitoring team while still on site, and that a second meeting would take place later during the site visit. A critical component to the creation of the handbooks was a decision how they would be communicated to the SID through training. We previously commented that there were several delivery options available to SID.

The SID commander advised that during this monitoring period the SID implemented the use of unit handbooks (the Narcotics and Task Force Handbooks) to pilot how the handbooks would be implemented. The monitoring team reviewed COB documentation where a newly assigned detective received informal instruction from his supervisor using the new Narcotics handbook. This occurred in September 2016 and was the first time SID operationalized their new procedures. The Narcotics Handbook was accompanied by a sign off sheet that was signed by both the supervisor and new detective to verify a meeting took place and that the handbook was explained to the detective. Following that meeting the new detective was evaluated against specific and pre-determined performance criteria, similar to an FTO program, except for detectives. The detective was observed in the workplace by his supervisor and as he demonstrated a specific performance competency, they both signed the evaluation form as an acknowledgement that the specific criteria had been met. This evaluation period continued over the course of approximately one month, at

which time the detective went through the same procedure to be reassigned to the Task Force Unit. The monitoring team reviewed the COB documentation related to the Task Force assignment and verified the procedure had been followed. Since no other detectives had been assigned to the SID, this was the only example that was available for the monitoring team to review. The SID commander articulated to the monitoring team that moving forward newly assigned detectives will be required to take these same specific steps.

The monitoring team met with the SID commanders later in the same site visit. The intended purpose of the second meeting was for SID to provide copies of the handbooks to the monitoring team, however, in the intervening period of time, SID had taken the initiative to incorporate changes into each of the unit-level handbooks. In the view of the monitoring team, that responsiveness allowed SID to more efficiently seek compliance with this paragraph.

Communication between the monitoring team and SID continued through the monitoring period as SID continued to adjust and refine their handbooks, while also developing a training regimen to support their implementation. They ultimately decided that the best approach was to develop general sections to the handbooks that applied to all SID units, with each unit handbook having specific sections that relate to their unique responsibilities. SID ultimately received approval from the monitoring team to disseminate the unit handbooks and deliver the training they developed for those handbooks at the latter part of January 2017. On January 27, 2017, SID conducted its training during a three-hour session and delivered the unit specific handbooks to the SID. The general provisions of the handbooks were delivered by one instructor while the unit specific sections were delivered by unit supervisors. Training records were provided and reviewed by the monitoring team. Because the training was to a group of incumbent and experienced SID detectives, the three-hour training program is sufficient without the need to have each detective complete the proficiency checklist.<sup>127</sup> The manner in which SID developed and implemented their unit handbooks is something to be emulated by any APD command. Now that SID has successfully reached secondary compliance, the monitoring team will focus heavily on their operational compliance during the next monitoring period.

Primary: In Compliance  
 Secondary: In Compliance  
 Operational: Not In Compliance

***Recommendation 4.7.93a: Continue current levels of response to this requirement, and continue to document incident response***

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<sup>127</sup> APD advised that unit supervisors were consulted to determine if any specific detectives demonstrated performance deficiencies that may warrant them having to complete the proficiency checklist. To our knowledge no detectives were required to do so. Moving forward, any new SID detectives will be expected to complete the handbook training and proficiency check list.

***protocols in writing in after-action critiques and assessments that will be reviewed for operational compliance.***

#### 4.7.94 Compliance with Paragraph 107: High Risk Situation Protocols

Paragraph 107 stipulates:

**“APD shall prohibit specialized investigative units from providing tactical responses to critical situations where a specialized tactical unit is required. APD shall establish protocols that require communication and coordination by specialized investigative units when encountering a situation that requires a specialized tactical response. The protocols shall include communicating high-risk situations and threats promptly, coordinating effectively with specialized tactical units, and providing support that increases the likelihood of safely resolving a critical incident.”**

#### Methodology

Investigative Bureau SOP 3-01 Special Investigations Division (SID) was approved by the monitor on June 5, 2016, which brought APD into Primary Compliance with the requirements of this paragraph. APD continues to recast its SOP cataloging system and SOP 3-01 is now SOP 5-01. As documented in IMR-4, SID has taken on the task of developing unit-level handbooks that set forth the unique standards, missions and duties for each of its subordinate units. Those handbooks serve several purposes, including SID incorporating and reinforcing APD’s use of force policies, including the provisions of this paragraph. During its November 2016 site visit members of the monitoring team met with SID commanders and were provided a series of updated handbooks that took into consideration feedback the monitoring team previously provided. It was represented to the monitoring team that the handbooks have been designed to augment and standardize the operations of SID and its subordinate units, and meet the provisions of this paragraph.

Finally, the monitoring team reviewed training records, to include lesson plans, PowerPoints, attendance records, and an after-action report (dated February 6, 2017) related to SID delivering training to the entire Division based on their approved handbooks.

#### Results

As noted in the previous paragraph the monitoring team worked closely with SID as they developed their unit specific handbooks and the training to implement those handbooks. We note that the handbooks contained specific provisions that meet the requirements of this paragraph, specifically the prohibition of investigative units providing tactical



responses to critical situations where a specialized tactical unit is required, and the requirement that SID members utilize the Risk Assessment Matrix originally developed by SOD.

SID received approval from the monitoring team regarding the unit handbooks they created and to deliver the training they developed for those handbooks at the latter part of January 2017. On January 27, 2017, SID conducted its training during a three-hour session and delivered the unit specific handbooks to the SID. The general provisions of the handbooks were delivered by one instructor while the unit specific sections were delivered by unit supervisors. Training records were provided and reviewed by the monitoring team prior to the delivery of the training. Because the training was to a group of incumbent and experienced SID detectives the three-hour training program is sufficient without the need to have each detective complete the proficiency checklist.<sup>128</sup> The manner in which SID developed and implemented their unit handbooks is something to be emulated by any APD command. Now that SID has successfully reached secondary compliance,<sup>129</sup> the monitoring team will focus heavily on their operational compliance during the next monitoring period.

Primary:	In Compliance
Secondary:	In Compliance
Operational:	Not In Compliance

***Recommendation 4.7.94a: Continue current practice in preparation for full operational review during IMR-6.***

4.7.95 Compliance with Paragraph 108: Inspection of Specialized Units

Paragraph 108 stipulates:

**“Within three months of the Effective Date, APD shall conduct an inspection of specialized investigative units to determine whether weapons and equipment assigned or accessible to specialized investigative units are consistent with the units’ mission and training. APD shall conduct re-inspections on at least an annual basis.”**

Methodology:

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<sup>128</sup> APD advised that unit supervisors were consulted to determine if any specific detectives demonstrated performance deficiencies that may warrant them having to complete the proficiency checklist. To our knowledge no detectives were required to do so. Moving forward, any new SID detectives will be expected to complete the handbook training and proficiency check list.

<sup>129</sup> The monitoring team notes that secondary compliance occurred at the very end of this monitoring period.



The monitoring team reviewed the Special Investigation Division's annual inspection forms that were completed in January and February of 2016. Consistent with the unit's mission and training, a review of the individual inspection forms indicated that there was proper documentation of all weapons and equipment assigned or made accessible to SID. An Interoffice Memorandum was submitted on June 21<sup>st</sup> 2016 to document SID's yearly inspection. The Memorandum, completed during the normal course of daily business, stated in part that all sworn personnel were involved and no issues of concern were located; additionally, all personnel were rated at satisfactory. The monitoring of these inspections is set to continue on at least an annual basis.

## Results

Primary:	In Compliance
Secondary:	In Compliance
Operational:	In Compliance

### 4.7.96 Assessing Compliance with Paragraph 109: Tracking Specialized Unit Responses

Paragraph 109 stipulates:

**“APD agrees to track and analyze the number of specialized investigative unit responses. The analysis shall include the reason for each investigative response, the legal authority, type of warrant (if applicable), and the result of each investigative response, to include: (a) the location; (b) the number of arrests; (c) the type of evidence or property seized; (d) whether a forcible entry was required; (e) whether a weapon was discharged by a specialized investigative unit member; (f) whether the person attempted to flee from officers; and (g) whether a person or domestic animal was injured or killed. This data analysis shall be entered into the Early Intervention System and included in APD's annual reports.”**

## Methodology

Investigative Bureau SOP 3-01 Special Investigations Division (SID) was approved by the monitor on June 5, 2016, which brought APD into Primary Compliance with the requirements of this paragraph. APD continues to recast its SOP cataloging system and SOP 3-01 is now SOP 5-01. As documented in IMR-4, SID has taken on the task of developing unit-level handbooks that set forth the unique standards, missions and duties for each of its subordinate units. Those handbooks serve several purposes, including SID incorporating and reinforcing APD's use of force policies, including the provisions of this paragraph. During its November 2016 site visit members of the monitoring team met with SID commanders and were provided a series of updated handbooks that took into consideration feedback the monitoring team previously provided. It was represented to

the monitoring team that the handbooks have been designed to augment and standardize the operations of SID and its subordinate units, and meet the provisions of this paragraph.

Finally, the monitoring team reviewed training records, to include lesson plans, PowerPoints, attendance records, and an after-action report (dated February 6, 2017) related to SID delivering training to the entire Division based on their approved handbooks.

## Results

As noted in previous paragraphs the monitoring team worked closely with SID as they developed their unit specific handbooks and the training to implement those handbooks. Within the training program SID specifically handed out and discussed SOP 5-01. We note that the handbooks SID created contained specific provisions that meet the requirements of this paragraph. However, because APD's annual report was had not yet been completed the monitoring team could not compare the data it reported against the provisions of this paragraph. Likewise, APD's EIRS policy is still not approved and implemented.

SID received positive feedback from the monitoring team related to the unit handbooks they created, and have moved on to planning delivery the training they developed for those handbooks at the latter part of January 2017. On January 27, 2017, SID conducted it's training during a three-hour session and delivered the unit specific handbooks to the SID. The general provisions of the handbooks were delivered by one instructor while the unit specific sections were delivered by unit supervisors. Training records were provided and reviewed by the monitoring team prior to the delivery of the training. Because the training was to a group of incumbent and experienced SID detectives the three-hour training program is sufficient without the need to have each detective complete the proficiency checklist.<sup>130</sup> The manner in which SID developed and implemented their unit handbooks is something to be emulated by any APD command. Now that SID has successfully reached secondary compliance<sup>131</sup> the monitoring team will focus heavily on their operational compliance during the next monitoring period.

Primary: In Compliance  
Secondary: In Compliance

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<sup>130</sup> APD advised that unit supervisors were consulted to determine if any specific detectives demonstrated performance deficiencies that may warrant them having to complete the proficiency checklist. To our knowledge no detectives were required to do so. Moving forward, any new SID detectives will be expected to complete the handbook training and proficiency check list.

<sup>131</sup> The monitoring team notes that secondary compliance occurred at the very end of this monitoring period.

Operational: Not In Compliance

**Recommendation 4.7.96a: Continue current practice in preparation for full operational review during IMR-6.**

4.7.97 Assessing Compliance with Paragraph 110:

Paragraph 110 stipulates:

**“To maintain high-level, quality service; to ensure officer safety and accountability; and to promote constitutional, effective policing, APD agrees to minimize the necessity for the use of force against individuals in crisis due to mental illness or a diagnosed behavioral disorder and, where appropriate, assist in facilitating access to community-based treatment, supports, and services to improve outcomes for the individuals. APD agrees to develop, implement and support more integrated, specialized responses to individuals in mental health crisis through collaborative partnerships with community stakeholders, specialized training, and improved communication and coordination with mental health professionals. To achieve these outcomes, APD agrees to implement the requirements below.”**

Methodology

This overarching paragraph refers to the paragraphs 111-137, below. As such, this paragraph will not be noted in compliance until such time that other related required paragraphs are found to be fully in compliance.

Members of the monitoring team assessed data from the relevant policies as noted in the table below.

Table 4.7.97

Policy	Policy Name (Relevance to 110)
SOP 2-19 (previously 2-13)	RESPONSE TO BEHAVIORAL HEALTH ISSUES
SOP 2-20 (previously 2-42)	HOSTAGE, SUICIDAL/BARRICADED SUBJECT, AND TACTICAL THREAT ASSESSMENT
SOP 2-8 (previously 1-09)	USE OF ON-BODY RECORDING DEVICES / MANAGEMENT OF RECORDINGS (contains reference to people with mental illness)
SOP 5-3 (previously 3-06)	CRIMINAL INVESTIGATIONS DIVISION (contains referral to Crisis Intervention Section)

## Results

Primary: In Compliance  
Secondary: Not In Compliance  
Operational: Not In Compliance

***Recommendation 4.7.97a: APD should ensure that each of the related paragraphs, 111-137 below conform with the goals articulated in this paragraph and are articulated sufficiently to Command and supervisory-level personnel.***

### 4.7.98 Assessing Compliance with Paragraph 111: Mental Health Response Advisory Committee

Paragraph 111 stipulates:

**“Within six months of the Effective Date, APD and the City shall establish a Mental Health Response Advisory Committee (Advisory Committee) with subject matter expertise and experience that will assist in identifying and developing solutions and interventions that are designed to lead to improved outcomes for individuals perceived to be or actually suffering from mental illness or experiencing a mental health crisis. The Advisory Committee shall analyze and recommend appropriate changes to policies, procedures, and training methods regarding police contact with individuals with mental illness.”**

## Methodology

The monitoring team reviewed a 100% sample of MHRAC’s reports, recommendations, communications, and processes created during this reporting period, as well as other data sources considered for this reporting period, which included: meeting minutes for each MHRAC meeting listed in table above; meeting minutes for subcommittee meetings, including the Training Subcommittee (July 3, 2016, August 22, 2016, November 21, 2016 and January 30, 2017) and the Information Sharing subcommittee (January 25, 2017); and various memos from APD to MHRAC written during the reporting period.

## Findings

MHRAC meetings occurred monthly during this reporting period. Table 4.7.98, below, briefly describes contextual “minutes” covered during these meeting

Table 4.7.98

Reporting period month	Meeting date	Issues discussed
August 2016	8/16/16	SOP 1-39 regarding use of body cameras with people with mental illness; term limits of MHRAC co-chairs; List of Providers used by APD.
September 2016	9/20/16	SOP 1-39 regarding use of body cameras with people with mental illness
October 2016	10/18/16	SOP 1-39 regarding use of body cameras with people with mental illness
November 2016	11/15/16	SOP 1-39 regarding use of body cameras with people with mental illness
December 2016	12/20/16	Training Plan for Mobile Crisis Teams; Network of Care (Resource subcommittee)
January 2017	1/17/17	Revisions to SOP 1-39; Training Plan for Mobile Crisis Teams

## Results

Primary: In Compliance<sup>132</sup>  
 Secondary: In Compliance  
 Operational: In Compliance

### 4.7.99 Assessing Compliance with Paragraph 112:

Paragraph 112 stipulates:

**“The Advisory Committee shall include representation from APD** command staff, crisis intervention certified responders, Crisis Intervention Unit (CIU), Crisis Outreach and Support Team (COAST), and City-contracted mental health professionals. APD shall also seek representation from the Department of Family and Community Services, the University of New Mexico Psychiatric Department, community mental health professionals, advocacy groups for consumers of mental health services (such as the National Alliance on Mental Illness and Disability Rights New Mexico), mental health

<sup>132</sup> APD is currently consulting with MHRAC and receiving MHRAC feedback. At times the process is confusing or provides less than ample time for MHRAC to carefully assess proposed policies and processes prior to existing deadlines.

service providers, homeless service providers, interested community members designated by the Forensic Intervention Consortium, and other similar groups.”

Methodology: 100% sample of MHRAC’s reports, recommendations, communications, and processes. Data sources considered: MHRAC meeting sign-in sheets for all monthly meetings.

## Results

All specified groups named in this paragraph regularly participated in MHRAC meetings during this reporting period, and minutes reflected well-structured treatments of agenda items designed to facilitate the goals of MHRAC.

Primary: In Compliance  
Secondary: In Compliance  
Operational: In Compliance

### 4.7.100 Assessing Compliance with Paragraph 113

Paragraph 113 stipulates:

**“The Advisory Committee shall provide guidance to assist the City** in developing and expanding the number of crisis intervention certified responders, CIU, and COAST. The Advisory Committee shall also be responsible for considering new and current response strategies for dealing with chronically homeless individuals or individuals perceived to be or actually suffering from a mental illness, identifying training needs, and providing guidance on effective responses to a behavioral crisis event.”

## Methodology

Members of the monitoring team reviewed a 100% sample of MHRAC’s reports, recommendations, communications, and processes, attended selected MHRAC meetings, and conducted interviews with specific members of the MHRAC. In addition, we reviewed MHRAC monthly meeting agendas and minutes, and MHRAC subcommittee meeting minutes and memos.

## Results

The MHRAC continued to provide guidance to the City and APD regarding developing and expanding the number of CIT-certified responders as well as response strategies for interacting effectively with homeless individuals and people with mental illness. During this reporting

period, the MHRAC considered and provided feedback on the APD's developing mobile crisis teams.

Primary: In Compliance  
Secondary: In Compliance  
Operational: Not In Compliance<sup>133</sup>

***Recommendation 4.7.100: Assess MHRAC-APD information interfaces to identify ways of increasing lead times presented to MHRAC from APD related to issue review and consideration and development of recommendations.***

4.7.101 Assessing Compliance with Paragraph 114:

Paragraph 114 stipulates:

**“APD, with guidance from the Advisory Committee, shall develop protocols that govern the release and exchange of information about individuals with known mental illness to facilitate necessary and appropriate communication while protecting their confidentiality.”**

#### Methodology

Members of the monitoring team reviewed a 100% sample of MHRAC's reports, recommendations, communications, and processes during the reporting period, assessing these documents for compliance with Paragraph 114. The monitoring team also reviewed several draft versions of the MOU with mark-ups (tracked changes in Word). Data sources considered: several draft versions of the MOU with mark-ups (tracked changes in Word), but an MOU was not signed nor executed during this reporting period.

#### Results

Negotiations between the City of Albuquerque and the University of New Mexico Health System are on-going with regard to executing an MOU that governs the release and exchange of information; however, an MOU has not been executed during this reporting period.

Primary: Not In Compliance  
Secondary: Not In Compliance  
Operational: Not In Compliance

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<sup>133</sup> APD is currently consulting with MHRAC and receiving MHRAC feedback. According to MHRAC members, at times the *process* is confusing and, more importantly, tends to provide less than ample time for MHRAC to carefully assess proposed policies and processes prior to existing deadlines.



***Recommendation 4.7.101: Complete MOU as planned, and implement provisions. Copy the monitor on final product.***

4.7.102 Assessing Compliance with Paragraph 115

Paragraph 115 stipulates:

**“Within nine months of the Effective Dates, APD shall provide the Advisory Committee with data collected by crisis intervention certified responders, CIU, and COAST pursuant to Paragraphs 129 and 137 of this Agreement for the sole purpose of facilitating program guidance. Also, within nine months of the Effective Date, the Advisory Committee shall review the behavioral health training curriculum; identify mental health resources that may be available to APD; network and build more relationships; and provide guidance on scenario-based training involving typical situations that occur when mental illness is a factor.**

Methodology

Members of the monitoring team reviewed a 100% sample of data provided to MHRAC by APD relating to provisions of Paragraph 115, including data analysis prepared by Dr. Winograd in the form of PowerPoint slides; and MHRAC and subcommittee meeting agendas and minutes.

Results

APD continued to work with staff to produce meaningful data analysis of the data elements specified in paragraphs 129 and 137. APD has presented this data regularly to the MHRAC. The monitoring team has not yet been able to confirm that all behavioral health curricula is available to and being reviewed by the MHRAC. Operational compliance is pending submission by APD to the monitoring team of documentation verifying submission and review of all behavioral health curricula.

Primary: In Compliance  
Secondary: In Compliance  
Operational: Not in Compliance

***Recommendation 4.7.102: Submit required documentation to MHRAC as well as documentation from MHRAC noting review and approval. Ensure that documentation is responsive to relationship building and scenario-based training.***

4.7.103 Assessing Compliance with Paragraph 116

Paragraph 116 stipulates:

**“The Advisory Committee shall seek to enhance coordination with local behavioral health systems, with the goal of connecting chronically homeless individuals and individuals experiencing mental health crisis with available services.”**

#### Methodology

Members of the monitoring team conducted a 100% sample of data provided to MHRAC by APD relating to enhancing coordination within and among MHRAC’s service base, through a complete review of MHRAC meeting minutes.

#### Results

The MHRAC continued their work to enhance coordination of services for chronically homeless individuals and people experiencing mental health crisis. Moreover, the APD and the MHRAC revisited and updated their list of Albuquerque-area providers and list of services during this reporting period.

The monitoring team’s review shows a substantial and tangible of interaction and cooperation between local behavioral health systems and the APD on this issue, as well as tangible results in systems improvement recommendations.

Primary: In Compliance  
Secondary: In Compliance  
Operational: In Compliance

#### 4.7.104 Assessing Compliance with Paragraph 117

Paragraph 117 stipulates:

**“Within 12 months of the Effective Date, and annually thereafter, the Advisory Committee will provide a public report to APD that will be made available on APD’s website, which shall include recommendations for improvement, training priorities, changes in policies and procedures, and identifying available mental health resources.”**

#### Methodology

Members of the monitoring team conducted a 100 % review of data provided to MHRAC by APD, and reviewed the Advisory Committee’s public report.

## Results

The MHRAC produced an annual report for calendar year 2016, which also includes annual reports from the Training and Information Sharing subcommittees; however, as of the date of this report, these documents were not available on the CABQ website.

Primary: In Compliance  
Secondary: In Compliance  
Operational: Not In Compliance

### ***Recommendation 4.7.104: Ensure MHRAC reports are posted on relevant CABQ websites.***

#### 4.7.105 Assessing Compliance with Paragraph 118 Behavioral Health Training

Paragraph 118 stipulates:

**“APD has undertaken an aggressive program to provide behavioral health training to its officers. This Agreement is designed to support and leverage that commitment.”**

No evaluation methodology was developed for paragraph 118, as it is not a “requirement” for APD or City action, but simply states facts.

#### 4.7.106 Assessing Compliance with Paragraph 119 Behavioral Health Training for all Cadets

Paragraph 119 stipulates:

**“APD agrees to continue providing state-mandated, basic behavioral health training to all cadets in the academy. APD also agrees to provide 40 hours of basic crisis intervention training for field officers to all academy graduates upon their completion of the field training program. APD is also providing 40 hours of basic crisis intervention training for field officers to all current officers, which APD agrees to complete by the end of 2015.”**

## Methodology

Members of the monitoring team reviewed a 100% sample of training records of APD relating to basic behavioral health training.

APD continues to provide state-mandated basic behavioral health training to cadets in the academy as well as 40 hours of basic CIT to academy graduates upon completion of the field training program and to all field

officers, including their most recent class (January 23, 2017) in which 21 students were trained in basic 40-Hour CIT.

## Results

Primary: In Compliance  
Secondary: In Compliance  
Operational: In Compliance

### 4.7.107 Assessing Compliance with Paragraph 120

Paragraph 120 stipulates:

**“The behavioral health and crisis intervention training provided to all officers will continue to address field assessment and identification, suicide intervention, crisis de-escalation, scenario-based exercises, and community mental health resources. APD training shall include interaction with individuals with a mental illness and coordination with advocacy groups that protect the rights of individuals with disabilities or those who are chronically homeless. Additionally, the behavioral health and crisis intervention training will provide clear guidance as to when an officer may detain an individual solely because of his or her crisis and refer them for further services when needed.”**

## Methodology

Members of the monitoring team reviewed a 100% sample of training records of APD relating to basic behavioral health training. APD continues to utilize a training curriculum that addresses field assessment, identification, suicide intervention, crisis de-escalation, community mental health participation and scenario-based exercises and role play exercises appropriately and effectively. All training emphasizes the importance of community partnerships and appropriate referrals to services.

Data sources reviewed included: APD CIU Monthly Reports; 40-hour CIT curriculum updates to PowerPoints, and meeting minutes for meetings in which APD refined training plans with peers and mental health experts.

## Results

Primary: In Compliance  
Secondary: In Compliance  
Operational: In Compliance

### 4.7.108 Assessing Compliance with Paragraph 121

Paragraph 121 stipulates:

**“APD shall ensure that new tele-communicators receive 20 hours of behavioral health training. This training shall include: telephonic suicide intervention; crisis management and de-escalation; interactions with individuals with mental illness; descriptive information that should be gathered when tele-communicators suspect that a call involves someone with mental illness; the roles and functions of COAST, crisis intervention certified responders, and CIU; the types of calls that should be directed to particular officers or teams; and recording information in the dispatch database about calls in which mental illness may be a factor.”**

## Methodology

Members of the monitoring team reviewed a 100% sample of training records of APD relating to basic behavioral health training for telecommunicators.

## Results

APD has designed 20 hours of behavioral health training for tele-communicators that includes all topics noted in paragraph 121 as well as role-play scenarios drawn from actual 911 calls fielded by APD tele-communicator personnel. Tele-communicator training did not occur during this reporting period, as it is a bi-annual requirement.

Primary: In Compliance  
Secondary: In Compliance  
Operational: In Compliance

### ***Recommendation 4.7.108a: Execute the tele-communicators training as outlined.***

#### 4.7.109 Assessing Compliance with Paragraph 122

Paragraph 122 stipulates:

APD shall provide two hours of in-service training to all existing officers and tele-communicators on behavioral health-related topics biannually.

## Methodology

Members of the monitoring team reviewed a 100% sample of training records of APD relating to basic behavioral health training for officers and telecommunicators.

## Results

APD has developed a 2-hour in-service training curriculum that addresses the requirements of New Mexico House Bill 93, entitled “Police Training for Mental Impairments.” It is unclear, based on the records we reviewed whether any two-hour bi-annual training sessions for either officers or tele-communicators took place during this reporting period, and if so, what the results were on testing on that training. We will re-visit this issue in IMR-6. No scheduled training was due this reporting period. The next “biannual training” is scheduled for August. APD remains in compliance based on performance in the first session of scheduled bi-annual training.

Primary: In Compliance  
 Secondary: In Compliance  
 Operational: In Compliance

#### 4.7.110 Assessing Compliance with Paragraph 123 Crisis Intervention Certified Responders and Crisis Intervention Unit

Paragraph 123 stipulates:

**“APD shall maintain a sufficient number of crisis intervention certified responders who are specially trained officers across the Department who retain their normal duties and responsibilities and also respond to calls involving those in mental health crisis. APD shall also maintain a Crisis Intervention Unit (“CIU”) composed of specially trained detectives housed at the Family Advocacy Center whose primary responsibilities are to respond to mental health crisis calls and maintain contact with mentally ill individuals who have posed a danger to themselves or others in the past or are likely to do so in the future. APD agrees to expand both the number of crisis intervention certified responders and CIU.”**

#### Methodology

Members of the monitoring team reviewed training and assignment records for CIU officers for the reporting period. According to course rosters, the APD CIU trained a total of 44 officers in e-CIT during this monitoring period, making them “certified responders” per this paragraph. As of the end of this reporting period, a total of 71 APD officers have completed the eCIT training and certification process. Members of the monitoring team also reviewed eCIT training in-service course sign-in sheets and eCIT training spreadsheets.

The APD maintains a Crisis Intervention Unit staffed with detectives housed at the Family Advocacy Center, with a total of seven sworn officers in the CIU during this reporting period, short of the 12 recommended in the “Albuquerque Police Department Comprehensive Staffing Assessment and Resources Study” conducted by Alexander

Weiss Consulting, LLC (Final Draft Report, December 11, 2015). Response times to crisis calls will be calculated once training of “certified responders” is completed.

We are unaware of any specific methodology developed by APD to determine what the department’s definition of the “sufficient number” of crisis-intervention certified responders is, other than the 12 recommended by Weiss Consulting. Members of the monitoring team have engaged APD in a discussion of this topic, and, are aware that all active patrol officers had been trained in basic CIT processes, and that APD has added another 27 eCIT trained officers to its existing compliment. The monitoring team’s assessment is that staffing remains insufficient, based on the requirement that staffing for the advocacy center is below that articulated in the CASA.

## Results

Primary: Not In Compliance  
Secondary: Not In Compliance  
Operational: Not In Compliance

***Recommendation 4.7.111a: Develop and execute a data-based, methodologically appropriate workload and manpower planning analysis that ensures that reliable “staffing levels” for eCIT officers are calculated, reported, set as staffing goals, and attained.***

### 4.7.111 Assessing Compliance with Paragraph 124

Paragraph 124 stipulates:

The number of crisis intervention certified responders will be driven by the demand for crisis intervention services, with an initial goal of 40% of Field Services officers who volunteer to take on specialized crisis intervention duties in the field. Within one year of the Effective Date, APD shall reassess the number of crisis intervention certified responders, following the staffing assessment and resource study required by Paragraph 204 of this Agreement.

## Methodology

Members of the monitoring team reviewed related areas of the staffing plan produced by APD in response to this paragraph.

## Results

The current staffing levels of crisis intervention “certified responders” (a total of 71) falls far short of the goal of 40% of field services officers.



Primary: Not in Compliance  
Secondary: Not in Compliance  
Operational: Not in Compliance

***Recommendation 4.7.111a: Develop a recruitment, training and deployment plan for “Certified responders” that will meet the articulated goal of 40 percent of field services officers.***

#### 4.7.112 Assessing Compliance with Paragraph 125

Paragraph 125 stipulates:

**“During basic crisis intervention training for field officers provided to new and current officers, training facilitators shall recommend officers with apparent or demonstrated skills and abilities in crisis de-escalation and interacting with individuals with mental illness to serve as crisis intervention certified responders.”**

#### Methodology

Members of the monitoring team reviewed recommendations obtained and assessed by training facilitators during the fifth reporting period.

#### Results

The APD CIU instructors appear to identify and recommend field officers well suited for the Enhanced CIT (eCIT) course and recommend that they enroll. Unfortunately, compliance evidence provided by APD for this paragraph was not “Course of Business” data, e.g., copies of names of officers attending and scores on examinations, but was a “memo” stating the training was held. APD should submit “Course of Business” records, as requested by the monitoring team.

***Recommendation 4.7.112a: Submit training documentation for this particular training, e.g., routinely kept class rosters, exam scores, etc.***

Primary: In Compliance  
Secondary: In Compliance  
Operational: Not In Compliance<sup>134</sup>

#### 4.7.113 Assessing Compliance with Paragraph 126

Paragraph 126 stipulates:

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<sup>134</sup> As we have advised APD repeatedly, course of business documentation must consist of normal course-of-business documents showing performance related to the paragraph, not an *ad hoc* memorandum stating something was done.

**“Within 18 months of the Effective Date, APD shall require crisis intervention certified responders and CIU to undergo at least eight hours of in-service crisis intervention training biannually.”**

#### Methodology

Members of the monitoring team reviewed training records for CIU personnel.

#### Results

The CIU did not provide 8-hour in-service “refresher” training during this reporting period. They are currently at work on an 8-hour “refresher” training drawn from the eCIT training materials.

Primary: In Compliance  
Secondary: In Compliance  
Operational: In Compliance

***Recommendation 4.7.113a: Submit training documentation for this particular training, e.g., routinely kept class rosters, exam scores, etc.***

#### 4.7.114 Assessing Compliance with Paragraph 127

Paragraph 127 stipulates:

**“Within 18 months of the Effective Date, APD will ensure that there is sufficient coverage of crisis intervention certified responders to maximize the availability of specialized responses to incidents and calls for service involving individuals in mental health crisis; and warrant service, tactical deployments, and welfare checks involving individuals with known mental illness.”**

#### Methodology

Members of the monitoring team reviewed CAD records regarding calls for CIU response and calculated response times to such requests. During this reporting period, APD CIU was developing and delivering new Enhanced CIT training to address the requirement for “certified responders.” Response times to crisis calls will be calculated after training of new “certified responders” is completed.

#### Results

Since eCIT training has not yet been completed, the secondary and operational elements of the policy are not in compliance. Review of

critical CIU calls for process will begin after training of “certified responders” is completed.

Primary: In Compliance  
Secondary: Not In Compliance  
Operational: Not In Compliance

***Recommendation 4.7.114: Complete eCIT training as designed, and evaluate performance via a reasonable testing procedure.***

#### 4.7.115 Assessing Compliance with Paragraph 128

Paragraph 128 stipulates:

APD will ensure that crisis intervention certified responders or CIU will take the lead, once on scene and when appropriate, in interacting with individuals in crisis. If a supervisor has assumed responsibility for the scene, the supervisor will seek input of the crisis intervention certified responder or CIU on strategies for resolving the crisis when it is practical to do so.

#### Methodology

Members of the monitoring team reviewed critical CIU calls for process, effectiveness and outcome.

#### Results

SOP 2-19, entitled “Response to Behavioral Health Issues” (formerly titled SOP 2-13, “Response to the Mentally Ill / Suspected Mentally Ill and People in Crisis,”) was updated during this reporting period, with the most recent version is marked “Effective: 11/01/16 Expires: 11/01/17 Replaces: 06/07/16.” The SOP language remains unchanged, clearly stating: “ECIT, MCT or CIU will take the lead in interacting with individuals in a behavioral health crisis. If a supervisor has assumed responsibility for the scene, the supervisor will seek input from ECIT, MCT, or CIU on strategies for de-escalating, calming and resolving the crisis, when it is safe.” Since eCIT training has not yet been completed, the secondary and operational elements of the policy are not in compliance. Review of critical CIU calls for process will begin after training of “certified responders” is completed.

Primary: In Compliance  
Secondary: Not In Compliance  
Operational: Not In Compliance

***Recommendation 4.7.115a: Complete eCIT training and evaluate; revise as necessary.***

#### 4.7.116 Assessing Compliance with Paragraph 129

Paragraph 129 stipulates:

“**APD shall collect** data on the use of crisis intervention certified responders and CIU. This data will be collected for management purposes only and shall not include personal identifying information of subjects or complainants. APD shall collect the following data:

- a) date, shift, and area command of the incident;
- b) subject’s age, race/ethnicity, and gender;**
- c) whether the subject was armed and the type of weapon;
- d) whether the subject claims to be a U.S. military veteran;
- e) name and badge number of crisis intervention certified responder or CIU detective on the scene;
- f) whether a supervisor responded to the scene;
- g) techniques or equipment used;
- h) any injuries to officers, subjects, or others;
- i) disposition of the encounter (e.g., arrest, citation, referral); and
- j) a brief narrative of the event (if not included in any other **document**).”

#### Methodology

Members of the monitoring team reviewed APD’s work product for this paragraph. APD continues to regularly update its data analysis workbook, entitled, “The Albuquerque Police Department Crisis Intervention Unit Data Book: A Working Compendium.” The new director provides analytics on the following: tracking the number of CIT-related calls for service over time; analyzing uses of force with people in CIU caseloads during encounters with field officers; numbers of people contacted by COAST who claim to be veterans; and monitoring the calls for service by time of day and day of week as well as capturing the data elements required by this paragraph.

#### Results

“Tracked” information at BSU is not congruent with the requirements of the paragraph.

Primary: In Compliance  
Secondary: In Compliance  
Operational: Not in Compliance

***Recommendation 4.7.116: Design and build tracking systems congruent with the requirements of this paragraph.***

#### 4.7.117 Assessing Compliance with Paragraph 130

Paragraph 130 stipulates:

**“APD will utilize incident information from actual encounters to develop case studies and teaching scenarios for roll-call, behavioral health, and crisis intervention training; to recognize and highlight successful individual officer performance; to develop new response strategies for repeat calls for service; to identify training needs for in-service behavioral health or crisis intervention training; to make behavioral health or crisis intervention training curriculum changes; and to identify systemic issues that impede APD’s ability to provide an appropriate response to an incident involving an individual experiencing a mental health crisis.”**

### Methodology

Members of the monitoring team reviewed APD work product responsive to this paragraph, noting compliance or non-compliance issues during the review.

APD CIU continues to develop case studies based on actual encounters and incorporate them into training courses. During this reporting period, case studies were developed for the tele-communicator training, based on actual call-taker recordings.

### Results

APD CIU continues to develop case studies based on actual encounters and incorporate them into training courses. During this reporting period, case studies were developed for the tele-communicator training, based on actual call-taker recordings.

Primary: In Compliance  
Secondary: In Compliance  
Operational: In Compliance

#### 4.7.118 Assessing Compliance with Paragraph 131

Paragraph 131 stipulates:

Working in collaboration with the Advisory Committee, the City shall develop and implement a protocol that addresses situations involving barricaded, suicidal subjects who are not posing an imminent risk of harm to anyone except themselves. The protocol will have the goal of protecting the safety of officers and suicidal subjects while providing suicidal subjects with access to mental health services.

### Methodology

Members of the monitoring team reviewed the work product of the Advisory Committee and city personnel responsive to this paragraph. Procedural Order 2-20 (formerly 2-42) "Hostage, Suicidal/Barricaded Subject, and Tactical Threat Assessment" was not updated during this reporting period. The most recent version is marked "Effective: 05/27/16 Expires: 11/23/16 Replaces: 04/25/16." The policy addresses: assessment of need for tactical response; ensuring backup officers are present; dispatch of the on-duty field supervisor; MCT or eCIT will take the lead on interactions; obtaining information from family and friends; responding to the scene; communicating by emphasizing de-escalation; disengagement procedures; tactical threat assessment; and the use of tactical units. This paragraph is not in compliance until it is revised or simply re-issued with a current "Expires" date.

## Results

Primary: Not In Compliance  
Secondary: Not In Compliance  
Operational: Not In Compliance

***Recommendation 4.7.118a: The current policy guiding this paragraph is expired. Change existing policy as appropriate, and promulgate the new policy.***

***Recommendation 4.7.118b: Revise training and training evaluation protocols to reflect the new policy developed as per 4.7.118a, above.***

## 4.7.119 Assessing Compliance with Paragraph 132 Crisis Prevention

Paragraph 132 stipulates:

APD shall continue to utilize COAST and CIU to follow up with chronically homeless individuals and individuals with a known mental illness who have a history of law enforcement encounters and to proactively work to connect these individuals with mental health service providers.

## Methodology

Members of the monitoring team reviewed critical CIU/COAST calls for process and referrals, if any. Throughout this reporting period, the monitoring team held monthly teleconferences with the APD CIU and COAST personnel. Those conversations, along with CIU Monthly Reports indicate that APD continues to maintain regular contact with individuals known to them and work with them to connect them to services.

## Results

Primary: In Compliance  
Secondary: In Compliance  
Operational: In Compliance

#### 4.7.120 Assessing Compliance with Paragraph 133

Paragraph 133 stipulates:

COAST and CIU shall provide crisis prevention services and disposition and treatment options to chronically homeless individuals and individuals with a known mental illness who are at risk of experiencing a mental health crisis and assist with follow-up calls or visits.

##### Methodology

Members of the monitoring team reviewed critical CIU/COAST calls for process and referral.

##### Results

APD continues to manage its caseload through CIU and COAST with consistent outreach to individuals with a known mental illness, as detailed case-by-case in the monthly CIU/COAST reports. The monitoring team has reviewed the primary avenue the MHRAC and the APD are using to connect chronically homeless individuals and individuals in crisis with services--a small tri-fold resource card on which organization names and telephone numbers appear.

Primary: In Compliance  
Secondary: In Compliance  
Operational: In Compliance

#### 4.7.121 Assessing Compliance with Paragraph 134

Paragraph 134 stipulates:

APD shall continue to utilize protocols for when officers should make referrals to and coordinate with COAST and CIU to provide prevention services and disposition and treatment options.

##### Methodology

Members of the monitoring team reviewed all known critical CIU/COAST calls for process and referral.

##### Results



SOP 2-19 contains specific language to address these protocols: “B. Officers will complete an original incident report where required (e.g. there are charges filed, a CIU referral, or transport to the hospital). Regardless of whether an incident report is required, officers will complete a CIT contact sheet for any dispatch in which the subject’s behavior indicates a behavioral health disorder or behavioral health crisis.” Review of in-field practice shows that this guidance is followed by responding CIT officers.

Primary: In Compliance  
Secondary: In Compliance  
Operational: In Compliance

#### 4.7.122 Assessing Compliance with Paragraph 135

Paragraph 135 stipulates:

**“APD shall maintain a sufficient number of trained and qualified mental health professionals in COAST and full-time detectives in CIU to satisfy its obligations under this Agreement. Within three months of completing the staffing assessment and resource study required by Paragraph 204 of this Agreement, APD shall develop a recruitment, selection, and training plan to assign, within 24 months of the study, 12 full-time detectives to the CIU, or the target number of detectives identified by the study, whichever is less.”**

#### Methodology

Members of the monitoring team reviewed critical CIU/COAST calls for process and referral to identify any “unacceptable” delays. Call For Service data and correlating or related reports were also reviewed.

#### Results

According to the CIU/COAST monthly “highlights” reports for this reporting period, there were a total of 7 sworn members of the CIU. Staffing requirements for this unit are not being realized. The unit is still short of required staffing.

Primary: In Compliance  
Secondary: In Compliance  
Operational: Not In Compliance

***Recommendation 4.7.122a: Upgrade CIU/COAST to the required staffing levels.***

#### 4.7.123 Assessing Compliance with Paragraph 136

Paragraph 136 stipulates:

**“COAST and CIU shall continue to look for opportunities to coordinate in developing initiatives to improve outreach, service delivery, crisis prevention, and referrals to community health resources.”**

## Methodology

Members of the monitoring team, through conversations with CIU personnel and members of the MHRAC and review of meeting minutes, observed that communication and coordination is taking place, focused on improving outreach, service delivery, crisis prevention and referrals. However, we are unaware of any indication of review by COAST and CIU for presence of indicators of developed initiatives. We will reassess this component specifically during our next site visit

## Results

Primary: In Compliance  
Secondary: In Compliance  
Operational: Not In Compliance

***Recommendation 4.7.123a: APD should ensure that COAST and CIU personnel track incident reports involving their personnel for indications of recurring issues and problems that may be addressed by referral of clients to community health resources.***

***Recommendation 4.7.123b: Once these opportunities are identified, train COAST and CIU personnel to implement, where appropriate referrals to outreach, service delivery, crisis prevention, and referrals to community health resources***

### 4.7.124 Assessing Compliance with Paragraph 137

Paragraph 137 stipulates:

**“APD shall collect and analyze data to demonstrate the impact of and inform modifications to crisis prevention services. This data will be collected for management purposes only and shall not include personal identifying information of subjects or complainants. APD shall collect the following data:**

- a) number of individuals in the COAST and CIU caseloads;
- b) number of individuals receiving crisis prevention services;
- c) date, shift, and area command of incidents or follow up encounters;
- d) subject’s age, race/ethnicity, and gender;**
- e) whether the subject claims to be a U.S. military veteran;

- f) techniques or equipment used;
- g) any injuries to officers, subjects, or others;
- h) disposition of the encounter (e.g., arrest, citation, referral); and
- i) a brief narrative of the event (if not included in any other document).”

## Methodology

Members of the monitoring team review each reporting period the steps taken as a result of review of data collected.

## Results

Data is being collected and analyzed by CIU and COAST units (see findings in paragraph 129); however, we have found no specific indicators that data is collected or analyzed on the *topics* required by this paragraph. Analytics are, however, informing changes to crisis prevention services.

Primary: In Compliance  
Secondary: In Compliance  
Operational: Not In Compliance

***Recommendation 4.7.137a: Collect, analyze and interpret the data elements above on a routine basis, and produce reports circulated to CIU and COAST personnel, through the chain of command, and eventually to the public via APD’s web-site.***

***Recommendation 4.7.137b: Memorialize these processes in policy and training.***

### 4.7.125 Assessing Compliance with Paragraph 139<sup>135</sup>

Paragraph 139 stipulates that:

**“APD shall review, develop, and implement policies and procedures that fully implement the terms of this Agreement, comply with applicable law, and comport with best practices. APD policies and procedures shall use terms that are defined clearly, shall be written plainly, and shall be organized logically. “**

## Results

Policy development, review, approval, promulgation has slowed remarkably as of this reporting period, with major issues arising on critical

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<sup>135</sup> Paragraph 138 is judged to be prefatory to the following section on training, and as such established goals, but not quantifiable objectives. These are dealt with in paragraphs 139-148.

policies such as use of force and implementation of early intervention systems. Both of those critical pieces of policy guidance are in limbo as of this report as the Parties debate and revisit old debates concerning issues such as neck holds, use of force definitions, trigger thresholds for Early Intervention System reviews and consultations with officers, On-Body-Recording-Device review and response rates and modalities, and other critical issues.

The monitoring team will continue to work with the City to free the log jam of policy issues; however, the City appears to be resisting state-of-the-process “landmark” requirements, already agreed to and implemented in Maricopa County, Arizona; Seattle, Washington; and New Orleans, Louisiana. As a result, several policies that should have been revisited, assessed and re-written are still pending, including Use of Force, EIRS, and OBRD policies. As such, training on those areas will be delayed, and we project in-field compliance processes will suffer the same fate. We note specific and tangible actions on the part of APD to “roll back” many of the policy provisions regarding the supervisory and “oversight” roles required of APD (for example drastically reducing the “trigger points” for supervisory review of officers’ performance, and drastically reducing the number of OBRD videos that supervisors must review). Similarly, we have noted in previous sections of this report outstanding and difficult-to-resolve issues with APD use of force policies, e.g., neck holds, distraction strikes, and “show of force” issues.

Primary: In Compliance  
 Secondary: Not in Compliance  
 Operational: Not in Compliance

***Recommendation 4.7.125a: Expedite policy review and revision of policies and practices to ensure that current, reliable, and workable policies are in place to guide the actions of APD officers***

***Recommendation 4.7.125b: Focus first on high-risk/critical task policies such as Use of Force, EIRS, and OBRD.***

***Recommendation 4.7.125c: Where possible, use and/or adopt approved similar policies from other law enforcement agencies currently working through consent decrees, i.e., Seattle PD and New Orleans PD.***

#### 4.7.126 Assessing Compliance with Paragraph 140

Paragraph 140 stipulates:

**“APD policies and procedures shall be indexed and maintained in an organized manner using a uniform numbering system for ease of**

reference. APD policies and procedures shall be accessible to all APD officers and civilian employees at all times in hard copy or **electronic format.** “

### Methodology

Current APD policies are reviewed almost monthly in one aspect or another by the monitoring team. The current (revised) numbering and indexing system meet acceptable protocols and standards as interpreted by the monitoring team. We do note a shift in practice on APD's side, as outlined in 4.7.125, above.

### **Results**

Primary: In Compliance  
Secondary: In Compliance  
Operational: In Compliance

#### 4.7.127 Assessing Compliance with Paragraph 141

Paragraph 141 stipulates:

**“Within three months of the Effective Date, APD shall provide** officers from varying ranks and units with a meaningful opportunity to review and comment on new or existing policies and procedures.”

### Methodology

APD has made substantive changes to its policy development, review and comment on new and revised policy with the advent of the Office of Policy Analysis (OPA). Current structure exists to allow substantive comment from line and staff officers to policy proposals.

### Results

Representatives of the APOA have access to every meeting held by the monitor to discuss relative policy changes and provisions.

Primary: In Compliance  
Secondary: In Compliance  
Operational: In Compliance

#### 4.7.128 Assessing Compliance with Paragraph 142

Paragraph 142 stipulates:

**“Within three months of the Effective Date, APD shall ensure that**

the Policy and Procedures Review Board is functional and its **members are notified of the Board's duties and responsibilities. The** Policy and Procedures Review Board shall include a representative of the Technology Services Division in addition to members currently required under Administrative Order 3-65-2 (2014).“

### Methodology

The monitoring team review almost monthly output from the PPRB. Notices of PPRB-related activity is posted almost weekly on APD's website and intranet, and PPRB appears to be functioning as required by this paragraph, including membership of a representative of the Technical Services Division.

### Results

Primary: In Compliance  
Secondary: In Compliance  
Operational: In Compliance

#### 4.7.129 Assessing Compliance with Paragraph 143

Paragraph 143 stipulates:

Within nine months of the Effective Date, the Policy and Procedures Review Board shall review, develop, and revise policies and procedures that are necessary to implement this Agreement. The Policy and Procedures Review Board shall submit its formal recommendations to the Chief through the Planning and Policy Division.

### Methodology

The monitoring team review almost monthly output from the PPRB. Notices of PPRB-related activity is posted almost weekly on APD's website and intranet, and PPRB appears to be functioning as required by this paragraph. Recent "pushback" regarding monitor's suggestions regarding policies related to EIRS, Use of Force, and On-Body Recording Devices, while significant and troubling are not, in the monitor's opinion, attributable to PPRB's role under paragraph 143.

### Results

Primary: In Compliance  
Secondary: In Compliance  
Operational: In Compliance

#### 4.7.130 Assessing Compliance with Paragraph 144

Paragraph 144 stipulates:

**“Unless otherwise noted, all new and revised policies and procedures that are necessary to implement this Agreement shall be approved and issued within one year of the Effective Date. APD shall continue to post approved policies, procedures, and administrative orders on the City website to ensure public accessibility. There shall be reasonable exceptions for policies, procedures, and administrative orders that are law enforcement sensitive, such as procedures on undercover officers or operations.”**

#### Methodology

The work required here was not completed within the timeline established by the CASA; however, all required initial policy work, with the exception of the canine policy, (covered in paragraphs 102 – 105) have been completed and approved by the monitor. Canine is pending review of bite ratio calculation processes.

#### Results

Primary: In Compliance  
Secondary: In Compliance  
Operational: In Compliance

#### 4.7.131 Assessing Compliance with Paragraph 145

Paragraph 145 stipulates:

**“The Policy and Procedures Review Board shall review each policy or procedure six months after it is implemented and annually thereafter, to ensure that the policy or procedure provides effective direction to APD personnel and remains consistent with this Agreement, best practices, and current law. The Policy and Procedures Review Board shall review and revise policies and procedures as necessary upon notice of a significant policy deficiency during audits or reviews.”**

#### Methodology

The monitoring team remains closely involved with the review and approval of APD’s proffered policies. Current issues noted with re-approval of critical policies such as Use of Force, Early Intervention Systems, and OBRD (body cams) are significant and meaningful; however, based on the monitor’s knowledge and experience, none of these problems related to or are caused by PPRB processes, but instead revolve around an apparent shift in responsiveness to comments made by the monitoring team relevant to the high-risk, critical-task policies noted above. Of late, the DOJ and the monitor have had substantive,



direct, and strong disagreements with APD over required six-month review and approval of existing policies, such as OBRD, EIRS, and Use of Force policies. These critical policies at this point in time, remain in limbo, with the APD exhibiting reluctance to revise them, as suggested by DOJ and the monitor, to improve provisions of critical policies such as Use of Force, EIRS, and OBRD. The required review and approval of these policies at their six-month point has not yet been completed, and these critical policies are in limbo.

## Results

Primary: In Compliance  
Secondary: In Compliance  
Operational: Not In Compliance

***Recommendation 4.7.131a: Expedite policy review and revision policies and practices to ensure that current, reliable, and workable policies are in place to guide the actions of APD officers***

***Recommendation 4.7.131b: Focus first on high-risk/critical task policies such as Use of Force, EIRS, and OBRD.***

***Recommendation 4.7.131c: Where possible, use approved similar policies from other law enforcement agencies currently working through consent decrees, i.e., Seattle PD and New Orleans PD.***

## 4.7.132 Assessing Compliance with Paragraph 146

Paragraph 146 stipulates:

**“APD shall apply policies uniformly and hold officers accountable for complying with APD policy and procedure. “**

## Methodology

The monitoring team is closely involved with inputs and outputs from APD’s policy apparatus, e.g., the Force Review Board, CIRT, Internal Affairs, PPRB, etc. As noted in our treatment of several CASA paragraphs in this document, we are beginning to see issues related directly to Paragraph 146 in the oversight, discipline, and related follow-up practices at APD. New procedures are becoming more difficult to negotiate to the point that they remain in compliance with the CASA, and supervisory and managerial response to the requirements of certain policies are starting to show salient and substantive issues with accountability and uniformity. These issues are discussed more fully in paragraphs (4.7.2 Use of Force; 4.7.6 and 4.7.8 Show of Force, 4.7.9 Firing at motor vehicle, 4.7.10 EIRS etc.) elsewhere in this report. We

have noted since IMR-2 sporadic issues with accountability, and those issues seem to have become more frequent of late. For example, FRB operations often stray substantively from existing policy in terms of their review outcomes and findings. We have highlighted in IMR-2, IMR-3, IMR-4 and a special report on use of force, issues with policy violations, often serious and consequential, that have gone unaddressed by APD supervisory and command staff. These issues, accompanied by APD's new-found resistance to effective revisions in Use of Force, Early Intervention, and On-Body Recording Device policies cause great concern to the monitoring team relative to the "accountability" provision of this paragraph. Of late, the DOJ and the monitor have had substantive, direct, and strong disagreements with APD over required six-month review and approval of existing policies such as OBRD, EIRS, and Use of Force policies. These critical policies at this point in time, remain in limbo, with the APD reluctant to revise them, as suggested by DOJ and the monitor, to improve provisions of critical policies such as Use of Force, EIRS, and OBRD. The required review and approval of these policies at their six-month point has not yet been completed, and these critical policies are in limbo and substantially delayed.

## Results

Primary: In Compliance<sup>136</sup>  
 Secondary: Not In Compliance  
 Operational: Not In Compliance

***Recommendation 4.7.132a: APD should identify the "roadblocks" to completion of these policy processes and design a careful, deliberate, and recommendation-centric resolution to those roadblocks.***

### 4.7.133 Assessing Compliance with Paragraph 147

Paragraph 147 stipulates

**"APD shall submit all policies, procedures, manuals, and other administrative orders or directives related to this Agreement to the Monitor and DOJ for review and comment before publication and implementation."**

## Methodology

The issues noted in Paragraph 146 above, while related, do not impinge upon APD's compliance with this paragraph. Documents identified in Paragraph 147 are routinely submitted for review to the monitor, but

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<sup>136</sup> Current policies remain in effect until revised.

suggested changes to bring APD policy in to compliance with policy requirements, as has proven possible in other agencies also undergoing settlement agreement-like process, are often strongly resisted by the City. See our discussions in paragraphs 4.7.2-4.7.33, above. Key policies such as use of force, OBRD and EIRS are seriously delayed.

## Results

Primary: In Compliance  
Secondary: Not In Compliance  
Operational: Not In Compliance

***Recommendation 4.7.133a: APD should identify the “roadblocks” to completion of these policy processes and design a careful, deliberate, and recommendation-centric resolution to those roadblocks.***

### 4.7.134 Assessing Compliance with Paragraph 148

Paragraph 148 stipulates:

**“APD shall have 15 days to resolve any objections to new or revised policies, procedures, manuals, or directives implementing the specified provisions. If, after this 15-day period has run, the DOJ maintains its objection, then the Monitor shall have an additional 15 days to resolve the objection. If either party disagrees with the Monitor’s resolution of the objection, either party may ask the Court to resolve the matter. The Monitor shall determine whether in some instances an additional amount of time is necessary to ensure full and proper review of policies. Factors to consider in making this determination include: 1) complexity of the policy; 2) extent of disagreement regarding the policy; 3) number of policies provided simultaneously; and 4) extraordinary circumstances delaying review by DOJ or the Monitor. In determining whether these factors warrant additional time for review, the Monitor shall fully consider the importance of prompt implementation of policies and shall allow additional time for policy review only where it is clear that additional time is necessary to ensure a full and proper review. Any extension to the above timelines by the Monitor shall also toll APD’s deadline for policy completion.”**

## Methodology

All Parties, DOJ, the City, and the monitoring team periodically avail themselves of the ability to extend briefly existing timelines for policy review. Almost without exception these requests are reasonable, fitting, and honored by the other Parties. Of late, the DOJ and the monitor have had substantive, direct, and strong disagreements with APD over required six-month review and approval of existing policies, such as

OBRD, EIS, and Use of Force policies. These critical policies at this point in time, remain in limbo, with the APD exhibiting reluctance to revise them, as suggested by DOJ and the monitor, to improve provisions of critical policies such as Use of Force, EIS, and OBRD. The required review and approval of these policies at their six-month point has not yet been completed, and these critical policies are in limbo.

#### Results

Primary: In Compliance  
Secondary: Not In Compliance  
Operational: Not In Compliance

***Recommendation 4.7.134a: APD should identify the “roadblocks” to completion of these policy processes and design a careful, deliberate, and recommendation-centric resolution to those roadblocks.***

#### 4.7.135 Assessing Compliance with Paragraph 149

Paragraph 149 stipulates:

**“Within two months of the Effective Date, APD shall ensure that all officers are briefed and presented the terms of the Agreement, together with the goals and implementation process of the Agreement.”**

#### Methodology

The City remains in compliance with this paragraph based on earlier performance.

#### Results

Primary: In Compliance  
Secondary: In Compliance  
Operational: In Compliance

#### 4.7.136 Assessing Compliance with Paragraph 150

Paragraph 150 stipulates:

**“Within three months of issuing a policy or procedure pursuant to this Agreement, APD agrees to ensure that all relevant APD personnel have received and read their responsibilities pursuant to the policy or procedure, including the requirement that each officer or employee report violations of policy; that supervisors of all ranks shall be held accountable for identifying and responding to policy**

or procedure violations by personnel under their command; and that personnel will be held accountable for policy and procedure violations. APD agrees to document that each relevant APD officer or other employee has received and read the policy. Training beyond roll-call or similar training will be necessary for many new policies to ensure officers understand and can perform their duties **pursuant to the policy.**"

#### Methodology

The City remains in compliance with this paragraph based on earlier performance.

#### Results

Primary: In Compliance  
Secondary: In Compliance  
Operational: In Compliance

#### 4.7.137 Assessing Compliance with Paragraph 151

Paragraph 151 stipulates:

Unless otherwise noted, the training required under this Agreement shall be delivered within 18 months of the Effective Date, and annually thereafter. Within six months of the Effective Date, APD shall set out a schedule for delivering all training required by this Agreement.

#### Methodology

The City remains in compliance with this paragraph based on earlier performance.

#### Results

Primary: In Compliance  
Secondary: In Compliance  
Operational: In Compliance

#### 4.7.138 Assessing Compliance with Paragraph 152

Paragraph 152 stipulates:

**"APD shall ensure that all new lateral hires are certified law enforcement officers and that they receive all training required by this Agreement prior to entry onto duty."**

#### Methodology

The monitoring team requested from APD copies of COB documentation related to this paragraph, and were provided data responsive to that request. Those data were provided absent the “certification” proofs that were requested. We will revisit this issue in IMR-6.

## Results

Primary: In Compliance  
Secondary: In Compliance  
Operational: Not In Compliance

***Recommendation 4.7.138a: APD should provide “certification proofs” as requested by the monitor.***

### 4.7.139 Assessing Compliance with Paragraph 153

Paragraph 153 stipulates:

**“APD shall maintain complete and accurate records of all training provided to sworn APD officers during pre-service and in-service training programs, including curricula, course materials, lesson plans, classroom presentations, handouts, videos, slides, recordings, and attendance records. APD shall also maintain complete and accurate records of any audit, review, assessment, or evaluation of the sufficiency or effectiveness of its training programs. APD shall make these records available for inspection by the Monitor and DOJ.”**

## Methodology

Monitoring team requests for records responsive to Paragraph 153 produced ample evidence that “curricula, course materials, lesson plans, classroom presentations, handouts, videos, slides, recordings, and attendance records are being maintained.”

## Results

Primary: In Compliance  
Secondary: In Compliance  
Operational: In Compliance

### 4.7.140 Assessing Compliance with Paragraph 154

Paragraph 154 stipulates:

**“APD shall ensure that changes in relevant case law and statutes are disseminated to APD personnel in a timely manner and**

incorporated, as appropriate, into annual and pre- service **training.”**

#### Methodology

No changes to relevant case law and statutes were noted during this reporting period. APD remains in compliance based on past performance.

#### Results

Primary: In Compliance  
Secondary: In Compliance  
Operational: In Compliance

#### 4.7.141 Assessing Compliance with Paragraph 155

Paragraph 155 stipulates:

**“APD shall supervise and manage its field-training program to ensure that new officers develop the necessary technical and practical skills required to use force in accordance with APD policy and applicable law. The field-training program should reinforce, rather than circumvent, the agency’s values, core principles, and expectations on use of force and engagement with the community. Field Training Officers should demonstrate the highest levels of competence, professionalism, impartiality, and ethics.”**

#### Methodology

During the fourth monitoring visit, members of the monitoring team met the APD Training Academy personnel responsible for the Field Training and Evaluation Program (FTEP), as per S.O.P. 6-1 Training Division (dated June 14, 2016). The Field Training and Evaluation Program Manual (dated April 13, 2016) was supplied to the monitoring team as requested. The documents contained the necessary changes required to fulfill the requirements of this paragraph. No known changes to case law, core principles, values or expectations were initiated this reporting period.

APD remains in compliance with the requirements of this paragraph based on current and past performance.

#### Results

Results for this paragraph are reported in Table 4.7.141, below.



Table 4.7.141

Item No.	A. APD shall revise the policies applicable to its field-training program to provide that academy graduates will receive 16 weeks of field training following the training academy	B. Recruits will not be released from the field-training program early	# in-compliance	% in Compliance
OJT Matrix 2016	1	1	2	100
Special Order Phase 1 16-40	1	1	2	100
Special Order Phase 2 16-48	1	1	2	100
Special Order Phase 3 16-53	1	1	2	100
Special Order Phase 4 16-55	1	1	2	100
<b>Number in Compliance Total all Incidents</b>	<b>5</b>	<b>5</b>	<b>10</b>	
<b>% in Compliance Total by Category</b>	<b>100</b>	<b>100</b>		<b>100</b>

Primary: In Compliance

Secondary: In Compliance

Operational: In Compliance

#### 4.7.142 Assessing Compliance with Paragraph 156

Paragraph 156 stipulates:

**“APD shall revise the policies applicable to its field-training program to provide that academy graduates will receive 16 weeks of field training following the training academy and that recruits will not be released from the field-training program early.”**

#### Methodology

The monitoring team pulled a random sample of nine officers undergoing FTO training and found 100 % compliance for the requirements of paragraph 156 among those individuals for all four phases of the FTO program.

## Results

Table 4.7.142

Item No.	A. APD shall revise the policies applicable to its field-training program to provide that academy graduates will receive 16 weeks of field training following the training academy	B. Recruits will not be released from the field-training program early	# in-compliance	% in Compliance
OJT Matrix 2016	1	1	2	100
Special Order Phase 1 16-40	1	1	2	100
Special Order Phase 2 16-48	1	1	2	100
Special Order Phase 3 16-53	1	1	2	100
Special Order Phase 4 16-55	1	1	2	100
<b>Number in Compliance Total all Incidents</b>	<b>5</b>	<b>5</b>	<b>10</b>	
<b>% in Compliance Total by Category</b>	<b>100</b>	<b>100</b>		<b>100</b>

Primary: In Compliance  
 Secondary: In Compliance  
 Operational: In Compliance

## 4.7.143 Assessing Compliance with Paragraph 157

Paragraph 157 stipulates:

**“APD shall revise the qualifications for Field Training Officers to require four years of non-probationary experience as a sworn police officer and to ensure that Field Training Officers have a demonstrated commitment to constitutional policing, ethics, and professionalism.”**

## Methodology

Members of the monitoring team reviewed special orders and related documents from APD’s training academy related to this paragraph. We also pulled individual records for ten of APD’s FTOs and nine recruits who were active during this reporting period, and evaluated their compliance with regard to experience and “demonstrated commitment to Constitutional policing, as well as Special Orders 16-40, 16-48, 16-53 and

16-55 and related performance records for FTOs 1-10<sup>137</sup> indicate APD remains in compliance with this paragraph, as depicted in Table 4.7.143 below.

## Results

Results for this paragraph are reported in Table 4.7.143, below.

Table 4.7.143

Item	A. Recruits in the field-training program shall be trained in multiple Area Commands	B. They shall be trained in multiple shifts	C. They shall be trained with several FTOs	# in-compliance	% in Compliance
FSB Special Order 16-40	1	1	1	3	100
FSB Special Order 16-48	1	1	1	3	100
FSB Special Order 16-53	1	1	1	3	100
FSB Special Order 16-59	1	1	1	3	100
FSB Special Order 16-65	1	1	1	3	100
<b>Number in Compliance Total all Incidents</b>	<b>5</b>	<b>5</b>	<b>5</b>	<b>15</b>	
<b>% in Compliance Total by Category</b>	<b>100</b>	<b>100</b>	<b>100</b>		<b>100</b>

Primary: In Compliance

Secondary: In Compliance

Operational: In Compliance

### 4.7.144 Assessing Compliance with Paragraph 158

Paragraph 158 stipulates:

**“New Field Training Officers and Area Sergeant Coordinators shall** receive at least 40 hours of initial supervisory-level training and annual in-service training in the following areas: management and supervision; constitutional, community-oriented policing; de-escalation techniques; and effective problem-solving techniques. Field Training Officers and Area Sergeant Coordinators shall be required to maintain, and

<sup>137</sup> Based on a random sample of ten FTOs.

demonstrate on a regular basis, their proficiency in managing recruits and subordinates, as well as practicing and teaching constitutional, community-oriented policing; de-escalation techniques; and effective problem solving. APD shall maintain records of all evaluations and training of Field Training Officers and Area Sergeant Coordinators.”

## Methodology

Members of the monitoring team reviewed records relating to this Paragraph for the information responsive to this Paragraph. The results of this review are reported in Table 4.7.144, below.

Table 4.7.144

<b>Case No.</b>	<b>A. New FTOs and Area Sergeant Coordinators receive 40 hours of initial supervisory-level training and annual in-service training in the following required areas:</b>	<b>B. FTOs and Area Sergeant Coordinators shall maintain their proficiency in managing recruits and subordinates, practicing and teaching constitutional, community-oriented policing; de-escalation techniques; and problem-solving</b>	<b>C. APD shall maintain records of evaluations and training of FTOs and Area Sergeant Coordinators</b>	<b># in-compliance</b>	<b>% in Compliance</b>
FTO1 Training Records	1	1	1	3	100
FTO2 Training Records	1	1	1	3	100
FTO3 Training Records	1	1	1	3	100
FTO4 Training Records	1	1	1	3	100
FTO5 Training Records	1	1	1	3	100
FTO6 Training Records	1	1	1	3	100
ASGT1 Training Recs	1	1	1	3	100
ASGT2 Training Recs	1	1	1	3	100
ASGT3 Training Recs	1	1	1	3	100
ASGT4 Training Recs	1	1	1	3	100
<b>Compliance Total all Incidents</b>	<b>10</b>	<b>10</b>	<b>10</b>	<b>30</b>	
<b>% in Compliance Total by Category</b>	100	100	100		100

## Results

Primary: In Compliance  
Secondary: In Compliance

## Operational: In Compliance

## 4.7.145 Assessing Compliance with Paragraph 159

Paragraph 159 stipulates:

**“Recruits in the field-training program shall be trained in multiple Area Commands and shifts and with several Field Training Officers.”**

## Methodology

Members of the monitoring team reviewed Special Orders 16-40, 48, 53, 59 and 65, and sampled training records for field training recruits to assure policy and practice compliance with this paragraph.

## Results

Records of 27 recruits and APD’s policies related to this paragraph indicate full compliance for this reporting period.

Table 4.7.145

Item	A. Recruits in the field-training program shall be trained in multiple Area Commands	B. They shall be trained in multiple shifts	C. They shall be trained with several FTOs	# in-compliance	% in Compliance
FSB Special Order 16-40	1	1	1	3	100.0%
FSB Special Order 16-48	1	1	1	3	100.0%
FSB Special Order 16-53	1	1	1	3	100.0%
FSB Special Order 16-59	1	1	1	3	100.0%
FSB Special Order 16-65	1	1	1	3	100.0%
<b>Number in Compliance Total all Incidents</b>	<b>5</b>	<b>5</b>	<b>5</b>	<b>15</b>	
<b>% in Compliance</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>		<b>100.0%</b>

Primary: In Compliance  
 Secondary: In Compliance  
 Operational: In Compliance

## 4.7.146 Assessing Compliance with Paragraph 160

Paragraph 160 stipulates:

**“APD shall provide a mechanism for recruits to provide confidential feedback regarding the quality of their field training, including the extent to which their field training was consistent with what they learned in the academy, and suggestions for changes to academy training based upon their experience in the field-training program. APD shall consider feedback and document its response, including the rationale behind any responsive action taken or decision to take no action.”**

## Methodology

APD has developed an anonymous survey process to comply with the requirements of this paragraph. For the latest recruit class of 27 recruits, 22 responded (at least partially) to the survey. Not all recruits responded to every question. Nonetheless, it is clear that APD has provided the “mechanism for confidential feedback,” and that the mechanism has been implemented and used. Documentation of APD’s consideration of feedback was received too late to be considered for this report, but will be discussed in IMR-6. Previous data indicated APD had followed up on survey comments received during the 4<sup>th</sup> reporting period. We will address the “feedback and document” issue again in IMR-6.

## Results

Case No.	A. APD I provide mechanism for confidential feedback regarding the quality of their field training	B. extent to which their field training consistent with what they learned in the academy	C. Suggestions for changes for training based upon experience in field-training	B. APD to consider feedback and response, including rationale behind action taken or decision to take no action	# in Compliance	% in Compliance
Survey for 115th Recruit Class	1	1	1	1	4	100
# in Compliance Total all Incidents	1	1	1	1	4	
% in Compliance	100	100	100	100		100

Surveys are being routinely offered to and taken by recruits at the completion of their academy phase of training. We will follow-up with APD for IMR-6 to assess the degree to which the Academy uses the input from these survey processes to improve delivery and effectiveness of Academy processes and to assess operational compliance.

Primary: In Compliance  
Secondary: In Compliance  
Operational: Not In Compliance

***Recommendation 4.7.146a: The Training Academy should assemble, review, and assess documentation relevant to this task that addresses the manner in which they use these surveys to assess and modify training parameters, and should identify rationale(s) for not utilizing survey feedback.***

#### 4.7.147 Assessing Compliance with Paragraph 161

Paragraph 161 stipulates:

**“The City shall provide APD with the necessary support and resources to designate a sufficient number of Field Training Officers to meet the requirements of this Agreement.”**

#### Methodology

Based on observation of through-put of required product (recruit evaluation reports, etc.) there appears to be no significant backlog of required and timely reports and/or evaluations by FTOs of recruits, or other FTO-related documents, that would indicate understaffing of FTOs at the Academy. The monitoring team will continue to assess this paragraph on a regular basis, as the monitoring project continues.

#### Results

As noted above, we have no indications that required work product is negatively being delayed or affected by staffing at the academy. The APD remains in compliance with this task.

Primary: In Compliance  
Secondary: In Compliance  
Operational: In Compliance

#### 4.7.148 Compliance with Paragraph 162: Accountability for Conduct

Paragraph 162 stipulates:



“To maintain high-level, quality service; to ensure officer safety and accountability; and to promote constitutional, effective policing, APD and the Civilian Police Oversight Agency shall ensure that all allegations of officer misconduct are received and are fully and fairly investigated; that all findings in administrative investigations are supported by a preponderance of the evidence; and that all officers who commit misconduct are held accountable pursuant to a fair and consistent disciplinary system.”

## Methodology

The monitoring team view this paragraph as a policy statement, as opposed to a specific set of action-requirements, and thus no evaluation of this specific paragraph is necessary.

### 4.7.149 Assessing Compliance with Paragraph 163: Duty to Report Misconduct

Paragraph 163 stipulates:

APD shall require that all officers and employees report misconduct by any APD officer or employee, including themselves, to a **supervisor or directly to the Internal Affairs “Bureau for review and investigation.** Where alleged misconduct is reported to a supervisor, the supervisor shall immediately document and report this information to the Internal Affairs Bureau. Failure to report or document alleged misconduct or criminal behavior shall be grounds for discipline, up to and including termination of **employment.”**

## Methodology

Members of the monitoring team found five cases that had components of the requirements of this paragraph included in their “fact statements” available to the team. We reviewed each of those five cases for compliance with the requirements of this paragraph. The results of that review are reported, both numerically, and in written comments in Table 4.7.149, below.

Table 4.7.149

Case No.	Requirement that officers and employees report misconduct	Supervisors immediately document and report alleged misconduct to IAB	Failure to report or document misconduct is grounds for discipline	# Compliant	% in Compliance by Case
NA	1	NA	1	1	100
IMR-5-054	NA	0	NA	0	0
IMR-5-040	NA	1	NA	1	100
IMR-5-033	NA	1	NA	1	100
IMR-5-034	NA	0	NA	0	0
IMR-5-036	NA	0	NA	0	0
IMR-5-038	NA	1	NA	1	100
Number in Compliance Total all Incidents	1	3	1	4	--
% in Compliance Total by Category	100	50	100	57	

Primary: In Compliance  
Secondary: In Compliance  
Operational: Not in Compliance

**Recommendation 4.7.149a:** *APD's failure in this paragraph is directly attributable to supervision, and reflects directly on the effectiveness of the agency's training and oversight of supervisory personnel, indicating a need to review supervisory training mechanisms to ensure that it has effectively and thoroughly trained the supervisors involved in the failures to document and report alleged misconduct to IAB.*

**Recommendation 4.7.149b:** *If the supervisors in question have received the latest version of supervisory training provided by APD during this training cycle, APD should diagnose the reason for the failure to identify: 1. whether this topic was covered adequately in the training; 2. whether the training was provided or not provided to the sergeants in question; and 3. If it was provided, but not "learned" remedial training is necessary.*

**Recommendation 4.7.149c:** *If the training was not covered or delivered properly, mechanisms need to be designed to ensure remedial training is offered to all those who received the improper training.*

**Recommendation 4.7.149d: If the training was not covered or delivered properly, all sessions of the training offered on other time and or dates need to be similarly assessed and remediated.**

**Recommendation 4.7.149e: If the training was not covered or delivered properly, a comprehensive failure analysis needs to be conducted to identify lessons that can be learned from the failure and to feedback those findings to the academy staff involved in developing, conducting and over-seeing the training in question.**

**Recommendation 4.7.149f: Similar training failure analyses should be conducted as a matter of routine practice any time data, such as those just provided by the monitor on this issue, result in out-of-compliance findings.**

#### 4.7.150 Assessing Compliance with Paragraph 164: Public Information on Civilian Complaints

Paragraph 164 stipulates:

“Within six months of the Effective Date, APD and the Civilian Police Oversight Agency shall develop and implement a program to ensure the Albuquerque community is aware of the procedures to make civilian complaints against APD personnel and the availability of effective mechanisms for making civilian complaints.”

#### Methodology

CPOA and APD were in secondary compliance last reporting period, having been kept from operational status by an issue with the web-support for anonymous complaints. We noted “this is a recurring issue that must be addressed in order for APD to maintain operational compliance.” This reporting period, we found that the same “web-hack” was necessary to file an anonymous citizen complaint. We noted last reporting period that this was unacceptable. It still is. This is the only issue keeping APD and CPOA from full compliance with this task.

#### Results

Primary: In Compliance  
Secondary: In Compliance  
Operational: Not in Compliance

**Recommendation 4.7.150a: Revise APD’s and CPOA’s websites to include an icon for “filing an anonymous complaint,” and ensure that that icon reliably leads to a form not requiring (or seeming to**

**require) a name, address, telephone number or other similar identifying information.**

**Recommendation 4.7.150b: Insure that anonymous complaints are fully and, to the extent possible, fairly investigated.**

#### 4.7.151 Assessing Compliance with Paragraph 165: Availability of Complaint Forms

Paragraph 165 stipulates:

**“APD and the Civilian** Police Oversight Agency shall make complaint forms and informational materials, including brochures and posters, available at appropriate government properties, including APD headquarters, Area stations, APD and City websites, City Hall, public libraries, community centers, and the office of the Civilian Police Oversight Agency. Individuals shall be able to submit civilian complaints through the APD and City websites and these websites shall include, in an identifiable and accessible form, complaint forms and information regarding how to file civilian complaints. Complaint forms, informational materials, and the APD and City websites shall specify that complaints may be submitted anonymously or on behalf of another person. Nothing in this Agreement prohibits APD from soliciting officer commendations or other feedback through the same process and **methods as above.**”

#### Methodology

During the site visit for IMR-5, members of the monitoring team visited city properties, websites, and determined the availability of reporting “systems” (informational materials, brochures, posters, etc. We found all these to be “in place,” with the exception of being able to download and print a form to file a complaint. We noted, again this site visit, as we had on the last, that it appears there is no readily apparent methodology to submit anonymous complaints through accessing complaint forms on the web, downloading them, filling them out, and e-mailing them in. Last site visit and report, we made APD and the City aware of this issue and were told that capacity existed, one just had to “by-pass” that information and submit the report with that section blank. Unfortunately, we found no instructions to that point on the city’s websites. Requiring a “hack” to report a complaint anonymously is not acceptable. Based on our warning to the City in IMR-4, and finding the situation unchanged for IMR-5, we find the City out of compliance on this requirement.

#### Results

See our discussion of anonymous complaints in paragraphs 164 and 165 above.

Primary: In Compliance  
Secondary: In Compliance  
Operational: Not in Compliance

***Recommendation 4.7.151a: Revise APD's and CPOA's websites to include an icon for "filing an anonymous complaint," and ensure that icon reliably leads to a form not requiring (or seeming to require) a name, address, telephone number or other similar identifying information.***

***Recommendation 4.7.151b: Insure that anonymous complaints are fully and, to the extent possible, fairly investigated.***

#### 4.7.152 Assessing Compliance with Paragraph 166: Public Information on Complaint Process

Paragraph 166 stipulates:

**"APD shall post and** maintain a permanent placard describing the civilian complaint process that includes relevant contact information, such as telephone numbers, email addresses, and Internet sites. The placard shall specify that complaints may be submitted anonymously or on behalf of another person. APD shall require all officers to carry complaint forms, containing basic complaint information, in their Department vehicles. Officers shall **also provide the officer's name, officer's identification number, and, if applicable, badge number upon request.** If an individual indicates that he or she would like to make a misconduct complaint or requests a complaint form for alleged misconduct, the officer shall immediately inform his or her supervisor who, if available, will respond to the scene to assist the individual in providing and accepting appropriate forms and/or other available mechanisms for filing a misconduct **complaint."**

#### Methodology

During the site visit for IMR-5, members of the monitoring team performed spot checks for compliance with Paragraph 166. Further, we reviewed CPOA and IA complaints for allegations of refusal to provide name and badge numbers when requested.

#### Results

Based on information reviewed by the monitoring team, all elements of this paragraph are in compliance.

Primary: In Compliance  
Secondary: In Compliance  
Operational: In Compliance

#### 4.7.153 Assessing Compliance with Paragraph 167: Duty to Accept Citizen Complaints

Paragraph 167 stipulates:

**“APD agrees to accept** all civilian complaints and shall revise any forms and instructions on the civilian complaint process that could be construed as discouraging civilians from submitting complaints.”

#### Methodology

Requiring a “web-hack” to file a citizen complaint anonymously is definitely construed by the monitoring team as “discouraging civilians from submitting complaints.” This is the third time we have cautioned APD and the City about this issue. If it persists, we will find the City/CPOA and APD in deliberate non-compliance on this issue. Further, the City contends that the non-compliance is due to the fact that the change “will require working with CPOA to change the functioning of their website”. We have repeatedly warned the City of the issues involved with the anonymous complaints, beginning in IMR-3, and continuing in IMR-4 and now, again, in IMR -5. This seems to us more than ample time to effect a minor revision to a web-site.

#### Results

Primary: In Compliance  
Secondary: In Compliance  
Operational: Not In Compliance

***Recommendation 4.7.153a: Revise APD’s and CPOA’s websites to include an icon for “filing an anonymous complaint,” and ensure that that icon reliably leads to a form not requiring (or seeming to require) a name, address, telephone number or other similar identifying information.***

***Recommendation 4.7.153b: Insure that anonymous complaints are fairly and, to the extent possible, fully investigated.***

#### 4.7.154 Assessing Compliance with Paragraph 168: Multi-Lingual Complaint Forms

Paragraph 168 stipulates:

**“Complaint forms and related informational materials shall be made available and posted in English and Spanish.”**

## Methodology

The multi-lingual versions of APD's complaint forms available on the internet also appear to require the same "web-hack" to file a citizen's complaint as outlined above. Requiring a "web-hack" to file a citizen complaint via the internet is definitely construed by the monitoring team as "discouraging civilians from submitting complaints." This is the third time we have cautioned APD and the City about this issue. If it persists, we will find the City and APD in deliberate non-compliance on this issue.

## Results

Primary: In Compliance  
Secondary: In Compliance  
Operational: Not In Compliance

***Recommendation 4.7.154a: Revise APD's and CPOA's multi-lingual websites to include an icon for "filing an anonymous complaint," and ensure that that icon reliably leads to a form not requiring (or seeming to require) a name, address, telephone number or other similar identifying information.***

***Recommendation 4.7.154b: Insure that anonymous complaints are fairly and, to the extent possible, fully, investigated.***

4.7.155 Assessing Compliance with Paragraph 169: Training on Complaint Intake

Paragraph 169 stipulates:

**"Within six months of the Operational Date, APD shall train all personnel in handling civilian complaint intake."**

## Methodology

Based on prior performance, APD remains in compliance with this task.

## Results

Primary: In Compliance  
Secondary: In Compliance  
Operational: In Compliance

4.7.156 Assessing Compliance with Paragraph 170: Complaint Receipt Process



Paragraph 170 stipulates:

**“APD shall accept complaints regardless of when they are filed. The City shall encourage civilians to promptly report police misconduct so that full investigations can be made expeditiously and the full range of disciplinary and corrective action be made available.”**

Methodology

We have found no instances of APD not accepting complaints due to timeliness considerations.

Results

Primary: In Compliance  
Secondary: In Compliance  
Operational: In Compliance

4.7.157 Assessing Compliance with Paragraph 171: Prohibition of Refusal to Take Complaint

Paragraph 171 stipulates

**“The refusal to accept a misconduct complaint, discouraging the filing of a misconduct complaint, or providing false or misleading information about filing a misconduct complaint shall be grounds for discipline.”**

Methodology

We found no instances of APD or its employees refusing to accept a citizen complaint during this reporting period.

Results

Primary: In Compliance  
Secondary: In Compliance  
Operational: In Compliance

4.7.158 Assessing Compliance with Paragraph 172: Acceptance of Anonymous Complaints

Paragraph 172 stipulates:

**“APD and the Civilian Police Oversight Agency shall accept all misconduct complaints, including anonymous and third-party complaints, for review and investigation. Complaints may be made in writing or verbally, in person or by mail, telephone (or TDD),**

facsimile, or electronic mail. Any Spanish-speaking individual with limited English proficiency who wishes to file a complaint about APD personnel shall be provided with a complaint form in Spanish to ensure that the individual is able to make a complaint. Such complaints will be investigated in accordance with **this Agreement.**”

## Methodology

As we have noted in Paragraphs 164-166, above, requiring a “web-hack” to file a citizen complaint via the internet is definitely construed by the monitoring team as “discouraging civilians from submitting complaints.” This is the third time we have cautioned APD and the City about this issue. If it persists, we will find the City and APD in deliberate non-compliance on this issue. The City contends that the non-compliance is due to the fact that the change “will require working with CPOA to change the functioning of their website”. We have repeatedly warned the City of the issues involved with the anonymous complaints, beginning in IMR-3, and continuing in IMR-4 and now in IMR -5. This seems to us more than ample time to correct a minor revision to a web-site.

## Results

Primary: In Compliance  
Secondary: In Compliance  
Operational: Not In Compliance

***Recommendation 4.7.158a: Revise APD’s and CPOA’s websites to include an icon for “filing an anonymous complaint,” and ensure that that icon reliably leads to a form not requiring (or seeming to require) a name, address, telephone number or other similar identifying information.***

***Recommendation 4.7.158b: Insure that anonymous complaints are fairly and, to the extent possible, fully, investigated.***

4.7.159 Assessing Compliance with Paragraph 173: Inform Supervisors of Citizen Complaints

Paragraph 173 stipulates:

**“All APD personnel who receive a misconduct complaint shall immediately inform a supervisor of the misconduct complaint so that the supervisor can ensure proper intake of the misconduct complaint. All misconduct complaints shall be submitted to the Internal Affairs Bureau by the end of the shift following the shift in which it was received.”**

## Methodology

Members of the monitoring reviewed available completed cases for compliance to this paragraph.

## Results

We reviewed all APD/CPOA cases available to the monitoring team this reporting period, and selected a sample of six to review for completeness and conformance to CASA provisions. Of those six, five included evidence indicating that they adhered to all provisions of Paragraph 173. The other, IMR-5-054 included evidence that the complaint was not reported to IA following the shift after it was received. An error of one-in-six constitutes 16.6 percent, well outside the 5.0 percent requirement.

Primary: In Compliance  
Secondary: In Compliance  
Operational: Not in Compliance

***Recommendation 4.7.159: Redouble efforts, such as roll-call reminders, etc. to ensure that officers and supervisors continue to conform with the requirements of this Paragraph.***

### 4.7.160 Assessing Compliance with Paragraph 174: Allegation by Judicial Officers

Paragraph 174 stipulates:

**“APD and the Civilian Police Oversight Agency shall develop a system to ensure that allegations by a judicial officer of officer misconduct made during a civil or criminal proceeding are identified and assessed for further investigation. Any decision to decline investigation shall be documented.”**

## Methodology

Members of the monitoring team identified all known allegations by judicial officers of APD officer misconduct, and reviewed APD’s response to ensure that the follow-up was appropriate. We found two cases fitting the parameters of this paragraph. Both were referred and investigated appropriately.

## Results

Primary: In Compliance  
Secondary: In Compliance  
Operational: In Compliance

#### 4.7.161 Assessing Compliance with Paragraph 175: Allegations Made by the Homeless or the Mentally Ill

Paragraph 175 stipulates:

**“APD and the Civilian Police Oversight Agency shall track** allegations regarding misconduct involving individuals who are known to be homeless or have a mental illness, even if the complainant does not specifically label the **misconduct as such.**”

#### Methodology

Members of the monitoring team reviewed City systems responsive to this requirement, and found that this provision is now currently being monitored and activated by APD’s Blue Team IA management software.

#### Results

We found no instances of complaints involving individuals known to be homeless or to have a mental illness not being referred/tracked appropriately by APD.

Primary: In Compliance  
Secondary: In Compliance  
Operational: In Compliance

#### 4.7.162 Assessing Compliance with Paragraph 176: Centralized Complaint Numbering System

Paragraph 176 stipulates that:

**“Within six months of the Operational Date, the Internal Affairs** Bureau, in coordination with the Civilian Police Oversight Agency, shall develop and implement a centralized numbering and tracking system for all misconduct complaints. Upon the receipt of a complaint, the Internal Affairs Bureau shall promptly assign a unique numerical identifier to the complaint, which shall be provided to the complainant at the time the numerical identifier is assigned when contact information is available for the **complainant.**”

#### Methodology

IAB and CPOA have created centralized numbering and tracking systems, and assign unique identification numbers to all received complaints.

#### Results

Primary: In Compliance

Secondary: In Compliance  
Operational: In Compliance

#### 4.7.163 Assessing Compliance with Paragraph 177: IAB Complaint Data Management

Paragraph 177 stipulates:

**The Internal Affairs Bureau's tracking system** shall maintain accurate and reliable data regarding the number, nature, and status of all misconduct complaints, from initial intake to final disposition, including investigation timeliness and notification to the complainant of the interim status and final disposition of the investigation. This system shall be used to determine the status of complaints and to confirm that a complaint was received, as well as for periodic assessment of compliance with APD policies and procedures and this Agreement, including requirements on the timeliness of administrative investigations.

#### Methodology

Members of the monitoring team reviewed all known IAB complaints received, investigated, or resolved this reporting period for unique identifiers and provision of those identifiers to the complainant.

#### Results

Primary: In Compliance  
Secondary: In Compliance  
Operational: In Compliance

#### 4.7.164 Assessing Compliance with Paragraph 178: Supervisors to Provide Complaint Information

Paragraph 178 stipulates:

**“Where** a supervisor receives a complaint alleging that misconduct has just occurred, the supervisor shall gather all relevant information and evidence and provide the information and evidence to the Internal Affairs Bureau. All information should be referred to the Internal Affairs Bureau by the end of the shift following the shift in which the misconduct complaint was received, absent **exceptional circumstances.**”

#### Methodology

The monitoring team reviewed a random selection of five cases for compliance with this provision, and found two, [CPC-045-16], which failed both provisions of this paragraph. One complaint was made while the

complainant was being processed through the county detention center, and was not provided to IAB appropriately. The second case resulted in supervisory personnel conducting a preliminary investigation, without timely notice to IAB. An error rate of two of five constitutes *forty percent*, well outside the allowable 5 percent.

## Results

This error was not caught and corrected until noted by the monitoring team.

Primary: In Compliance  
Secondary: In Compliance  
Operational: Not in Compliance

***Recommendation 4.7.164: These issues hardly appear systemic. Counseling of the involved officers regarding the requirements of Paragraph 178 would be appropriate.***

4.7.165 Assessing Compliance with Paragraph 179: Referral of Complaints to CPOA

Paragraph 179 stipulates:

**“Within three business days of the receipt of a misconduct complaint from a civilian, the Internal Affairs Bureau shall refer the complaint to the Civilian Police Oversight Agency.”**

## Methodology

Members of the monitoring team reviewed a random sample of misconduct complaints for conformance to the three-business-days requirement for referral to COPA by the IAB.

## Results

All of the cases reviewed by the monitoring team relative to this requirement were found to be handled appropriately.

Primary: In Compliance  
Secondary: In Compliance  
Operational: In Compliance

4.7.166 Assessing Compliance with Paragraph 180: Handling of Internal Complaints by IAB

Paragraph 180 stipulates:

**“Internal misconduct complaints submitted by APD personnel shall remain with the Internal Affairs Bureau for review and classification. The Internal Affairs Bureau shall determine whether the internal complaint will be assigned to a supervisor for investigation or retained by the Internal Affairs Bureau for investigation. In consultation with the Chief, the commanding officer of the Internal Affairs Bureau shall also determine whether a civilian or internal complaint will be investigated criminally by the Internal Affairs Bureau, the Multi- Agency Task Force, and/or referred to the appropriate federal law enforcement agency.”**

## Methodology

Members of the monitoring team reviewed a random sample of 12 cases for conformance with the requirements of this paragraph. We found two instances in which, apparently, the Chief of Police was consulted by IAB during the process of deciding whether the complaint would be treated as a civilian or internal complaint and would be investigated by the IAB or MATF.

## Results

A review of the IAB caseload this reporting period found two cases that potentially should have been referred to the MATF. IAB consulted with the Chief of Police regarding this referral on both cases.

Primary: In Compliance  
Secondary: In Compliance  
Operational: In Compliance

## 4.7.167 Assessing Compliance with Paragraph 181: IAB Classification Protocol

Paragraph 181 stipulates:

**“APD shall continue to maintain an internal complaint classification protocol that is allegation-based rather than anticipated-outcome-based to guide the Internal Affairs Bureau in determining where an internal complaint should be assigned.”**

## Methodology

Members of the monitoring reviewed APD policy controlling of this task to ensure it complies with the requirements of Paragraph 181, and further insured that all complaints reviewed by the monitoring team this reporting period were properly classified.

## Results



All IAB cases assessed by the monitoring team for the this reporting period were allegation-based.

Primary: In Compliance  
Secondary: In Compliance  
Operational: In Compliance

#### 4.7.168 Assessing Compliance with Paragraph 182: Prohibition from Self-Investigation

Paragraph 182 stipulates:

**“An internal complaint investigation may not be conducted by any supervisor who used force during the incident; whose conduct led to the injury of a person; who authorized the conduct that led to the reported incident or complaint; or who witnessed or was involved in the incident leading to the allegation of misconduct.”**

#### Methodology

Members of the monitoring team reviewed random sample of 12 completed IA cases for the reporting period for IMR-5 for evidence of any self-conducted investigations. Of the 12 cases we reviewed, we found none in which an investigation was conducted by a supervisor who was the subject of the investigation, or who was directly involved in the incident as a participant or supervisor.

#### Results

APD remains in full compliance with this paragraph.

Primary: In Compliance  
Secondary: In Compliance  
Operational: In Compliance

#### 4.7.169 Compliance with Paragraph 183: Investigations Reach Reliable Conclusions

Paragraph 183 stipulates:

**“APD and the Civilian Police Oversight Agency shall ensure that investigations of officer misconduct complaints shall be as thorough as necessary to reach reliable and complete findings. The misconduct complaint investigator shall interview each complainant in person, absent exceptional circumstances, and this interview shall be recorded in its entirety, absent specific, documented objection by the complainant. All officers in a position to observe an incident, or involved in any significant event before**

or after the original incident, shall provide a written statement regarding their observations, even to state that they did not observe **anything.**"

## Methodology

Members of the monitoring team reviewed a total of 21 completed APD IA and CPOA investigated cases for compliance with this paragraph. This sample consisted of nine IA cases and 12 CPOA cases.

## Results

Table 4.7.169

Case No.	Investigations thorough	Interview of complainant	Interview recorded	Officers provide written statement	Compliant	% in Compliance by Case
IMR-5-065	1	1	0	NA	2	66%
IMR-5-032	1	1	1	NA	3	100%
IMR-5-033	1	1	1	NA	3	100%
IMR-5-034	1	1	1	NA	3	100%
IMR-5-035	1	1	1	NA	3	100%
IMR-5-036	1	1	1	NA	3	100%
IMR-5-037	1	1	NA	NA	2	100%
IMR-5-038	1	1	1	NA	3	100%
IMR-5-066	1	1	0	NA	2	66%
IMR-5-052*	1	1	1	NA	3	100%
IMR-5-053*	1	1	1	NA	3	100%
IMR-5-058*	1	1	1	1	4	100%
IMR-5-055*	1	1	1	NA	3	100%
IMR-5-056*	1	1	1	NA	3	100%
IMR-5-057*	1	1	1	NA	3	100%
IMR-5-059*	1	1	NA	NA	2	100%
IMR-5-060* <sup>138</sup>	0	1	1	NA	2	66%
IMR-5-061* <sup>139</sup>	0	1	0	NA	1	33%
IMR-5-062	1	1	1	NA	3	100%
IMR-5-063*	0	1	0	NA	1	33%
IMR-5-064*	1	1	1	NA	3	100%
<b>in Compliance</b>	18	20	15	1		
<b>% Total by Category</b>	<b>86%</b>	<b>100%</b>	<b>79%</b>	<b>100%</b>		<b>76%</b>

Overall, we found a calculated "failure" rate of 24 percent for the selected cases. Individually, we found 2 non-compliant investigations in the 9 APD IA cases, resulting in a 78 percent compliance rate. For CPOA cases, we found three non-compliant investigations in 12 cases, resulting

<sup>138</sup> CPC 2016-000088 was transferred to APD IA and investigated and resolved by APD IA.

<sup>139</sup> CPC 2016-000089 was administratively closed as it involved the Airport Police and CPOA had no jurisdiction.

in a 75 percent compliance rate. The overall compliance rate for both CPOA and APD IA was 76 percent. Overall compliance rates and error rates by case are shown in Table 4.7.169.

Primary: In Compliance  
Secondary: In Compliance  
Operational: Not In Compliance

***Recommendation 4.7.169a: APD and CPOA leadership should conduct a review of each of the non-compliant cases and clearly determine: 1.) where the failure occurred; 2.) the nature and severity of the failure viz. a viz. its threat to the reliability of the investigation; and 3.) the nature of remedial steps that need to be taken to minimize the chance of similar errors in the future.***

***Recommendation 4.7.169b: APD and CPOA should produce a Completed Staff Work document clearly identifying points 1-3 above, and recommending specific steps to be taken to ensure the issues are corrected, to the point that errors can be reduced to acceptable levels. This document should be submitted to the Chief of Police for review and comment in writing, and specifically articulating reasons for his decisions.***

4.7.170 Assessing Compliance with Paragraph 184: Investigations Documented in Writing

Paragraph 184 stipulates:

**“APD and the Civilian Police Oversight Agency shall investigate all misconduct complaints and document the investigation, its findings, and its conclusions in writing. APD and the Civilian Police Oversight Agency shall develop and implement a policy that specifies those complaints other than misconduct that may be resolved informally or through mediation. Administrative closing or inactivation of a complaint investigation shall be used for the most minor policy violations that do not constitute a pattern of misconduct, duplicate allegations, or allegations that even if true would not constitute misconduct.”**

Methodology

Members of the monitoring team reviewed a total of 21 completed APD IA and CPOA investigated cases for compliance with this paragraph. This sample consisted of nine IA cases and 12 CPOA cases.

Results

The 21 investigations reviewed this reporting period (nine for IAB and 12 for CPOA) resulted in three “errors” or “exceptions:” two APD cases inappropriately administratively closed, and one CPC case in which the complainant was not satisfied with the mediation attempt. The APD cases were “self-caught” and corrected by Internal Affairs before the monitor’s review, and do not constitute an error for tabulation for that reason. The CPC case was handled correctly, but simply resulted in an outcome unsatisfactory to the complainant. The monitoring team does not evaluate these cases based on complainant satisfaction, but whether the case was processed according to policy and best practices.

Primary: In Compliance  
Secondary: In Compliance  
Operational: In Compliance

#### 4.7.171 Assessing Compliance with Paragraph 185: Required Cooperation with IAB/CPOA

Paragraph 185 stipulates:

**“APD shall require personnel to cooperate with Internal Affairs Bureau and Civilian Police Oversight Agency investigations, including appearing for an interview when requested by an APD or Civilian Police Oversight Agency investigator and providing all requested documents and evidence under the person’s custody and control. Supervisors shall be notified when a person under their supervision is summoned as part of a misconduct complaint or internal investigation and shall facilitate the person’s appearance, absent extraordinary and documented circumstances.”**

#### Methodology

The monitoring reviewed 21 IAB/CPOA cases for the fifth reporting period, and found no instances in which APD refused to cooperate with the investigation. APD is in compliance with this task.

#### Results

Primary: In Compliance  
Secondary: In Compliance  
Operational: In Compliance

#### 4.7.172 Assessing Compliance with Paragraph 186: Separate Administrative and Criminal Investigations

Paragraph 186 stipulates:

**“APD and the City shall develop and implement protocols to ensure that criminal and administrative investigations of APD personnel are kept appropriately separate, to protect APD personnel’s rights under the Fifth Amendment. When an APD employee affirmatively refuses to give a voluntary statement and APD has probable cause to believe the person has committed a crime, APD shall consult with the prosecuting agency (e.g., District Attorney’s Office or USAO) and seek the approval of the Chief before taking a compelled statement.”**

## Methodology

In the data sampled by the monitoring team this reporting period, we found three cases which involved both criminal and investigative investigations. APD handled each of those cases according to established policy and the requirements of the CASA.

## Results

Primary: In Compliance  
Secondary: In Compliance  
Operational: In Compliance

### 4.7.173 Assessing Compliance with Paragraph 187: Advisement of Officer Rights

Paragraph 187 stipulates:

**“Advisements by the Internal Affairs Bureau or the Civilian Police Oversight Agency to APD personnel of their Fifth Amendment rights shall only be given where there is a reasonable likelihood of a criminal investigation or prosecution of the subject employee.”**

## Methodology

In the data sampled by the monitoring team this reporting period, we found two cases which involved investigations requiring Fifth Amendment advisements. APD handled each of those cases according to established policy and the requirements of the CASA.

## Results

The disciplinary policy is moot on the requirement that departures from the “presumptive range of discipline” must be justified in writing. Practice, however, conforms to the requirement. APD should consider updating the policy.

Primary: In Compliance  
Secondary: In Compliance

Operational: In Compliance

#### 4.7.174 Assessing Compliance with Paragraph 188: Notification of Criminal Misconduct

Paragraph 188 stipulates:

**“If at any time during misconduct complaint intake or investigation** the investigator determines that there may have been criminal conduct by any APD personnel, the investigator shall immediately notify the Internal Affairs Bureau commanding officer. If the complaint is being investigated by the Civilian Police Oversight Agency, the investigator shall transfer the administrative investigation to the Internal Affairs Bureau. The Internal Affairs Bureau commanding officer shall immediately notify the Chief. The Chief shall consult with the relevant prosecuting agency or federal law enforcement agency regarding the initiation of a criminal investigation. Where an allegation is investigated criminally, the Internal Affairs Bureau shall continue with the administrative investigation of the allegation. Consistent with Paragraph 186, the Internal Affairs Bureau may delay or decline to conduct an interview of the subject personnel or other witnesses until completion of the criminal investigation unless, after consultation with the prosecuting agency and the Chief, the Internal Affairs Bureau deems such interviews appropriate.”

#### Methodology

Members of the monitoring team found two cases met the issues covered in this paragraph, one filed with APD IA and one filed with CPOA.

#### Results

Of the six factors required in the CASA, each case reviewed by the monitoring team provided evidence of compliance with less than half of the six standards articulated. Collectively, this involved two-for-two “misses” (involving both the CPOA and the IAB) requiring the Chief of Police to be notified in such events, two-for-two “misses” (involving both the CPOA and IAB) requiring the Chief to consult with prosecuting or federal law enforcement agencies where appropriate. Obviously, the level of coordination and cooperation between the Chief’s office, CPOA, and IAB is in serious need of review and restructuring.

Primary: In Compliance  
Secondary: In Compliance  
Operational: Not In Compliance

***Recommendation 4.7.174a: These errors are found not to be intentional, but simply oversights. Reminding all personnel from***

**both IAB and CPOA of this requirement in writing should be sufficient. Both agencies' supervisory and command staff should be on increased alert for issues involving this paragraph.**

**Recommendation 4.7.174b:** All three entities, APD, IAB, and CPOA would benefit from a detailed flowcharting process, depicting in **clear detail, the "process" of completing, forwarding for review and or comment, consulting on, "approving," and resolving differences** in findings about their investigative reports.

#### 4.7.175 Assessing Compliance with Paragraph 189: Provision of Public Safety Statements

Paragraph 189 stipulates:

**"Nothing in this Agreement or APD policy shall hamper APD personnel's obligation to provide a public safety statement** regarding a work-related incident or activity, including Use of Force Reports and incident reports. APD shall make clear that all statements by personnel in incident reports, arrest reports, Use of Force Reports and similar documents, and statements made in interviews **such as those conducted in conjunction with APD's routine use of force investigation process, are part of each employee's routine professional duties and are not compelled** statements. Where an employee believes that providing a verbal or written statement will be self-incriminating, the employee shall affirmatively state this and shall not be compelled to provide a statement without prior consultation with the prosecuting agency **(e.g., District Attorney's Office or USAO), and approval by the Chief."**

#### Methodology

Members of the monitoring team reviewed all cases selected by the team for IAB/CPOA assessments to determine if any exhibited characteristics involving this paragraph. None were found. Absence of an applicable set of circumstances, e.g., employees availing themselves of a specific right leads us to find this paragraph un-evaluable in terms of in-field practice this reporting period. Thus, we have determined the operational status for this paragraph as "not observable," which is obviously not the equivalent of not in compliance.

#### Results

Primary:	In Compliance
Secondary:	In Compliance
Operational:	Not Observable



#### 4.7.176 Assessing Compliance with Paragraph 190: Considering All Relevant Evidence

Paragraph 190 stipulates:

**“In each investigation, APD and the Civilian Police Oversight Agency shall consider all relevant evidence, including circumstantial, direct, and physical evidence. There will be no automatic preference for an officer’s statement over a non-officer’s statement, nor will APD or the Civilian Police Oversight Agency disregard a witness’s statement merely because the witness has some connection to the complainant or because of any criminal history. During their investigation, APD and the Civilian Police Oversight Agency shall take into any convictions for crimes of dishonesty of the complainant or any witness. APD and the Civilian Police Oversight Agency shall also take into account the record of any involved officers who have been determined to be deceptive or untruthful in any legal proceeding, misconduct investigation, or other investigation. APD and the Civilian Police Oversight Agency shall make efforts to resolve material inconsistencies between witness statements.”**

#### Methodology

Members of the monitoring team reviewed 21 CPOA and IAB closed cases for indications that the investigations were in conformance with this paragraph. The results of that review are described below.

#### Results

Individually, CPOA has a 96% compliance rate and APD has a 98% compliance rate. Overall, the compliance rate is 97%. Both agencies individually and collectively are in compliance with this requirement.

Primary:	In Compliance
Secondary:	In Compliance
Operational:	In Compliance

#### 4.7.177 Assessing Compliance with Paragraph 191: 90 Days to Complete Administrative Investigations

Paragraph 191 stipulates:

**“All administrative investigations conducted by the Internal Affairs Bureau or the Civilian Police Oversight Agency shall be completed within 90 days of the initiation of the complaint investigation. The 90-day period shall not include time for review. An extension of the investigation of up to 30 days may be granted but only if the request for an extension is in writing and is approved by the Chief. Review and final approval of the investigation, and the determination and imposition of the appropriate discipline, shall be**

completed within 30 days of the completion of the investigation. To the extent permitted by state and city law, extensions may also be granted in extenuating circumstances, such as military deployments, hospitalizations of the officer, and extended **absences.**”

### Methodology

Members of the monitoring team reviewed 21 completed IAB and CPOA cases for compliance with the requirements of this paragraph.

### Results

Overall, IAB and CPOA failed to meet the time-line requirements of this paragraph in 48 % of the cases completed this reporting period. Results for this paragraph are reported in Table 4.7.177, below. Collectively, the City failed to meet the requirements of this paragraph, failing in seven of the 21 cases (33 percent) to complete the required investigation in 90 days, and failing in three of the cases 21 cases to review and implement final discipline within 30 days of completing an investigation. Collectively, the IAB and CPOA requested nine 30 day extensions to complete investigations, with IAB requesting two extensions, and CPOA requesting seven. The most frequent reason for missing deadlines was “delay in assignment.” One delay was considered reasonable by the monitoring team: a delay waiting for determination of declination of criminal charges. Table 4.7.177, below, depicts the results for the requirements of this paragraph.

Table 4.7.177 90 Days to Complete Administrative Investigations

Case No.	All admin investigations by APD or CPOA must be completed in 90 days, excluding time for review	A written request for a 30 day extension may be granted if approved by the Chief	Review and final disciplinary determination must be made within 30 days of investigation completion	Compliant	% in Compliance by Case
IMR-5-065	1	NA	1	2	100
IMR-5-032	1	1	1	3	100
IMR-5-033	0	NA	1	1	50
IMR-5-034	1	1	1	3	100
IMR-5-035	1	NA	1	2	100
IMR-5-036	0	NA	1	1	50
IMR-5-037	1	NA	1	2	100
IMR-5-038	1	NA	1	2	100
IMR-5-039	1	NA	1	2	100
IMR-5-052	1	1	0	2	67
IMR-5-042	1	1	1	3	100
IMR-5-043	0	1	1	2	67
IMR-5-044	1	NA	1	2	100
IMR-5-045	0	1	1	2	67
IMR-5-046	0	1	1	2	67
IMR-5-048	1	NA	0	1	50
IMR-5-060	0	NA	1	1	50
IMR-5-049	1	NA	0	1	50
IMR-5-050	0	1	1	2	67
IMR-5-051	1	1	1	3	100
IMR-5-064	1	NA	1	2	100
<b>Number in Compliance Total all Incidents</b>	14	21	18	41	
<b>% in Compliance Total by Category</b>	67	100	86	--	52

Primary: In Compliance  
Secondary: In Compliance  
Operational: Not in Compliance

**Recommendation 4.7.177a: Managers at CPOA and IAB should be cognizant of timelines for given investigations, and ensure that, when needed and appropriate, extensions are requested. (IMR-5-060) was opened in a timely manner by CPOA and transferred to APD IA for final investigation.)**

***Recommendation 4.7.177b: Timeline compliance rates should be included in CPOA's and IAB's monthly and/or quarterly management reports.***

4.7.178 Assessing Compliance with Paragraph 192: Case Dispositions

Paragraph 192 stipulates:

**“APD or Civilian Police Oversight Agency investigator shall explicitly identify and recommend one of the following dispositions for each allegation of misconduct in an administrative investigation:**

- a) **“Unfounded,” where the investigation determines**, by clear and convincing evidence, that the alleged misconduct did not occur or did not involve the subject officer;
- b) **“Sustained,” where the investigation determines, by a preponderance of the evidence**, that the alleged misconduct did occur;
- c) **“Not Sustained,” where the investigation is unable to determine**, by a preponderance of the evidence, whether the alleged misconduct occurred;
- d) **“Exonerated,” where the investigation determines, by a preponderance of the evidence**, that the alleged conduct did occur but did not violate APD policies, procedures, or training;
- e) **“Sustained violation not based on original complaint,”** where the investigation determines, by a preponderance of the evidence, that misconduct did occur that was not alleged in the original complaint but that was discovered during the misconduct investigation; or
- f) **“Administratively closed,” where the policy violations are minor**, the allegations are duplicative, or investigation cannot be conducted because of the lack of information in the complaint.”

Methodology

Members of the monitoring team reviewed 21 completed IAB/CPOA cases for the reporting period, assessing them for compliance with disposition requirements articulated in the CASA.

Of the 21 cases we reviewed, IAB had two improper (out of compliance with the CASA) findings, which were caught and corrected by managerial-level personnel in IAB. That constitutes a 100 percent compliance rate, since the issues were caught and corrected before review by the monitoring team.

CPOA had also had two cases with improper dispositions from among the 12 cases we reviewed from that agency. These, however, were not

caught and corrected prior to the monitoring team's review. This constitutes an 83 percent compliance rate.

The overall compliance rate (19 of 21 cases) was 90 percent. Overall, the city is not in compliance with this requirement for this reporting period.

## Results

Primary: In Compliance  
Secondary: In Compliance  
Operational: Not in Compliance

### ***Recommendation 4.7.178a: CPOA should reinforce training and supervision of its personnel related to investigative timelines.***

#### 4.7.179 Assessing Compliance with Paragraph 193: Reopening Administrative Investigations

Paragraph 193 stipulates:

**"All administratively closed complaints** may be re-opened if additional information becomes available. The deadlines contained in Paragraph 191 shall run from when the complaint is **re-opened.**"

## Methodology

Members of the monitoring team assessed CPOA and IAB cases for any that accrued to this paragraph and found none.

## Results

CPOA and IAB remain in compliance on this task based on past performance.

Primary: In Compliance  
Secondary: In Compliance  
Operational: in Compliance

#### 4.7.180 Assessing Compliance with Paragraph 194: Training and Legal Standards

Paragraph 194 stipulates:

**"In addition to determining whether APD personnel committed the** alleged misconduct, administrative investigations shall assess and document whether the action was in compliance with training and legal standards and whether the incident suggests the need for a change in policy, procedure, or training. In reviewing completed

administrative investigations, APD shall also assess and document whether: TABLE(a) the incident suggests that APD should revise strategies and tactics; and (b) the incident indicates a need for additional training, counseling, or other non-disciplinary corrective measures. This information shall be shared with the relevant **commander(s).**”

## Methodology

Members of the monitoring team reviewed 21 completed IAB/CPOA cases for the reporting period, assessing them for compliance with disposition requirements articulated in the CASA.

## Results

Of those cases reviewed, we found two that were non-compliant. Both of those were handled by IAB. To its credit, IAB through appropriate supervisory review, caught and correct these errors prior to review by the monitoring team. This is exactly the type of management oversight the monitor expects to see from APD. By monitoring team practice, any error caught and appropriately corrected by APD prior to monitor’s notice is not considered an “error” for monitoring purposes. CPOA had no errors on this paragraph, thus no error rate.

Primary:	In Compliance
Secondary:	In Compliance
Operational	In Compliance

### 4.7.181 Assessing Compliance with Paragraph 195: Retaliation Prohibited

Paragraph 195 stipulates:

**“The City shall continue to expressly prohibit all forms of retaliation, including discouragement, intimidation, coercion, or adverse action, against any person who reports misconduct, makes a misconduct complaint, or cooperates with an investigation of misconduct.”**

## Methodology

During this reporting period, the City received one complaint of retaliation as defined by this paragraph. The complaint was received, assigned, and appropriately investigated.

## Results

Members of the monitoring team reviewed 21 completed cases from IAB and CPOA relative to this paragraph, and found one, [IMR-5-035]. The

Albuquerque Code of Ordinances prohibits retaliation for reporting improper governmental action. Policy mandating compliance with this paragraph is also contained in GO 1-04 and AO 2-05 and 3-22. This constitutes primary compliance. Performance on the retaliation complaint completed this reporting period was within expected parameters, thus the City is in secondary and operational compliance for this reporting period as well.

Primary: In Compliance  
Secondary: In Compliance  
Operational: In Compliance

#### 4.7.182 Assessing Compliance with Paragraph 196: Review of Anti-Retaliation Statements

Paragraph 196 stipulates:

**“Within six months of the Effective Date, and annually thereafter, the Internal Affairs Bureau and the Civilian Police Oversight Agency shall review APD’s anti-retaliation policy and its implementation. This review shall consider the alleged incidents of retaliation that occurred or were investigated during the reporting period, the discipline imposed for retaliation, and supervisors’ performance in addressing and preventing retaliation. Following such review, the City shall modify its policy and practice, as necessary, to protect individuals, including other APD personnel, from retaliation for reporting misconduct.”**

#### Methodology

Policy mandating compliance with this paragraph is contained in GO 1-04, and AO 2-05 and 3-22. This constitutes primary compliance. Performance in the retaliation complaint reviewed this reporting period also indicates that training of personnel related to this requirement is sufficient, and performance on the one retaliation complaint noted in 4.7.181, above indicates operational compliance.

#### Results

Primary: In Compliance  
Secondary: In Compliance  
Operational: In Compliance

#### 4.7.183 Assessing Compliance with Paragraph 197: Retaliation Grounds for Discipline

Paragraph 197 stipulates:



Retaliation for reporting misconduct or for cooperating with an investigation of misconduct shall be grounds for discipline, up to and including termination of employment.

## Methodology

Policy mandating compliance with this paragraph is contained in GO 1-04, and AO 2-05 and 3-22. This constitutes primary compliance. Performance in the retaliation complaint reviewed this reporting period also indicates that training of personnel related to this requirement is sufficient, and performance on the one retaliation complaint noted in 4.7.181, above indicates operational compliance.

## Results

Primary:	In Compliance
Secondary:	In Compliance
Operational:	In Compliance

### 4.7.184 Assessing Compliance with Paragraph 198: CPOA Staffing

Paragraph 198 stipulates:

**“The City shall ensure that APD and the Civilian Police Oversight Agency have a sufficient number of well-trained staff assigned and available to complete and review thorough and timely misconduct investigations in accordance with the requirements of this Agreement. The City shall re-assess the staffing of the Internal Affairs Bureau after the completion of the staffing study to be conducted pursuant to Paragraph 204. The City further shall ensure sufficient resources and equipment to conduct thorough and timely investigations.”**

The monitoring team met with IAB and CPOA on several occasions including visits to their respective offices and inspection of physical space. The monitoring team also reviewed staffing charts and assessed the timelines of investigations that were randomly selected.

## Results

The COA Ordinance requires that it be given staff sufficient to carry out the agency functions contained in the Ordinance. Additional policy mandating compliance with this paragraph is also contained in GO 1-04, and AO 2-05 and 3-22.

Currently, the staffing of IAB appears to be sufficient, as investigative timelines are being met. The CPOA staffing also appears to be sufficient as there are no current vacancies. No requests for additional staff have been noted.

Despite the lack of significant vacancies, in the future the monitoring team will continue to review the completion times on selected investigations, and also has broadened its search to look at overall processing time statistics. No delays or quality control issues were noted that can be traced to staffing levels.

Primary: In Compliance  
Secondary: In Compliance  
Operational: In Compliance

#### 4.7.185 Assessing Compliance with Paragraph 199: IA Initial Training

Paragraph 199 stipulates:

**“All APD personnel conducting misconduct investigations, whether assigned to the Internal Affairs Bureau, an Area Command, or elsewhere, shall receive at least 24 hours of initial training in conducting misconduct investigations within one year of the Operational Date, and shall receive at least eight hours of training each year. The training shall include instruction on APD’s policies and protocols on taking compelled statements and conducting parallel administrative and criminal investigations.”**

#### Methodology

The monitoring team had several meetings during the site visit with the IAB Commander and his staff. The team also conducted a thorough review of training records, including syllabi, video recordings of training (if available) exams (if available) related to specified training and attendance rosters were also conducted in order to complete the review and approval process of the training required in this paragraph. We found all assigned personnel to have had the required training, both preliminary 24 hour and the 8-hour in-service.

#### Results

Primary: In Compliance  
Secondary: In Compliance  
Operational: In Compliance

#### 4.7.186 Assessing Compliance with Paragraph 200: CPOA Training

Paragraph 200 stipulates:

**“Investigators from the Civilian Police Oversight Agency shall receive at least 40 hours of initial training in conducting misconduct investigations within one year of the Effective Date, and shall receive at least eight hours of training each year. The training shall include instruction on APD’s policies and protocols on taking**

compelled statements and conducting parallel administrative and **criminal investigations.**”

### Methodology

Policy mandating compliance with this paragraph is contained in AO 3-22, and in 2-05, and Special Order 16-24. The monitor reviewed the initial training provided by CPOA’s legal counsel, and found it to be well organized and delivered. It addresses all salient points of the CASA and of internal complaint investigations; however, there were no performance testing measures included in the training. We are thus unable to assess the overall effectiveness of the training. We will work with CPOA to develop an *ad hoc* assessment mechanism to remedy this issue.

### Results

Primary:	In Compliance
Secondary:	In Compliance
Operational:	Pending Resolution of Testing Issue

### 4.7.187 Assessing Compliance with Paragraph 201: Fact Based Discipline

Paragraph 201 stipulates:

**“APD shall ensure that discipline for sustained allegations of misconduct is consistently applied, fair, and based on the nature of the allegation, and that mitigating and aggravating factors are set out and applied consistently.”**

### Methodology

The monitoring team reviewed 21 current cases (nine from APD and 12 for CPOA) for compliance with this requirement.

### Results

We found APD to be out of compliance on two of their nine cases relative to consistent and fair discipline. Relative to consistent application of mitigating and aggravating factors, APD was out of compliance on two of their nine cases, and CPOA was similarly out of compliance on one of their 12 cases. See Table 4.7.201, below.

Table 4.7.201 Fact Based Discipline

Case No.	Discipline is consistent, fair, & based on allegation	Mitigating & Aggravating factors applied	# Compliant	% in Compliance by Case
IMR-5-065	0	0	0	0
IMR-5-032	1	1	2	100
IMR-5-033	1	1	2	100
IMR-5-034	1	1	2	100
IMR-5-035	1	NA	1	100
IMR-5-036	1	1	2	100
IMR-5-037	1	NA	1	100
IMR-5-038	1	1	2	100
IMR-5-039	0	0	0	0
IMR-5-052	1	NA	NA	100
IMR-5-042	1	1	2	100
IMR-5-043	1	NA	1	100
IMR-5-044	1	1	2	100
IMR-5-045	1	1	2	100
IMR-5-046	1	1	2	100
IMR-5-048	NA	NA	NA	NA
IMR-5-060	1	NA	1	100
IMR-5-049	NA	NA	NA	NA
IMR-5-050	1	0	1	50
IMR-5-051	1	1	2	100
IMR-5-064 <sup>140</sup>	1	1	1	1
<b>Number in Compliance</b>	17	11		
<b>% in Compliance Total by Category</b>	<b>89</b>	<b>79</b>		<b>84</b>

Primary: In Compliance  
Secondary: In Compliance  
Operational: Not In Compliance

***Recommendation 4.7.187a: APD and CPOA need to redouble their efforts related to ensuring fair and consistent discipline, based on the event and the officer's previous records.***

4.7.188 Assessing Compliance with Paragraph 202: Discipline Matrix

Paragraph 202 stipulates:

**“APD shall establish a disciplinary matrix that:**

<sup>140</sup> Allegations in IMR-5-064 were exonerated, thus no discipline was applied.

- a) establishes a presumptive range of discipline for each type of rule violation;
- b) increases the presumptive discipline based on an officer's** prior violations of the same or other rules;
- c) sets out defined mitigating or aggravating factors;
- d) requires that any departure from the presumptive range of discipline must be justified in writing;
- e) provides that APD shall not take only non-disciplinary corrective action in cases in which the disciplinary matrix calls for the imposition of discipline; and
- f) provides that APD shall consider whether non-disciplinary corrective action also is appropriate in a case where discipline **has been imposed."**

## Methodology

The monitoring team reviewed cases with imposed discipline occurring this reporting period to ensure that they comply with the requirements of the CASA. We also reviewed the disciplinary policy itself for compliance with this paragraph. APD has opined that the written record accompanying disciplinary records is included in and "briefed with" the findings; however, records as currently provided to not validate that assessment. We have discussed this issue previously with APD, and remain unconvinced that their verbal claims are reflected in the written records regarding discipline. It seems the only "cure" for this incongruity is written policy, requiring compliance with this paragraph.

## Results

Primary: Not in Compliance  
Secondary: Not in Compliance  
Operational: Not in Compliance

***Recommendation 4.7.188a:*** The disciplinary policy is moot on the requirement that departures from the "presumptive range of discipline" must be justified in writing. APD should append such a declaration to the matrix.

### 4.7.189 Assessing Compliance with Paragraph 203

Paragraph 203 stipulates:

"To maintain high-level, quality service; to ensure officer safety and accountability; and to promote constitutional, effective policing, the City shall ensure that APD has the staffing necessary to implement the terms of this Agreement. APD shall also deploy a sufficient number of first-line supervisors to respond to scenes of uses of force; investigate thoroughly each use of force to identify, correct, and prevent misconduct; and provide close and effective supervision necessary for officers to improve and develop

professionally. APD shall revise and implement policies for supervision that set out clear requirements for supervision and comport with best practices.

We view this paragraph as an over-arching introductory statement for the following provisions of the CASA. Thus, no specific evaluative modalities were used for this paragraph in the monitor's reports.

#### 4.7.190 Assessing Compliance with Paragraph 204

Paragraph 204 requires:

**“In order to successfully implement the provisions of this Agreement, APD shall assess the appropriate number of sworn and civilian personnel to perform the different Department functions necessary to fulfill its mission. APD therefore shall conduct a comprehensive staffing assessment and resource study. The study shall be the predicate for determining appropriate staffing and resource levels that are consistent with community-oriented policing principles and support the systematic use of partnerships and problem-solving techniques. The study shall also consider the distribution of officers to patrol functions as opposed to specialized units, as well as the distribution of officers with less than three years of experience across shifts and Area Commands. This staffing assessment and resource study shall be completed within one year of the Effective Date. Within six months of the completion of the staffing assessment and resource study, the Parties shall assess its results and jointly develop a staffing plan to ensure that APD can meet its obligations under this Agreement.”**

#### Methodology

APD has contracted with a staffing specialist, Dr. Alexander Weiss, who has designed, executed and published a staffing study for APD's "operations" units, e.g., patrol, etc. The monitoring team and DOJ have reviewed that document, and have found it sound within the parameters assigned to Dr. Weiss. APD has "operationalized" the Weiss work in the form of plans of action for each significant component. The monitor and DOJ have reviewed that plan, and have not suggested or required any changes to APD's plan, as written. APD has made substantial progress with the key element of this study, recruiting sufficient officers to meet the plan's requirements. As of this report, it appears that recruiting effort has been successful: APD currently has a sufficient number of trained and operating field sergeants to reduce its officer-supervisor ratio to no more than 8:1.

#### Results

Primary: In Compliance  
Secondary: In Compliance  
Operational: In Compliance

## 4.7.191 Assessing Compliance with Paragraph 205

Paragraph 205 stipulates:

**“First-line supervisors shall investigate officers’ use of force as described in Section IV of this Agreement, ensure that officers are working actively to engage the community and increase public trust and safety, review each arrest report, and perform all other duties as assigned and as described in departmental policy.”**

## Methodology

Members of the monitoring team conducted a detailed field-based data assessment of eight randomly selected use-of-force incidents to determine if first-line supervisors were meeting the obligations of this paragraph. Each report was analyzed against the specific requirements for field supervisors (identified in the CASA) responding to incidents of use of force. As of our last review, there are no formalized and routinized processes for supervisory monthly reports. Results of this analysis are also reported in Table 4.7.1, paragraph 4.7.1, above, as well as in Table 4.7.191, below.

Table 4.7.191

Case Number	UOF event was investigated (as set forth policy)	The UOF investigation comports with applicable law and best practices	The force was determined to be legally justified and comply with APD policy	# In Compliance	% In Compliance	In Compliance
IMR-5-001	1	1	1	3	100	Y
IMR-5-002	0	0	1	1	33	N
IMR-5-003	0	0	0	0	0	N
IMR-5-004	0	0	1	1	33	N
IMR-5-005	0	0	1	1	33	N
IMR-5-006	0	0	1	1	33	N
IMR-5-007	0	0	0	0	0	N
IMR-5-008	0	0	0	0	0	N
IMR-5-009	0	0	1	1	33	N
IMR-5-013	0	0	0	0	0	N
IMR-5-015	0	0	1	1	33	N
IMR-5-030	0	0	1	1	33	N
IMR-5-031	0	1	1	2	66	N
IMR-5-010	0	0	0	0	0	N
IMR-5-012	0	0	1	1	33	N
IMR-5-011	1	1	1	3	100	Y
					% in Compliance	13

## Results

APD asserts in its comments to this report that “there is no training component” to this Paragraph’s requirements, which may explain the dismal performance rate of 13 percent compliance. It is inconceivable to the monitoring team that APD feels it is not necessary to train supervisory personnel in the appropriate investigation of uses of force by its officers.



Primary: In Compliance  
Secondary: Not In Compliance  
Operational: Not In Compliance

***Recommendation 4.7.191: APD and CPOA should investigate police officers' uses of force as required by policy, and those investigations should comport with best practices and applicable federal and state regulations.***

#### 4.7.192 Assessing Compliance with Paragraph 206

Paragraph 206 stipulates:

**“All field officers shall be assigned to a primary, clearly identified first-line supervisor and shall also report to any other first-line supervisor within the chain of command. First-line supervisors shall be responsible for closely and consistently supervising all officers under their primary command. Supervisors shall also be responsible for supervising all officers under their chain of command on any shift to which they are assigned to ensure accountability across the Department.”**

#### Methodology

Members of the monitoring team assessed course of business data related to this paragraph, reviewing Commander's monthly reports and also reviewing eight randomly selected incident reports.

#### Results

The monitoring team visited six area commands during the fourth site visit and met with the Commanders or designees for each command to review SOP 3-9 (Supervisory Leadership) and ensure that the requirements of this paragraph were being met. The monitoring team requested the daily roster from each command to review and ensure that a first-line supervisor was assigned to the field officers on patrol. Daily rosters reviewed by the monitoring team reflected that a supervisor was assigned to each unit that was working and when the span of control for a supervisor exceeded eight (8) an additional supervisor was assigned to that shift. With the completion of the latest sergeant's training and selection process, a new cadre of sergeants has been assigned to the more critical areas needing expanded supervisory presence, and has moved APD into secondary compliance for this paragraph.

In-field performance for Paragraph 206 is remarkably sub-standard, with individual assessments of sergeants' performance in meeting the requirements of the paragraph averaging only 52 percent (See Table 4.7.192, below). In the monitor's experience, there are two probable causes for this substandard

performance on this highly critical task: 1. Poor training that failed to adequately demonstrate, teach, train, and evaluate learning on one of the most high-risk, critical tasks in American law enforcement; 2. A failure of command level personnel to ensure that the supervisory cadre of the APD conform to policy and training in their interactions with their field officers. It is conceivable, based on our observations, that both factors may come into play relative to this paragraph.

Results for this Paragraph are reported in Table 4.7.192, which is included below.

Table 4.7.192

	IMR-5-001	IMR-5-002	IMR-5-003	IMR-5-004	IMR-5-005	IMR-5-006	IMR-5-012	IMR-5-011
A. Reports to Scene	1	1	1	1	1	1	1	1
B.1. Advises Subject(s) of Rights	1	1	0	1	0	1	1	0
B.2. Assess for Injuries	1	1	0	1	0	1	1	0
B.3. Secures medical Attention	1	1	0	1	0	1	1	0
C. Identify & Collect e/d re UoF	0	0	1	1	0	0	0	1
D. Collect Relevant e/d re UoF	0	0	0	1	0	0	0	1
E.1. Canvass for & Interview Witnesses	0	0	0	0	1	0	0	1
E.2. Signed & Written Statement from Witnesses	0	0	0	0	1	0	0	1
F. Witness Officers Provide a UoF Narrative	1	1	1	1	1	1	1	1
G. Separate Witness Officers	0	0	0	0	0	0	0	0
H. Ensure UOF Reports ID all Witness & Involved & present officers	1	1	1	1	1	1	1	1
I. Conduct Rigorous Investigations	0	0	0	0	0	0	0	1
I.1 Avoid Leading Questions	0	0	0	1	0	0	0	0
J. Record all Interviews using OBRD	0	0	1	0	0	0	0	0
K. Ensure all UOF Narratives Compliant with Policy	0	0	0	1	1	0	1	0
L. Consider All Relevant Evidence	0	0	0	1	1	0	1	1
L.1. Make Credibility Assessments	0	1	0	1	1	0	1	1
M. Resolve Material Inconsistencies	NA	NA	NA	NA	NA	NA	NA	NA
N. Obtain a Unique Tracking Number	1	1	1	1	1	1	1	1
O. If Misconduct re UoF, Notify Area Commander	NA	NA	NA	NA	NA	NA	NA	NA
P. Review each Arrest Report	1	1	1	1	1	1	1	1
Q. Engage the Community	NA	NA	NA	NA	NA	NA	NA	NA
R. Other Duties as Assigned	NA	NA	NA	NA	NA	NA	NA	NA
<b>N=</b>	<b>8</b>	<b>9</b>	<b>7</b>	<b>14</b>	<b>10</b>	<b>8</b>	<b>11</b>	<b>12</b>
<b>Percent in Compliance</b>	<b>42%</b>	<b>47%</b>	<b>37%</b>	<b>74%</b>	<b>53%</b>	<b>42%</b>	<b>58%</b>	<b>63%</b>

Primary: In Compliance  
Secondary: In Compliance  
Operational: Not In Compliance

***Recommendation 4.7.192a: APD should develop a comprehensive analysis of the Sergeant's training provided and ensure that each of these elements noted in Table 4.7.192 above were fully and comprehensively covered in the Sergeant's training, that testing corroborated learning on each issue in the curriculum, and that identifies and recommends solutions for any issues noted in this review.***

***Recommendation 4.7.192b: APD should compare the supervisory training provided recently to APD supervisory personnel with the training similarly provided in Seattle, Washington and New Orleans, Louisiana to determine if there are any substantive differences in the training documentation and/or the training presentation, testing, or other processes that may explain this remarkably unusual failure rate.***

***Recommendation 4.7.192c: APD should develop an expeditious remediation plan if the training assessed in a and b above is found to be problematic, and submit the plan to the Chief of Police;***

***Recommendation 4.7.192d: The remediation plan noted in Recommendation 4.7.192c should take the form of a Completed Staff Work document, exhibiting a thoughtful and meaningful attempt to identify issues related to the failure, recommend resolutions for those issues, and articulate an implementation and evaluation schedule for the remediation plan.***

***Recommendation 4.7.192e: The Chief of Police should develop an action plan based on information developed in a-d above, specifically outlining steps the APD will take to resolve this critical training deficiency, establishing clear and measurable goals, objectives, and processes.***

***Recommendation 4.7.192f: Once the steps outlined in "e" above have been implemented, APD should evaluate the impact of the changes in training for supervisors relating to oversight of use of force and the individual elements of Paragraph 206.***

***Recommendation 4.5.192g: APD should "feedback" the findings of the 192f phase to the Training Academy, and require appropriate action regarding modifications to training based on this final feedback loop.***

4.7.193 Assessing Compliance with Paragraph 207

Paragraph 207 stipulates:

**“First-line supervisors shall ordinarily be assigned as a primary supervisor to no more than eight officers. Task complexity will also play a significant role in determining the span of control and whether an increase in the level of supervision is necessary.”**

## Methodology

Members of the monitoring team reviewed course-of-business staffing reports from APD, consisting of assessments of staffing levels at each Area Command. Data indicated that the staffing issues that have confronted APD over the past two years have been significantly improved.

## Results

Table 4.7.193

	<b>A. First-line supervisors shall ordinarily be assigned as a primary supervisor to no more than eight officers</b>	<b>B. Task complexity will also play a significant role in determining the span of control and whether an increase in the level of supervision is necessary</b>	<b># in-Compliance</b>	<b>% in Compliance</b>	<b>Compliant</b>
Report 1: August 2016	1	1	2	100.0%	Y
Report 2: September 2016	1	1	2	100.0%	Y
Report 3: October 2016	1	1	2	100.0%	Y
Report 4: November 2016	1	1	2	100.0%	Y
Report 5: December 2016	1	1	2	100.0%	Y
Report 6: January 2016	1	1	2	100.0%	Y
<b>Number in Compliance Total all Incidents</b>	<b>6</b>	<b>6</b>	<b>12</b>		
<b>% in Compliance Total by Category</b>	<b>100%</b>	<b>100%</b>		<b>100%</b>	

Primary: In Compliance  
 Secondary: In Compliance  
 Operational: In Compliance

### 4.7.194 Assessing Compliance with Paragraph 208

Paragraph 208 stipulates:

**“APD Commanders and lieutenants shall be responsible for close and effective supervision of officers under their command. APD Commanders and lieutenants shall ensure that all officers under their direct command comply with APD policy, federal, state and municipal law, and the requirements of this Agreement.”**

### Methodology

Members of the monitoring team reviewed course-of-business documents from APD consisting of 72 “additional concerns” memoranda from lieutenants assigned to area commands. These reports provided the monitoring team additional details that were not available from the commanders’ reports. Despite mention of this deficiency within commanders’ reports, which was noted in IMR-4, we did note *two* commanders’ reports that appropriately addressed supervisory issues. It appears at this point that APD is viewing the language regarding “effective supervision” to be one that can be delegated to lieutenants. We note the CASA requires “Commanders *and* lieutenants” to be “responsible for close and effective supervision” of officers, not commanders *or* lieutenants.

### Results

Results for compliance evaluations for this paragraph are reported in Table 4.7.194 below.

Table 4.7.194

Case No.	A. APD Commanders and lieutenants shall be responsible for close and effective supervision of officers under their command	B. APD Commanders and lieutenants shall ensure that all officers under their direct command comply with APD policy, federal, state and municipal law, and the requirements of this Agreement	# In Compliance	% in Compliance
Area Commands Report 1: August 2016	1	0	1	50%
Area Commands Report 2: September 2016	1	0	1	50%
Area Commands Report 3: October 2016	1	0	1	50%
Area Commands Report 4: November 2016	1	0	1	50%
Area Commands Report 5: December 2016	1	0	1	50%
Area Commands Report 6: January 2016	1	0	1	50%
<b>Number in Compliance Total all Incidents</b>	<b>6</b>	<b>0</b>	<b>6</b>	
<b>% in Compliance Total by Category</b>	<b>100%</b>	<b>0%</b>		<b>0%</b>

Primary: In Compliance  
Secondary: In Compliance  
Operational: Not In Compliance

***Recommendation 4.7.194a: Given APD's performance on use of force review depicted in Table 4.7.192 above, command-level review of use of force reporting, and associated performance during sergeant-level review should be the top priority for Area Commanders. Delegating this review almost entirely to lieutenants is not in compliance with the letter or the spirit of this paragraph. Commanders should be tasked with routinely pulling together monthly status reports on what's being done within their Area Commands to improve the quality of performance of supervisors in reviewing uses of force by their personnel and correcting out-of-policy behaviors.***

***Recommendation 4.7.194b: Area Commanders should require each sergeant under their command who supervise patrol officers on routine or specialized patrol to 1.) Identify lapses in policy related to use of force that they have noted during each quarter; 2.) identify a course of remedial action to ensure the policy lapses cease; and 3)***



*communicate that remedial action up the chain of command (to lieutenants and commanders) and down the chain of command (to the officers under their supervision, including the officer found out of compliance). Obviously, remedial action to the officers as a group should not be officer-specific, but fact-specific.*

*Recommendation 4.7.194c: If “downstream” review of incidents, e.g., CIRT, IRT, etc. find supervisory or policy issues, commanders should ensure that those reviews are relayed in routine and periodic interactions with the sergeants who have missed those issues in their reviews of the incidents.*

*Recommendation 4.7.194d: Area Commanders should track all interventions in response to a-c above, and if lieutenants or sergeant persist in missing critical opportunities for intervention, shall refer them to the training academy for remedial training.*

*Recommendation 4.7.194e: Area Commanders and lieutenants should remain constantly aware of opportunities for coaching and other forms of informal remedial applications regarding use of force. These should be reserved for instances where troubling “indicators” may be known to the Commanders or lieutenant that may not constitute a policy violation, but inform the intent and practice of officers in day-to-day interaction with citizens and suspects.*

*Recommendation 4.7.194f: The Chief of Police should develop ongoing feedback and “coaching” processes for Area Commanders and lieutenants relating to informal control mechanism relative to officers’ use of force, as well as the formal mechanisms outline in a-e, above.*

#### 4.7.195 Assessing Compliance with Paragraph 209

Paragraph 209 stipulates:

**“Sergeant training is critical to effective first-line supervision. Every sergeant shall receive 40 hours of mandatory supervisory, management, leadership, and command accountability training before assuming supervisory responsibilities.”**

#### Methodology

Members of the monitoring team reviewed completion certificates, test scores, class rosters, and the curriculum outline for the 40-hour supervisory training curriculum.

## Results

Results show that all sergeants assigned supervisory roles at APD received the required 40 of in-service training on the mandated topics. Unfortunately, it appears that training was not effective in remediating errant supervisory practices at APD, particularly related to use of force issues. A full treatment of training lapses is provided previously in this report.

Primary: In Compliance  
Secondary: Not In Compliance  
Operational: Not In Compliance

***Recommendation 4.7.195a: Prioritize the most frequent and most serious use of force “misses,” and develop a response plan, using the Completed Staff Work model, and present the results to the Chief of for review and comment.***

***Recommendation 4.7.195b: Continue these prioritized reviews at least quarterly until the error rate drops below five percent.***

### 4.7.196 Assessing Compliance with Paragraph 210

Paragraph 210 stipulates:

**“APD’s sergeant training program shall include the following topics:**

- a) techniques for effectively guiding and directing officers and promoting effective and ethical police practices;
- b) de-escalating conflict;
- c) evaluating written reports, including those that contain canned language;
- d) investigating officer uses of force;
- e) understanding supervisory tools such as the Early Intervention System and on-body recording systems;
- f) responding to and investigating allegations of officer misconduct;
- g) evaluating officer performance;
- h) consistent disciplinary sanction and non-punitive corrective action;
- i) monitoring use of force to ensure consistency with policies;
- j) building community partnerships and guiding officers on this requirement;
- k) legal updates.”**

## Methodology

Members of the monitoring team reviewed Academy training responsive to Paragraph 210 for compliance with the content of the training. Results are depicted in Table 4.7.195, below.

## Results

Table 4.7.195

		Included Y=1/N=0
Topic	40-Hour Sgt's Training	In Compliance?
A. APD's sergeant training program shall include techniques for effectively guiding and directing officers and promoting effective and ethical police practices	Y	1
B. APD's sergeant training program shall include de-escalating conflict	Y	1
C. APD's sergeant training program shall include evaluating written reports, including those that contain canned language	Y	1
D. APD's sergeant training program shall include investigating officer uses of force	Y	1
E. APD's sergeant training program shall include understanding supervisory tools such as the Early Intervention System and on-body recording systems	Y	1
F. APD's sergeant training program shall include responding to and investigating allegations of officer misconduct	Y	1
G. APD's sergeant training program shall include evaluating officer performance	Y	1
G. APD's sergeant training program shall include evaluating officer performance	Y	1
I. APD's sergeant training program shall include monitoring use of force to ensure consistency with policies	Y	1
K. APD's sergeant training program shall include legal updates	Y	1
	% Compliant	100%

Primary: In Compliance  
 Secondary: In Compliance  
 Operational: In Compliance

## 4.7.197 Assessing Compliance with Paragraph 211

Paragraph 211 stipulates:

**“All sworn supervisors shall also receive a minimum of 32 hours of in-service management training, which may include updates and**

lessons learned related to the topics covered in the sergeant **training and other areas covered by this Agreement.”**

## Methodology

Members of the monitoring team reviewed the Special Order mandating this training, which is expected to be delivered during the IMR-6 reporting period.

## Results

Once the training plan is developed and articulated the monitoring is willing to confirm whether or not the lesson plan is congruent with the requirements of the CASA, assuming the training plan is congruent with the guidance the monitoring team frequently has given to APD and the academy regarding the format and content of “lesson plans.” Upon delivery, we will observe and opine where it meets the requirements of the CASA.

Primary: In Compliance  
Secondary: Not in Compliance  
Operational: Not in Compliance

***Recommendation 4.7.197a: Ensure the training plan is documented according to the standards the monitor has consistently provided to the APD.***

***Recommendation 4.7.197b: Ensure that all training-related elements of the CASA identified in this (and related) paragraphs.***

### 4.7.198 Assessing Compliance with Paragraph 212

Paragraph 212 stipulates:

**“Within nine months of the Effective Date, APD shall revise and update its Early Intervention System to enhance its effectiveness as a management tool that promotes supervisory awareness and proactive identification of both potentially problematic as well as commendable behavior among officers. APD supervisors shall be trained to proficiency in the interpretation of Early Intervention System data and the range of non-punitive corrective action to modify behavior and improve performance; manage risk and liability; and address underlying stressors to promote officer well-being.”**

## Methodology

Members of the monitoring team have reviewed multiple drafts of the proposed six-month update and revisions to the Department's Early Intervention and Recording System (EIRS). To date, the monitor has not been presented with a policy that he can approve, as all submitted policy versions have, in one way or another, failed in meaningful ways to conform to either the CASA or established practice regarding EIRS systems in policing, such as those currently in place in Seattle, Washington or New Orleans, Louisiana. We continue to work with the City to craft acceptable policies that conform to national standards for this element. Our first issue with the proposed policy was that it reduced OBRD video review from two per officer per month, to two per squad per month, a reduction of roughly 89 percent in the depth of supervisory review. While APD relented on that issue, the resulting policy re-write specifies only a "7-10 minute" portion of each of the 16 videos that need to be reviewed monthly by each sergeant. Given the human propensity to "take the easy road," we can easily see many sergeants reviewing only the first 7-10 minutes of each tape, often long before any activity of interest takes place.

The monitoring team is cognizant of the time involved, but we remind APD that the New Jersey State Police did not come into compliance with the motor vehicle recording (MVR) requirement of that decree process until they formed a specialized and highly trained and supervised MVR Review Unit. Further, APD remains in compliance on the policy aspects of this task, as the current policy was approved by the monitoring team.

As we have noted in previous reports, APD has on at least one occasion, "shut down" the EIRS system because it generated "too many alerts." The current policy regarding EIRS was approved by the monitoring team in 2016. The six-month revision of that policy is "pending" and past due. The monitor has serious concerns about the current proposed policy and cannot approve it until it has been significantly revised, as per the monitor's comments to the Parties.

## Results

Primary: In Compliance<sup>141</sup>  
 Secondary: Not in Compliance  
 Operational: Not in Compliance

***Recommendation 4.7.198a: APD should consider monitor feedback and not respond to that feedback positively while otherwise***

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<sup>141</sup> The monitor is seriously concerned about the current backlog of pending high-impact policies such as OBRD, use of force, and EIRS, that have been delayed by City step-backs on other compliance areas while considering and approving of other concerns within the policy identified by the monitor.

***stepping backward in other sections of the policy, such as the “seven minute review” policy noted above.***

***Recommendation 4.7.198b: APD should contact NJSP, New Orleans PD, and Seattle PD to glean ideas about how this review regimen could be structured to meet the requirements of the CASA in the most efficient manner possible.***

#### 4.7.199 Assessing Compliance with Paragraph 213

Paragraph 213 stipulates:

**“APD shall review and adjust, where appropriate, the threshold levels for each Early Identification System indicator to allow for peer-group comparisons between officers with similar assignments and duties.”**

#### Methodology

During the fourth site visit, the monitor discovered that APD had removed all “thresholds” governing EIRS, in direct violation of paragraph 219, which stipulates:

**“The Parties shall jointly review all proposals that limit the functions of the Early Intervention System that are required by this Agreement before such proposals are implemented to ensure they continue to comply with the intent of this Agreement.”**

The City failed to notify the monitor or the Parties of this change, thus violating the requirements of this paragraph, and losing primary compliance. To date, the monitor has not been able to agree with the City on proposed six-month revisions to the proposed EIRS policy. The critical sticking point is “trigger points” that will require APD to make full reviews of officer performance *viz a viz* established thresholds of critical events. Lack of an approved revised policy implicates primary compliance; however, the monitor will consider the currently approved policy as “in effect” until APD has had a reasonable amount of time to revise it. We remind APD that anticipated changes outlined in new policy must be “trained” to ensure performance in the field.

#### Results:

Primary: In Compliance (based on old policy)  
Secondary: Not In Compliance  
Operational: Not in Compliance

***Recommendation 4.7.199a: APD should avoid making unilateral decisions revisions to policies required by the CASA without***

***notifying the Parties and the monitor of the need, import, and specifics of the “new” policy.***

4.7.200 Assessing Compliance Paragraph 214

Paragraph 214 stipulates:

**“APD shall implement rolling thresholds so that an officer who has received an intervention of use of force should not be permitted to engage in additional uses of force before again triggering a review.”**

Methodology

During the fourth site visit, the monitoring team discovered that APD had removed all threshold “triggers” from the EIRS system, which is a direct violation of paragraph 219. Paragraph 219 requires a joint review by the Parties and the monitor prior to limiting the functions of the EIRS. Training, for obvious reasons, should not commence until policies are approved. Current thresholds are established at rolling intervals. We will continue to monitor the status of this critical issue in future reports.

Results

As reported in prior reports, the system implementation had appeared to be proceeding at a reasonable rate, given the complexity of the proposed system. During the fourth site visit, the IMT discovered that APD had removed all thresholds from the system, thereby eliminating any triggers/notifications. In addition, APD is now in the process of re-writing the EIRS policy and thresholds, and in current form (as of the close of the fifth reporting period) it is, in the opinion of the IMT ineffective and unsatisfactory.

APD has not developed or presented to the IMT, the process to comply with sections (g) relating to prosecutors notifying APD of a failure to record with OBRD and section (k) relating to capturing demographic data for search and seizure incidents. We will bring discuss these issues with APD and ensure that they are added as system requirements.

A review of a 20% sample of cases referred to IA due to “failure to record” suggests that additional supervisory training is needed. Many supervisors stated that “we reviewed” the policy or “we talked about” the SOP. What is required are declarative, finite statements such as “we reviewed the policy, particularly with provision to sections covering the duty to record. I asked Officer X to describe to me his understanding of what the policy required and he presented an accurate synopsis. Officer X was advised to review the policy *in toto* and pose any questions or issues he might have to Sergeant Y for clarification.” One supervisor did



consider the session as "verbal counseling" and one described it as "re-training." In the best example, a lieutenant describes that he conducted an additional review of four other recordings by the officer to determine that there was no pattern in failing to record. Secondary compliance is not attained, as the required six-month policy revisions have included verbiage that the monitor will not approve, such as unusually high trigger thresholds, and definitions of what constitutes a "review" by supervisors. Without approved policy, training is not possible. In response to queries from the monitoring team for reports to the commanders re EIRS "triggers," the monitoring team received a collection of charts with no narrative or "findings" suitable to be compliance evidence for this paragraph. A request for commanders' responses to EIRS triggers yielded no response from APD. We find it remarkably troubling that such a critical system simply appears to the monitoring team to be "off-line."

Primary: In Compliance  
 Secondary: Not in Compliance  
 Operational: Not in Compliance

#### 4.7.201 Assessing Compliance Paragraph 215

Paragraph 215 stipulates:

**"The Early Intervention System shall be a component of an** integrated employee management system and shall include a computerized relational database, which shall be used to collect, maintain, integrate, and retrieve data department-wide and for each officer regarding, at a minimum:

- a) uses of force;
- b) injuries and deaths to persons in custody;
- c) failures to record incidents with on-body recording systems that are required to be recorded under APD policy, whether or not **corrective action was taken, and cited violations of the APD's on-body recording policy;**
- d) all civilian or administrative complaints and their dispositions;
- e) all judicial proceedings where an officer is the subject of a protective or restraining order;
- f) all vehicle pursuits and traffic collisions involving APD equipment;
- g) all instances in which APD is informed by a prosecuting authority that a declination to prosecute any crime occurred, in whole or in part, because the officer failed to activate his or her on-body recording system;
- h) all disciplinary action taken against employees;
- i) all non-punitive corrective action required of employees;
- j) all awards and commendations received by employees, including those received from civilians, as well as special acts performed by employees;
- k) demographic category for each civilian involved in a use of force or search and seizure incident sufficient to assess bias;

l) all criminal proceedings initiated against an officer, as well as all civil or administrative claims filed with, and all civil lawsuits served upon, the City and/or its officers or agents, allegedly resulting from APD operations or the actions of APD personnel; and  
m) all offense reports **in which an officer is a suspect or offender.**"

## Methodology

Members of the monitoring team reviewed the OBRD policy for compliance to each of these 19 requirements and found two missing as of the latest review.

## Results

APD has not developed or presented to the monitor, the process to comply with sections (g) relating to prosecutors notifying APD of a failure to record with OBRD and section (k) relating to capturing demographic data for search and seizure incidents. The policy for OBRD is currently under review and revision by APD. These required elements should be included in the revised version. Training will need to be developed for the revised EIRS, as well as systems for operational review of performance in the field.

Primary: In Compliance  
Secondary: Not in Compliance  
Operational: Not in Compliance

***Recommendation 4.7.201a: Clarify sections g and k of the current policy to reflect the requirements of the CASA***

***Recommendation 4.7.201b: Ensure supervisors are cognizant of their responsibilities under Paragraph 215, and are trained to correctly perform those responsibilities.***

### 4.7.202 Assessing Compliance Paragraph 216

Paragraph 216 stipulates:

**"APD shall develop and implement a protocol for using the updated Early Intervention System and information obtained from it. The protocol for using the Early Intervention System shall address data storage, data retrieval, reporting, data analysis, pattern identification, supervisory use, supervisory/departmental intervention, documentation and audits, access to the system, and confidentiality of personally identifiable information. The protocol shall also require unit supervisors to periodically review Early Intervention System data for officers under their command."**

## Methodology

Compliance with this paragraph is assessed in conjunction with approved policy for EIRS systems. To date, APD is developing policy and protocols to conform to Paragraph 216. The monitor will review and comment on those elements as they are developed and provided to the monitoring team.

## Results

In response to queries from the monitoring team for reports to the commanders re EIRS “triggers,” the monitoring team received a collection of charts with no narrative or “findings” suitable to be compliance evidence for this paragraph. A request for commanders’ responses to EIRS triggers yielded no response from APD.

Primary: In Compliance  
Secondary: Not in Compliance  
Operational: Not in Compliance

***Recommendation 4.7.202a: Complete the development process to achieve an approved policy regarding EIRS implementation at the sergeant’s level.***

***Recommendation 4.7.202b: Develop an approved analysis and reporting system regarding EIRS triggers, and response protocols to those triggers.***

## 4.7.203 Assessing Compliance Paragraph 217

Paragraph 217 stipulates:

**“APD shall maintain all personally identifying information about an officer included in the Early Intervention System for at least five years following the officer’s separation from the agency except where prohibited by law. Information necessary for aggregate statistical analysis will be maintained indefinitely in the Early Intervention System. On an ongoing basis, APD will enter information into the Early Intervention System in a timely, accurate, and complete manner and shall maintain the data in a secure and confidential manner.”**

## Methodology

The monitoring team has reviewed the existing policies supporting the EIRS and plans for additional development find that, as written, they support the requirements of this paragraph.

## Results

APD is currently in compliance with the plans to support the five-year and “indefinite” requirement regarding records retention. The monitoring team will continue to assess progress with the requirements of this paragraph.

Primary: In Compliance  
Secondary: In Compliance  
Operational: Not In Compliance

***Recommendation 4.7.203a: Complete the planning process and submit a document outlining policy and procedures approvable by the monitor.***

### 4.7.204 Assessing Compliance Paragraph 218

Paragraph 218 stipulates:

**“APD shall provide in-service training to all employees, including officers, supervisors, and commanders, regarding the updated Early Intervention System protocols within six months of the system improvements specified in Paragraphs 212-215 to ensure proper understanding and use of the system. APD supervisors shall be trained to use the Early Intervention System as designed and to help improve the performance of officers under their command. Commanders and supervisors shall be trained in evaluating and making appropriate comparisons in order to identify any significant individual or group patterns of behavior.”**

## Methodology

The monitoring team requested “supporting documentation” for all three levels of compliance on this paragraph. APD provided a memorandum advising that the EIRS SOP is in the “revision stage,” and APD had nothing to support activity related to Paragraph 218.

## Results

Primary: In Compliance  
Secondary: Not In Compliance  
Operational: Not In Compliance

***Recommendation 4.7.204a: Complete the planning process and submit a document outlining policy and procedures approvable by the monitor. Revise as necessary and implement.***

### 4.7.205 Assessing Compliance Paragraph 219

Paragraph 219 stipulates:

**“Following the initial implementation of the updated Early Intervention System, and as experience and the availability of new technology may warrant, the City may add, subtract, or modify thresholds, data tables and fields; modify the list of documents scanned or electronically attached; and add, subtract, or modify standardized reports and queries as appropriate. The Parties shall jointly review all proposals that limit the functions of the Early Intervention System that are required by this Agreement before such proposals are implemented to ensure they continue to comply with the intent of this Agreement.”**

### Methodology

During the fourth site visit, the monitoring team uncovered the fact that APD had intentionally removed all thresholds from active EIRS functions, without notice to the Parties or the monitor. Currently, the EIRS remains “off-line” when it comes to triggers of proscribed behaviors. Established protocols by Paragraph 219 require “...The Parties shall jointly review all proposals that limit the functions of the Early Intervention System that are required by this Agreement before such proposals are implemented to ensure they continue to comply with the intent of this Agreement.” Unilaterally shutting down such a critical system is a direct and serious violation of the CASA.

### Results

APD is proposing new policy for EIRS, but as yet that policy has not been approved, and EIRS alerts continue to be disabled, as of our last site visit.

Primary: In Compliance  
Secondary: Not In Compliance  
Operational: Not In Compliance

***Recommendation 4.7.206a: Complete development of the revisions to APD’s EIRS policy that are approvable by the Parties and the monitor.***

***Recommendation 4.7.203b: Train the new policies as approved***

***Recommendation 4.7.203c: Develop and implement a meaningful “inspections and audit” protocol and procedure to ensure internal field-assessment of operations in the field (i.e., sergeants, lieutenants and Area Commanders) relating to this policy.***

4.7.206 Assessing Compliance Paragraph 220

Paragraph 220 stipulates:

“**To maintain high-level, quality service; to ensure officer safety and accountability; and to promote constitutional, effective policing,** APD is committed to the consistent and effective use of on-body recording systems. Within six months of the Effective Date, APD agrees to revise and update its policies and procedures regarding on-body recording systems to require:

- a) specific and clear guidance when on-body recording systems are used, including who will be assigned to wear the cameras and where on the body the cameras are authorized to be placed;
- b) officers to ensure that their on-body recording systems are working properly during police action;
- c) officers to notify their supervisors when they learn that their on-body recording systems are not functioning;
- d) officers are required to inform arrestees when they are recording, unless doing so would be unsafe, impractical, or impossible;
- e) activation of on-body recording systems before all encounters with individuals who are the subject of a stop based on reasonable suspicion or probable cause, arrest, or vehicle search, as well as police action involving subjects known to have mental illness;
- f) supervisors to review recordings of all officers listed in any misconduct complaints made directly to the supervisor or APD report regarding any incident involving injuries to an officer, uses of force, or foot pursuits;
- g) supervisors to review recordings regularly and to incorporate the knowledge gained from this review into their ongoing evaluation and supervision of officers; and
- h) APD to retain and preserve non-evidentiary recordings for at least 60 days and consistent with state disclosure laws, and evidentiary recordings for at least one year, or, if a case remains in investigation or litigation, until the case is **resolved.**”

## Methodology

Revised policy for OBRD is among several “high-risk, critical tasks” still being revised by APD. As with many critical policies, of late, the Parties and the monitor are experiencing substantial difficulties coming to agreement on the changes APD is proposing for its six-month (required) review and revision of policies. The monitor will continue to insist that revised policy not be a roadblock to effective oversight and assessment of APD’s compliance systems. Current policies will be enforced while the Parties and the monitor work on establishment of agreed upon policy requirements.

## Results

Primary: In Compliance  
Secondary: Not In Compliance  
Operational: Not In Compliance

***Recommendation 4.7.207a: Complete policy development and approval processes as agreed to by the Parties and approvable by the monitor.***

### 4.7.207 Assessing Compliance with Paragraph 221

Paragraph 221 stipulates:

**“APD shall submit all new or revised on-body recording system policies and procedures to the Monitor and DOJ for review, comment, and approval prior to publication and implementation. Upon approval by the Monitor and DOJ, policies shall be implemented within two months.”**

### Methodology

During the process of reviewing OPA meeting minutes, the monitoring team learned of an APD Special Order 16-75. SO-16-75 unilaterally (without notice to or approval by the monitor and the Parties) changed the required review rate for sergeants from two per month per officer, to two per squad per month. The reader should note that the monitoring team discovered this out-of channels process via review of APD’s routine course of business documents, i.e., meeting minutes for the “APD Office of Policy Analysis Meeting Minutes Agenda for 16-06 OBRD, dated 11 OCT 16,” which clearly stated: “Updated the policy to match Special Order 16-75 that supervisors are to review two recordings per month from their assigned squad.” When the monitoring team asked for a copy of the “Special Order,” we were told “it doesn’t exist,” and that we “must be mistaken.” The monitoring team forwarded a copy of the meeting minutes date and memo number. We have never heard back from the City on this so-called “mistake,” **or on our request for a copy of SO 16-75.** Thus, it is clear that APD had promulgated a Special Order in direct contradistinction to the CASA policy as approved by the monitor and the Parties.

This seemingly minor revision, again without notice to the Parties or the monitor, reduced the required review rate for an average squad of officers from 16 per month to **two** per month. This action by APD stands in direct refusal to comply with this paragraph’s “notice and review” clause. The monitoring team views such hugger-mugger changes as deliberate and in direct contradistinction to the requirements of the CASA. These were actions deliberately non-compliant with the CASA and were taken by the City completely without notice to the monitor or the Parties.



## Results

Primary: Not in Compliance  
Secondary: Not in Compliance  
Operational: Not in Compliance

***Recommendation 4.7.207a: APD should cease, effective immediately, making policy changes related to requirements of the CASA via Special Order, or any similar mechanism, without notifying the Parties and the monitor.***

***Recommendation 4.7.207b: APD should conduct an exhaustive, comprehensive, and thorough review of all “Special Orders” to ensure they find and correct any other “Special Orders” that contradict or undermine the CASA.***

***Recommendation 4.7.207c: APD should rescind effective immediately any and all “Special Orders” or other policy mechanisms that contradict the CASA and/or monitor- and Party-approved policy.***

***Recommendation 4.7.207d: APD should provide to the Parties and the monitor a written list of “Special Orders” they have rescinded based on recommendations contained in this paragraph.***

## 4.7.208 Assessing Compliance with Paragraph 222

Paragraph 222 stipulates:

**“The Parties recognize that training regarding on-body recording systems is necessary and critical. APD shall develop and provide training regarding on-body recording systems for all patrol officers, supervisors, and command staff. APD will develop a training curriculum, with input from the Monitor and DOJ that relies on national guidelines, standards, and best practices.”**

## Methodology

Members of the monitoring team reviewed PSU training related to this paragraph. The training included a “testing block” designed to verify learning.

## Results

APD’s use of Special Orders to over-ride policy that is reviewed and approved by the monitor and the Parties will lead the monitoring team to implement more rigid screening of operations in the field related to OBRD

use and supervision. We will re-visit operational compliance on this issue next reporting period.

Primary: In Compliance  
Secondary: Not In Compliance  
Operational: Not in Compliance

***Recommendation 4.7.208a: APD should cease, effective immediately, making policy changes related to requirements of the CASA via Special Order, or any similar mechanism, without notifying the Parties and the monitor.***

***Recommendation 4.7. 2082b: APD should conduct an exhaustive, comprehensive, and thorough review of all “Special Orders” to ensure they find and correct any other “Special Orders” that contradict or undermine the CASA.***

***Recommendation 4.7208c: APD should rescind effective immediately any and all “Special Orders” or other policy mechanisms that contradict the CASA and/or monitor- and Party-approved policy.***

#### 4.7.209 Assessing Compliance with Paragraph 223

Paragraph 223 stipulates:

**“APD agrees to develop and implement a schedule for testing on-body recording systems to confirm that they are in proper working order. Officers shall be responsible for ensuring that on-body recording systems assigned to them are functioning properly at the beginning and end of each shift according to the guidance of their system’s manufacturer and shall report immediately any improperly functioning equipment to a supervisor.”**

#### Methodology

The monitoring team reviewed several hundred Supervisor Monthly Inspection Reports and found only 2 reports of a test failure of OBRD during inspection. These, however, were noted for 2 Aviation Officers who were not issued OBRD's. Such seemingly innocent “confusions,” taken in light of the issues noted in Paragraph 223, above, cause serious concern among the monitoring team relative to the integrity of APD’s “testing” for OBRD systems. We will continue to monitor this paragraph accordingly.

#### Results

Primary: In Compliance  
Secondary: Not In Compliance  
Operational: Not in Compliance

***Recommendation 4.7.209a: APD should conduct an immediate, thorough and complete investigation to explain to the Parties and the monitor how officers who were not assigned or issued OBRDs wound up reporting “failures” in those unassigned units during routine “inspections” of OBRD performance.***

#### 4.7.210 Assessing Compliance with Paragraph 224

Paragraph 224 stipulates:

**“Supervisors shall be responsible for ensuring that officers under their command use on-body recording systems as required by APD policy. Supervisors shall report equipment problems and seek to have equipment repaired as needed. Supervisors shall refer for investigation any officer who intentionally fails to activate his or her on-body recording system before incidents required to be recorded by APD policy.”**

#### Methodology

The monitoring team has requested the data to document APD's compliance with these requirements for the past several reporting periods. The response to this period's data request was "being worked on by IA." Testing systems, reviewing recordings and referring out of policy performance for investigation is critical for the success of the OBRD program. It is unclear why Internal Affairs is working on policy and procedures to govern what should be a Patrol supervisory function. We will visit with APD on that issue as part of this report's "de-brief."

#### Results

Primary: Not In Compliance  
Secondary: Not In Compliance  
Operational: Not In Compliance

***Recommendation 4.7.210a: Complete a monitor- and Parties-approved policy outlining an effective inspections and audit function in the Area Commands' patrol operations processes of auditing supervisory processes designed to implement OBRD “use” requirements.***

***Recommendation 4.7.210b: Implement the policy and evaluate its effectiveness in identifying and remediating OBRD use that is outside policy.***

#### 4.7.211 Assessing Compliance with Paragraph 225

Paragraph 225 stipulates:

**“At least on a monthly basis, APD shall review on-body recording system videos to ensure that the equipment is operating properly and that officers are using the systems appropriately and in accordance with APD policy and to identify areas in which additional training or guidance is needed.”**

#### Methodology

As discussed in Paragraph 221, above, APD changed the OBRD policy approved by the Parties and the Monitor, in violation of the requirements of Paragraph 221. By “Special Order,” APD changed the requirement of supervisors to review 2 Body Cam videos per month, per officer to only 2 reviews per month per UNIT, by establishing a “special order” doing so. This was not submitted for approval by the Monitor or the Parties. Using such a flawed methodology and an extremely small sample number, APD is missing the opportunity to determine if the OBRD program is effective at documenting high-level, quality service; ensuring officer safety and accountability; and promoting constitutional, effective policing. During a 30-day period (October 5-November 5, 2016) only 25 videos were reviewed for the entire APD--less than 1 per day. In the monitor’s opinion, *this constitutes deliberate non-compliance.*

#### Results

Primary:	In Compliance (based on old policy)
Secondary:	Not In Compliance
Operational:	Not In Compliance

***Recommendation 4.7.211a: Until such time that a new OBRD policy is approved, and Special Order SO 16-75 is withdrawn, comply with the existing policy (see 4.7.209, above).***

***Recommendation 4.7.211b: Ensure that all internal changes to policies approved by the monitor and the Parties are noticed to the monitor and the Parties in writing and approved as per the requirements of the CASA.***

#### 4.7.212 Assessing Compliance with Paragraph 226

Paragraph 226 stipulates:

**“APD policies shall comply with all existing laws and regulations, including those governing evidence collection and retention, public disclosure of information, and consent.”**

## Methodology

As noted above, review by the monitor and the Parties of proposed policies includes an assessment of compliance with existing laws and regulations. Thus, all approved policies are deemed by the monitor and the Parties to comply with the requirements of Paragraph 226. Recent developments with internal changes to APD policy, without notice to the Parties or the monitor, bring compliance with this paragraph into question. This is one of the reasons we recommended that APD conduct a complete self-review of policies to ensure there are no other “outliers” among their policy promulgation systems, e.g., internal practice memoranda such as Special Orders in conflict with approved policy. If necessary, the monitoring team will conduct a review to clarify the issue of “rogue policy” within APD’s operational systems. We consider the APD to be in deliberate non-compliance based on the nature and impact of Special Order SO 16-75.

## Results

Primary:	In Compliance
Secondary:	Not in Compliance
Operational:	Not in Compliance

***Recommendation 4.7.212a: APD should conduct a complete self-review of policies to ensure there are no other “outliers” among their policy promulgation systems, e.g., internal practice memoranda in conflict with approved policy, etc.***

***Recommendation 4.7.212b: APD should notify the Parties and the monitor if they find any other similar issues related to other elements of the CASA.***

***Recommendation 4.7.212c: If such issues are found, immediate remedial policy or “Special Order” revisions or retractions should be implemented to correct the issue.***

***Recommendation 4.7.212d: APD should provide the Parties and the monitor with copies of their review findings and actions taken to resolve any additional issues noted.***

## 4.7.213 Assessing Compliance with Paragraph 227

Paragraph 227 stipulates:

**“APD shall ensure that on-body recording system videos are properly categorized and accessible. On-body recording system videos shall be classified according to the kind of incident or event captured in the footage.”**

## Methodology

The monitoring team reviewed 27 reports of improper classification of videos. In only 3 of these cases was the error listed as a Training Issue/Deficiency. Most supervisors indicated that the officer was "spoken to", "reminded" or "issue addressed". In only 1 case was the officer informed that this was considered a verbal warning. No comments included "coached" or "counseled" as an outcome.

## Results

Finding only 27 reports of improper classification among the thousands of OBRD recordings constitutes an extremely small error rate. Finding only one case among 27 that was responded to appropriately by supervisory personnel is more troubling, and constitutes an error rate of 96 percent, well outside of the articulated standard of five percent or less. Again, this finding implicates a potential for training, supervision or discipline issues regarding supervisory personnel review of OBRD video. This statistic is more than an artifact. It is clearly demonstrable of extreme and troubling issues within APD's supervisory cadre.

Primary: In Compliance  
Secondary: Not In Compliance  
Operational: Not In Compliance

***Recommendation 4.7.213a: Identify the training elements implicated in the findings on this Paragraph and assess whether they were delivered in a manner that was clear and correct enough to result in CASA-compliance in the field.***

***Recommendation 4.7.213b: If training deficiencies or problems are implicated in this review, design remedial training, counseling, or discipline if required to directly affect the observed in-field supervisory under performance.***

***Recommendation 4.7.213c: Once the remedial training, counseling, or discipline is implemented, close the loop by re-evaluating performance in the field. Repeat until under-performance is eliminated.***

4.7.214 Assessing Compliance with Paragraph 228

Paragraph 228 stipulates:

**“Officers who wear on-body recording systems shall be required to articulate on camera or in writing their reasoning if they fail to record an activity that is required by APD policy to be recorded. Intentional or otherwise unjustified failure to activate an on-body recording system when required by APD policy shall subject the officer to discipline.”**

Methodology

The monitoring team’s requests to APD for OBRD recordings of incidents responsive to this requirement were responded to by a note from APD declaring “Being worked on by IA.” No documentation of that process was provided to support the assertion.

Results

Primary: Not In Compliance  
Secondary: Not In Compliance  
Operational: Not In Compliance

***Recommendation 4.7.214a: Using the Completed Staff Work method, develop policy, training, and audit protocols responsive to this paragraph.***

***Recommendation 4.7.214b: Once developed, implement and re-evaluate to determine if the problem has been resolved.***

***Recommendation 4.7.214c: Repeat until compliance is attained.***

4.7.215 Assessing Compliance with Paragraph 229

Paragraph 229 stipulates:

**“APD shall ensure that on-body recording systems are only used in conjunction with official law enforcement duties. On-body recording systems shall not be used to record encounters with known undercover officers or confidential informants; when officers are engaged in personal activities; when officers are having conversations with other Department personnel that involve case strategy or tactics; and in any location where individuals have a reasonable expectation of privacy (e.g., restroom or locker room).”**

Methodology



Members of the monitoring team asked APD for policy, training, or related records supporting compliance on this task. None were provided in response to the monitor's request.

#### Results

Primary: Not In Compliance  
Secondary: Not In Compliance  
Operational: Not In Compliance

***Recommendation 4.7.215a: Using the Completed Staff Work method, develop policy, training, and audit protocols responsive to this paragraph.***

***Recommendation 4.7.215b: Once developed, implement and re-evaluate to determine if the problem has been resolved.***

***Recommendation 4.7.215c: Repeat until compliance is attained.***

#### 4.7.216 Assessing Compliance with Paragraph 230

Paragraph 230 stipulates:

**“APD shall ensure that all on-body recording system recordings are properly stored by the end of each officer's subsequent shift. All images and sounds recorded by on-body recording systems are the exclusive property of APD.”**

#### Methodology

Members of the monitoring team sampled a total of 25 known video recordings completed this reporting period, and assessed whether the videos had been uploaded, as required by this paragraph. We found two incidents of failure to upload. This constitutes an eight percent error rate, outside the acceptable five percent.

#### Results

Primary: In Compliance  
Secondary: In Compliance  
Operational: Not In Compliance

***Recommendation 4.7.216a: APD should implement its own “inspections and audit” process to ensure OBRD video are appropriately stored by the end-of-shift.***

**Recommendation 4.7.216b: Once developed, implement and re-evaluate to determine if the problem has been resolved.**

**Recommendation 4.7.216c: Repeat until compliance is attained.**

#### 4.7.217 Assessing Compliance with Paragraph 231

Paragraph 231 stipulates:

**“The Parties are committed to the effective use of on-body recording systems and to utilizing best practices. APD currently deploys several different platforms for on-body recording systems that have a range of technological capabilities and cost considerations. The City has engaged outside experts to conduct a study of its on-body recording system program. Given these issues, within one year of the Effective Date, APD shall consult with community stakeholders, officers, the police officer’s union, and community residents to gather input on APD’s on-body recording system policy and to revise the policy, as necessary, to ensure it complies with applicable law, this Agreement, and best practices.”**

#### Methodology

Members of the monitoring team conducted a course-of-business review of documents related to compliance-building activities relative to this paragraph. This review would have demonstrated their commitment to compliance with the requirements of this paragraph; however, also included in the COB documents we reviewed was Special Order 16-75, related to OBRDs, which, *by order*, eviscerated the agreed-upon (by the City, the Parties, and the monitor) policy requirements for this paragraph, effectively revising and weakening the approved policy without the approval and knowledge—at the time—of the DOJ, APOA, or the monitor. This is a direct, and we must assume, intentional violation of paragraph 231. Such a direct assault on the written and approved policy would negate any previous consultation with the monitoring team and/or community stakeholders.

#### Results

Primary: Not in Compliance  
Secondary: Not in Compliance  
Operational: Not in Compliance

**Recommendation 4.7.217a: Immediately rescind Special Order 16-75.**

**Recommendation 4.7.217b: Restore any policy, procedure, practice or custom revised, terminated, or implemented as a result of Special**

**Order 16-75 as they relate to OBRD policies, procedures, custom or practice.**

**Recommendation 4.7.217c: Retrain any personnel who were provided training responsive to of Special Order 16-75.**

**Recommendation 4.7.217d: Conduct an agency-wide review for any other “Special Orders” that may have contravened, limited, or otherwise reduced CASA requirements and identify them, in writing, to the monitor and the Parties, with an accompanying statement of how APD plans to “recover” from the damage done to the policy system, the CASA, and/or APD in-field performance.**

#### 4.7.218 Assessing Compliance with Paragraph 232

Paragraph 232 stipulates:

**“To maintain high-level, quality service; to ensure officer safety and accountability; and to promote constitutional, effective policing, APD shall develop a comprehensive recruitment and hiring program that successfully attracts and hires qualified individuals. APD shall develop a recruitment policy and program that provides clear guidance and objectives for recruiting police officers and that clearly allocates responsibilities for recruitment efforts.”**

#### Methodology

Members of the monitoring team reviewed APD responses related to this requirement in the form of policy, programs, and results.

#### Results

APD has been, and is currently attracting and hires qualified individuals.

Primary: In Compliance  
Secondary: In Compliance  
Operational: In Compliance

#### 4.7.219 Assessing Compliance with Paragraph 233

Paragraph 233 stipulates:

**“APD shall develop a strategic recruitment plan that includes clear goals, objectives, and action steps for attracting qualified applicants from a broad cross section of the community. The recruitment plan shall establish and clearly identify the goals of**

**APD’s recruitment efforts and the duties of officers and staff implementing the plan.”**

Methodology

Members of the monitoring team met with Training Academy personnel responsible for the development and implementation of a strategic recruitment plan.

Results

As we noted in IMR-4, “The APD Training Academy has provided the monitoring team with the “2016 Strategic Recruitment Plan” and continues to aggressively promote APD via web based applications with expanded emphasis on minority group sites. Additionally, APD has provided documentation of attendance at many diverse community group events including Military, Faith Based, Educational, and Sports Related. The “blind” online application process wherein an applicant can remain completely anonymous until they arrive for testing is a laudable process. The 2016 Strategic Recruitment Plan meets the requirements of Paragraph 233. The recruiting plan has been reasonably effective to date.

Primary: In Compliance  
Secondary: In Compliance  
Operational: In Compliance

4.7.220 Assessing Compliance with Paragraph 234

Paragraph 234 stipulates:

**“APD’s recruitment plan shall include specific strategies for attracting a diverse group of applicants who possess strategic thinking and problem-solving skills, emotional maturity, interpersonal skills, and the ability to collaborate with a diverse cross-section of the community.”**

Methodology

Members of the monitoring team reviewed APD performance on this topic as related to the requirements above.

Results

We noted in IMR-4 that “The University of New Mexico worked with the APD to develop a comprehensive recruiting plan. The monitoring team has received a copy of the resulting “2016 Strategic Recruitment Plan.” In addition to the initial APD test with related skills questions—the

background questionnaires for both a Candidates former employers and Personal References—contain questions related to the required skills/abilities in this paragraph.” A random audit of applicant files found each one to contain the relevant questionnaires with answers to the specific questions related to the requirements of this paragraph.

Primary: In Compliance  
Secondary: In Compliance  
Operational: In Compliance

#### 4.7.221 Assessing Compliance with Paragraph 235

Paragraph 235 stipulates:

**“APD’s recruitment plan will also consult with community stakeholders to receive recommended strategies to attract a diverse pool of applicants. APD shall create and maintain sustained relationships with community stakeholders to enhance recruitment efforts.”**

#### Methodology

Members of the monitoring team also assessed compliance with this paragraph through a review of recruiting documentation and results.

#### Results

The “2016 Strategic Recruitment Plan” lists a review of past strategies and enumerates goals/objectives and plans to attract a diverse pool of applicants for 2016. APD has expanded its web based advertising with more emphasis on minority group sites (National Black Officers website) in addition to the Military and the University communities. APD is continuing regular contact with board members of the Southern Christian Leadership Council. Feedback received from a recruiting summit was a determining factor in the reduction of the college credit requirements. APD has expanded its efforts with the High School “Career Enhancement Center” in an effort to recruit students into the Public Service Aide program, and furthered that efforts process to transition from PSA into Police Officer.” The APD has yet to document effective involvement of and consultation with “community stakeholders” on this issue.

Primary: In Compliance  
Secondary: In Compliance  
Operational: Not In Compliance

***Recommendation 4.7.221a: Analyze and document in writing “effective involvement of stakeholders” on this issue.***

***Recommendation 4.7.221b: If no “effective involvement of stakeholders” exists, articulate and implement a plan with goals, objectives, and timelines to implement the requirements of this paragraph.***

#### 4.7.222 Assessing Compliance with Paragraph 236

Paragraph 236 stipulates:

**“APD shall develop and implement an objective system for hiring and selecting recruits. The system shall establish minimum standards for recruiting and an objective process for selecting recruits that employs reliable and valid selection devices that comport with best practices and anti-discrimination laws.”**

#### Methodology

We found the APD “in compliance” for this task in IMR-4. We re-visited that issue for IMR-5 and found no negative changes in APD’s process. APD has developed a “blind” automated, on-line system that allows an applicant to remain completely anonymous until they arrive for testing. Recruiting and Hiring policies have been revised and approved. The monitoring team has requested, but has not yet received, the policies/procedures supporting the automated on-line process. We reiterate that request, again, here. The reader should note, however, that existing non-automated Recruiting and Hiring policies appear to meet the requirements of Paragraph 236.

#### Results

Primary: In Compliance  
Secondary: In Compliance  
Operational: In Compliance

#### 4.7.223 Assessing Compliance with Paragraph 237

Paragraph 237 stipulates:

**“APD shall continue to require all candidates for sworn personnel positions, including new recruits and lateral hires, to undergo a psychological, medical, and polygraph examination to determine their fitness for employment. APD shall maintain a drug testing program that provides for reliable and valid pre-service testing for new officers and random testing for existing officers. The program shall continue to be designed to detect the use of banned or illegal substances, including steroids.”**

## Methodology

Members of the monitoring team requested COB data related to this paragraph, and reviewed a random sample of six cadets.

## Results

The results of that review, included in Table 4.7.223, below, indicate 100 percent compliance for this task.

Table 4.7.223

Case No.	New recruits and lateral hires, to undergo a psychological examination to determine their fitness	New recruits and lateral hires, to undergo a medical examination to determine their fitness	New recruits and lateral hires, to undergo a polygraph examination to determine their fitness	Reliable and valid pre-service Drug testing for new officers and random testing for existing officers.	Detect the use of banned or illegal substances, including steroids.
Recruit 1	1	1	1	1	1
Recruit 2	1	1	1	1	1
Recruit 3	1	1	1	1	1
Recruit 4	1	1	1	1	1
Recruit 5	1	1	1	1	1
Recruit 6	1	1	1	1	1
Total	6	6	6	6	6
Number in Compliance Total all Incidents	6	6	6	6	6
% in Compliance Total by Category	100%	100%	100%	100%	100%

Primary: In Compliance  
 Secondary: In Compliance  
 Operational: In Compliance

### 4.7.224 Assessing Compliance with Paragraph 238

Paragraph 238 stipulates:

**“APD shall ensure that thorough, objective, and timely background investigations of candidates for sworn positions are conducted in accordance with best practices and federal anti-discrimination laws. APD’s suitability determination shall include assessing a candidate’s credit history, criminal history, employment history, use of controlled substances, and ability to work with diverse communities.”**



Methodology

Members of the monitoring team requested COB data related to this paragraph, and reviewed a random sample of six cadets.

Results

The results of that review, included in Table 4.7.224 below indicate 100 percent compliance for this task.

Table 4.7.224

Case No.	Assessing a candidate's credit history	Assessing a candidate's criminal history	Assessing a candidate's employment history	Assessing a candidate's use of controlled substances	Assessing a candidate's ability to work with diverse communities
Recruit 1	1	1	1	1	1
Recruit 2	1	1	1	1	1
Recruit 3	1	1	1	1	1
Recruit 4	1	1	1	1	1
Recruit 5	1	1	1	1	1
Recruit 6	1	1	1	1	1
Total	6	6	6	6	6
Number in Compliance Total all Incidents	6	6	6	6	6
% in Compliance Total by Category	100	100	100	100	100

Primary: In Compliance  
 Secondary: In Compliance  
 Operational: In Compliance

4.7.225 Assessing Compliance with Paragraph 239

Paragraph 239 stipulates:

**“APD shall complete thorough, objective, and timely pre-employment investigations of all lateral hires. APD’s pre-employment investigations shall include reviewing a lateral hire’s history of using lethal and less lethal force, determining whether the lateral hire has been named in a civil or criminal action; assessing the lateral hire’s use of force training records and complaint history, and requiring that all lateral hires are provided training and orientation in APD’s policies, procedures, and this Agreement.”**

Methodology

The monitoring team determined that there were two lateral hires during this reporting period. We assessed compliance with CASA requirements for both of those lateral hires.

## Results

APD met or exceeded all established requirements for the Paragraph, as depicted in the table below.

Table 4.7.225

Case No.	Lateral hiring pre-employment investigations shall include reviewing a lateral hire's history of using lethal and less lethal force	Lateral hiring pre-employment investigations shall include whether the lateral hire has been named in a civil or criminal action	Lateral hiring pre-employment investigations shall include hire's use of force training records	Lateral hiring pre-employment investigations shall include hire's complaint history	All lateral hires are provided training and orientation in APD's policies, procedures, and this Agreement.
Lateral 1	1	1	1	1	1
Lateral 2	1	1	1	1	1
Total	2	2	2	2	2
Number in Compliance Total all Incidents	2	2	2	2	2
% in Compliance Total by Category	100	100	100	100	100

Primary: In Compliance  
 Secondary: In Compliance  
 Operational: In Compliance

### 4.7.226 Assessing Compliance with Paragraph 240

Paragraph 240 stipulates:

**“APD shall annually report its recruiting activities and outcomes, including the number of applicants, interviewees, and selectees, and the extent to which APD has been able to recruit applicants with needed skills and a discussion of any challenges to recruiting high-quality applicants.”**

### Methodology

Members of the monitoring team received a copy of APD's annual training report and reviewed it for compliance with this Paragraph. We find APD in full compliance with this task.

## Results

Primary: In Compliance  
Secondary: In Compliance  
Operational: In Compliance

### 4.7.227 Assessing Compliance with Paragraph 241

Paragraph 241 stipulates:

**“APD shall develop** and implement fair and consistent promotion practices that comport with best practices and federal anti-discrimination laws. APD shall utilize multiple methods of evaluation for promotions to the ranks of Sergeant and Lieutenant. APD shall provide clear guidance on promotional criteria and prioritize effective, constitutional, and community-oriented policing as criteria for all promotions. These criteria should account for experience, protection of civil rights, discipline history, and previous performance evaluations.”

#### Methodology

APD promoted twenty-five officers to the rank of sergeant during the reporting period. We reviewed a random sample of 20 percent of those promotions (five officers) and found APD to be in full compliance with the requirements of this paragraph for all five promotions we reviewed.

## Results

Primary: In Compliance  
Secondary: In Compliance  
Operational: In Compliance

### 4.7.228 Assessing Compliance with Paragraph 242

Paragraph 242 stipulates:

**“APD shall develop objective** criteria to ensure that promotions are based on knowledge, skills, and abilities that are required to perform supervisory and management duties in core substantive areas.”

#### Methodology

During the IMR-4 reporting period, we assessed this paragraph and noted “During the current monitoring period (just after the fourth site visit), APD developed and approved a new Promotional Practices Policy (July

19, 2016). The monitoring team had provided APD with templates for acceptable needs assessment and training outline processes, which we would expect to be followed as this process continues.”

We note that the Promotional Practices Policy is still under review at this time, with a resolution draft being submitted to the monitor so that differences between the City and the APOA can be resolved. Accordingly, APD remains out of compliance with this task. The Promotional Practices Policy resolution was completed by the monitor during the first week in April 2017.

## Results

Primary: Not in Compliance  
Secondary: Not in Compliance  
Operational: Not in Compliance

***Recommendation 4.7.228a: Complete the promotional practices policy in a manner that is acceptable to the Parties and the monitor and promulgate, train and implement the policy.***

### 4.7.229 Assessing Compliance with Paragraph 243

Paragraph 243 stipulates:

**“Within six months of the Effective Date, APD shall develop and implement procedures that govern the removal of officers from consideration from promotion for pending or final disciplinary action related to misconduct that has resulted or may result in a suspension greater than 24 hours.”**

## Methodology

During the IMR-4 reporting period, we assessed this paragraph and noted “During the current monitoring period (just after the fourth site visit), APD developed and approved a new Promotional Practices Policy (July 19, 2016).”

We note that the Promotional Practices Policy is still under review at this time, with a resolution draft being submitted recently to the monitor so that differences between the City and the APOA can be resolved. Accordingly, APD remains out of compliance with this task. The Promotional Practices Policy resolution is scheduled for completion by the monitor during the first week in April 2017. We will report further on this process in IMR-6.

## Results

APD remains out of compliance on this issue until there is an approved policy, and practice has been implemented on promotions that follow the policy.

Primary: Not in Compliance  
Secondary: Not in Compliance  
Operational: Not in Compliance

***Recommendation 4.7.229a: No action is required at this time, as this issue is currently “in progress,” with resolution expected early in the month of May.***

#### 4.7.230 Assessing Compliance with Paragraph 244

Paragraph 244 stipulates:

**“APD shall develop and implement fair and consistent practices to accurately evaluate the performance of all APD officers in areas related to constitutional policing, integrity, community policing, and critical police functions on both an ongoing and annual basis. APD shall develop objective criteria to assess whether officers meet performance goals. The evaluation system shall provide for appropriate corrective action, if such action is necessary.”**

#### Methodology

APD has completed and promulgated policy regarding performance evaluations. Members of the monitoring team drew a random sample of four officers’ performance evaluations completed during the fifth reporting period. The policy provides guidance on use of the system, listing criteria to be used to assess achievement of performance goals, and outlining corrective action required if performance “falls short.”

#### Results

We selected a random sample of four officers’ performance evaluations for review this reporting period—not all officers have as yet been evaluated. We found APD’s supervisors to be using the system as designed in all four instances.

Primary: In Compliance  
Secondary: In Compliance  
Operational: In Compliance

#### 4.7.232 Assessing Compliance with Paragraph 245

Paragraph 245 stipulates:

**“As part of this system, APD shall maintain a formalized system documenting annual performance evaluations of each officer by the officer’s direct supervisor. APD shall hold supervisors accountable for submitting timely, accurate, and complete performance evaluations of their subordinates.”**

#### Methodology

The random selection of performance evaluations described in 4.7.231, above, also included a review of performance for this paragraph.

#### Results

Primary: In Compliance  
Secondary: In Compliance  
Operational: In Compliance

#### 4.7.233 Assessing Compliance with Paragraph 246

Paragraph 246 stipulates:

**“As part of the annual performance review process, supervisors shall meet with the employee whose performance is being evaluated to discuss the evaluation and develop work plans that address performance expectations, areas in which performance needs improvement, and areas of particular growth and achievement during the rating period.”**

#### Methodology

The random selection of performance evaluations described in 4.7.231, above, also included a review of performance for this paragraph.

#### Results

Primary: In Compliance  
Secondary: In Compliance  
Operational: In Compliance

#### 4.7.234 Assessing Compliance with Paragraph 247

Paragraph 247 stipulates:

**“To maintain high-level, quality service; to ensure officer safety and accountability; and to promote constitutional, effective policing, APD agrees to provide officers and employees ready access to mental health and support resources. To achieve this outcome, APD agrees to implement the requirements below.”**

## Methodology

Members of the monitoring reviewed APD's "Behavioral Science Surveys," (BSS) conducted in November 2016 and in August 2016 and again in January 2017. Results of these surveys are highly confidential; however, our review confirms that APD is actively engaged in compliance efforts for this paragraph.

## Results

At this point, the monitoring team is satisfied that the surveys designed in response to this paragraph are being executed and analyzed. As this process progresses, however, we would expect to see some programmatic changes and innovations based on "lessons learned" from this process.

Primary: In Compliance  
Secondary: In Compliance  
Operational: Not in Compliance

***Recommendation 4.7.234a: Identify, using BSSs to drive programmatic revisions and upgrades to the BSU's operations and programs, and implement those implicated revisions.***

### 4.7.235 Assessing Compliance with Paragraph 248

Paragraph 248 stipulates:

**"APD agrees to develop** and offer a centralized and comprehensive range of mental health services that comports with best practices and current professional standards, including: readily accessible confidential counseling services with both direct and indirect referrals; critical incident debriefings and crisis counseling; peer support; stress management training; and mental health **evaluations."**

## Methodology

Members of the monitoring team reviewed numerous Course of Business documents produced by the Behavioral Science Unit, including the unit's SOP 1-10, the Peer Support training curriculum, documentation for the Peer Support Board's activities, and a Peer Support "flyer." Implementation of these processes is just coming "on-line" at BSU, and we will continue to monitor progress. Only Primary compliance could be assessed at this point.



## Results

Primary: In Compliance  
Secondary: Not Measurable  
Operational: Not Measurable

***Recommendation 4.7.235a: Prepare analyses of the numbers and types of BSU activities related to this paragraph, and include them in the quarterly reports of BSU activities.***

### 4.7.236 Assessing Compliance with Paragraph 249

Paragraph 249 stipulates:

**“APD shall provide training to management and supervisory personnel in officer support protocols to ensure support services are accessible to officers in a manner that minimizes stigma.”**

## Methodology

Members of the monitoring team reviewed documentation for five separate “trainings” provided (or to be provided) by BSU during this reporting period, including portions of the 40-hour sergeants’ training, PTSD (post-traumatic stress disorder) training, police suicide training, “Line of Duty” issues training, and BSU training. Course syllabi and documentation was provided and reviewed. BSU has made giant strides in its processes of needs assessments, program development, program documentation, and program execution compared to earlier efforts by the unit.

## Results

Primary: In Compliance  
Secondary: In Compliance  
Operational: In Compliance

### 4.7.237 Assessing Compliance with Paragraph 250

Paragraph 250 stipulates:

**“APD shall ensure that any mental health counseling services provided APD employees remain confidential in accordance with federal law and generally accepted practices in the field of mental health care.”**

## Methodology

Members of the monitoring team conducted an on-site review of BSU facilities, and verified visually that records of individuals assisted by the BSU are secured in a locked filing cabinet, with reasonable restrictions on who has access.

#### Results

Primary: In Compliance  
Secondary: In Compliance  
Operational: In Compliance

#### 4.7.238 Assessing Compliance with Paragraph 251

Paragraph 251 stipulates:

**“APD shall involve mental health professionals in developing and providing academy and in-service training on mental health stressors related to law enforcement and the mental health services available to officers and their families.”**

#### Methodology

Members of the monitoring team reviewed the processes involved in ten different BSU initiatives. All applicable programs show direct involvement of mental health professional in developing and providing mental health-related issues.

#### Results

Primary: In Compliance  
Secondary: In Compliance  
Operational: In Compliance

#### 4.7.239 Assessing Compliance with Paragraph 252

Paragraph 252 stipulates:

**“APD shall develop and implement policies that require and specify a mental health evaluation before allowing an officer back on full duty following a traumatic incident (e.g., officer-involved shooting, officer-involved accident involving fatality, or all other uses of force resulting in death) or as directed by the Chief.”**

#### Methodology

Members of the monitoring team requested and reviewed documentation sustaining the fact that BHD providers are accessible to line personnel. The nature of this documentation is highly confidential, and only

aggregate data were reviewed, where practicable. Where that was not practicable, notes taken by the monitoring team were devoid of any direct or circumstantial information that would allow an individual to be identified.

## Results

Primary: In Compliance  
Secondary: In Compliance  
Operational: In Compliance

### 4.7.240 Assessing Compliance with Paragraph 253

Paragraph 253 stipulates:

**“APD agrees** to compile and distribute a list of internal and external available mental health services to all officers and employees. APD should periodically consult with community and other outside service providers to maintain a current and accurate list of available **providers.**”

## Methodology

Members of the monitoring team reviewed COB documentation showing implementation and high levels of performance for BSU on this paragraph, including Excel spreadsheets of available mental health professionals, and APD BSU 2016 flyer that went out to all personnel, a listing of referrals made by BSU during 2016, and other items.

## Results

Primary: In Compliance  
Secondary: In Compliance  
Operational: In Compliance

### 4.7.240 Assessing Compliance with Paragraph 255<sup>142</sup>

Paragraph 255 stipulates:

**“APD agrees to ensure its mission statement reflects its** commitment to community oriented policing and agrees to integrate community and problem solving policing principles into its management, policies, procedures, recruitment, training, personnel

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<sup>142</sup> Paragraph 254 is not evaluated as it is subsumed in 255 and following.

evaluations, resource deployment, tactics, and accountability systems.”

## Methodology

Members of the monitoring team reviewed updates to APD’s website, assessed related Special Orders, and discussed this issue with members of Albuquerque’s community policing councils.

## Results:

Special Order 16-06, dated January 9, 2017 indicates that APD has revised its mission statement reflecting its commitment to community oriented policing, and this commitment has been observed “on the ground” through factual information gathered from the CPCs membership. APD continues to make progress integrating community policing principles into its management practices (policies, procedures, recruitment, training, deployment, tactics, and accountability systems. Work remains to be done to ensure that community participation, input and access are assessed, folded into the mix of policy-making, training development, goal-setting, in-field processes and tactics, supervision, command decision making, and program assessment.

Primary: In Compliance  
Secondary: In Compliance  
Operational: Not In Compliance

***Recommendation 4.7.240a: APD should “operationalize” its revised mission statement through actions such as those listed in b and c below.***

***Recommendation 4.7.240b: APD should continuously focus on mechanisms to take issues identified through its community-based systems such as the CPCs and move those issues through internal processes to ensure that community opinions, needs, and critical issues are reflected in patrol plans, organizational priorities, and programmatic planning.***

***Recommendation 4.7.240c: APD should plan, develop and assess programmatic processes and evaluation strategies to identify, implement, assess, and improve both the quality and perception of its receptivity to community input and its ability to implement policing initiatives responsive to articulated community needs.***

4.7.241 Assessing Compliance with Paragraph 256: APD Response to Staffing Plan

Paragraph 256 stipulates:

**“As part of the Parties’ staffing plan described in Paragraph 204, APD shall realign its staffing allocations and deployment, as indicated, and review its recruitment and hiring goals to ensure they support community and problem oriented policing.”**

### Methodology

Members of the monitoring team reviewed relevant APD documentation, communications, and related updates, circulars and communications methods. They also assessed the level of congruity between the CASA requirements and staff re-allocations with the department’s PACT deployment requirements. Members of the monitoring team requested information from APD regarding changes to recruitment and hiring goals and staffing that reflected internal, process-compliance with this task.

### Results

APD’s PACT plan was approved on December 27, 2016, and staff re-alignment responsive to the plan was initiated during this reporting period. In addition, APD circulated COB documentation requesting applications for PACT positions during this reporting period. The monitoring team found no available information or program documentations to inform APD’s status on programmatic changes to recruitment, hiring goals and staffing directly related to tangible steps to staff the second, element of this paragraph related to staffing allocations responsive to a tangible shift to community-oriented policing strategies.

Primary: In Compliance  
Secondary: Not In Compliance  
Operational: Not In Compliance

***Recommendation 4.7.241a: Articulate a data-based strategy for staffing APD Area Commands so that the processes required in this paragraph related to in-field changes to patrol allocation, staffing (and training) are responsive to the requirements of this paragraph.***

***Recommendation 4.7.241b: This should result in a piece of Completed Staff Work (CSW) identifying goals, measurable objectives, and processes involved in meeting the requirements of this Paragraph.***

***Recommendation 4.7.241c: The finished CSW should be provided to the Chief of Police for review and comment and action***

#### 4.7.242 Assessing Compliance with Paragraph 257: Geographic Familiarity of Officers

Paragraph 257 stipulates:

**“APD shall ensure that officers are familiar with the geographic areas they serve, including their issues, problems, and community leaders, engage in problem identification and solving activities with the community members around the community’s priorities; and work proactively with other city departments to address quality of life issues.”**

#### Methodology

Members of the monitoring team reviewed APD patrol “bid packets” by conducting random assessments of the packets to determine if they contained evidence of conformance with this Paragraph’s requirements. The monitoring team also reviewed APD memoranda and other program documentation describing Problem Oriented Policing (POP) projects. The monitor also assessed whether or not APD’s goal of having at least one POP project in each of the six command areas, has been met, and that the POP projects involve community members and City departments working together to address project-identified community safety priorities.

#### Results

Four of the six (75 percent) Area Commands provided data regarding signed bid packets. APD programmatic documentation does not document POP projects in each of the six Area Commands; however, APD did provide descriptions of in-progress POP projects. Policy and procedures guiding APD’s POP systems was not provided as part of APD’s supporting documentation.

Primary: Not in Compliance  
Secondary: Not in Compliance  
Operational: Not in Compliance

***Recommendation 4.7.242a: APD should develop a Completed Staff Work document identifying the scope and depth of POP development issues, including recommendations for solving the identified above.***

***Recommendation 4.7.242b: The CSW document should be forwarded to the Chief of Police for review and comment.***

#### 4.7.243 Compliance with Paragraph 258: Officer Outreach Training

Paragraph 258 stipulates:

**“Within 12 months of the Effective Date, APD agrees to provide 16** hours of initial structured training on community and problem oriented policing methods and skills for all officers, including supervisors, commanders, and executives this training shall include:

- a) Methods and strategies to improve public safety and crime prevention through community engagement;
- b) Leadership, ethics, and interpersonal skills;
- c) Community engagement , including how to establish formal partner ships, and actively engage community organizations, including youth, homeless, and mental health communities;
- d) Problem-oriented policing tactics, including a review of the principles behind the problem solving framework developed **under the “SARA Model”, which promotes a collaborative, systematic process to address issues of the community. Safety, and the quality of life;**
- e) Conflict resolution and verbal de-escalation of conflict and;
- f) Cultural awareness and sensitivity training. These topics should be included in APD annual in-**service training.** “

## Methodology

Members of the monitoring team reviewed APD’s training curriculum for those officers involved in the POP program, and compared it to the DOJ-recommended training for POP officers. We found several issues with the early training product, as delivered and recommended specific changes.

## Results

APD has revised, based on the monitoring team’s comments, the POP training, and presented its POP training to 864 of all sworn officers, above the 95 percent threshold established by the monitoring team. In the monitoring team’s assessment, the provided training now reflects industry standards for the field. APD reports that 98.77 percent of the officers who took the APD post-test received a passing score. Operational aspects of the APD’s performance on this requirement will be assessed as the POP procedures are placed into operations and the monitoring team has an opportunity to assess outcomes associated with the new program.

Primary:	In Compliance
Secondary:	In Compliance
Operational:	Not In Compliance

***Recommendation 4.7.233a: Prepare detailed operational reports assessing POP-related programs and projects, including analyses of outcomes and processes.***



#### 4.7.244 Assessing Compliance with Paragraph 259: Measuring Officer Outreach

Paragraph 259 stipulates:

**“Within six months of the Effective Date, APD agrees to develop and implement mechanisms to measure officer outreach to a broad cross-section of community members, with an emphasis on mental health, to establish extensive problem solving partnerships, and develop and implement cooperative strategies that build mutual respect and trusting relationships with this broader cross section of stakeholders.”**

#### Methodology

Members of the monitoring team reviewed APD’s community calendar, Area Command tracking sheets, and monthly report tracking sheets. In addition, we reviewed the ABQ Collaborative on Police-Community Relations report. These data sources were reviewed to gauge the level and quality of “formalized partnerships” with stakeholders in the community. We also reviewed documented problem-solving partnerships developed by APD with its various communities.

#### Results

APD provided community calendars depicting activity at various levels for the reporting period. No documentation was provided relative to area command tracking sheets or monthly report tracking sheets. Based on the calendar data, APD participated in meetings with stakeholder groups to identify issues and generate recommendations. To date, no documented on-going partnerships with these groups have been documented by APD. Moreover, no studies, assessments, or other documents depict preliminary planning to work with or generate on-going partnerships with stakeholders in the community, other than the CPCs.

Primary: Not in Compliance  
Secondary: Not in Compliance  
Operational: Not in Compliance

***Recommendation 4.7.245a: Document activities using Area Command tracking sheets, ensuring specifically that documented on-going partnerships are assessed and recommendations for reasonable improvement are included.***

#### 4.7.245 Compliance with Paragraph 260: PIO Programs in Area Commands

Paragraph 260 stipulates:

**“APD shall develop a Community Outreach and Public Information program in each area command.”**

#### Methodology

Members of the monitoring team reviewed Area Command websites, related internal memoranda and other documentation of APD’s Coffee with a Cop initiative and other outreach activities. Further, we reviewed examples of APD community interaction on Twitter and other social media sites.

#### Results

APD has established websites for each of the six command areas and have launched a chat feature where the Area Commander and/or Crime Prevention Specialist can directly answer questions and address concerns interactively. These sites previously and currently capture crime information, crime prevention materials, photographs of commanders and officers that work in the area command, schedules of upcoming events, other news items, information on how to report crimes, and information regarding how to file complaints or recommendations for officer commendations. APD has also established social media outreach that includes Facebook, Twitter, and netdoor.com. APD has established the “Coffee with a Cop” program in each command area as well. APD has not yet presented documentation on outreach impact.

Primary: In Compliance  
Secondary: In Compliance  
Operational: In Compliance

#### 4.7.246 Compliance with Paragraph 261: Community Outreach in Area Commands

Paragraph 261 stipulates:

**“The Community Outreach and Public Information program shall require at least one semi-annual meeting in each Area Command that is open to the public. During the meetings, APD officers from the Area command and the APD compliance coordinator or his or her designee shall inform the public about the requirements of this Agreement, update the public on APD’s progress meeting these requirements, and address areas of community concern. At least one week before such meetings, APD shall widely publicize the meetings.”**

#### Methodology

Members of the monitoring reviewed normal COB documentation related to this paragraph for the reporting period, including internal memoranda, meeting announcements, meeting agendas, and PowerPoint representations of community informational presentations.

## Results

APD's COB documentation indicates compliance for this paragraph has been achieved.

Primary: In Compliance  
Secondary: In Compliance  
Operational: In Compliance

### 4.7.247 Compliance with Paragraph 262: Community Outreach Meetings

Paragraph 262 stipulates:

**“The Community Outreach and Public Information meeting shall, with appropriate safeguards to protect sensitive information, include summaries, of all audits and reports pursuant to this Agreement and any policy changes and other significant action taken as a result of this Agreement. The meetings shall include public information on an individual's right and responsibilities during a police encounter.”**

## Methodology

Members of the monitoring team reviewed APD website activity, semi-annual meeting PowerPoint presentations, meeting handouts, and meeting agenda.

## Results

All CASA-related reports are posted on the APD website. The power point presentation for the semi-annual meetings does provide summary information on policy changes and actions taken by APD. Further, APD has created a hand out outlining individual rights and responsibilities for police encounters and made it available at the semi-annual meetings in each command area.

Primary: In Compliance  
Secondary: In Compliance  
Operational: In Compliance

#### 4.7.248 Compliance with Paragraph 263: APD Attendance at Community Meetings

Paragraph 263 stipulates:

**“For at least the first two years of this Agreement, every APD officer and supervisor assigned to an Area command shall attend at least two community meetings or other meetings with residential, business, religious, civic or other community-based groups per year in the geographic area to which the officer is assigned.”**

#### Methodology

Members of the monitoring team reviewed APD’s “Community Calendar”; Officer monthly reports, other data available data capturing community contacts and outcomes.

#### Results

APD previously established through SOP-3-02-1 the requirement and tracking mechanisms to implement this task. It has not developed the capability to systematically track and capture salient information about participation in community meetings, and document execution of this task.

Primary: In Compliance  
Secondary: Not In Compliance  
Operational: Not In Compliance

***Recommendation 4.7.248a: Develop the capacity, and begin using the capacity to systematically track and capture salient information about participation in community meetings, and document execution of this task***

#### 4.7.249 Compliance with Paragraph 264: Crime Statistics Dissemination

Paragraph 264 stipulates:

**“APD shall continue to maintain and publicly disseminate accurate and updated crime statistics on a monthly basis.”**

#### Methodology

Members of the monitoring team reviewed the APD website and minutes of CPC monthly meetings.

## Results

APD has contacted with a service that provides up to date crime mapping services based on “calls for service” that can be accessed on their website, a very useful tool. However, it is not a CASA requirement. The capture and reporting of aggregated monthly crime statistics is a CASA requirement. While some of this information may be presented at monthly CPC meetings, it is not provided on the area command website. Overall, City-wide Monthly crime numbers are provided on the city government website.

Primary: In Compliance  
Secondary: In Compliance  
Operational: Not In Compliance

***Recommendation 4.7.249a: Document the capture and reporting of aggregated monthly crime statistics by Area Command.***

### 4.7.250 Compliance with Paragraph 265: **Posting Monitor’s Reports**

Paragraph 265 stipulates:

**“APD audits and reports related to the implementation of this Agreement shall be posted on the City or APD website with reasonable exceptions for materials that are legally exempt or protected from disclosure.”**

## Methodology

Members of the monitoring team reviewed the APD and City websites for evidence of compliance with this task.

## Results

All requirements stipulated by this paragraph were met by the APD and the City. Further, APD has developed guidelines for determining any reasonable exceptions to posting audits and reports relating to the CASA.

Primary: In Compliance  
Secondary: In Compliance  
Operational: In Compliance

### 4.7.251 Compliance with Paragraph 266: **CPCs in Each Area Command**

Paragraph 266 stipulates:

**“The City shall establish Community Policing Councils in each of the six Area Commands with volunteers from the community to facilitate regular communication and cooperation between APD and community leaders at the local level. The Community Policing Councils shall meet, at a minimum, every six months.”**

## Methodology

Members of the monitoring team reviewed CPC minutes, and randomly selected attendance reports for CPC meetings.

## Results

CPCs have been established in each of the six Area commands since November 2014. During this and prior reporting periods, each of the six Councils met once a month. Non-voting participation levels are not reflected in minutes, and therefore cannot be determined at this time, although staff reported low levels of participation during the reporting period at two of the six CPCs.

Communication and dialogue with all relevant community stakeholders remains a challenge, too often leading to only APD perspectives on issues being presented at CPC meetings. APD and CPC members have exhibited efforts to remedy this current challenge by broadening membership and participation.

APD has consistently exceeded CASA requirements with CPCs meeting monthly since their inception.

Primary: In Compliance  
Secondary: In Compliance  
Operational: Not In Compliance

***Recommendation 4.7.251a: APD should continue work to broaden membership and participation by determining what factors are keeping “relevant stakeholders” from expressing their views at CPC meetings, and documenting attempts to address those factors.***

4.7.252 Compliance with Paragraph 267: Selection of Members of the CPCs

Paragraph 267 stipulates:

**“In conjunction with community representatives, the City shall develop a mechanism to select the members of the Community Policing Councils, which shall include a representative cross section of community members and APD officers, including for**

example representatives of social services providers and diverse neighborhoods, leaders in faith, business, or academic communities, and youth. Members of the Community Policing Councils shall possess qualifications necessary to perform their duties, including successful completion of the Citizen Police Academy.”

## Methodology

Members of the monitoring team assessed the CPC survey data, APD’s website, APD’s CPC guidance document and reviewed them for compliance to the requirements of the CASA. In addition, we audited posted CPC selection procedures and criteria, and reviewed data on on-going operations at the CPCs.

## Results

Selection mechanisms have evolved and now reflect community input. Application forms are on the APD website. The selection procedures are not posted. CPC survey data reflects a continued need to recruit a more representative cross section of community members as CPC voting members. Selection procedures and criteria need to more strongly addressed and publicized. The qualifications to perform criteria needs to be more clearly articulated and documented. Members by and large are attending and completing the Citizen Police Academy.

Primary: Not in Compliance  
Secondary: Not in Compliance  
Operational: Not in Compliance

***Recommendation 4.7.252a: Improve and document efforts to recruit and retain a more representative cross section of community members as voting members of the CPCs***

***Recommendation 4.7.252b: Post selection procedures on the internet.***

### 4.7.253 Compliance with Paragraph 268: Resourcing the CPCs

Paragraph 268 stipulates:

“**The City shall allocate sufficient resources** to ensure that the Community Policing Councils possess the means, access, training, and mandate necessary to fulfill their mission and the requirements of this Agreement. APD shall work closely with the Community Policing Councils to develop a comprehensive community policing approach that collaboratively identifies and implements strategies to address crime and safety issues. In order to foster this collaboration, APD shall provide appropriate information and documents with the Community



Policing Councils, provided adequate safeguards are taken not to disclose **information that is legally exempt or protected from disclosure.**"

## Methodology

Members of the monitoring team reviewed CPC guidelines, Facilitator invoices, and the CPC staffing memorandum.

## Results

APD has hired staff fully devoted to CPCs and provide facilitation services for the CPCs although some interruption of services has occurred. Outreach activities have demonstratively increased. Further, topics and discussions at times touch on community policing efforts but APD in conjunction with CPCs have not produced a comprehensive community policing approach for each command area. APD commanders and their staff have made themselves available to CPCs, and data and other information has generally been provided when requested by CPCs.

Primary: In Compliance  
Secondary: In Compliance  
Operational: Not In Compliance

***Recommendation 4.7.254a: APD should take the lead to ensure a comprehensive community policing approach is identified for each area command, based on CPC interaction, participation, and comment.***

### 4.7.254 Compliance with Paragraph 269: APD-CPC Relationships

Paragraph 269 stipulates:

**"APD shall seek the Community Policing Councils assistance, counsel, recommendations, or participation in areas including:**

- a) Reviewing and assessing the propriety and effectiveness of law enforcement priorities and related community policing strategies, materials, and training;
- b) Reviewing and assessing concerns or recommendations about specific APD policing tactics and initiatives;
- c) Providing information to the community and conveying feedback from the community;
- d) Advising the chief on recruiting a diversified work force
- e) Advising the Chief on ways to collect and publicly disseminate data and information including information about APDs compliance with this Agreement, in a transparent and public –friendly format to **the greatest extent allowable by law.**"

## Methodology

Members of the monitoring team have reviewed CPC meeting minutes, the APD website, and documentation relative to this requirement produced by the CPCs and the APD. We have also audited CPC agenda and CPC recommendations, and have reviewed APD feedback to the CPCs relative to this paragraph.

## Results

Agenda items and CPC recommendations are only partially reflective of CASA requirements. In addition, CPC agenda items and recommendations inadequately address specific APD policies and actions, and do not address recruitment of a diversified work force. APD has started tracking and posting recommendations and APD responses, but to date, this is not a complete and careful assessment and response to CPC recommendations. Recommendations and responses from several command areas were not posted during this reporting period.

Primary: Not in Compliance  
Secondary: Not in Compliance  
Operational: Not in Compliance

***Recommendation 4.7.255a: Using the CSW model, APD should assess specific “failure analyses” for the issues noted above, identify the cause of the failures, and articulate a written plan for resolving any outstanding requirements relating to compliance with this paragraph.***

### 4.7.255 Compliance with Paragraph 270: CPC Annual Reports

Paragraph 270 stipulates:

**“The Community Policing Councils shall memorialize their recommendations in annual public report that shall be posted on the City website. The report shall include appropriate safeguards not to disclose information that is legally exempt or protected from disclosure.”**

## Methodology

Members of the monitoring team reviewed CPC annual reports and the APD website for information responsive to the requirements of this paragraph.

## Results

APD has posted annual CPC reports from each of the area commands. However, two of the reports are in “draft status” and not all reports contain a complete set of recommendations and APD feedback.

Primary: In Compliance  
Secondary: In Compliance  
Operational: Not in Compliance

***Recommendation 4.7.255a: Ensure that all “draft status” annual CPC reports are posted on City or Area Command websites, and complete the drafts, which should also be posted once complete.***

***Recommendation 4.7.255b: Ensure that all reports contain complete sets of recommendations and APD feedback.***

#### 4.7.256 Compliance with Paragraph 271: CPOA Implementation

Paragraph 271 stipulates:

**“The City shall implement a civilian police oversight agency (“the agency”) that provides meaningful, independent review of all citizen complaints, serious uses of force, and officer-involved shootings by APD. The agency shall also review and recommend changes to APD policy and monitor long-term trends in APD’s use of force.”**

#### Methodology

Members of the monitoring team reviewed scores of records from, to, and relating to CPOA operations this reporting period.

#### Results

It is clear from this review that the CPOA has been implemented, organized and is providing an independent review of the elements of police oversight articulated in this paragraph.

Primary: In Compliance  
Secondary: In Compliance  
Operational: In Compliance

#### 4.7.257 Assessing Compliance with Paragraph 272: Independence and Accountability of CPOA

Paragraph 272 stipulates:

**“The City shall ensure that the agency remains accountable to, but independent from, the Mayor, the City Attorney’s Office, the City**

Council, and APD. None of these entities shall have the authority to **alter the agency's findings, operations, or processes, except by amendment to the agency's enabling ordinance.**"

## Methodology

Members of the monitoring team have near-constant communications with CPOA staff and leadership. In addition, we review, every reporting period, the work product produced by CPOA.

## Results

It is clear from this review that the CPOA has been implemented, organized and is providing an independent review of the elements of police oversight articulated in this paragraph.

Primary: In Compliance  
Secondary: In Compliance  
Operational: In Compliance

### 4.7.258 Assessing Compliance with Paragraph 273: Requirements for Service of CPOA Members

Paragraph 273 stipulates:

**"The City shall ensure that the individuals appointed to serve on the agency are drawn from a broad cross-section of Albuquerque and have a demonstrated commitment to impartial, transparent, and objective adjudication of civilian complaints and effective and constitutional policing in Albuquerque."**

The monitor reviewed the CVs and backgrounds of the appointed members of the CPOA (POB members) and the CPOA Ordinance, had several meetings during the site visit with members of the CPOA, and had a meeting with the POB Chair and attended a POB meeting in which the monitor met members of the POB.

## Results

As noted in IMR-4 the Ordinance sets forth the requirements of this paragraph for members of the Police Oversight Board. The monitor was able to review the CVs and background of members of the POB, as well as observe them in POB meetings. The monitor finds their background and commitment to be in compliance with this paragraph.

Primary: In Compliance  
Secondary: In Compliance  
Operational: In Compliance

#### 4.7.259 Assessing Compliance with Paragraph 274: CPOA Pre-Service Training

Paragraph 274 stipulates:

**“Within six months of their appointment, the City shall provide 24** hours of training to each individual appointed to serve on the agency that covers, at a minimum, the following topics:

- a) **This Agreement and the United States’ Findings Letter of April 10, 2014;**
- b) The City ordinance under which the agency is created;
- c) State and local laws regarding public meetings and the conduct of public officials;
- d) Civil rights, including the Fourth Amendment right to be free from unreasonable searches and seizures, including unreasonable uses of force;
- e) All APD policies related to use of force, including policies **related to APD’s internal review of force incidents; and**
- f) **Training provided to APD officers on use of force.”**

#### Methodology

As noted in IMR-4, the monitor reviewed training records of the appointed members of the CPOA (POB members) and the CPOA Ordinance, had several meetings during the site visit with members of the CPOA and visited the CPOA office, met with the POB Chair and attended a POB meeting in which the monitor met all members of the POB. The monitor also reviewed, relative to a previous site visit, a PowerPoint presentation proposed by legal counsel to the CPOA of civil rights and Fourth Amendment training and the CASA.

#### Results

The Ordinance sets forth the initial training requirements (within the first six months of the member’s appointment) required by this paragraph, although it does not specify that these training requirements must equal 24 hours.

The monitor’s review of CPOA training records shows that the appointed members of the CPOA (POB members) are in compliance with the training requirements of this paragraph, including the 24-hour training requirement.

The monitor finds the proposed Civil Rights, Fourth Amendment and CASA training is professional and appropriately addresses the subject matter required by the CASA. The monitoring team will continue its efforts to “reach out” to POB/CPOA to ensure their issues and concerns regarding the CASA project are reflected in monitoring reports.

Primary: In Compliance

Secondary: In Compliance  
Operational: In Compliance

#### 4.7.260 Assessing Compliance with Paragraph 275: CPOA Annual Training

Paragraph 275 stipulates:

**“The City shall provide eight hours of training annually to those appointed to serve on the agency on any changes in law, policy, or training in the above areas, as well as developments in the implementation of this Agreement.”**

#### Methodology

The monitor reviewed training records of the appointed members of the CPOA (POB members), had several meetings during the site visit with members of the CPOA and visited the CPOA office, met with the POB Chair and attended a POB meeting in which the monitor met all members of the POB. The monitor also reviewed, relative to a previous site visit, a PowerPoint presentation proposed by legal counsel to the CPOA, of civil rights and Fourth Amendment training and the CASA. (See also, Methodology, paragraph 274).

#### Results

The CPOA is in compliance with the annual training requirement for members of the POB (appointed members of the agency).

Primary: In Compliance  
Secondary: In Compliance  
Operational: In Compliance

#### 4.7.261 Assessing Compliance with Paragraph 276: CPOA Ride-alongs

Paragraph 276 stipulates:

**“The City shall require those appointed to the agency to perform at least two ride-alongs with APD officers every six months.”**

#### Methodology

The monitor had several meetings during the site visit with members of the CPOA and visited the CPOA office, reviewed the CPOA Ordinance and literature and documents related to the civilian complaint and CPOA process, and reviewed CPOA training records.

## Results

The Ordinance forming and empowering the CPOA sets forth the requirements of this paragraph for members of the POB (appointed members).

The monitor reviewed training records demonstrating operational compliance with this paragraph during this site visit.

Primary: In Compliance  
Secondary: In Compliance  
Operational: In Compliance

### 4.7.262 Assessing Compliance with Paragraph 277: CPOA Authority and Resources to Make Recommendations

Paragraph 277 stipulates:

“The City shall provide the agency sufficient resources and support **to assess and make recommendations regarding APD’s civilian complaints, serious uses of force, and officer- involved shootings;** and to review and make recommendations about changes to APD policy and long-term trends in **APD’s use of force.**”

## Methodology

Members of the monitoring team reviewed staffing levels and case-completion times for relative to civilian complaints, serious uses of force, and officer-involved shootings. In addition, we reviewed recommendations for change made by CPOA relative to policy and long-term trends.

## Results

CPOA case completion times are reviewed in Paragraph 198, above. They show adequate levels of personnel.

Primary: In Compliance  
Secondary: In Compliance  
Operational: In Compliance

### 4.7.263 Assessing Compliance with Paragraph 278: CPOA Budget and Authority

Paragraph 278 stipulates:

“**The City shall provide the agency a dedicated budget and grant the agency the authority to administer its budget in compliance with**



state and local laws. The agency shall have the authority to hire staff and retain independent legal counsel as necessary.”

### Methodology

The monitoring team routinely assess this issue in its conversation with the Executive Director of CPOA, and through assessment of existing case-completion data, etc.

### Results

The City remains in compliance with this paragraph based on past and current performance.

Primary:	In Compliance
Secondary:	In Compliance
Operational:	In Compliance

### 4.7.264 Assessing Compliance with Paragraph 279: Full-Time CPOA Investigative Staff

Paragraph 279 stipulates:

**“The agency shall retain a full-time, qualified investigative staff to conduct thorough, independent investigations of APD’s civilian complaints and review of serious uses of force and officer-involved shootings. The investigative staff shall be selected by and placed under the supervision of the Executive Director. The Executive Director will be selected by and work under the supervision of the agency. The City shall provide the agency with adequate funding to ensure that the agency’s investigative staff is sufficient to investigate civilian complaints and review serious uses of force and officer-involved shootings in a timely manner.”**

### Methodology

The monitoring team routinely monitors performance on this paragraph by reviewing case timelines and completion data. No substantial delays were noted based on staffing issues.

### Results

Primary:	In Compliance
Secondary:	In Compliance
Operational:	In Compliance

### 4.7.265 Assessing Compliance with Paragraph 280: Receipt and Review of Complaints by CPOA

Paragraph 280 stipulates:

**“The Executive Director will receive all APD civilian complaints, reports of serious uses of force, and reports of officer-involved shootings. The Executive Director will review these materials and assign them for investigation or review to those on the investigative staff. The Executive Director will oversee, monitor, and review all such investigations or reviews and make findings for each. All findings will be forwarded to the agency through reports that will be made available to the public on the agency’s website.”**

#### Methodology

The monitor reviewed intake and resolution data responsive to this paragraph.

#### Results

CPOA remains in compliance with this task for this monitoring period.

Primary:	In Compliance
Secondary:	In Compliance
Operational:	In Compliance

#### 4.7.266 Assessing Compliance with Paragraph 281: Prompt and Expedient Investigation of Complaints

Paragraph 281 stipulates:

**“Investigation of all civilian complaints shall begin as soon as possible after assignment to an investigator and shall proceed as expeditiously as possible.”**

#### Methodology

Members of the monitoring team assessed a random sample of CPOA cases completed this reporting period to determine start dates v. received and completion dates.

#### Results

We sampled 12 cases completed this reporting period. Of those 12, six had evidence of “as soon as possible” initiation, a 50 percent compliance rate. Seven showed evidence of “expeditious” investigations.

Primary:	In Compliance
Secondary:	In Compliance

Operational: Not In Compliance

***Recommendation 4.7.266a: Increase the levels of focus by managerial personnel on timelines for completed investigation.***

***Recommendation 4.7.266b; Ensure that tardy investigations are noted, and discussed with the involved investigator(s) to ensure the reasons for delay were reasonable.***

4.7.267 Assessing Compliance with Paragraph 282: CPOA Access to Files

Paragraph 282 stipulates:

**“The City shall ensure that the agency, including its investigative staff and the Executive Director, have access to all APD documents, reports, and other materials that are reasonably necessary for the agency to perform thorough, independent investigations of civilian complaints and reviews of serious uses of force and officer-involved shootings. At a minimum, the City shall provide the agency, its investigative staff, and the Executive Director access to:**

- a) all civilian complaints, including those submitted anonymously or by a third party;
- b) the identities of officers involved in incidents under review;
- c) the complete disciplinary history of the officers involved in incidents under review;
- d) if requested, documents, reports, and other materials for incidents related to those under review, such as incidents involving the same officer(s);
- e) all APD policies and training; and
- f) if requested, documents, reports, and other materials for **incidents that may evince an overall trend in APD’s use of force, internal accountability, policies, or training.”**

Methodology

Members of the monitoring team interviewed CPOA staff concerning this requirement, and received confirmation that there were no issues involved related to this paragraph for this reporting period.

Results

Primary: In Compliance  
Secondary: In Compliance  
Operational: In Compliance

4.7.268 Assessing Compliance with Paragraph 283: Access to Premises by CPOA

Paragraph 283 stipulates:

**“The City shall provide reasonable access to APD premises, files, documents, reports, and other materials for inspection by those appointed to the agency, its investigative staff, and the Executive Director upon reasonable notice. The City shall grant the agency the authority to subpoena such documents and witnesses as may be necessary to carry out the agency functions identified in this Agreement.”**

### Methodology

Interviews with the Executive Director and CPOA staff indicate there were no issues with access to City premises experienced this reporting period.

### Results

Primary: In Compliance  
Secondary: In Compliance  
Operational: In Compliance

#### 4.7.269 Assessing Compliance with Paragraph 284: Ensuring Confidentiality of Investigative Files

Paragraph 284 stipulates:

**“The City, APD, and the agency shall develop protocols to ensure the confidentiality of internal investigation files and to ensure that materials protected from disclosure remain within the custody and control of APD at all times.”**

### Methodology

Members of the monitoring team reviewed these protocols during earlier monitor’s reports. CPOA reports no changes to these protocols during this reporting period.

### Results

The agency remains in compliance based on past performance.

Primary: In Compliance  
Secondary: In Compliance  
Operational: In Compliance

#### 4.7.270 Assessing Compliance with Paragraph 285: Authority to Recommend Discipline

Paragraph 285 stipulates:

**“The Executive Director, with approval of the agency, shall have the authority to recommend disciplinary action against officers involved in the incidents it reviews. The Chief shall retain discretion over whether to impose discipline and the level of discipline to be imposed. If the Chief decides to impose discipline other than what the agency recommends, the Chief must provide a written report to the agency articulating the reasons its recommendations were not followed.”**

#### Methodology

Members of the monitoring team reviewed CPOA and APD records related to this paragraph during the on-site visit for IMR-5. This included review of five letters explaining non-concurrence with CPOA recommendations, as required by the CASA. All letters provided by the City were dated after this reporting period ended. Nonetheless, none of those letters included the required reasons why the Chief disagreed with CPOA recommendations. Most of the chief’s letters simply stated “I do not concur with the findings ... I believe a finding of ... is more applicable in this matter.” This is language clearly non-compliant with the letter and spirit of this paragraph. The chief’s letters should clearly respond to the requirement: “provide a written report to the agency explaining any reasons why such policy recommendations will not be followed or why the agency’s concerns are unfounded. None of the letters we reviewed included reasons for non-concurrence.

#### Results

Primary: Not In Compliance  
Secondary: Not In Compliance  
Operational: Not In Compliance

***Recommendation 4.7.270a: The chief of police should change his modalities of response to this paragraph to conform to the requirements stipulated in the paragraph, to ensure that the rationale for his decisions are clearly and fairly explained.***

***Recommendation 4.7.270b: APD should ensure that input from POB and CPOA is given full and complete assessment, and implemented whenever possible.***

***Recommendation 4.7.270c: Where APD decides it cannot implement POB and CPOA recommendations, the reasons for the decision not to implement should be communicated fully and completely to the POB and CPOA in writing.***

#### 4.7.271 Assessing Compliance with Paragraph 286: Documenting Executive Director's Findings

Paragraph 286 stipulates:

**"Findings of the Executive Director shall be documented by APD's Internal Affairs Bureau for tracking and analysis."**

##### Methodology

Members of the monitoring team reviewed APD's internal databases responsive to the requirements of this task. Documentation was available as required by this paragraph and APD policy.

##### Results

Primary:	In Compliance
Secondary:	In Compliance
Operational:	In Compliance

#### 4.7.272 Assessing Compliance with Paragraph 287: Opportunity to Appeal Findings

Paragraph 287 stipulates:

**"The City shall permit complainants a meaningful opportunity to appeal the Executive Director's findings to the agency."**

##### Methodology

The monitor reviewed the Ordinance and had several meetings during the site visit with members of the CPOA and visited the CPOA office, and reviewed a random selection of CPOA investigations that were completed during this monitoring period.

##### Results

The Ordinance contains the policy required by this paragraph, and permits a complainant to request reconsideration in the form of a hearing when dissatisfied with the findings and/or recommendations of the POB (findings of Executive Director to and approved by the POB). The Ordinance also permits an appeal by the complainant to the Chief Administrative Officer of the final disciplinary decision of the Chief of Police.

No instances of complaint appeals were reported to the monitor during this monitoring period. A review by the monitor of randomly selected CPOA

investigations by the monitoring team did not show any instances of requests for reconsideration or appeals.

A review of the CPOA website shows POB meeting minutes wherein appeals of CPOA findings and recommendations are listed with disposition of appeals. It appears from the minutes that the City is in full compliance with this paragraph however the monitor will have to assess individual appeals in order to determine whether “a meaningful opportunity to appeal” exists.

Primary: In Compliance

Secondary: In Compliance

Operational: In Compliance

#### 4.7.273 Assessing Compliance with Paragraph 288: CPOA Recommendations Regarding APD Policies

Paragraph 288 stipulates:

**“The agency shall make recommendations to the Chief regarding APD policy and training. APD shall submit all changes to policy related to this Agreement (i.e., use of force, specialized units, crisis intervention, civilian complaints, supervision, discipline, and community engagement) to the agency for review, and the agency shall report any concerns it may have to the Chief regarding policy changes.”**

Members of the monitoring team had several meetings during the site visit with members of the CPOA and visited the CPOA office, reviewed CPOA literature and documents related to the civilian complaint and CPOA process, and reviewed the CPOA website and public reports contained thereon, as well as a random sample of CPOA investigations that were completed during this monitoring period.

#### Results

The Ordinance provides CPOA with the authority to carry out the tasks of this paragraph. CPOA’s authority is also contained in the CPOA Policies and Procedures, approved by City Council and the monitor.

A review of recent completed CPOA cases found none that resulted in recommendations to the Chief of Police regarding changes to APD policy and training.

CPOA and POB report that they feel they are still being marginalized in the policy development process, noting that “APD still does not provide a mechanism for the Board as a body to review changes made to policy. The Board made a policy recommendation to include the POB in the flowchart of policy changes, and the Chief [of Police] rejected the recommendation.” Further, POB notes they made



policy recommendations to amend APD policy 3-1, designed to change the policy qualifications for the position of Chief of Police, and that this recommendation also appears to have been rejected by the Chief of Police. See Paragraph 289, below for further discussion of this “collaboration” issue.

Primary: In Compliance  
Secondary: In Compliance  
Operational: In Compliance

**4.7.274 Assessing Compliance with Paragraph 289: Explanation for not Following CPOA Recommendations**

**“For any of the agency’s policy recommendations that the Chief decides not to follow, or any concerns that the agency has regarding changes to policy that Chief finds unfounded, the Chief shall provide a written report to the agency explaining any reasons why such policy recommendations will not be followed or why the agency’s concerns are unfounded.”**

Methodology

We have reviewed CPOA and APD records related to this paragraph. CPOA and POB report that they feel they are still being marginalized in the policy development process, noting that “APD still does not provide a mechanism for the Board as a body to review changes made to policy.” POB/CPOA note that “the Board made a policy recommendation to include the POB in the flowchart of policy changes, and the Chief [of Police] rejected the recommendation.” Further, POB notes they made policy recommendations to amend APD policy 3-1, designed to change the policy qualifications for the position of Chief of Police, and that this recommendation also appears to have been rejected by the Chief of Police, without notice to POB/CPOA explaining that decision.

Results

Primary: Not In Compliance  
Secondary: Not In Compliance  
Operational: Not In Compliance

***Recommendation 4.7.274a: APD should ensure that input from POB and CPOA is given full and complete assessment, and implemented where practicable.***

***Recommendation 4.7.274b: In any instance in which APD decides it cannot implement the POB/CPOA recommendations, the reasons for the decision not to implement should be communicated fully to the POB and CPOA in writing.***

#### 4.7.275 Assessing Compliance with Paragraph 290: Regular Public Meetings

Paragraph 290 stipulates:

**“The agency shall conduct regular public meetings in compliance with state and local law. The City shall make agendas of these meetings available in advance on websites of the City, the City Council, the agency, and APD.”**

#### Methodology

Members of the monitoring team observed, in person and via the internet CPOA presentations at POB meetings, and reviewed agendas posted regarding these meetings.

#### Results

CPOA remains in compliance with this task.

Primary: In Compliance  
Secondary: In Compliance  
Operational: In Compliance

#### 4.7.276 Assessing Compliance with Paragraph 291: Community Outreach for the CPOA

Paragraph 291 stipulates:

**“The City shall require the agency and the Executive Director to implement a program of community outreach aimed at soliciting public input from broad segments of the community in terms of geography, race, ethnicity, and socio-economic status.”**

#### Methodology

Members of the monitoring team reviewed CPOA/POB the website and notes of the Community Outreach subcommittee has been formed, and meeting notices and agenda are posted on the CPOA website. Members of the monitoring team have reviewed sub-committee agenda and meeting minutes, as well as attending, during site visits, meetings of the sub-committee. CPOA has hired a new Community Outreach specialist to manage its outreach processes.

#### Results

Primary: In Compliance  
Secondary: In Compliance

Operational: In Compliance

4.7.277 Assessing Compliance with Paragraph 292: Semi Annual Reports to Council

Paragraph 292 stipulates:

**“The City shall require the agency to submit semi-annual reports to the City Council on its activities, including:**

- a) number and type of complaints received and considered, including any dispositions by the Executive Director, the agency, and the Chief;
- b) demographic category of complainants;
- c) number and type of serious force incidents received and considered, including any dispositions by the Executive Director, the agency, and the Chief;
- d) number of officer-involved shootings received and considered, including any dispositions by the Executive Director, the agency, and the Chief;
- e) policy changes submitted by APD, including any dispositions by the Executive Director, the agency, and the Chief;
- f) policy changes recommended by the agency, including any dispositions by the Chief;
- g) public outreach efforts undertaken by the agency and/or Executive Director; and
- h) **trends or issues with APD’s use of force, policies, or training.”**

Methodology

The monitoring team review of the CPOA website revealed 2015 and 2016 as well as annual and semi-annual reports from prior years. Annual reports reflect activity in this area as required by the paragraph.

Results

Primary: In Compliance  
Secondary: In Compliance  
Operational: In Compliance

4.7.279 Assessing Compliance with Paragraph 320: Notice to Monitor of Officer Involved Shootings

Paragraph 320 stipulates:

“To facilitate its work, the Monitor may conduct on-site visits and assessments without prior notice to the City. The Monitor shall have access to all necessary individuals, facilities, and documents, which shall include access to Agreement-related trainings,

meetings, and reviews such as critical incident review and disciplinary hearings. APD shall notify the Monitor as soon as practicable, and in any case within 12 hours, of any critical firearms discharge, **in-custody death, or arrest of any officer.**”

## Methodology

The monitor continues to receive notices from the managing assistant city attorney responsive to this paragraph.

## Results

Known OIS incidents are routinely cross-checked with IAB data to ensure all OIS are reliably reported.

Primary: In Compliance  
Secondary: In Compliance  
Operational: In Compliance

## 5.0 Summary

This section of IMR-5 summarizes “where we stand” as of the end of the fifth reporting period. APD has been involved in implementation of the CASA for 25 months as of the end of this reporting period. At this point, almost all of the “low-hanging fruit” has been harvested, i.e., policies have been written and approved, and training has been designed and initiated. From this point forward, most of what remains to be done (operationalization of policies and training in the field) is substantially more difficult.

Table 5.1, below, identifies the progression of compliance achievement by APD over 25 months. Figure 5.1, below, is a graphical representation of APD’s compliance efforts over the last 25 months. Figure 5.1 indicates a steady progress in all three levels of compliance, primary, secondary, and operational. Most of the work remaining to be done is some of the most difficult work in the entire reform process:

- Moving policy into operation, which involves focused, targeted, and persistent training modalities to ensure that field personnel know what is expected of them; and
- Ensuring that supervisory and command personnel *insist on adherence* to training, policy, and other articulated expectations (the “definitions” of secondary and operational compliance).

### Table 5.1: Long-Term Compliance Results

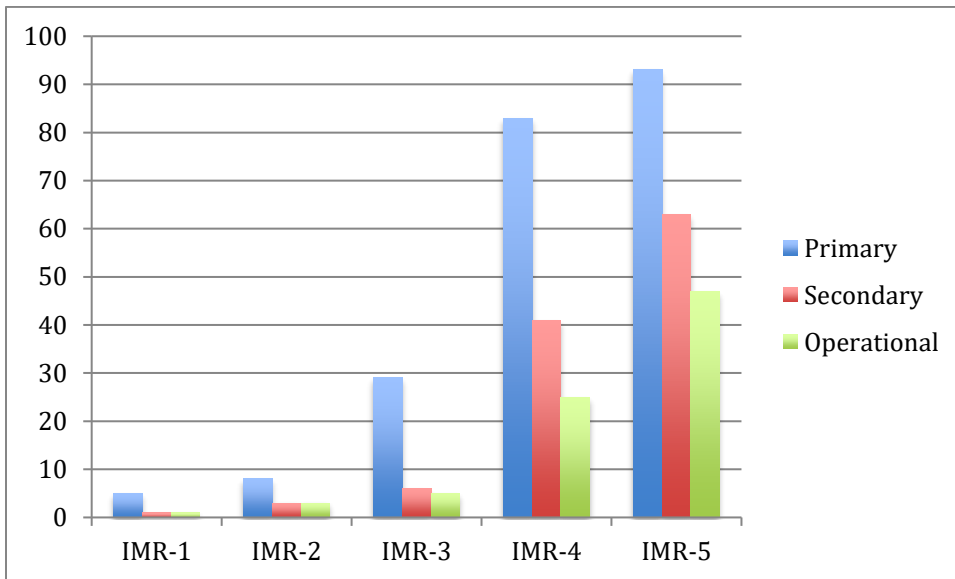
Data representing APD’s compliance results for the first five reporting periods are presented in Table 5.1, below. The table indicates substantial improvements in compliance rates for the fourth and fifth reporting period. IMR-5 primary compliance rates constitute a 12 percent improvement rate over IMR-4’s rates. Secondary compliance rates for IMR-5 constitute a 53.7 percent improvement over IMR-4’s rates. Operational compliance rates for IMR-5 constitute an 88 percent improvement over IMR-4’s rates, thus it is clear that progress is being made. This tends to be true of all organizational development and planned change efforts. Progress usually begins slowly, and as the organization builds experience with the tasks at hand, successes begin to build on each other and the rate of change tends to accelerate, until the last remaining and most difficult challenges are encountered and overcome. As is true with other projects, often the easiest tasks are completed early in the project and the most difficult ones remain to be addressed later in the project’s life cycle.

**Table 5.1 APD’s Gross Compliance Percentages, Periods 1-5**

Task Type	IMR-1	IMR-2	IMR-3	IMR-4	IMR-5
Primary	5	8	29	83	93
Secondary	1	3	6	41	63
Operational	1	3	5	25	47

The data represented in Table 5.1 are presented in graphical form in Figure 5.1, below.

**Figure 5.1: Long-Term Compliance Results**



Some policy work remains to be done, as depicted in Figure 5.1, mostly related to use-of-force and force assessment and monitoring processes. The reader is referred to the body of the document, where 300+ recommendations have been made by the monitor. At APD’s request, these “recommendations” have been moved from their normal place in the body of our report narratives (IMRs 1-4), and highlighted in separate, trackable segments presented at the end of each paragraph’s assessment for all paragraphs that are not in full primary, secondary and operational compliance.

During the fifth reporting period, the monitoring team has noted a palpable shift in APD’s approach to compliance, made noticeable by specific actions on the department’s part that have slowed compliance achievement substantially. These actions included, but were not limited to:

1. Extended delays in revising the department’s use of force policy, including, issues of “neck holds,” show of force, distraction strikes, use of

force against handcuffed individuals, use of advisements and warning prior to use of force (where practicable), and de-escalation of force as resistance decreases, and allowing, where practicable, time for suspects to submit prior to using force.

2. Use of covert “Special Orders” to subvert policies agreed to by the Parties and the monitor (See Section 4.7.207 in the monitor’s report);
3. Passive-aggressive refusals to respond to and remediate problematic policy guidance provided by such documents as APD’s “Underuse of Force” policy document;
4. Reluctance to remediate problematic training for supervisory personnel by performing a system-wide review of problems noted in previous IMRs related to training and conducting meaningful and targeted “retraining” to supervisors, i.e., “addressing the gaps,” as the monitoring team has advised;
5. Continued resistance to responding to the monitoring team’s direct and clear notice of the need for appropriate re-training, counseling, or disciplinary action for clearly “out-of-policy” use of force events;
6. A tendency to see serious, problematic, and critical “systems failures” (such as the Force Review Board’s often fragmented and ineffective reviews of officers’ uses of force) as “water under the bridge,” or “someone else’s problem,” resulting in APD repeatedly failing to address critical issues noted in the monitor’s reports;
7. Lack of a central point of *command responsibility* for compliance, i.e., to date, the monitor seems to have no counterpart inside APD. There seems to be no one person, unit, or group with *responsibility and command authority* to “make change happen,” and
8. A near total failure to take seriously the CASA’s recommendations regarding integrating POB/CPOA processes into the APD’s internal investigations and systems improvement functions.

Until APD takes the critical steps necessary to resolve the nine issues above, little more than primary and secondary compliance will be attained for the critical issues still outstanding. The 300+ recommendations included in this report are designed to address the nine critical issues remaining; however, we strongly suggest that APD not see these nine issues (or the recommendations included in this report) as “stand-alone” issues. In our opinion, universal internal oversight, command, assessment, evaluation and remediation is essential if APD move forward in resolving its remaining compliance issues.



We leave the APD with one final recommendation here: Carefully assess each of the 300+ recommendations developed by the monitor in the body of this report, and prioritize their response order, focusing on the issues that are clearly seminal to non-compliance (more than likely this means the systems hierarchy of policy-training-supervision-remediation). Eventually, APD will need to self-evaluate the impact of this process, and repeat as necessary until “error rates” are less than 5 percent.

**6.0 Numbered List of Recommendations  
IMR-5**

- 1 Recommendation 4.7.1a: The monitor recommends that APD track back the three cases that were out of compliance and ensure that the chain of command (sergeant through Area Commander) that reviewed and approved those cases without noting the compliance shortfalls be notified of their failures and be retrained in the requirements of this (and related paragraphs). Similar audits should be performed by APD on each use of force reported by its personnel.**
- 2 Recommendation 4.7.1b: Resolve outstanding issues related to neck holds and “distraction strikes” by modifying policy and training to clarify those issues to the point that policy and training are compliant with the CASA.**
- 3 Recommendation 4.7.2a: Clearly define in operational and understandable terms “pointing a firearm.” The monitoring team suggests that anything above “low ready,” e.g., APD’s unique use of “high-low ready,” is simply confusing and unenforceable: the difference between “high-low ready” (a phrase coined by APD via “Special Order” and not shared with the monitoring team), and “pointing a firearm” at a suspect or person is minute enough as to be indistinguishable in the review, via OBRD, of actions in the field.**
- 4 Recommendation 4.7.2b: Share all “Special Orders” related to actions covered by the CASA with the monitoring team.**
- 5 Recommendation 4.7.2c: Limit the use of Special Orders to change or otherwise modify the impact of CASA-controlled policy issues.**
- 6 Recommendation 4.7.2d: Define “distraction technique” by policy— approved by the monitor— and supplemental training for all line personnel, or discontinue its use in training and operations.**
- 7 Recommendation 4.7.2e: Close out any remaining issues on “un-resisted handcuffing” via clear, specific, trainable, and evaluable policy guidance re same.**
- 8 Recommendation 4.7.3a: Resolve the “low-ready and high-low ready show of force conundrum with policy and training revisions.**
- 9 Recommendation 4.7.4a: APD should evaluate modalities for developing formal audit/review/reporting policy for “carry and use” assessments and inspections regarding modified or altered weapons outlined in this paragraph, including known “successful” similar programs in other police agencies, using modalities established for Completed Staff Work (CSW)[1].**
- 10 Recommendation 4.7.4b: APD should transition to a routinely reported “inspections and audit” process responsive to this paragraph’s requirements.**

- 11 **Recommendation 4.7.5a:** *APD should evaluate modalities for developing formal audit/review/reporting policy for “carry and use” assessments and inspections regarding modified or altered weapons outlined in this paragraph, including known “successful” similar programs in other police agencies, using modalities established for Completed Staff Work.*
- 12 **Recommendation 4.7.5b:** *APD should transition to a routinely reported “inspections and audit” process responsive to this paragraph’s requirements.*
- 13 **Recommendation 4.7.6a:** *APD should evaluate modalities for developing formal audit/review/reporting policy for “on duty weapons” assessments and inspections regarding modified or altered weapons outlined in this paragraph, including known “successful” similar programs in other police agencies, using modalities established for Completed Staff Work.*
- 14 **Recommendation 4.7.6b:** *APD should transition to a routinely reported “inspections and audit” process responsive to this paragraph’s requirements.*
- 15 **Recommendation 4.7.7a:** *APD should transition to a routinely reported “inspections and audit” process responsive to this paragraph’s requirements, using Completed Staff Work to guide development and reporting of same.*
- 16 **Recommendation 4.7.7b:** *Timely response to establish policy requirements should be emphasized to firearms training staff and supervisors.*
- 17 **Recommendation 4.7.8a:** *APD should complete expeditiously a Completed Staff Work document related to paragraph 21 compliance, outlining compliance issues and developing recommendations to remedy those activities. This document should be provided to the Chief of Police and cc’d to the Monitor.*
- 18 **Recommendation 4.7.9a:** *APD should produce a piece of Completed Staff Work assessing why it has been unable to meet the requirements of paragraph 22, and recommending a way forward on this critical oversight paragraph. The CSW should be presented to the Chief of Police for review, comment and action.*
- 19 **Recommendation 4.7.10a:** *Write a revised EIRS policy that can be approved by the Parties and the monitor as responsive to established policy in the field, e.g., New Orleans PD and Seattle PD.*
- 20 **4.7.11 Assessing Compliance with Paragraph 24: Use of ECWs**
- 21 **Recommendation 4.7.24a:** *Develop needs assessments, articulate needed improvements in written policy, and support with protocols that guide the audit unit as it compares operational requirements with operational practice, allowing the audit unit to identify and address any discrepancies in audit reports via recommendation of training or retraining, follow-up, or discipline, if necessary and appropriate.*

- 22 **Recommendation 4.7.25a:** *APD should either commission externally or complete internally a focused, thoughtful and meaningful “Completed Staff Work” document analyzing this problem and submit it to the Chief of Police for review, assessment and action*
- 23 **Recommendation 4.7.26a:** *APD should complete a multi-agency review and assessment of the incidents surrounding the Trump rally, focusing on policy guidance for after-action event assessments, after-action upgrades to policy, training, and multi-agency responses, and develop policy that is responsive to partner-agency concerns guiding after-action reviews, assessments, and revisions to existing policy. That policy should be submitted to partner agencies for review and comment, and changes made to accommodate partner agency concerns (or explain why changes were not made).*
- 24 **Recommendation 4.7.27a:** *APD should complete a multi-agency review and assessment of the incidents surrounding the Trump rally, focusing on policy guidance for after-action event assessments, after-action upgrades to policy, training, and multi-agency responses, and develop policy that is responsive to partner-agency concerns guiding after-action reviews, assessments, and revisions to existing policy. That policy should be submitted to partner agencies for review and comment, and changes made to accommodate partner agency concerns (or explain why changes were not made).*
- 25 **Recommendation 4.7.28a:** *Ensure that all lapel video is viewed at some point by trained and effective review staff, and that any noted “policy outliers” are noted, in writing, and forwarded up the chain of command.*
- 26 **Recommendation 4.7.28b:** *Ensure that Area Commanders consider and track these “policy outliers” as part of their command oversight function, e.g., increasing “review rates,” increasing supervisory field contacts with triggered personnel, increasing report review and assessment frequency for triggered personnel, assigning remedial training, ordering increased review frequencies, etc.*
- 27 **Recommendation 4.7.29a:** *Prioritize the most frequent and most serious use of force “misses,” and develop a response plan, using the Completed Staff Work model, and present the results to the Chief of Police for review, comment, and action.*
- 28 **Recommendation 4.7.29b:** *Continue these prioritized reviews until the error rate drops below five percent.*
- 29 **Recommendation 4.7.31a:** *Identify in routine monthly reports, officers who failed to report, or incompletely reported, a given Use of Force, and supervisors who missed that failure, and provide appropriate progressive discipline to the officers, supervisors, and commanders.*
- 30 **Recommendation 4.7.31b:** *Reports responsive to this recommendation should be compiled as part of APD’s CASA-required reports, along with a listing of corrective responses required by APD.*

- 31 **Recommendation 4.7.32a:** *Assess available data to determine if failure to activate occurs among specific units or shifts etc. and, if so, “retrain” those units and shifts’ supervisory and command personnel in the requirements of this paragraph. If not, “retrain” the specific officers involved, and their supervisory and command personnel regarding the requirements of this paragraph. Document all remedial training by unit, individual officer, supervisor, or command officer, date and issue. Review these data quarterly to identify needed further intervention if necessary.*
- 32 **Recommendation 4.7.32b:** *Develop policy changes to APD’s use of force policy that address distraction strikes, neck holds, and shows of force and include these topics in follow-up training to all personnel.*
- 33 **Recommendation 4.7.33a:** *Given the scope of the failure rate on these cases, it is highly unlikely they are supervisor or command specific; however, APD should carefully assess where these errors occurred, what supervisory and command structure permitted them, and should design a carefully thought out response plan to ensure that the errors are communicated to the appropriate command, that the command(s) assess(es) the errors and submit(s) to the Chief of Police realistic responses designed to eliminate an 87% error rate in such a critical process’ oversight, review and remediation.*
- 34 **Recommendation 4.7.33b:** *The Chief of Police should track changes in these data results quarterly, and take corrective action where necessary if reporting accuracy does not improve.*
- 35 **Recommendation 4.7.33c:** *APD should issue public, quarterly reports to Council, CPOA, and POB regarding the outcomes of their efforts to correct errant Command-level classifications and decisions on use of force.*
- 36 **Recommendation 4.7.33d:** *Develop policy changes to APD’s use of force policy that address distraction strikes, neck holds, and show of force and include these topics in follow-up training to all personnel.*
- 37 **Recommendation 4.7.34a:** *Given the scope of the failure rate on the cases noted in 4.7.33 above, it is highly unlikely they are supervisor or command specific; however, APD should carefully assess, through Completed Staff Work processes, where these errors occurred, what supervisory and command structure permitted them, and should design a carefully thought out response plan to ensure that the errors are communicated to the appropriate command, that the command(s) assess(es) the errors and submit(s) to the Chief of Police realistic responses designed to eliminate an 87% error rate in such a critical process’ oversight, review and remediation.*
- 38 **Recommendation 4.7.34b:** *Develop policy changes to APD’s use of force policy that address distraction strikes, neck holds, and show of force and include these topics in follow-up training to all personnel.*



- 39 **Recommendation 4.7.35a: Develop policy guidance on outstanding issues in use of force protocols, i.e., distraction strikes, the definition/elimination of neck holds, and show of force procedures that conform to national standards and are acceptable to the monitor.**
- 40 **Recommendation 4.7.36a: Resolve outstanding issues related to neck holds, distraction strikes and show of force through revised policies and training.**
- 41 **Recommendation 4.7.37a: Conduct a point-by-point analysis of use of force training to ensure that field supervisors have been provided sufficient training and oversight to be cognizant of their responsibilities under this section. Either revise training protocols or “re-train” supervisory personnel who are not adhering to established and approved policy.**
- 42 **Recommendation 4.7.37b: Develop policy changes to APD’s use of force policy that address distraction strikes, neck holds, and show of force and include these topics in follow-up training to all personnel.**
- 43 **Recommendation 4.7.37c: If more than 5 percent of the issues that should have been covered in the training, by topic, have not been covered, revise the training as necessary to give appropriate guidance and repeat it to the entire population of affected sergeants.**
- 44 **Recommendation 4.7.37d: Conduct an after-action review of uses of force involved in [IMR-5-006], and provide remedial training, counseling, or other action as indicated by the results of the investigation.**
- 45 **Recommendation 4.7.38a: Develop policy changes to APD’s use of force policy that address distraction strikes, neck holds, and show of force and include these topics in follow-up training to all personnel.**
- 46 **Recommendation 4.7.39a: APD should carefully assess the training and oversight it has provided supervisory and management levels of the organization regarding follow up on use of force incidents by sworn personnel. In the monitor’s experience, such global failures can be attributed to either poor training, poor oversight, or both. This should include:**
- 47 **i. A complete and thorough review of not only use of force lesson plans, but also in-class delivery, including ancillary “off page” comments, etc.**
- 48 **ii. Point-by-point, clear assessments, by CASA requirement, of the modalities used to “transfer” knowledge and understanding re acceptable use of force (this would entail breaking down each element of a given CASA requirement, lesson plans, but also in-class delivery, including ancillary “off page” comments, etc.**
- 49 **iii. Review past monitor’s reports to ensure that problematic training modalities noted therein have been addressed and corrected;**
- 50 **iv. Develop a written failure analysis for past training; and**
- 51 **v. Develop and implement a plan for remediating problematic errors and/or omissions in past training processes related to Paragraph 52**

*and related training paragraphs.*

- 52 ***Recommendation 4.7.39b: Submit the results of this training review (which should incorporate past monitor's training assessments) to the Chief of Police for review, comment, and development of an implementation plan for remediation.***
- 53 ***Recommendation 4.7.39c: Determine if the "failures" noted are due to training or supervision.***
- 54 ***Recommendation 4.7.39d: The Chief of Police should forward to the Training Academy the results of 4.7.39b above for assessment and remedial action.***
- 55 ***Recommendation 4.7.39e: APD should assess whether or not the remedial processes it implemented have corrected at least 95 percent of the problems identified with training, and***
- 56 ***Recommendation 4.7.39f: APD should repeat the process identified above until failure rates in the field are below five percent.***
- 57 ***Recommendation 4.7.40a: Establish, by policy, a standard deadline for supervisory review of uses of force incidents by APD personnel.***
- 58 ***Recommendation 4.7.40b: Build in an audit system to ensure those deadlines are either adhered to or are accompanied by a command-level extension of existing deadlines, noting specific, salient reasons for the granting of extensions.***
- 59 ***Recommendation 4.7.41a: Establish by policy, training, and internal monitoring specific requirements for command review of supervisory force reviews, ensuring that the new policy, training and internal monitoring conform to the requirements of the CASA for this paragraph.***
- 60 ***Recommendation 4.7.41b: Ensure that policy outliers are brought to the attention of commanders failing to conform, and to their immediate superiors and the Chief of Police.***
- 61 ***Recommendation 4.7.41c: Require commanders who fail to conform with Paragraph 54's requirements to undergo retraining in policy requirements and to develop a correction-plan for ensuring that policy adherence is achieved.***
- 62 ***Recommendation 4.7.41d: Executive-level personnel for those commanders completing such retraining and corrective planning measures should monitor commanders under their supervision to ensure they meet the requirements of Paragraph 54's stipulations relative to are brought into compliance.***
- 63 ***Recommendation 4.7.41e: Executive-level personnel so tasked should develop quarterly reviews of commanders under their chains of command, stating their levels of compliance with Paragraph 54's requirements. Those reviews should be forwarded to the Chief of Police, for development of actions plans to remedy identified issues.***



- 64 **Recommendation 4.7.42a:** *Identify the factors causing the most errors in command review and require a completed CSW document that proposes specific, tangible, and evaluable policy revisions, supervisory and commander re-training or discipline to rectify given error categories.*
- 65 **Recommendation 4.7.42b:** *Forward the CSW document to the Chief of Police for review, assessment and implementation of remedial processes.*
- 66 **Recommendation 4.7.42c:** *Require follow-up and analysis to determine if recommended processes have alleviated the identified problems, and repeat steps a through c until issues have been reduced to less than 95 percent.*
- 67 **Recommendation 4.7.43a:** *Ensure that APD automated systems relating to paragraphs 41-56 are supported by a meaningful recording, assessment, and tracking system to ensure that each incident of a noted failure to comply within the command structure is documented, addressed, and followed up to ensure such errors are mitigated and reduced to a level below five percent.*
- 68 **Recommendation 4.7.43b:** *Ensure that deficiencies in APD's systems relating to paragraphs 41-56 are monitored and noted, and result in corrective action taken with the responsible command and supervisory personnel.*
- 69 **Recommendation 4.7.43c:** *If necessary, consult with external resources to design a formalized system of monitoring supervisory and command-level responses to policy violations.*
- 70 **Recommendation 4.7.44a:** *APD should ensure that the FRB process is integrated and methodical, requiring each "out of policy" action to be assessed for causes, remaining issues, and recommended responses to ensure that organization-wide implications are addressed in their problem response modalities as well as officer-specific, supervisor-specific and command-specific responses;*
- 71 **Recommendation 4.7.44b:** *APD should assess other similar processes in other police agencies known to be effective at dealing with such issues and review their processes for "lessons learned" that can be applied to APD's processes.*
- 72 **Recommendation 4.7.44c:** *APD should make it clear that "refrain from answering" is not a viable response. If APD cannot get a decision about a given use of force issue at this level, it suggests either a lack of training, a lack of structuring of the process, or a lack of commitment to improving.*
- 73 **Recommendation 4.7.44d.** *APD should assess its FRB panelists to ensure they understand current policy and practice and are clear about the FRB's purpose. To the extent that they find members who continually "refrain from answering" they should be re-trained or removed from FRB participation, with appropriate notation why in their APD personnel files.*

- 74 Recommendation 4.7.45a:** APD should initiate a systems-wide failure analysis regarding this case and determine at what points the most critical systems failed to perform as expected or required.
- 75 Recommendation 4.7.45b:** Once the failure points are identified, a thorough review of any cases with similar fact circumstances, similar command reviews, or other similar issues are noted.
- 76 Recommendation 4.7.45c:** Once the failure analysis is complete, APD should identify lessons learned and recommend policy, training, systemic, supervisory, and/or management oversight systems that need to be revised, upgraded, or otherwise modified.
- 77 Recommendation 4.7.45d:** Assessments outlined above should not be restricted to the case giving rise to these recommendations, but should address all similarly situated FRB reviews.
- 78 Recommendation 4.7.46a:** APD should initiate a systems-wide failure analysis regarding this case and determine at what point the most critical system failed to perform as expected or required.
- 79 Recommendation 4.7.46b:** Once the failure points are identified, a thorough review of any cases with similar fact circumstances, similar command reviews, or other similar issues are noted.
- 80 Recommendation 4.7.46c:** Once the failure analysis is complete, APD should identify lessons learned and recommend policy, training, systemic, supervisory, and/or management oversight systems that need to be revised, upgraded, or otherwise modified.
- 81 Recommendation 4.7.46d:** Assessments outlined above should not be restricted to the case giving rise to these recommendations, but should address all similarly situated FRB reviews.
- 82 Recommendation 4.7.46e:** Revise policy, training, supervision and command issues reflecting similar outcomes accordingly.
- 83 Recommendation 4.7.47a:** Complete an externally developed and executed manpower needs assessment for CIRT and FIT. The assessment should be completed using hard data regarding workload, average time to complete investigative phases, supervision levels required, and managerial processes that may be implemented to “work smarter” while maintaining the ability to meet established goals.
- 84 Recommendation 4.7.47b:** Once the needs assessment is complete, commit to optimum staffing within six months.

- 85 **Recommendation 4.7.47c: Report the goals, timelines, milestones, and quality control points suggested by the study, and effectiveness CIRT/IRT in meeting operational objectives to the Chief of Police and through the chief to Council.**
- 86 **Recommendation 4.7.48a: The solution to IA external training conundrum is simple. Perform a careful, comprehensive, inclusive Job-Task Analysis of all currently assigned IA job classes (this may require external assistance).**
- 87 **Recommendation 4.7.48b: Once the JTA is complete, develop a listing of needed skills and competencies;**
- 88 **Recommendation 4.7.48c: Identify current skill-sets possessed by current IA personnel, and conduct a “Gap Analysis;”**
- 89 **Recommendation 4.7.48d: Determine what missing skill-sets need to be developed;**
- 90 **Recommendation 4.7.48e: Assess external training modalities to identify in advance which ones train and develop the missing skill sets;**
- 91 **Recommendation 4.7.48f: Either develop the needed training in-house or procure it by sending IAB personnel to external training events that are known to provide effectively needed skill sets that will fill IAB’s skill-set deficiencies. Make no assignments to external training unless APD can verify that the training venue or provider actually has a plan and or course syllabus that includes an effective treatment of the designated skill set.**
- 92 **Recommendation 4.7.48g: Maintain records regarding skill set deficiencies and external training events skills training, and follow-up with post-training analyses of each externally trained employee’s ability to meet performance goals related to “new” skill sets.**
- 93 **Recommendation 4.7.49a: The solution to IA external training conundrum is simple. Perform a careful, comprehensive, inclusive Job-Task Analysis of all currently assigned IA job classes (this may require external assistance).**
- 94 **Recommendation 4.7.49b: Once the JTA is complete, develop a listing of needed skills and competencies;**
- 95 **Recommendation 4.7.49c: Identify current skill-sets possessed by current IA personnel, and conduct a “Gap Analysis;”**
- 96 **Recommendation 4.7.49d: Determine what missing skill-sets need to be developed;**
- 97 **Recommendation 4.7.49e: Assess external training modalities to identify in advance which ones train and develop the missing skill sets;**

- 98 ***Recommendation 4.7.49f: Either develop the needed training in-house or procure it by sending IAB personnel to external training events that are known to provide effectively needed skill sets that will fill IAB's skill-set deficiencies. Make no assignments to external training unless APD can verify that the training venue or provider actually has a plan and or course syllabus that includes an effective treatment of the designated skill set.***
- 99 ***Recommendation 4.7.49g: Maintain records regarding skill set deficiencies and external training events skills training, and follow-up with post-training analyses of each externally trained employee's ability to meet performance goals related to "new" skill sets.***
- 100 ***Recommendation 4.7.50a: The solution to IA external training conundrum is simple. Perform a careful, comprehensive, inclusive Job-Task Analysis of all currently assigned IA job classes (this may require external assistance).***
- 101 ***Recommendation 4.7. 50b: Once the JTA is complete, develop a listing of needed skills and competencies;***
- 103 ***Recommendation 4.7. 50c: Identify current skill-sets possessed by current IA personnel, and conduct a "Gap Analysis;"***
- 104 ***Recommendation 4.7.50d: Determine what missing skill-sets need to be developed;***
- 105 ***Recommendation 4.7. 50f: Either develop the needed training in-house or procure it by sending IAB personnel to external training events that are known to provide effectively needed skill sets that will fill IAB's skill-set deficiencies. Make no assignments to external training unless APD can verify that the training venue or provider actually has a plan and or course syllabus that includes an effective treatment of the designated skill set.***
- 106 ***Recommendation 4.7. 50g: Maintain records regarding skill set deficiencies and external training events skills training, and follow-up with post-training analyses of each externally trained employee's ability to meet performance goals related to "new" skill sets.***
- 107 ***Recommendation 4.7.51a: Perform a careful, comprehensive, inclusive Job-Task Analysis of all currently assigned IA job classes (this may require external assistance).***
- 108 ***Recommendation 4.7. 51b: Once the JTA is complete, develop a listing of needed skills and competencies;***
- 109 ***Recommendation 4.7. 51c: Identify current skill-sets possessed by current IA personnel, and conduct a "Gap Analysis;"***
- 110 ***Recommendation 4.7.51d: Determine what missing skill-sets need to be developed;***
- 111 ***Recommendation 4.7. 51e: Assess external training modalities to identify in advance which ones train and develop the missing skill sets;***

- 112 **Recommendation 4.7. 51f:** *Either develop the needed training in-house or procure it by sending IAB personnel to external training events that are known to provide effectively needed skill sets that will fill IAB's skill-set deficiencies. Make no assignments to external training unless APD can verify that the training venue or provider actually has a plan and or course syllabus that includes an effective treatment of the designated skill set.*
- 113 **Recommendation 4.7. 51g:** *Maintain records regarding skill set deficiencies and external training events skills training, and follow-up with post-training analyses of each externally trained employee's ability to meet performance goals related to "new" skill sets.*
- 114 **Recommendation 4.7.52a:** *Perform a careful, comprehensive, inclusive Job-Task Analysis of all currently assigned IA job classes (this may require external assistance).*
- 115 **Recommendation 4.7. 52b:** *Once the JTA is complete, develop a listing of needed skills and competencies;*
- 116 **Recommendation 4.7. 52c:** *Identify current skill-sets possessed by current IA personnel, and conduct a "Gap Analysis;"*
- 117 **Recommendation 4.7.52d:** *Determine what missing skill-sets need to be developed;*
- 118 **Recommendation 4.7. 52e:** *Assess external training modalities to identify in advance which ones train and develop the missing skill sets;*
- 119 **Recommendation 4.7. 52f:** *Either develop the needed training in-house or procure it by sending IAB personnel to external training events that are known to provide effectively needed skill sets that will fill IAB's skill-set deficiencies. Make no assignments to external training unless APD can verify that the training venue or provider actually has a plan and or course syllabus that includes an effective treatment of the designated skill set.*
- 120 **Recommendation 4.7. 52g:** *Maintain records regarding skill set deficiencies and external training events skills training, and follow-up with post-training analyses of each externally trained employee's ability to meet performance goals related to "new" skill sets.*
- 121 **Recommendation 4.7. 53a:** *Once the JTA is complete, develop a listing of needed skills and competencies;*
- 122 **Recommendation 4.7. 53b:** *Once the JTA is complete, develop a listing of needed skills and competencies;*
- 123 **Recommendation 4.7. 53c:** *Identify current skill-sets possessed by current IA personnel, and conduct a "Gap Analysis;"*
- 124 **Recommendation 4.7.53d:** *Determine what missing skill-sets need to be developed;*
- 125 **Recommendation 4.7. 53e:** *Assess external training modalities to identify in advance which ones train and develop the missing skill sets;*



- 126 **Recommendation 4.7. 53f:** *Either develop the needed training in-house or procure it by sending IAB personnel to external training events that are known to provide effectively needed skill sets that will fill IAB's skill-set deficiencies. Make no assignments to external training unless APD can verify that the training venue or provider actually has a plan and or course syllabus that includes an effective treatment of the designated skill set.*
- 127 **Recommendation 4.7. 53g:** *Maintain records regarding skill set deficiencies and external training events skills training, and follow-up with post-training analyses of each externally trained employee's ability to meet performance goals related to "new" skill sets.*
- 128 **Recommendation 4.7.54a:** *APD should develop policy and training requiring such referrals to track the exact inventory of items that go back and forth for these reviews and provide more specificity*
- 129 **Recommendation 4.7.55a:** *Document via lesson plans, attendance records, and test scores training related this paragraph as it relates to internal policies*
- 130 **Recommendation 4.7.55b:** *The solution to IA external training conundrum is simple. Perform a careful, comprehensive, inclusive Job-Task Analysis of all currently assigned IA job classes (this may require external assistance).*
- 131 **Recommendation 4.7. 55c:** *Once the JTA is complete, develop a listing of needed skills and competencies;*
- 132 **Recommendation 4.7. 55d:** *Identify current skill-sets possessed by current IA personnel, and conduct a "Gap Analysis;"*
- 133 **Recommendation 4.7.55e:** *Determine what missing skill-sets need to be developed;*
- 134 **Recommendation 4.7. 55f:** *Assess external training modalities to identify in advance which ones train and develop the missing skill sets;*
- 135 **Recommendation 4.7. 55g:** *Either develop the needed training in-house or procure it by sending IAB personnel to external training events that are known to provide effectively needed skill sets that will fill IAB's skill-set deficiencies. Make no assignments to external training unless APD can verify that the training venue or provider actually has a plan and or course syllabus that includes an effective treatment of the designated skill set.*
- 136 **Recommendation 4.7. 55h:** *Maintain records regarding skill set deficiencies and external training events skills training, and follow-up with post-training analyses of each externally trained employee's ability to meet performance goals related to "new" skill sets.*
- 137 **Recommendation 4.7.56a:** *Document via lesson plans, attendance records, and test scores training related this paragraph as it relates to internal policies;*

- 138 **Recommendation 4.7.56b:** *The solution to IA external training conundrum is simple. Perform a careful, comprehensive, inclusive Job-Task Analysis of all currently assigned IA job classes (this may require external assistance).*
- 139 **Recommendation 4.7. 56c:** *Once the JTA is complete, develop a listing of needed skills and competencies;*
- 140 **Recommendation 4.7. 56d:** *Identify current skill-sets possessed by current IA personnel, and conduct a “Gap Analysis;”*
- 141 **Recommendation 4.7. 56e:** *Determine what missing skill-sets need to be developed;*
- 142 **Recommendation 4.7. 56f:** *Assess external training modalities to identify in advance which ones train and develop the missing skill sets;*
- 143 **Recommendation 4.7. 56g:** *Either develop the needed training in-house or procure it by sending IAB personnel to external training events that are known to provide effectively needed skill sets that will fill IAB’s skill-set deficiencies. Make no assignments to external training unless APD can verify that the training venue or provider actually has a plan and or course syllabus that includes an effective treatment of the designated skill set.*
- 144 **Recommendation 4.7. 56h:** *Maintain records regarding skill set deficiencies and external training events skills training, and follow-up with post-training analyses of each externally trained employee’s ability to meet performance goals related to “new” skill sets.*
- 145 **Recommendation 4.7.57:** *Formalize and document IAB training protocols relative to internal policy requirements. Such training cannot be outsourced to external training providers unless they are specifically tailored to APD IAB internal policy requirements.*
- 146 **Recommendation 4.7.58a:** *Develop specific, direct, and cogent policy provisions that conform to the requirements of Paragraph 71*
- 147 **Recommendation 4.7.58b:** *Develop and train the policy provisions related to this policy provisions, supplemented by appropriate testing and evaluation to determine effectiveness.*
- 148 **Recommendation 4.7.59a:** *Develop a needs assessment informing the curriculum that is necessary to meet the requirements of the process of applying internal investigations processes to conform to federal and state law and practice, and to conform with the requirements of this paragraph*
- 149 **Recommendation 4.7.59b:** *Develop lesson plans outlining the planned course of instruction that identifies specific and measurable goals, objectives, methods of delivery and methods of testing learning responsive to the needs assessment stipulated in 4.7.59a*
- 150 **Recommendation 4.7.59c:** *Deliver the training as planned to all IAB personnel and those charged with directly or indirectly supporting IAB on this topic.*
- 151 **Recommendation 4.7.59d:** *Test all involved officers and supervisory*



*personnel to ensure the information delivered was “learned;”*

- 152 Recommendation 4.7.59e: Re-train any officers or supervisors who did not achieve a passing score, and retest. Retrain and retest until 95% or more have achieved a passing score.**
- 153 Recommendation 4.7.60a: Ensure that >95% of all IAB investigators score at least a passing score on the issued exam process outlined in 4.7.59, above.**
- 154 Recommendation 4.7.61a: Comply with recommendations in sections 4.7.59-4.7.60, above.**
- 155 Recommendation 4.7.62a: Train or re-train IAB personnel based on the expectations for performance related to SOPs 2-05, SOP 7-1, SOP 7-2, SOP 7-3 and SOP 3-41, and test for learning as outlined in sections 4.7.59-4.7.60, above.**
- 156 Recommendation 4.7.63a: Train or re-train IAB personnel based on the expectations for performance related to SOPs 2-05, SOP 7-1, SOP 7-2, SOP 7-3 and SOP 3-41, and test for learning as outlined in sections 4.7.59-4.7.60, above.**
- 157 Recommendation 4.7.65a: Train or re-train IAB personnel based on the expectations for performance related to SOPs 2-05, SOP 7-1, SOP 7-2, SOP 7-3 and SOP 3-41, and test for learning as outlined in sections 4.7.59-4.7.60, above.**
- 158 Recommendation 4.7.65b: APD should commission an in-depth review of FRB policy, staffing, leadership and operations to ensure that the issues addressed in the paragraph are assessed internally, and, for each issue identified above, APD should craft a thoughtful, detailed, and effective piece of Completed Staff Work.**
- 159 Recommendation 4.5.65b: The monitor views the discussion in 4.7.65 as mission critical. Results of the assessment, including any and all recommendations made to remediate the failures noted here should be staffed with APD command and executive leadership for comment before APD begins implementation of those recommendations.**
- 160 Recommendation 4.7.65c: APD should reach out to other similarly situated police agencies to discuss successful modalities for overcoming such critical issues as we have observed with the FRB.**
- 161 Recommendation 4.7.65d: APD should conduct a careful needs assessment of the skill sets needed for FRB participation, and develop training to ensure that FRB members receive this training prior to assuming their FRB-related duties.**
- 162 Recommendation 4.7.66a: Clearly and officially assess the veracity and validity of the “under use of force” (sic) report, and replace it with a clear, comprehensive, and cogent review that reflects national standards, case law, “best practices” in the field, and current (approved) APD policy and training.**

- 163 **Recommendation 4.7.66b:** *Develop and/or revise specific, cogent, policy-relevant to further production of such reports, including recommended methodologies for use of force assessment viz a viz “best practices” and (approved) APD policy;*
- 164 **Recommendation 4.7.66c:** *Ensure that the newly organized and structured Use of Force Report is used in APD’s recruit and in-service training on use of force.*
- 165 **Recommendation 4.7.66d:** *Establish a process for “peer review” of the results reported in the Use of Force Report by external use of force SMEs until APD clearly establishes it is capable of producing such documents that are clear, instructive, and responsive to national, and state law and “best practices.”*
- 166 **Recommendation 4.7.67a:** *Subject APD’s proposed Blue Team policy and procedures to “peer review” from other department’s that have previously met the standards for effective force-review processes, e.g., New Jersey State Police, Pittsburgh Bureau of Police, Seattle Police, and New Orleans Police, and ensure the proposed mechanism meets current standards in the field*
- 167 **Recommendation 4.7.73a:** *As we have suggested multiple times in the past, APD should develop a comprehensive training plan, based on information contained within the monitoring reports, and draw direct lines between policy, the CASA, training gaps identified by the monitoring team and the specific areas within their training curriculum where these issues are addressed.*
- 168 **Recommendation 4.7.73b** *Resolve at the soonest point possible outstanding issues regarding neck holds, distraction strikes, and show-of-force issues.*
- 169 **Recommendation 4.7.74a:** *APD should implement a careful review of IMR-4, IMR-5, and IMR-6 and note gaps in provided training, policy, or supervision and develop, where appropriate, specific training modalities to positively affect remediation of those gaps. Application of the concept of “completed staff work” should be directed toward each identified gap, resulting in specific recommendations to the Chief of Police designed to remediate any training gaps.*
- 170 **Recommendation 4.7.75a:** *We reiterate yet again, APD should consider developing a comprehensive training plan, based on information contained within what now is five monitor’s reports, and draw direct lines between training gaps we identify and specific areas within their training curriculum. This process should result in a piece of completed staff work that identifies specific issues and recommends steps to resolve those issues and is submitted to the Chief of Police for action.*

- 171 Recommendation 4.7.75b: We reiterate, yet again, APD should provide clear, concise and thorough course syllabi as part of their training plans, and those documents should be organized based on national standards that allow anyone needing to know the proposed content, process, and methods of the proposed training to consult the training plan and understand what the training's goals, objectives, modalities, and assessment of learning techniques will be. It may be that APD needs to contract with outside experts to find the expertise necessary to work through this process, as the monitor's numerous attempts at transferring this knowledge appear to have failed.[1]**
- 172 Recommendation 4.7.93a: Continue current levels of response to this requirement, and continue to document incident response protocols in writing in after-action critiques and assessments that will be reviewed for operational compliance, in preparation for the next reporting period.**
- 173 Recommendation 4.7.94a: Continue current practice in preparation for full operational review during IMR-6.**
- 174 Recommendation 4.7.96a: Continue current practice in preparation for full operational review during IMR-6**
- 175 Recommendation 4.7.97a: APD should ensure that each of the related paragraphs, 111-137 below conform with the goals articulated in this paragraph and are articulated sufficiently to Command and supervisory-level personnel.**
- 176 Recommendation 4.7.100a: Assess MHRAC-APD information interfaces to identify ways of increasing lead times presented to MHRAC from APD related to issue review and consideration and development of recommendations.**
- 177 Recommendation 4.7.101: Complete MOU as planned, and implement provisions. Copy the monitor on final product.**
- 178 Recommendation 4.7.102: Submit required documentation to MHRAC as well as documentation from MHRAC noting review and approval. Ensure that documentation is responsive to relationship building and scenario-based training.**
- 179 Recommendation 4.7.104: Ensure MHRAC reports are posted on relevant CABQ websites.**
- 180 Recommendation 4.7.110a: Develop and execute a data-based, methodologically appropriate workload and manpower planning analysis that ensures that reliable "staffing levels" for eCIT officers are calculated, reported, set as staffing goals, and attained.**
- 181 Recommendation 4.7.111a: Develop a recruitment, training and deployment plan for "Certified responders" that will meet the articulated goal of 40 percent of field services officers.**
- 182 Recommendation 4.7.112: Submit training documentation for this particular training, e.g., routinely kept class rosters, exam scores, etc.**

- 183 **Recommendation 4.7.114a: Complete eCIT training as designed, and evaluate performance via a reasonable testing procedure.**
- 184 **Recommendation 4.7.115a: Complete eCIT training and evaluate; revise as necessary.**
- 185 **Recommendation 4.7.116a: Design and build tracking systems congruent with the requirements of this paragraph.**
- 186 **Recommendation 4.7.118a: The current policy guiding this paragraph is expired. Change existing policy as appropriate, and promulgate the new policy.**
- 187 **Recommendation 4.7.118b: Revise training and training evaluation protocols to reflect the new policy developed as per 4.7.18a, above**
- 188 **Recommendation 4.7.122a: Upgrade CIU/COAST to the required staffing levels.**
- 189 **Recommendation 4.7.123a: APD should ensure that COAST and CIU personnel track incident reports involving their personnel for indications of recurring issues and problems that may be addressed by referral of clients to community health resources.**
- 190 **Recommendation 4.7.123b: Once these opportunities are identified, train COAST and CIU personnel to implement, where appropriate referrals to outreach, service delivery, crisis prevention, and referrals to community health resources**
- 191 **Recommendation 4.7.137a: Collect, analyze and interpret the data elements above on a routine basis, and produce reports circulated to CIU and COAST personnel, through the chain of command, and eventually to the public via APD's web-site.**
- 192 **Recommendation 4.7.137b: Memorialize these processes in policy and training.**
- 193 **Recommendation 4.7.125a: Expedite policy review and revision policies and practices to ensure that current, reliable, and workable policies are in place to guide the actions of APD officers**
- 194 **Recommendation 4.7.125b: Focus first on high-risk/critical task policies such as use of force, EIRS, and OBRD.**
- 195 **Recommendation 4.7.125c: Where possible, use approved similar policies from other law enforcement agencies currently working through consent decrees, i.e., Seattle PD and New Orleans PD.**
- 196 **Recommendation 4.7.131a: Expedite policy review and revision policies and practices to ensure that current, reliable, and workable policies are in place to guide the actions of APD officers**
- 197 **Recommendation 4.7.131b: Focus first on high-risk/critical task policies such as use of force, EIRS, and OBRD.**
- 198 **Recommendation 4.7.131c: Where possible, use approved similar policies from other law enforcement agencies currently working through consent decrees, i.e., Seattle PD and New Orleans PD.**
- 199 **Recommendation 4.7.132a: APD should identify the "roadblocks" to completion of these policy processes and design a careful, deliberate, and recommendation-centric resolution to those**

**roadblocks.**

- 200 Recommendation 4.7.133a: APD should identify the “roadblocks” to completion of these policy processes and design a careful, deliberate, and recommendation-centric resolution to those roadblocks.**
- 201 Recommendation 4.7.134a: APD should identify the “roadblocks” to completion of these policy processes and design a careful, deliberate, and recommendation-centric resolution to those roadblocks.**
- 202 Recommendation 4.7.138a: APD should provide “certification proofs” as requested by the monitor.**
- 203 Recommendation 4.7.146a: The Training Academy should assemble, review, and assess documentation relevant to this task that addresses the manner in which they use these surveys to assess and modify training parameters, and should identify rationale(s) for not utilizing survey feedback.**
- 204 Recommendation 4.7.149a: APD’s failure in this paragraph is directly attributable to supervision, and reflects directly on the effectiveness of the agency’s training and oversight of supervisory personnel, indicating a need to review supervisory training mechanisms to ensure that it has effectively and thoroughly trained the supervisors involved in the failures to document and report alleged misconduct to IAB.**
- 205 Recommendation 4.7.149b: If the supervisors in question have received the latest version of supervisory training provided by APD during this training cycle, APD should diagnose the reason for the failure to identify: 1. whether this topic was covered adequately in the training; 2. whether the training was provided or not provided to the sergeants in question; and 3. If it was provided, but not “learned” remedial training is necessary.**
- 206 Recommendation 4.7.149c: If the training was not covered or delivered properly, mechanisms need to be designed to ensure remedial training is offered to all those who received the improper training.**
- 207 Recommendation 4.7.149d: If the training was not covered or delivered properly, all sessions of the training offered on other time and or dates need to be similarly assessed and remediated.**
- 208 Recommendation 4.7.149e: If the training was not covered or delivered properly, a comprehensive failure analysis needs to be conducted to identify lessons that can be learned from the failure and to feedback those findings to the academy staff involved in developing, conducting and over-seeing the training in question.**



- 209 **Recommendation 4.7.149f:** *Similar training failure analyses should be conducted as a matter of routine practice any time data, such as those just provided by the monitor on this issue, result in out-of-compliance findings.*
- 210 **Recommendation 4.7.150a:** *Revise APD's and CPOA's websites to include an icon for "filing an anonymous complaint," and ensure that that icon reliably leads to a form not requiring (or seeming to require) a name, address, telephone number or other similar identifying information.*
- 211 **Recommendation 4.7.150b:** *Insure that anonymous complaints are fully and, to the extent possible, fairly investigated.*
- 212 **Recommendation 4.7.151a:** *Revise APD's and CPOA's websites to include an icon for "filing an anonymous complaint," and ensure that icon reliably leads to a form not requiring (or seeming to require) a name, address, telephone number or other similar identifying information.*
- 213 **Recommendation 4.7.151b:** *Insure that anonymous complaints are fully and, to the extent possible, fairly investigated.*
- 214 **Recommendation 4.7.154a:** *Revise APD's and CPOA's multi-lingual websites to include an icon for "filing an anonymous complaint," and ensure that that icon reliably leads to a form not requiring (or seeming to require) a name, address, telephone number or other similar identifying information.*
- 215 **Recommendation 4.7.154b:** *Insure that anonymous complaints are fairly and, to the extent possible, full, investigated.*
- 216 **Recommendation 4.7.158a:** *Revise APD's and CPOA's websites to include an icon for "filing an anonymous complaint," and ensure that that icon reliably leads to a form not requiring (or seeming to require) a name, address, telephone number or other similar identifying information.*
- 217 **Recommendation 4.7.158b:** *Insure that anonymous complaints are fairly and, to the extent possible, fully, investigated.*
- 218 **Recommendation 4.7.159:** *Redouble efforts, such as roll-call reminders, etc. to ensure that officers and supervisors continue to conform with the requirements of this Paragraph.*
- 219 **Recommendation 4.7.164a:** *These issues hardly appear systemic. Counseling of the involved officers regarding the requirements of Paragraph 178 would be appropriate.*
- 220 **Recommendation 4.7.169a:** *APD and CPOA leadership should conduct a review of each of the non-compliant cases and clearly determine: 1.) where the failure occurred; 2.) the nature and severity of the failure viz. a viz. its threat to the reliability of the investigation and 3.) the nature of remedial steps that need to be taken to minimize the chance of similar errors in the future.*

- 221 **Recommendation 4.7.169b:** *APD and CPOA should produce a Completed Staff Work document clearly identifying points 1-3 above, and recommending specific steps to be taken to ensure the issues are corrected, to the point that errors can be reduced to acceptable levels. This document should be submitted to the Chief of Police for review and comment in writing, and specifically articulating reasons for his decisions.*
- 222 **Recommendation 4.7.174a:** *These errors are found not to be intentional, but simply oversights. Reminding all personnel from both IAB and CPOA of this requirement in writing should be sufficient. Both agencies' supervisory and command staff should be on increased alert for issues involving this paragraph.*
- 223 **Recommendation 4.7.174b:** *All three entities, APD, IAB, and CPOA would benefit from a detailed flowcharting process, depicting in clear detail, the "process" of completing, forwarding for review and or comment, consulting on, "approving," and resolving differences in findings about their investigative reports.*
- 224 **Recommendation 4.7.177a:** *Managers at CPOA and IAB should be cognizant of timelines for given investigations, and ensure that, when needed and appropriate, extensions are requested. (CPC 2016-00088 was opened in a timely manner by CPOA and transferred to APD IA for final investigation.)*
- 225 **Recommendation 4.7.177b:** *Timeline compliance rates should be included in CPOA's and IAB's monthly and/or quarterly management reports.*
- 226 **Recommendation 4.7.178a:** *CPOA should reinforce training and supervision of its personnel related to investigative timelines.*
- 227 **Recommendation 4.7.187a:** *APD and CPOA need to redouble their efforts related to ensuring fair and consistent discipline, based on the event and the officer's previous records.*
- 228 **Recommendation 4.7.191a:** *APD and CPOA should investigate police officers' uses of force as required by policy, and those investigations should comport with best practices and applicable federal and state regulations.*
- 229 **Recommendation 4.7.192a:** *APD should develop a comprehensive analysis of the Sergeant's training provided and ensure that each of these elements noted in Table 4.7.192 above were fully and comprehensively covered in the Sergeant's training, that testing corroborated learning on each issue in the curriculum, and that identifies and recommends solutions for any issues noted in this review.*



- 230 **Recommendation 4.7.192b:** *APD should compare the supervisory training provided recently to APD supervisory personnel with the training similarly provided in Seattle, Washington and New Orleans, Louisiana to determine if there are any substantive differences in the training documentation and/or the training presentation, testing, or other processes that may explain this remarkably unusual failure rate.*
- 231 **Recommendation 4.7.192c:** *APD should develop an expeditious remediation plan if the training assessed in a and b above is found to be problematic, and submit the plan to the Chief of Police;*
- 232 **Recommendation 4.7.192d:** *The remediation plan noted in Recommendation 4.7.192c should take the form of a Completed Staff Work document, exhibiting a thoughtful and meaningful attempt to identify issues related to the failure, recommend resolutions for those issues, and articulate an implementation and evaluation schedule for the remediation plan.*
- 233 **Recommendation 4.7.192e:** *The Chief of Police should develop an action plan based on information developed in a-d above, specifically outlining steps the APD will take to resolve this critical training deficiency, establishing clear and measurable goals, objectives, and processes.*
- 234 **Recommendation 4.7.192f:** *Once the steps outlined in “e” above have been implemented, APD should evaluate the impact of the changes in training for supervisors relating to oversight of use of force and the individual elements of Paragraph 206.*
- 235 **Recommendation 4.5.192g:** *APD should “feed back” the findings of the 192f phase to the Training Academy, and require appropriate action regarding modifications to training based on this final feedback loop.*
- 236 **Recommendation 4.7.194a:** *Given APD’s performance on use of force review depicted in Table 4.7.192 above, command-level review of use of force reporting, and associated performance during sergeant-level review should be the top priority for Area Commanders. Delegating this review almost entirely to lieutenants is not in compliance with the letter or the spirit of this paragraph. Commanders should be tasked with routinely pulling together monthly status reports on what’s being done within their Area Commands to improve the quality of performance of supervisors in reviewing uses of force by their personnel and correcting out-of-policy behaviors.*

- 237 Recommendation 4.7.194b:** *Area Commanders should require each sergeant under their command who supervise patrol officers on routine or specialized patrol to 1.) Identify lapses in policy related to use of force that they have noted during each quarter; 2.) identify a course of remedial action to ensure the policy lapses cease; and 3) communicate that remedial action up the chain of command (to lieutenants and commanders) and down the chain of command (to the officers under their supervision, including the officer found out of compliance). Obviously, remedial action to the officers as a group should not be officer-specific, but fact-specific.*
- 238 Recommendation 4.7.194c:** *If “downstream” review of incidents, e.g., CIRT, IRT, etc. find supervisory or policy issues, commanders should ensure that those reviews are relayed in routine and periodic interactions with the sergeants who have missed those issues in their reviews of the incidents.*
- 239 Recommendation 4.7.194d:** *Area Commanders should track all interventions in response to a-c above, and if lieutenants or sergeant persist in missing critical opportunities for intervention, shall refer them to the training academy for remedial training.*
- 240 Recommendation 4.7.194e:** *Area Commanders and lieutenants should remain constantly aware of opportunities for coaching and other forms of informal remedial applications regarding use of force. These should be reserved for instances where troubling “indicators” may be known to the Commanders or lieutenant that may not constitute a policy violation, but inform the intent and practice of officers in day-to-day interaction with citizens and suspects.*
- 241 Recommendation 4.7.194f:** *The Chief of Police should develop ongoing feedback and “coaching” processes for Area Commanders and lieutenants relating to informal control mechanism relative to officers’ use of force, as well as the formal mechanisms outline in a-e, above.*
- 242 Recommendation 4.7.195a:** *Prioritize the most frequent and most serious use of force “misses,” and develop a response plan, using the Completed Staff Work model, and present the results to the Chief of for review and comment.*
- 243 Recommendation 4.7.195b:** *Continue these prioritized reviews at least quarterly until the error rate drops below five percent.*
- 244 Recommendation 4.7.197a:** *Ensure the training plan is documented according to the standards the monitor has consistently provided to the APD.*
- 245 Recommendation 4.7.197b:** *Ensure that all training-related elements of the CASA identified in this (and related) paragraphs*
- 246 Recommendation 4.7.198a:** *APD should consider monitor feedback and not respond to that feedback positively while otherwise stepping backward in other sections of the policy, such as the “seven minute review” policy noted above.*

- 247 **Recommendation 4.7.198b:** *APD should contact NJSP, New Orleans PD, and Seattle PD to glean ideas about how this review regimen could be structured to meet the requirements of the CASA in the most efficient manner possible.*
- 248 **Recommendation 4.7.199a:** *APD should avoid making unilateral decisions on policy revisions to policies required by the CASA without notifying the Parties and the monitor of the need, import, and specifics of the “new” policy.*
- 249 **Recommendation 4.7.200a:** *Provide the monitor with an approvable policy regarding EIRS triggers. In the meantime, re-install agreed-upon triggers to the system*
- 250 **Recommendation 4.7.200b:** *In the interim, prepare a catalog of all triggers received and ignored, covering the times that EIRS triggers have been removed*
- 251 **Recommendation 4.7.201a:** *Clarify sections g and k of the current policy to reflect the requirements of the CASA*
- 252 **Recommendation 4.7.201b:** *Ensure supervisors are cognizant of their responsibilities under Paragraph 215, and are trained to correctly perform those responsibilities.*
- 253 **Recommendation 4.7.202a:** *Complete the development process to achieve an approved policy regarding EIRS implementation at the sergeant’s level.*
- 254 **Recommendation 4.7.202b:** *Develop an approved analysis and reporting system regarding EIRS triggers, and response protocols to those triggers.*
- 255 **Recommendation 4.7.203a:** *Train the new policies as approved*
- 256 **Recommendation 4.7.203c:** *Develop and implement a meaningful “inspections and audit” protocol and procedure to ensure internal field-assessment of operations in the field (i.e., sergeants, lieutenants and Area Commanders) relating to this policy.*
- 257 **Recommendation 4.7.206a:** *Complete policy development and approval processes as agreed to by the Parties and approvable by the monitor.*
- 258 **Recommendation 4.7.206b:** *Develop and implement a meaningful “inspections and audit” protocol and procedure to ensure internal field-assessment of operations in the field (i.e., sergeants, lieutenants and Area Commanders) relating to this policy*
- 259 **Recommendation 4.7.207a:** *APD should cease, effective immediately, making policy changes related to requirements of the CASA via Special Order, or any similar mechanism, without notifying the Parties and the monitor.*
- 260 **Recommendation 4.7.207a:** *APD should cease, effective immediately, making policy changes related to requirements of the CASA via Special Order, or any similar mechanism, without notifying the Parties and the monitor.*

- 261 **Recommendation 4.7.207b:** *APD should cease, effective immediately, making policy changes related to requirements of the CASA via Special Order, or any similar mechanism, without notifying the Parties and the monitor.*
- 262 **Recommendation 4.7.207c:** *APD should rescind effective immediately any and all “Special Orders” or other policy mechanisms that contradict the CASA and/or monitor- and Party-approved policy.*
- 263 **Recommendation 4.7.207d:** *APD should provide to the Parties and the monitor a written list of “Special Orders” they have rescinded based on recommendations contained in this paragraph.*
- 264 **Recommendation 4.7.208a:** *APD should cease, effective immediately, making policy changes related to requirements of the CASA via Special Order, or any similar mechanism, without notifying the Parties and the monitor.*
- 265 **Recommendation 4.7. 2082b:** *APD should conduct an exhaustive, comprehensive, and thorough review of all “Special Orders” to ensure they find and correct any other “Special Orders” that contradict or undermine the CASA.*
- 266 **Recommendation 4.7.208c:** *APD should rescind effective immediately any and all “Special Orders” or other policy mechanisms that contradict the CASA and/or monitor- and Party-approved policy.*
- 267 **Recommendation 4.7.209a:** *APD should conduct an immediate, thorough and complete investigation to explain to the Parties and the monitor how officers who were not assigned or issued OBRDs wound up reporting “failures” in those unassigned units during routine “inspections” of OBRD performance.*
- 268 **Recommendation 4.7.210a:** *Complete a monitor- and Parties-approved policy outlining an effective inspections and audit function in the Area Commands’ patrol operations processes of auditing supervisory processes designed to implement OBRD “use” requirements*
- 269 **Recommendation 4.7.210b:** *Implement the policy and evaluate its effectiveness in identifying and remediating OBRD use that is outside policy.*
- 270 **Recommendation 4.7.211a:** *Until such time that a new OBRD policy is approved, and Special Order SO 16-75 is withdrawn, comply with the existing policy (see 4.7.209, above).*
- 271 **Recommendation 4.7.211b:** *Ensure that all internal changes to policies approved by the monitor and the Parties are noticed to the monitor and the Parties in writing and approved as per the requirements of the CASA.*
- 272 **Recommendation 4.7.212a:** *APD should conduct a complete self-review of policies to ensure there are no other “outliers” among their policy promulgation systems, e.g., internal practice memoranda in conflict with approved policy, etc.*

- 273 Recommendation 4.7.212b: APD should notify the Parties and the monitor if they find any other similar issues related to other elements of the CASA.**
- 274 Recommendation 4.7.212c: If such issues are found, immediate remedial policy or “Special Order” revisions or retractions should be implemented to correct the issue.**
- 275 Recommendation 4.7.212d: APD should provide the Parties and the monitor with copies of their review findings and actions taken to resolve any additional issues noted.**
- 276 Recommendation 4.7.213a: Identify the training elements implicated in the findings on this Paragraph and assess whether they were delivered in a manner that was clear and correct enough to result in CASA-compliance in the field.**
- 277 Recommendation 4.7.213b: If training deficiencies or problems are implicated in this review, design remedial training, counseling, or discipline if required to directly affect the observed in-field supervisory under performance.**
- 278 Recommendation 4.7.213c: Once the remedial training, counseling, or discipline is implemented, close the loop by re-evaluating performance in the field. Repeat until under-performance is eliminated.**
- 279 Recommendation 4.7.214a: Using the Completed Staff Work method, develop policy, training, and audit protocols responsive to this paragraph.**
- 280 Recommendation 4.7.214b: Once developed, implement and re-evaluate to determine if the problem has been resolved.**
- 281 Recommendation 4.7.214c: Repeat until compliance is attained.**
- 282 Recommendation 4.7.215a: Using the Completed Staff Work method, develop policy, training, and audit protocols responsive to this paragraph.**
- 283 Recommendation 4.7.215b: Once developed, implement and re-evaluate to determine if the problem has been resolved.**
- 284 Recommendation 4.7.215c: Repeat until compliance is attained.**
- 285 Recommendation 4.7.216a: APD should implement its own “inspections and audit” process to ensure OBRD video are appropriately stored by the end-of-shift.**
- 286 Recommendation 4.7.216b: Once developed, implement and re-evaluate to determine if the problem has been resolved.**
- 287 Recommendation 4.7.216c: Repeat until compliance is attained.**
- 288 Recommendation 4.7.217a: Immediately rescind Special Order 16-25.**
- 289 Recommendation 4.7.217b: Restore any policy, procedure, practice or custom revised, terminated, or implemented as a result of Special Order 16-25 as they relate to OBRD policies, procedures, custom or practice.**
- 290 Recommendation 4.7.217c: Retrain any personnel who were provided training responsive to of Special Order 16-25.**



- 291 **Recommendation 4.7.217d:** Conduct an agency-wide review for any other “Special Orders” that may have contravened, limited, or otherwise reduced CASA requirements and identify them, in writing, to the monitor and the Parties, with an accompanying statement of how APD plans to “recover” from the damage done to the policy system, the CASA, and/or APD in-field performance.
- 292 **Recommendation 4.7.221a:** Analyze and document in writing “effective involvement of stakeholders” on this issue.
- 293 **Recommendation 4.7.221b:** If no “effective involvement of stakeholders” exists, articulate a plan with goals, objectives, and timelines to implement the requirements of this paragraph.
- 294 **Recommendation 4.7.228a:** Complete the promotional practices policy in a manner that is acceptable to the Parties and the monitor and promulgate, train and implement the policy.
- 295 **Recommendation 4.7.229a:** No action is required at this time, as this issue is currently “in progress,” with resolution expected early in the month of May.
- 296 **Recommendation 4.7.234a:** Identify, using BSSs to drive programmatic revisions and upgrades to the BSU’s operations and programs.
- 297 **Recommendation 4.7.235a:** Prepare analyses of the numbers and types of BSU activities related to this paragraph, and include them in the quarterly reports of BSU activities.
- 298 **Recommendation 4.7.240a:** APD should “operationalize” its revised mission statement through actions such as those listed in b and c below.
- 299 **Recommendation 4.7.240b:** APD should continuously focus on mechanisms to take issues identified through its community-based systems such as the CPCs and move those issues through internal processes to ensure that community opinions, needs, and critical issues are reflected in patrol plans, organizational priorities, and programmatic planning.
- 300 **Recommendation 4.7.240c:** APD should plan, develop and assess programmatic processes and evaluation strategies to identify, implement, assess, and improve both the quality and perception of its receptivity to community input and its ability to implement policing initiatives responsive to articulated community needs
- 301 **Recommendation 4.7.241a:** Articulate a data-based strategy for staffing APD Area Commands so that the processes required in this paragraph related to in-field changes to patrol allocation, staffing (and training) are responsive to the requirements of this paragraph.
- 302 **Recommendation 4.7.241b:** This should result in a piece of Completed Staff Work (CSW) identifying goals, measurable objectives, and processes involved in meeting the requirements of this Paragraph.
- 303 **Recommendation 4.7.241c:** The finished CSW should be provided to the Chief of Police for review and comment and action

- 304 **Recommendation 4.7.242a:** *APD should develop a Completed Staff Work document identifying the scope and depth of POP development issues, including recommendations for solving the identified above.*
- 305 **Recommendation 4.7.242b:** *The CSW document should be forwarded to the Chief of Police for review and comment.*
- 306 **Recommendation 4.7.233a:** *Prepare detailed operational reports assessing POP-related programs and projects, including analyses of outcomes and processes.*
- 307 **Recommendation 4.7.244a:** *Document activities using Area Command tracking sheets, ensuring specifically that documented on-going partnerships are assessed and recommendations for reasonable improvement are included.*
- 308 **Recommendation 4.7.248a:** *Develop the capacity, and begin using the capacity to systematically track and capture salient information about participation in community meetings, and document execution of this task*
- 309 **Recommendation 4.7.249a:** *Document the capture and reporting of aggregated monthly crime statistics by Area Command.*
- 310 **Recommendation 4.7.251a:** *APD should continue work to broaden membership and participation by determining what factors are keeping “relevant stakeholders” from expressing their views at CPC meetings, and documenting attempts to address those factors.*
- 311 **Recommendation 4.7.252a:** *Improve and document efforts to recruit and retain a more representative cross section of community members as voting members of the CPCs*
- 312 **Recommendation 4.7.252b:** *Post selection procedures on the internet.*
- 313 **Recommendation 4.7.253a:** *APD should take the lead to ensure a comprehensive community policing approach is identified for each area command, based on CPC interaction, participation, and comment.*
- 314 **Recommendation 4.7.254a:** *Using the CSW model, APD should assess specific “failure analyses” for the issues noted above, identify the cause of the failures, and articulate a written plan for resolving any outstanding requirements relating to compliance with this paragraph.*
- 315 **Recommendation 4.7.255a:** *Ensure that all “draft status” annual CPC reports are posted on City or Area Command websites.*
- 316 **Recommendation 4.7.255b:** *Ensure that all reports contain complete sets of recommendations and APD feedback.*
- 317 **Recommendation 4.7.266a:** *Increase the levels of focus by managerial personnel on timelines for completed investigation.*
- 318 **Recommendation 4.7.266b:** *Ensure that tardy investigations are noted, and discussed with the involved investigator(s) to ensure the reasons for delay were reasonable.*



- 319 Recommendation 4.7.270a: The chief of police should change his modalities of response to this paragraph to conform to the requirements stipulated in the paragraph, to ensure that the rationale for his decisions are clearly and fairly explained. 270 a:**
- 320 Recommendation 4.7.270b: APD should ensure that input from POB and CPOA is given full and complete assessment, and implemented whenever possible.**
- 321 Recommendation 4.7.270c: Where APD decides it cannot implement POB and CPOA recommendations, the reasons for the decision not to implement should be communicated fully and completely to the POB and CPOA in writing.**
- 322 Recommendation 4.7.273b: Where APD decides it cannot implement POB and CPOA recommendations, the reasons for the decision not to implement should be communicated fully to the POB and CPOA in writing.**
- 323 Recommendation 4.7.274a: APD should ensure that input from POB and CPOA is given full and complete assessment, and implemented where practicable.**
- 324 Recommendation 4.7.274b: In any instance in which APD decides it cannot implement the POB/CPOA recommendations, the reasons for the decision not to implement should be communicated fully to the POB and CPOA in writing.**