Monitor's Eleventh Report

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

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Prepared by: Public Management Resources, Inc.

James D. Ginger, Ph.D., Independent Monitor

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1.0 Introduction

This Independent Monitor's Report (IMR) follows the same format as all previous reports. That format is organized into five sections:

1.0 Introduction;
2.0 Executive Summary;
3.0 Synopsis of Findings;
4.0 Compliance Findings; and
5.0 Summary.

The purpose of the monitor's periodic compliance reports is to inform the Court of the monitor's findings related to the progress made by APD in achieving compliance with the individual requirements of the CASA. This report covers the compliance efforts made by APD during the eleventh monitoring period, which began in August 1, 2019 and ended in January 31, 2020.

2.0 Executive Summary

The monitor's report for the eleventh reporting period, as with our past reports, tracks the Court-Approved Settlement Agreement (CASA) paragraph by paragraph, identifying APD's and the CPOA's compliance status for each requirement of the CASA. As is our usual practice, we provide a brief overall summary of compliance trends, current status, observed successes, and existing "problems and issues" related to compliance overall. The monitor continues to observe tangible evidence that compliance with the CASA is an important task to APD. Work continues among key members of the command staff, supported tangibly by staff from the City Attorney's office, to move critical elements into compliance. As with our past recent reports, we find APD's compliance focused units to be fully engaged in meaningful attempts to define internal business practices that will move the organization further along the path to compliance.

Training processes have been revised substantially during this reporting period, with APD moving to a new (to APD) adult learning model, replacing the "lecture and memorize" model used in the past. This change has resulted in two significant outcomes: it seems to have improved content delivery related to core compliance issues, and it appears the new process resulted in higher evaluations from attendees compared to the former process. Eventually, we see this new approach being applied to nearly all training topics at APD.

The good news from the Academy has been offset, unfortunately, by the monitoring team's observance of further examples of some APD personnel failing to adhere to the requirements of the CASA noted in the last several monitoring reports, including some instances moving beyond the epicenter of that issue (supervision) to mid- and upper-management levels of the organization. Some in APD's command levels continue to exhibit behaviors that build bulwarks preventing fair and objective discipline, including a

process of attempting to delay—in some cases successfully—oversight processes until the timelines for administering discipline have been exceeded, thus preventing an effective remedial response to behavior that is clearly in violation of established policy. For example, during this reporting period, the former Internal Affairs Professional Standards (IAPS) commander allowed multiple timelines established by the union contract to expire prior to mailing notice to involved supervisors regarding policy violations, thereby rendering moot any corrective action (see pp. 55 and following below). Additional examples of problematic behaviors are noted throughout this report.

APD's reform efforts have produced some otherwise very positive news on the administrative and operational fronts. We have noted:

- Policy development and promulgation has improved markedly of late, with proffered policies requiring little or no pressure from the monitoring team to move them to an acceptable level of specificity, applicability, and conformance with CASA requirements.

- Training processes, as noted above have improved markedly; moving from old-style lecture-memorize-test with multiple choice questions, to a more modern (and more effective) interactive process that requires the ability to identify problems, analyze those problems, and create solutions to those problems by working in small collaborative groups and demonstrating skills actually needed to manage: listening, assessing, analyzing, decision-making, and implementation management. As a result, learning has evolved to skills-level processes, instead of an ability to memorize and parrot back information via multiple-choice tests.

- Some levels of supervision and management have begun to pay meaningful attention to critical tasks involving specific components of the CASA: use of force, preparation of valid reports of in-field incidents, effective supervision and oversight, and well-focused managerial review and assessments, etc.

- Compliance with the CASA is broadly seen as important at command levels and is beginning to be perceived positively by mid-management and supervisory ranks.

These key changes have taken years to have an impact on APD management systems, and more importantly, internal belief systems. These belief systems are, at times, not fully supportive of the change demanded by the CASA. The type of strategic change required by the CASA is difficult to instill and takes longer to implement the desired change than other more "old-style" management and leadership processes. However, we see signs that this perspective is in the nescient stages of taking hold and engendering initial change, albeit in the face of strong resistance in some quarters at APD.

We have noted since the beginning of the CASA compliance process that there were a few at APD who were overtly resistant to the CASA. We have found evidence of a "counter-CASA effect" among some at the supervisory, mid-management, and command levels at APD. Those who knowingly or subconsciously count themselves in this group are beginning to face pressure to change their assessment of the value of the CASA, and, in some cases have faced reasonably prompt and appropriate corrective efforts from the current executive levels of the APD for behavior that is not congruent with the CASA. We see this as an essential "way forward" if APD is to move into full compliance. The remaining issue is that this pressure is neither uniform nor persistent.

At the same time, we see more frequent examples of strong, reasoned, and effective compliance efforts at APD:

The Accountability and Oversight Division's (AOD) Performance Metrics Unit (PMU) has expanded both its scope and capacity and is providing meaningful, reasoned, and fact-based oversight of an expanding portion of the CASA's requirements. More importantly, AOD and PMU are filtering that information to various command levels throughout the agency. What remains to be done is to formalize AOD's and PMU's established oversight processes to the command and supervisory levels, ensuring that, even if it is PMU's "finding" of out of policy or established process, it is APD's command and supervisory levels who are working within the department to ensure that errors, policy violations, or deliberate counter-CASA processes, are remediated, and accepted policy-congruent practice replaces inappropriate, "informal," or deliberately counter-CASA "street policy."

Over the years, APD has improved its policy development process, training process, and has markedly improved the administrative oversight process. What remains is attaining mastery of the supervisory and operational management processes at the street level. While policy, training, and administration are certainly on the critical path for the APD reform project, the proof of process is observing, in practice, routine success at the operational and street level. Until those two processes are moved into operational compliance, there remains much to be done.

Figure 2.0, below, represents compliance levels for each reporting period of the CASA. The reader is reminded that there was no formal monitor's report for the seventh reporting period, since, at the recommendation of the monitor, we instead provided intensive and extensive consultation, collaboration, and technical assistance with the new command staff who took responsibility for APD during that reporting period.

3.0 Synopsis of Findings for the 11th Reporting Period

As of the end of the IMR-11 reporting period, APD's compliance levels are as follows:

Primary Compliance 100%;
Secondary Compliance 93%; and
Operational Compliance 66%.

Since the last report, IMR 10, the following changes in compliance levels are noted:

Primary Compliance: No Change at 100%;

Secondary Compliance: From 81% in IMR 10 to 93% in IMR 11, a change of 14.8 percent; and

Operational Compliance: From 64% in IMR 10 to 66% in IMR 11, a change of only 3%.

The monitor asserts that the trajectory for primary and secondary compliance are normal trajectories for these types of reform projects, i.e., it is much easier to write policy than to train and supervise. In addition, it is doubly difficult to ensure evenness of results across all areas of police operations, e.g., policy is easier to execute than training. Training is easier to execute than supervision, and supervision is easier to execute than broad-scale implementation. Where APD is weakest (although it has

some very serious issues still evident in supervision) is in command and control. In the monitor's experience command and control is the *sine qua non* in these projects: without command and control there is truly nothing in terms of actual reform, since even the best policy and training is of limited utility without highly involved, highly skilled, and highly observant command elements.

4.0 Current Compliance Assessments

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 APD continues to work toward full compliance. As such, the baseline analysis was considered critical to future performance in APD's reform effort, as it gives a clear depiction of the issues standing between the APD and full compliance. This report, IMR-11, provides a similar assessment and establishes a picture of progress on APD goals and objectives since the last monitor's report.

4.1 Overall Status Assessment

Section 4.1 provides a discussion of the overall compliance status of APD as of the end of the eleventh reporting period. APD continues to make progress overall, having achieved primary compliance in 100 percent of the applicable paragraphs of the CASA. Primary Compliance relates mostly to development and implementation of acceptable policies (conforming to national practices). APD is in 93 percent Secondary Compliance as of this reporting period, which means that effective follow-up mechanisms are beginning to be 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 66 percent Operational Compliance with the requirements of the CASA, which means that 66 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

4.2 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 CASA, and specifically report, in each section, on the City's, APD's and CPOA's compliance levels for each of the 276 individual requirements of the CASA.

The Monitor's Reports are structured into nine major sections, following the structure of 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;

All monitor's reports 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.; and 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 CASA, 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 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 acceptable training related implementation of 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 such as 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 department.

- **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, change is seldom simple or quick. A great deal of work lies ahead. The monitoring team remains 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

APD, the City and CPOA have agreed to comply with each of the articulated elements of the CASA. At the outset of the monitoring process, the monitor 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[1]. 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 eleventh reporting period, using the *Monitor's Manual*, included as Appendix A, in the monitor's first report (see footnote 1, below). The manual identifies each task required by the CASA and stipulates the methodology used to assess compliance.

4.7 Assessing Compliance with Individual Tasks

APD's compliance with individual tasks for the eleventh reporting is described in the sections that follow.

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

[1] Available at: https://www.justice.gov/usao-nm/file/796891/download

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 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 as a Level 1 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

APD has reworked its use of force policies to integrate a new, three-tiered reporting system that was approved by the monitor during IMR-9. Members of the monitoring team have provided extensive perspective, feedback, and technical assistance related to that three-tiered system, with specific focus on the training and implementation of the policies. CASA requirements stipulate that the use and investigation of force shall comply with applicable laws and comport to best practices. Central to these investigations shall be a determination of each involved officer's conduct to determine if the conduct was legally justified and compliant with APD policy.

As in the past, the monitoring team spent time during the IMR-11 reporting period meeting with key APD personnel who have primary CASA compliance responsibilities, providing our perspective to help them better understand and deal with historical difficulties the agency has had achieving compliance, and providing ideas concerning how they could best be addressed. A number of positive strides were made during this reporting period, but there is still evidence

of force reporting and investigation issues, as well as Internal Affairs system and process disconnects, that will likely hinder Operational Compliance moving forward. As we comment in greater detail in Paragraphs 60-77, we continue to see significant progress in areas of force investigations through APD's Internal Affairs Force Division (IAFD), and we believe if that unit is properly staffed and given the resources it needs, APD will be better positioned in the future when Operational Compliance determinations are being made.

On January 11, 2020, APD's new use of force "suite of policies" were operationalized,[2] At that point IAFD shifted to taking on initial investigatory responsibilities of all Levels 2 and 3 uses of force in the field. As we noted in IMR-10, we can reasonably predict that once IAFD begins to conduct initial use of force investigations they will uncover policy violations at a higher rate than field supervisors; therefore, APD must provision for the increased workload that will result to address those contemporary policy violations through its internal affairs processes. If done in a meaningful way, there is little doubt that initially internal affairs will be inundated with misconduct allegations.[3] As we comment later in this report, our review of APD's IAFD function continues to reveal serious defects that hinder the proper remediation of performance deficiencies and the application of discipline.

As we reported previously, the monitor worked closely with the parties to write use of force policies that can be trained and implemented in the field. The new use of force "suite of policies" were not approved until January 2019, which was near the end of the IMR-9 monitoring period. During the IMR-11 reporting period, the monitoring team reviewed use of force investigations, proposed training for APD's new use of force "suite of policies", and also reviewed internal memos and IA reports that assisted our assessment of APD's current CASA compliance effort. APD's new policies were intended to accomplish several objectives related to uses of force, including reducing the time burden of investigations on field supervisors and shifting that responsibility to IAFD. We have cautioned APD on several occasions that we see the assessment of uses of force at the lower levels (between the new Level 1 and Level 2) to be a potential area of concern moving forward. If the agency does not account for the possibility that field supervisors will make improper initial classifications by establishing some additional layer of audit and oversight, this will be an area of vulnerability to CASA compliance. In mid-January, APD tasked the Accountability and Oversight Division with conducting Level 1 use of force reviews.

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[2] APD's Tier 4 use of force training will extend into the IMR-12 reporting period.

[3] This condition will not be surprising to the monitoring team, as even APD's own IAFD uncovered more than a thousand policy violations when they reviewed cases that were initially investigated by field supervisors. Increased reporting of policy violations would be a natural result of any legitimate oversight by IAFD.

Results

As we reported in IMR-10, we have seen positive strides by APD with respect to handling uses of force, including instances where the chain of command reviewing use of force incidents has documented performance issues, policy violations, and mis-categorized uses of force. However, there still exists cultural and systemic issues that could impact Operational Compliance moving forward. Timeliness of use of force investigations are of particular concern, and proper staffing of units responsible for CASA related paragraphs needs to be monitored closely. Since APD has pivoted its use of force investigation responsibilities for Level 2 and Level 3 uses of force to IAFD (as of January 11, 2020), the organization will likely be impacted adversely without proper allocation of resources. We report more extensively on our observations in Paragraphs 41-57 and 60-77.

During our November site visit, members of the monitoring team met with the Academy staff responsible for the tasks associated with Paragraphs 86-88. As in the past, we found the Academy personnel to be professional, interested in success, and receptive to feedback. Likewise, the Deputy Chief who oversees the Academy was conversant with the issues and fully engaged in the process. APD's training team has made significant strides toward overall training compliance efforts throughout 2019, but especially during the IMR-11 reporting period. Since the onset of the CASA, APD has been unable to assemble quality training programs, both in its documentation and delivery of those programs, which has had a significant impact on overall compliance efforts. Through a series of missteps and lost opportunities over the past several years, APD has never attained Secondary Compliance with Paragraphs 86-88. As a consequence, Secondary Compliance was not attained in a number of other CASA paragraphs that are focused on use of force, including Paragraph 14. APD remedied most of the issues we encountered in the past during the IMR-11 monitoring period, and we can report that APD has attained Secondary Compliance with Paragraphs 86-88. The Academy staff can now focus on the finer points of curriculum development in order to create a sustainable system of training. These finer points (i.e., proper learning objectives, valid test questions, connecting curriculum to measures, and needs assessments), are all factors that could impact Operational Compliance in the field, so APD must embrace the need to carefully craft its training programs.

Throughout the IMR-11 reporting period and during our November 2019 site visit, APD continued to receive feedback on training programs they intended to deliver to officers and supervisors. As is discussed in greater detail in Paragraphs 86-88, the monitoring team attended Tier 2 (In-person use of force) and Tier 3 (supervisory investigation of force) training programs and were impressed with the overall quality of the instructors' delivery and interaction with the class. While

there is still room to grow, APD's commitment to delivering quality use of force training was particularly evident during IMR-11.

Based on the recent positive strides that APD's Training Academy has made providing training on its new use of force suite of policies, we have determined that APD has achieved Secondary Compliance with Paragraph 14. This is an important milestone for the organization, as it now becomes possible to make Operational Compliance assessments for APD's ability to report, investigate, and oversee uses of force. The true measure of its success is whether the training is being implemented by officers and supervisors in the field. The monitoring team has stressed since the beginning, in the context of a CASA, the development of policies and training are the easiest steps in the process. Having effective policies and training are requisite preconditions of Operational Compliance, but they are not self-executing. Resiliency, effective supervision, and IA functions, along with a keen attention to detail will be required to move to, and sustain, the next level of compliance.

We met with the IAPS Commander and the City Attorney's staff during our November 2019 site visit and discussed the interrelationship of use of force investigations and misconduct that is uncovered during those investigations. While we are encouraged with the progress APD has recently made in some areas, the organization has been very slow to embrace feedback and technical assistance it has received with respect to its organization-level oversight responsibilities through IAPS. We are confident that each APD unit that has been successful during this process would attest that by embracing feedback and following the technical assistance given by DOJ and the monitoring team, compliance follows soon thereafter. We continued our efforts with IAPS including a special site-visit at the end of the reporting period specifically focused on IAPS processes. We are hopeful APD will apply what they have been given in terms of technical assistance during the next reporting period. In Paragraphs 60-77 we comment in greater detail, but it is clear based on our observations during this reporting period that systemic issues continue to hamper APD in its IAPS oversight of misconduct. To be clear, APD's ability to "police" itself is the centerpiece of its organizational reform efforts and sits at the very heart of long-term sustainability of those reforms. In spite of exhaustive feedback and technical assistance over the years, APD has yet to enable an effective internal affairs operation.

With the advent of the new three-level use of force classification system, remaining vigilant and maintaining close oversight of Level 1 uses of force will be crucial to APD's long-term success, as those cases (when not accompanied by a higher level of force) typically fall outside of the purview of IAFD. This should be concerning to the department since the initial categorization for a use of force still falls to field supervisors. Historically, those same field supervisors have struggled with that responsibility. Likewise, close oversight of uses of force by

specialized units will be required, since their uses of force are less frequent.[4] That fact could create an environment in which supervisors in those units are vulnerable to mistakes that Field Services Bureau supervisors may not make.

Finally, in past reports the monitoring team wrote at length about the need for APD to conduct and be guided by staffing and workload analyses. The monitoring team will be brief here: the data that we have been provided with respect to uses of force gives tremendous pause to believe that Operational Compliance will be achieved with existing staffing levels of IAFD. APD has been planning this shift to a new suite of use of force policies and new systems (largely called for and designed by APD) for investigating use of force incidents. This effort simply cannot be allowed to fail because appropriate staffing resources have not been dedicated to implement and operationalize the system designed and built by APD.[5] Toward the latter part of the reporting period, the staffing level of IAFD was increased, but based on a series of conversations over the past two years the monitoring team is not confident in APD's commitment to maintaining adequate staffing levels, as they regularly comment about other organizational priorities.[6] The monitoring team made this issue explicitly clear to the Chief during our site visit in November 2019: adequate staffing of IAFD is on the critical path to compliance.

Operational Compliance will require renewed focus and point-by-point adherence to applicable CASA paragraph requirements. It will also depend on APD's assertiveness in identifying and stopping supervisory and mid-level command usurpation of executive authority by overlooking, incorrectly characterizing, or delaying reporting of blatant policy violations. During the IMR-12 reporting period, the monitoring team will increase the number of case reviews to assess whether APD policies are being properly implemented in the field.

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

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[4] Even if certain CASA Paragraphs specific to specialized units are excised from regular monitoring, their activities still have direct impact on the core paragraphs that are centered on force reporting, investigations, and oversight.

[5] The monitoring team was provided with an Interoffice Memorandum authored within APD that outlined the current IAFD staffing level that predicted for the Chief the number of Level 2 and Level 3 use of force cases that would become a backlog by the close of 2020 depending on different staffing levels.

[6] Having served at the command levels of large law enforcement organizations, members of the monitoring team are cognizant of the many priorities the Chief and his command staff must balance. That said, when the new three-level system of force reporting was first conceptualized and IAFD was formed, the movement of personnel into that Division was meant to reduce the burden that field supervisors were experiencing so they could focus their attention on other issues (i.e., crime reduction). APD's command staff should be guided by data when deciding on staffing levels for CASA-related units, and as we document in Paragraphs 60-77, there is reason to be concerned.

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

As with other reporting periods, the monitoring team spent time during the IMR-11 reporting period in consultative processes providing perspective, feedback, and technical assistance to APD personnel regarding force investigations. We provided perspective to APD to help the administration better understand and deal with historical difficulties the agency has had in achieving compliance, and provided ideas concerning how they could best be addressed moving forward. We have seen examples of our technical assistance being implemented in certain areas, as well as an improvement with the overall handling of use of force incidents. However, we still find evidence of force reporting and investigation issues, as well as system and process disconnects that will continue to hinder Operational Compliance moving forward.

Throughout 2018, and up to the end of the IMR-9 reporting period, APD reworked its use of force policies to integrate a new, three-level reporting system. Training of the new policies occurred through a 4-tiered process that extended through the IMR-11 reporting period.[7] As is described in greater detail in Paragraphs 86-88, members of the monitoring spent considerable time providing feedback on all four Tiers of training and attended Tiers 2 and 3 training during its November 2019 site visit. Overall, the training was an excellent model for APD to emulate in all of its training programs moving forward.

[7] Prior to the close of the IMR-11 reporting period APD submitted curriculum for Tier 4 training (Reality-Based Training and defensive tactics), and we found it to be reasonably organized and complete. APD was given provisional approval, conditioned on a quality assurance review by the monitoring team once the training is delivered.

The CASA requirements stipulate that the use and investigation of force shall comply with applicable laws and comport to best practices. Central to these investigations shall be a determination of each involved officer's conduct to determine if the conduct was legally justified and compliant with APD policy. We met with key APD personnel who have primary CASA compliance responsibilities and provided our perspective to help them better understand and deal with historical difficulties the agency has had achieving compliance, and to provide ideas concerning how they could best be addressed. While we have seen examples of our technical assistance being implemented in certain areas, as well as an improvement with the overall handling of use of force incidents, we are still finding evidence of significant force reporting and investigation issues, as well as system and process disconnects that will hinder Operational Compliance moving forward.

Results

Based on the recent positive strides APD's Academy has made training the new use of force suite of policies, we have determined that APD has achieved Secondary Compliance with Paragraph 15. Operational Compliance will require renewed focus and point-by-point adherence to applicable CASA paragraph requirements. It will also depend on APD's assertiveness in identifying and stopping supervisory and mid-level command usurpation of executive authority by overlooking, incorrectly characterizing, or delaying blatant policy violations.

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

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

APD previously achieved Secondary Compliance, notwithstanding changes that have occurred to use of force policies that directly relate to this paragraph. APD integrated a new, three-tiered reporting system in which Level 1 uses of force will be investigated by a field supervisor and Levels 2 and 3 will be investigated by IAFD. Members of the monitoring team provided extensive perspective, feedback, and technical assistance

related to this new three-tiered system. The new use of force "suite of policies" were approved on January 15, 2019 and following the Academy's Tiers 1-3 training programs, those policies finally went live in the field on January 11, 2020.

Results

Operational Compliance for Paragraph 16 will require renewed focus and point-by-point adherence to applicable CASA paragraph requirements. It will also depend on APD's assertiveness in identifying and stopping supervisory and mid-level command usurpation of executive authority by overlooking, incorrectly characterizing, or delaying blatant policy violations. During the IMR-12 reporting period, the monitoring team will increase the number of case reviews to assess whether APD policies are being properly implemented in the field. Paragraphs 16 remains in Secondary Compliance.[8]

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

4.7.4 – 4.7.10 Assessing Compliance with Paragraphs 17 - 20

The 2019 annual firearms training cycle was completed during this monitoring period. During this reporting period, APD accepted a response from Smith & Wesson to an RFP issued by the department for the replacement of existing duty side-arms. It made little sense to conduct training with the old weapons, and then retrain with the new weapons. Unfortunately, several setbacks caused the delay to extend well into the year and the firearms staff were further hampered by holidays, vacations, a sitting academy class and state and national events in the city. The firearms staff completed the training of 100% of the active personnel, with 900 sworn attending training and 30 individuals out on various types of leave (Military, FMLA, Restricted duty, etc., who will be trained as they return to duty).

APD Firearms Staff have worked to address the monitor's IMR-9 and IMR-10 recommendations regarding CASA Firearm requirements, issues, problems, and solutions. Policy revisions, training revisions, additional training for range staff and line supervisors have all been executed and documented. The monitoring team will audit the training, which was completed after the close of this reporting period, during the June 2020 site visit.

Members of the monitoring team reviewed the 124 documents of personnel failing to qualify on their initial attempt. No summary of these data was completed (or provided). For a majority of officers, discussion with the firearms instructor regarding bad habits

[8] APD's new use of force system adds a new level of force that impacts reporting, classifying and investigatory responsibilities. These changes required a complete retraining of the organization to retain Secondary Compliance. Training efforts are covered in great detail in Paragraphs 86-88.

was enough to assist them in successfully completing the course on the second attempt. However, in several cases—per policy, officers had to surrender their weapons and return to the range for additional training. The monitoring team found several cases in which the surrendering of the weapon had either not occurred or was not documented as such. In one case, an officer failed to qualify with a rifle and stated that he would turn the weapon into supply the next day. This would be in violation of policy (and Special Order 19-91), which states that the weapon will be surrendered to firearms staff. Additionally, there were cases of poor documentation, i.e., undated documentation, incorrect weapon listed, and failure to document the surrendering of the weapon. There were common patterns to the reasons for failure to qualify. Low light handgun failures were largely due to flashlight manipulation. Rifle failures were largely due to misaligned sights and optics. It is essential that Firearms staff complete an audit or self-assessment of the range failures. The monitoring team questions how APD would adjust training and policy for issues highlighted if such an audit is not completed. Certainly, with so many sights and optics being off on long-guns—there should be some discussion and training regarding proper handling and storing of the weapons, or consideration of additional qualification requirements to prevent a catastrophic result in the field. The examples noted will not result in a reduction in compliance levels, since operational compliance has not been achieved, but additional work needs to be completed to advance compliance, and the work needs to be completed prior to the completion of the draft of IMR-12.

With the Firearms Training Curriculum submitted to the monitoring team along with Course of Business documentation that the training was completed, secondary compliance has been achieved. The monitoring team will follow up with APD during the June 2020 site visit to determine if the policy and training are reflected in field performance. Operational compliance will be reached once the monitoring team observes that line supervisors are in fact making formal weapons inspections monthly, as required by policy, are documenting any failures identified, and are following up with corrections to the failures.

During the November 2019 site visit, members of the monitoring team visited several Area Commands and duty locations and spoke with supervisors at each location. All supervisors stated that they are conducting monthly inspections, physically checking every officer's weapon for make, model, serial numbers, modifications, accessories or ammunition every month. Policy, Special Orders, database revisions and Firearms training should provide the tools necessary for field supervisors to complete this task.

4.7.4 Assessing Compliance with Paragraphs 17

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."**

Results

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

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."**

Results

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

4.7.5 4.7.6 Assessing Compliance with Paragraph 19: On Duty Weapons

Paragraph 19 stipulates:

> **"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."**

Results

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

Recommendations for Paragraphs 17-19:

4.7.4-6a: Develop an action plan, complete with tasks, responsibilities, and due dates for addressing the concerns outlined in paragraphs 17-19 and implement the plan as warranted.

4.7.4-6b: Involve APD's inspections and audit personnel in the development of the action plan.

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**."

Results

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

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

As noted in IMR-10, APD undertook the task of rebuilding its use of force "suite of policies" that includes a new 3-tier reporting system. APD received approval for their new policies at the latter part of the IMR-9 reporting period and throughout the IMR-10 and IMR-11 reporting periods they received extensive feedback on training programs they intended to deliver to officers and supervisors. As previously noted, APD made the decision to deliver training of its new use of force suite policies through four distinct tiers. Tier 1 (policy delivered through APD's on-line learning management system) was completed

during IMR – 9. Over the past several months the monitoring team reviewed and provided feedback for Tiers 2 and 3 in writing as well as in person during our November 2019 site visit. That feedback was incorporated when the training was delivered throughout the Fall of 2019. We also reviewed Tier 4 training and provided feedback prior to the end of this reporting period. We comment extensively about the training materials as well as our impressions of the in-person delivery of the programs for Paragraphs 86-88, however, it is appropriate to note here that the monitoring team is very encouraged with APD's training progress over the past two reporting periods. Through a series of missteps and lost opportunities over the past several years APD took extensive time to achieve Secondary Compliance with Paragraph 21, and never attained Operational Compliance. Since APD remedied most of the issues we encountered in the past during the IMR-11 monitoring period, they have attained Operational Compliance with this paragraph.

As noted in previous monitor reports, past reviews of use of force cases have revealed serious deficiencies in the oversight and accountability process, particularly with respect to force reporting, supervisory-level investigations, and chain of command reviews. Deficiencies related to APD officers and supervisors improperly reporting and investigating shows of force has directly impacted compliance efforts with this paragraph. We encourage APD to review past monitor reports and comments we made concerning this paragraph in order to avoid making the mistakes as in the past.

Results

APD must continue to be diligent with their training development and delivery for provisions of this paragraph. To retain Operational Compliance, APD must demonstrate use of force training programs incorporate needs, issues, and concerns that are drawn from the field and are relevant to APD policy and Constitutional policing. It will also be APD's responsibility to continue to assess the use of force policies to ensure they are current and address issues encountered in the field. While Operational Compliance has been achieved for Paragraph 21, we believe that any failure to properly maintain Operational Compliance here will likely result in problems in the field and impact CASA compliance efforts elsewhere.

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

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

Paragraph 22 stipulates:

> **"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

As noted in IMR-10, APD undertook the task of rebuilding their use of force "suite of policies" that includes a new 3-Tier reporting system. APD received approval for their new policies at the latter part of the IMR-9 reporting period and throughout the IMR-10 and IMR-11 reporting periods they received extensive feedback on training programs they intended to deliver to officers and supervisors. APD made the decision to train its new use of force suite policies through four distinct tiers that included different delivery methods. Tier 1 (policy delivered through APD's on-line learning management system) was completed during IMR-9. Over the past several months the monitoring team reviewed and provided feedback for Tiers 2 and 3 (in writing as well as in person during our November 2019 site visit). That feedback was then incorporated when the training was delivered throughout the Fall of 2019. We were provided Tier 4 training materials at the end of this reporting period and provided feedback. That training content was organized well and will be delivered to all active members during IMR-12 reporting period.

We comment extensively about the quality of training materials received as well as our impressions of the in-person delivery of the Tier 2 and 3 programs in Paragraphs 86-88, however, it is appropriate to note here that the monitoring team is very encouraged with APD's progress over the past two reporting periods. Through a series of missteps and lost opportunities over the past several years APD took substantial time to achieve Secondary Compliance with Paragraph 22 and has never attained Operational Compliance. Since during the IMR-11 monitoring period APD remedied most of the issues we encountered in the past, they have retained Secondary Compliance.

Results

In IMR-9 APD achieved Secondary Compliance for this paragraph and that status has been retained for IMR-11. APD will have to assess the new use of force suite of policies to determine what additional training is necessary to retain

Secondary Compliance and achieve Operational Compliance. We believe that any failure to properly maintain Secondary Compliance here will likely result in problems in the field that will impact CASA compliance efforts elsewhere. Since the type of use of force events that are implicated by this paragraph are infrequent, our ability to measure Operational Compliance through case reviews may be sporadic moving forward. Likewise, quantifying the provision that states, "Officers shall not intentionally place themselves in the path of, or reach inside, a moving vehicle" is difficult to prove in the negative since a goal is that these type of actions are trained out of the department's culture --- except under extraordinary circumstances. We will make specific requests for cases to review that are relevant to this paragraph in future reporting periods to re-assess Operational Compliance. Several successive reporting periods have resulted in "Not Observed" findings. As a result, we find APD "In Compliance" as it appears that training and supervisory practices have eliminated examples of this behavior in APD's day-to-day operations.

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

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

After the close of the eleventh reporting period, APD has not yet produced the Annual Use of Force Report for 2018. Until annual reports, including the sections dealing with critical firearms discharges, are completed accurately and in a timely manner, APD will remain out of compliance for Paragraph 23.

Results

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

Recommendations for Paragraph 23:

4.7.10a: Continue the work currently being done to bring annual reports into the required cycle, including the report for 2018.

4.7.10b: Continue the work currently underway to develop a replacement process for the old "EIS" system.

4.7.11-4.7.18 and 4.7.21-4.7.25 Assessing Compliance with Paragraphs 24-31 and 34-38 (Electronic Control Weapons)

Paragraphs 24-31 and 34-36 address requirements for APD'S use of Electronic Control Weapons (ECWs), as follows:

Paragraph 24: Use of ECWs;
Paragraph 25: ECW Verbal Warnings;
Paragraph 26: ECW Limitations;
Paragraph 27: ECW Cycling;
Paragraph 28: ECW Drive-Stun Mode;
Paragraph 29: ECW Reasonableness Factors;
Paragraph 30: ECW Targeting;
Paragraph 31: ECW Restrictions;
Paragraph 32: ECW Weak-side Holster;
Paragraph 33: ECW Annual Certification;
Paragraph 34: ECW Medical Protocols;
Paragraph 35: ECW Medical Evaluation; and
Paragraph 36: ECW Notifications.

During this monitoring period, APD was transitioning to a new Taser platform—the Taser 7 from the X26 Taser. APD has provided Course of Business documentation that 100% of the current sworn active personnel attended training/certification for 2019 (Paragraphs 33/34). Of 930 personnel, 875 individuals plus 9 Instructors attended the training. Thirty-two individuals were on Military/FMLA/Restricted duty etc. but will be scheduled to attend the required training as soon as they are returned to active duty. Fourteen individuals are exempt from carrying the Taser.

It quickly has become apparent that additional training is necessary as the systems are quite different in capabilities and function. There have been several unintentional discharges when officers were conducting a function test, as the new platform no longer requires a pull of the trigger to test function. Additionally, the X26 platform required a quarterly manual upload, using a cable attaching the device to a computer. The Taser 7 automatically uploads when the ECW rechargeable battery is switched out using the battery docking stations. Special Order 19-135 requires the supervisors to ensure that the batteries will be replaced at least once every 30 days. This would exceed the CASA requirement of quarterly uploads.

Policy also states that supervisors will ensure that following a use of force with the Taser 7, the battery will be removed and replaced with a fully charged battery from the dock.

The Performance Metrics Unit conducted an audit of the October 2019 quarterly upload and revealed a compliance level of 93% for accomplishing the task. Twelve Internal Affairs requests were submitted for the 31 ECW's that were not uploaded. These twelve supervisors did not ensure the uploads were completed, which is a policy violation. The monitoring team will audit the completed policy violation investigations during the June 2020 site visit. In the monitor's opinion, the data we reviewed indicate a need for further updates of training regarding policy, practice, and supervision of the ECW policy group.

During past reporting periods, the monitoring team conducted in-depth reviews of APD use of force cases involving the use of Electronic Control Weapons (ECWs). The results of those case reviews, along with the implementation of policy provisions through training and operational oversight, resulted in operational compliance for Paragraphs 24 through 36. PMU's work, however, indicated a need for further training on the new Taser units' operational processes and accompanying APD policies.

In IMR-9, APD compliance with five CASA Paragraphs was adversely impacted as the result of the monitoring team's review of ECW cases. During a site visit in May 2019 (IMR-10), the monitoring team reviewed several of these cases in depth with various members of APD in the form of technical assistance to provide perspective[9] on how to assess ECW cases. A review of ECW cases during IMR-10 revealed a number of deficiencies, from ECW deployment problems by officers, to supervisory reviews, and oversight errors.

During this monitoring period (August 1, 2019 through January 31, 2020), APD case ledgers revealed 53 distinct cases in which an ECW was utilized (inclusive of 21 ECW Shows of Force). Ten of the 53 ECW cases included only ECW Shows of Force (in which an actual use of the ECW did not occur). In early 2020, the monitoring team randomly selected eight ECW cases for review. This 19% sample of cases in which an ECW was actually deployed on subjects represents a cross-section of 2019-2020 ECW deployments that occurred during IMR-11. The cases were carefully reviewed by the monitoring team, and a short synopsis of each case are listed below.

Case #IMR-11-1 (ECW Application)

[9] We provided technical assistance to APD since the IAFD personnel were conducting thorough investigations and have identified numerous policy violations. Where there is an issue related to the force used in an event, we recommended that IAFD examine the use of force case since the diligence of IAFD use of force case reviews are not replicated in the field by front-line supervisors.

In August 2019, at approximately 7:00 PM, APD Auto Theft detectives were working a multi-agency crime reduction detail when they observed a male subject walking in the area. Some of the detectives reported being familiar with the subject from past encounters and they had knowledge of him being combative and in possession of a handgun in the past. In fact, in this encounter detectives reported being able to see the outline of a handgun in the waistband area under his shirt. One of the detectives conducted a warrant check and learned that the subject had an active felony warrant for his arrest (Probation Violation/ Receiving Stolen Vehicle). As the subject was interacting with other civilians in the area the detectives documented that they devised a plan to arrest him once he cleared the area where other people were congregated. Once the subject began to walk away, several detectives (at least ten) moved in and ordered him to stop. The weapon was visible to some of the officers immediately prior to the use of force and the subject failed to stop when ordered. The detectives' identities as police officers were apparent by their attire, vehicles with emergency lights and them verbally identifying themselves loudly and clearly as police officers. At the beginning stages of the encounter the subject continued to move away from them and not follow commands. Based on the totality of circumstances one detective deployed his Taser, and it was on the second cycle that it had the desired effect. Several officers restrained the subject and forcibly handcuffed him.

During our review of officer OBRDs, we observed that the subject refused to follow the detectives' commands to stop and continued to walk away. We noted that numerous detectives were yelling commands simultaneously and were displaying different weapons. The weapon that officers described the subject was carrying can clearly be seen on a detective's video and it was later recovered during the arrest. An APD supervisor deployed his Taser and cycled it twice in an attempt to control the suspect's actions. A number of APD and non-APD officers descended upon the suspect and had to forcibly hold him down and force his arms into a position to be handcuffed. The subject was verbally and physically aggressive throughout the encounter and after.

Because this review is focused on the appropriateness of the ECW use, Operational Compliance with respect to supervisory and chain of command related CASA paragraphs was not the subject of this section of the report. That said, we feel it appropriate to alert APD that if this case were being reviewed for those purposes, this case would likely result in non-compliance findings in those paragraphs. This case was poorly reported, investigated, and supervised through the entire chain of command, to include Internal Affairs—Professional Standards. There are tactical and safety issues that APD should consider, an unreported use of force, poorly written reports that contain boilerplate language, and witnesses who were not interviewed. As a multi-agency arrest, it is reasonable to expect that, as part of the case file, reports from all participating officers would be collected, but they were not. Likewise, APD must be cognizant of these types of situations in which an officer from an allied police agency may act in a manner that could create collateral issues for APD officers. Of particular concern is the fact that this case was referred to Internal Affairs for an issue unrelated to the use of force. Several months after the incident the APD determined the allegations

listed in the IA referral, were unfounded. However, it is obvious that a comprehensive review of the case by Internal Affairs was not conducted. IA was hyper-focused on an original allegation, instead of reviewing the case in its entirety. We have commented in the past on APD's IA oversight, and this case illustrates that critical issues remain. During our reviews for IMR-11 we communicated with APD and recommended that IAFD review this case.[10] We understand that, MATF is an interagency process, and as such APD is not in direct control of all reporting processes. Nonetheless, we mark this as an area of concern which APD should subject to internal monitoring and control. We note that APD has begun to self-correct regarding the roles and responsibilities between the two internal units (Internal Affairs Force Division and Internal Affairs Policy Section).

Case #IMR-11-2 (ECW Application)

In August 2019, two uniformed APD officers responded during daylight hours to a reported suspicious vehicle in a residential neighborhood. Upon their arrival they located the vehicle parked with a male and female in the front seats, apparently asleep. In plain view officers observed what they believed to be narcotics and a needle. They woke the subjects, had each of the occupants exit the vehicle and then asked each to have a seat on a curb while they continued their investigation. The male subject provided a false name and based on the probable cause of narcotics possession one of the officers asked him to stand and turn around to be handcuffed. As the officer went to apply the handcuffs the subject pulled away and ran from the officers. The two officers gave chase for approximately two blocks yelling commands for him to stop and that he would be Tased if he did not comply. The suspect was approaching an occupied school area, and when he briefly slowed down (nearly stopped), one of the officers deployed her Taser, energized with once cycle and the subject fell to the ground. The suspect then complied with commands and was handcuffed and taken into custody without any further uses of force.

The monitoring team reviewed the officers' OBRDs and reports, as well as the responding use of force investigation and chain of command reviews. Overall the quality of the case reviews was a strong example to be emulated across the department.[11] The officers and supervisor wrote detailed reports; the supervisor identified and resolved two material discrepancies and made training referrals for minor performance issues. There was a meaningful written dialogue between the chain of command reviews to ensure the case was complete and accurate. The lone issue we

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[10] APD is reviewing the case again and has preliminarily indicated that issues identified by the monitoring team are of concern to them as well. APD has demonstrated significant problems with their IAPS processes and oversight of misconduct, which have been called out by the monitoring team for the past several Monitor reports. They recently changed Commanders of IA, presumably to rectify those issues, but this case was reviewed under the new command.

[11] The monitoring team brought this case to the attention of APD as an illustration of a comprehensive use of force investigation being conducted in the field. We recommended that it be used as a comparison to Case #IMR-11-1.

identified was in a Commander's review wherein he noted there were "No discrepancies noted…", while the investigating supervisor's report clearly indicates there had been. That detail aside, this case was well done from the initial officers' actions through to the final chain of command assessment.

Case #IMR-11-3 (ECW Application)

In August 2019, at approximately 2:30 AM, two uniformed APD officers responded to a fight in progress at an apartment complex where a security guard reported a female was bleeding and a male suspect was holding an infant. Officer's arrived and confirmed the injuries to a female and approached an intoxicated male suspect who was holding an infant. The male suspect was uncooperative and continuously walking away from the officers carrying his infant child. Backup was requested because of the suspect's passive resistance and the presence of numerous persons contributing to safety issues for the officers. A sergeant arrived as backup and subsequently called for more backup officers. For several minutes the suspect would not answer the officers' questions asked during their de-escalation attempts; would not answer officers' questions in their attempt to conduct an on-scene investigation; would not relinquish the infant to an officer; and told officers they would need to pry the infant from his "dead arms." Growing increasingly concerned for the safety of the infant and the need to take the suspect into custody, the sergeant signaled for two other officers to close distance on the suspect. The sergeant and an officer grabbed each arm of the suspect and the third officer was able to take the infant safely out of the suspect's grasp, so she could be examined by medical personnel staged nearby. The sergeant and the officer continued to physically struggle with the suspect on the ground, as de-escalation techniques had failed and the sergeant subsequently issued Taser warnings before the ECW was deployed at close range. Because the probes that struck the suspect were close together, the Sergeant who deployed his ECW recognized the ineffectiveness of the probes and utilized his ECW in "follow-up drive stun" mode to deliver a five-second cycle. The suspect continued to resist and was told if he continued resisting, he would be Tased again. The suspect stopped resisting after the officers provided the additional warning and no subsequent ECW deployment was necessary. The suspect complied with commands, was handcuffed, and taken into custody without any further uses of force.

The monitoring team reviewed the officers' OBRDs and reports, as well as the responding use of force investigation and chain of command reviews. Overall the quality of the case was very good, and the ECW use was within policy. Minimum force appropriately used by another officer to keep the victim from attempting to reach her infant was noted in an officer's report, but supervisory reviews did not deal with this action by the officer. An internal affairs referral was made for a supervisory issue not directly pertaining to the ECW deployment. When the scene was controlled by numerous responding officers, an APD member explained the actions of the officers to family members who were emotionally charged and uncooperative at times during the incident. This represented an excellent example of working with the family to explain the dynamics of safely handling domestic violence calls.

Case #IMR-11-4 (ECW Application)

In September 2019, two officers responded to a call for domestic violence call at an apartment. The officers first met with a female victim at a convenience store and conducted an interview of her and contacted medical personnel to assess her well-being. Officers then responded to the apartment where they were provided access to the residence by the male suspect's mother. The officers subsequently met with the suspect in the confined space of the suspect's bedroom. The suspect was extremely intoxicated and vacillated between initially complying with officer requests and then being noncompliant. At a point when officers attempted to control the suspect's arms, he resisted, and the officers released their grip on him, and continued with more de-escalation techniques. Eventually, the suspect began telling officers that he was a black belt, that he was faster than them, faster than an ECW, and that he would have to fight them "for my respect." When it became apparent that the suspect would not become compliant and he appeared to be positioning himself and his hands in a way that officers construed as aggressive, an officer appropriately deployed his ECW. One "follow-up drive stun" application (to complete the circuit) was needed to gain the compliance of the suspect before successfully handcuffing him without further incident.

The monitoring team reviewed the officers' OBRDs and reports, as well as the use of force investigation and chain of command reviews. Overall the quality of the case was excellent. The officers and supervisor wrote detailed reports and minor material discrepancies were addressed.

Case #IMR-11-5 (ECW Application)

In September 2019, at approximately 8:00 PM, two uniformed APD officers on bike patrol were in the area of an apparent fatal shooting (including assisting at the scene moments after the shooting) and searching for a male and female suspect who were described running from the scene. One of the officers observed a male and female in a dark parking lot not far from the shooting scene and requested backup. The other officer on bike patrol responded and the two officers together separated the male and female suspects and conducted protective frisks. While the suspects were seated on the ground, the officers attempted to retrieve information from the suspects to conduct their investigation. The male suspect provided obviously incorrect information. When a third officer arrived on location, the male suspect started to stand up as directed and as the officer was reaching for his arm to assist him, the male suspect began to flee with the officer holding on to him. The officer, aided by two other officers, got the fleeing suspect on the ground after one officer was struck in the head by the suspect. As the suspect was writhing on the ground resisting arrest, one officer appropriately deployed his ECW and administered a "follow-up drive stun" due to the close proximity of the probes. This ECW deployment during a violent struggle was successful in gaining control of the suspect and handcuffing him quickly, thus reducing the duration of the officers' exposure while searching for the shooter(s).

The monitoring team reviewed the officers' OBRDs and reports, as well as the responding supervisors use of force investigation and subsequent chain of command reviews. The review revealed adequate oversight of minor administrative omissions on data entry reports.

Case #IMR-11-6 (ECW Application)

In October 2019, at approximately 6:45 AM, a uniformed APD officer was serving a citation on a known homeless person and the person refused to sign the citation, became verbally abusive, and walked away from his belongings while carrying a large, wooden rolling pin. The officer called for back-up officers and followed the suspect on foot a few blocks, telling him to stop, he was under arrest, and to drop the rolling pin. After two officers responded (one a supervisor), the first officer and the supervisor (who were walking) closed the gap on the suspect and continued their commands. The suspect swung the rolling pin in the air while continuing to walk away from the officers. The supervisor described feeling threatened for himself, other officers (one of whom was still in a vehicle), and a woman on the street, and resultantly deployed his ECW in standoff mode with one cycle. The suspect fell in the middle of the street and was eventually subdued, handcuffed, and moved out of the center of the street. The suspect became more agitated, verbally abusive, and could not be reasoned with at the scene. After medical personnel arrived, the suspect had to be lifted by numerous officers onto a stretcher and placed in numerous restraints for transportation to the hospital.

The monitoring team reviewed the officers' OBRD videos and reports, as well as the responding supervisors use of force investigation and subsequent chain of command reviews. The officer's use of force was appropriate given the known history of the suspect, his agitated state, and the risk potential to citizens increasingly present in the area due to the start of the business day. However, material statements about the use of pre-Tasing and physical actions of the suspect were not consistent with the videos and no investigators or reviewing personnel noted the discrepancies or addressed them in their investigation reports or reviews.

Case #IMR-11-7 (ECW Application)

In October 2019, at approximately 8:00 PM, uniformed APD officers responded to a grocery store based upon multiple callers indicating a male was trying to drag employees out of the store. Upon arrival, bystanders directed officers to the disturbance where the suspect was observed near the front entrance of the store with no shirt, a pair of hospital scrubs, and appeared to be in mental crisis or under the influence of narcotics. Officers gave commands to the suspect via the vehicle's PA system, identifying themselves as Albuquerque police officers. The suspect initially listened to instructions to get on the ground. Officers had hurriedly set up a force array and attempted to approach the suspect, but the suspect got up off the ground in front of the store and hurriedly started toward the entrance of the store. Officers warned nearby

customers and employees to get out of the suspect's path. As the officer, with his drawn ECW, was following the suspect toward the store's entrance, he hurriedly started to give a verbal Taser warning and then deployed the ECW just as the suspect was entering the threshold of the store. The suspect fell partially into the store after being struck by the ECW. This appropriate use of the ECW prevented the suspect from reentering the store and battering other employees (or customers) inside the store.

The monitoring team reviewed the officers' OBRDs and reports, as well as the responding supervisor's use of force investigation and subsequent chain of command reviews. The overall quality of the case was excellent, and chain of command reviews revealed proper oversight of minor administrative omissions on data entry reports.

Case #IMR-11-8 (ECW Application)

In October 2019, at approximately 7:30 AM, two officers responded to a domestic violence call at an apartment. The call was initiated by a child knocking on the door of a neighbor and asking him to call the police. The officers first met with the neighbor and then met with the suspect. The officers conducted a welfare check of the interior of the apartment and the victim and children were not present. The officers exited the apartment and were subsequently met in the parking lot by the female victim. After interviewing the victim, officers returned to the apartment to interview the suspect. The suspect, who had been drinking and taking an illegal hallucinogenic substance, was belligerent and non-compliant, resisting the officers' efforts to frisk and detain him for questioning. The suspect began reaching for the front door of the apartment and pulling away from one of the officers in an apparent attempt to exit the apartment. An officer tried to physically restrain the suspect from pulling away and leaving, and both the suspect and the officer fell to the floor. As the suspect continued to resist being handcuffed and after multiple warnings to stop resisting or a Taser would be deployed, the officer on the ground directed the other officer to Tase the suspect. That officer appropriately deployed his ECW in standoff mode with one cycle and the suspect complied physically, while still being verbally abusive to the officers. Other officers arrived at the apartment moments after the suspect was handcuffed and assisted in escorting the suspect to a police vehicle. The suspect continuously manipulated his handcuffs, resulting in the supervisor's use of force interview and examination by medical personnel conducted while the suspect remained in a police vehicle. The suspect's actions to manipulate his handcuffs continued at the police station's holding cell. At one point, a force array had to be assembled at the holding cell to ensure officer safety when the suspect was re-handcuffed in the cell.

The monitoring team reviewed the officers' OBRDs and reports, as well as the chain of command reviews. Actions were noted that appropriately addressed issues not related to the use of the ECW.

<u>Observations and Comments</u>

The cases the monitoring team reviewed this reporting period represent a markedly better result as compared to the sample reviewed during IMR-10. None of the cases reviewed by the monitoring team identified inappropriate deployments of ECWs by officers or supervisors. Supervisory oversight of ECW deployments was much better than observed in past monitoring periods, with many nuances identified and addressed by either first-line supervisors or chain-of-command reviews. A considerable problem that has been identified in past reporting periods was the issue of supervisory investigations being undertaken by supervisors who authorized force, witnessed force, or were actually part of the operation being investigated. None of the cases reviewed during this reporting period presented any evidence of this past problem.

One persistent problem with APD force reporting is the use of boilerplate language. While this was specifically set forth in the assessment of IMR-11-1, less problematic boilerplate language was seen in other cases. Boilerplate language and the absence of specificity do not always create an accurate picture of what has occurred and often creates problems for the investigation of such incidents. For example, when an officer reports that post-ECW deployment a suspect is still *struggling*, this does not afford supervisors clarity to assess whether post-deployment hands-on techniques are uses of force or not because the passivity of the suspect (or lack thereof) is not clearly stated. In IMR-11-8, the lack of clarity of the term “a bit of a struggle” was noted in the chain of command review and necessitated the supervisor to conduct a supplemental interview to clarify the term to more properly assess whether another use of force took place. In another case, IMR-11-4, an officer used the term *drive stun* when in fact the ECW deployment was a *follow-up drive stun,* the latter of which is meant to complete a circuit. These are two different types of deployments potentially necessitating different types of supervisory responses. Additionally, a drive stun in the neck is a serious use of force. When supervisors focus on a drive stun in the area of the neck this necessitates an IAFD response. This was the case in IMR-11-4, where IAFD conducted the investigation despite the drive stun actually being a properly delivered follow-up drive stun and the area of deployment was not the neck, but the trapezoidal muscle area closer to the shoulder (due to the subject laying on the bed).

The monitoring team notes that *target glancing* is another term that is used with some level of frequency in a number of cases. For example, in IMR-11-4 officers reported the suspect was “very intoxicated,” that the suspect continuously asked for his glasses, and that the room they were in was extremely small. The monitoring team did not see that the suspect was target glancing. An unrelated report the monitoring team reviewed during this reporting period noted a suspect was target glancing “for possible escape routes to the East.” This slightly more robust description of the perceived target glancing provides additional context in assessing the dynamics associated with interpreting a suspect’s intent or state of mind.

The disparity in how supervisors document their investigative actions presents what the monitoring team considers as a haphazard approach to conducting and documenting supervisory reviews of use of force incidents. An example of three case reviews

provides clarity to this assessment of the haphazard approach. In [IMR-11-5], an officer, who physically engaged with a subject prior to an ECW deployment, appeared to fall down just as the struggle began. This appeared to put the officer at a disadvantage with the struggling suspect. No evidence was observed that indicated the supervisor asked the officer about whether or not he was on the ground or how he ended up on the ground. In this same case, the supervisor's report (10 pages) used boilerplate language in the *Interviews Conducted* section for all three officers as follows: "… statement matched his report and actions observed on [the] OBRD. For exact statement from [the officer] see [the] interview." The use of this language was especially concerning in this case because the OBRD of the initiating officer who called for assistance when first confronting the suspects was not activated during the initial contact with the suspects, and this error was not addressed by the supervisor in this officer's interview. In IMR-11-8, the 17-page supervisory report included no information in the *Interviews Conducted* section about interviews conducted of the two officers who utilized force. In fact, the monitoring team found no analysis or reporting of the content of one officer's interview despite the fact that he was interviewed twice (the second time was upon the direction of a lieutenant reviewing the supervisory investigation). In IMR-11-7, the *Interviews Conducted* section of the 12-page supervisory investigation report documented the interviews of nine persons inclusive of three officers. The synopsis of the three officer interviews appropriately included information from their initial interviews as well as their follow-up interviews necessitated by a review of a surveillance video.

The residual impact of this variability in supervisory investigations continues to place an undue burden on the APD hierarchy to reconcile deficiencies at higher review levels. While the variability in these investigations did not adversely impact outcomes related to compliance during this monitoring period, they have plagued compliance efforts in other Paragraphs during past monitoring periods. Moving forward, APD's IAFD will investigate most instances of ECW usage in the field. The variability of organizational responses to ECW use previously resulted in APD losing operational compliance with some ECW Paragraphs. Continued variability in investigations and tepid responses to policy violations that are uncovered could result in intermittent Operational Compliance determinations, which would impact APD's long term compliance objectives. Such supervisor deficiencies should be documented, aggregated, and reflected in performance evaluations of those supervisors, and when appropriate referred to IAPS for investigation. This is also a key component of Paragraph 56. More importantly, as we have noted frequently, failure to identify issues early on often leads to more problematic behaviors in the field.

4.7.11 Assessing Compliance with Paragraph 24

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."

Results

ECW Usage As Compliance Techniques

	In Compliance
IMR-11-1	Y
IMR-11-2	Y
IMR-11-3	Y
IMR-11-4	Y
IMR-11-5	Y
IMR-11-6	Y
IMR-11-7	Y
IMR-11-8	Y
Compliance %	**100%**

Our analysis indicates that APD field personnel were in compliance with 100 percent of the incidents we reviewed for Paragraph 24.

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."

Results

Members of the monitoring team reviewed eight ECW application events for compliance with this task. Compliance figures for the eight events are depicted below, indicating a 100 percent compliance rate in the cases reviewed, for the requirements articulated in APD policies related to Paragraph 25 of the CASA.

Verbal Commands Prior to Deployment of Tasers

	In Compliance
IMR-11-1	Y
IMR-11-2	Y
IMR-11-3	Y
IMR-11-4	Y
IMR-11-5	Y
IMR-11-6	Y
IMR-11-7	Y
IMR-11-8	Y
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."**

Results

Tabular results for compliance for paragraph 26 are presented below.

Deployment of Tasers in Situations Posing Risk of Serious Injury or Death

	In Compliance
IMR-11-1	Y
IMR-11-2	Y
IMR-11-3	Y
IMR-11-4	Y
IMR-11-5	Y
IMR-11-6	Y
IMR-11-7	Y
IMR-11-8	Y
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."**

Results

Tabular results for compliance with Paragraph 27 are presented below.

Continuous Cycling of ECWs

	In Compliance
IMR-11-1	Y
IMR-11-2	Y
IMR-11-3	Y
IMR-11-4	Y
IMR-11-5	Y
IMR-11-6	Y
IMR-11-7	Y
IMR-11-8	Y
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."**

Results

ECW Use in Drive-Stun Mode

	In Compliance
IMR-11-1	Y
IMR-11-2	Y
IMR-11-3	Y
IMR-11-4	Y
IMR-11-5	Y
IMR-11-6	Y
IMR-11-7	Y
IMR-11-8	Y
Compliance %	**100%**

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."**

Results

Use of ECWs Based on All Circumstances of Incident

	In Compliance
IMR-11-1	Y
IMR-11-2	Y
IMR-11-3	Y
IMR-11-4	Y
IMR-11-5	Y
IMR-11-6	Y
IMR-11-7	Y
IMR-11-8	Y
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."**

Results

Compliance data for Paragraph 30 are presented below.

Targeting Subject's Head, Neck, or Genitalia

	In Compliance
IMR-11-1	Y
IMR-11-2	Y
IMR-11-3	Y
IMR-11-4	Y
IMR-11-5	Y
IMR-11-6	Y
IMR-11-7	Y
IMR-11-8	Y
Compliance %	**100%**

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

4.7.18 Assessing Compliance with Paragraph 31: ECW Restrictions

Paragraph 31 stipulates:

> **"ECWs shall not be used on handcuffed subjects, unless doing so is necessary to prevent them from causing serious physical injury to themselves or others, and if lesser attempts of control have been ineffective."**

Results

Taser Usage on Handcuffed Individuals

	In Compliance
IMR-11-1	Y
IMR-11-2	Y
IMR-11-3	Y
IMR-11-4	Y
IMR-11-5	Y
IMR-11-6	Y
IMR-11-7	Y
IMR-11-8	Y
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."**

Results

Taser Holstered on Weak-Side Only

	In Compliance
IMR-11-1	Y
IMR-11-2	Y
IMR-11-3	Y
IMR-11-4	Y
IMR-11-5	Y
IMR-11-6	Y
IMR-11-7	Y
IMR-11-8	Y
Compliance %	**100%**

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."**

Results

Paragraph 33 requires APD officers to receive annual ECW certifications that consist of physical competency; weapon retention; APD policy, including any policy changes; technology changes' and scenario- and judgment-based training. We requested training curriculum, as well as attendance and testing data, for

2018 ECW training for the department. We cross referenced that data with officers who reported using ECW as a means of force during our case reviews and found that each officer that reported using their ECW in those cases had received the required training and certifications. We also reviewed an Interoffice Memorandum entitled, "Status update on 2019 Taser 7 Transition" and Excel spreadsheet where APD captured department wide compliance data. Data we reviewed indicated that APD has a 95% overall attendance rate for the training[12], and 100% of active sworn member have successfully attended the training.

Annual Training for ECWs

	In Compliance
IMR-11-1	Y
IMR-11-2	Y
IMR-11-3	Y
IMR-11-4	Y
IMR-11-5	Y
IMR-11-6	Y
IMR-11-7	Y
IMR-11-8	Y
Compliance %	**100%**

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**

[12] APD reported thirty-two sworn members are on various types of authorized leave (i.e., FMLA or military) and had not yet attended the Taser transition training.

of drugs and/or exhibiting symptoms associated with excited delirium; or were kept in prone restraints after ECW use."

Results

Training re Risks of ECW Usage

	In Compliance
IMR-11-1	Y
IMR-11-2	Y
IMR-11-3	Y
IMR-11-4	Y
IMR-11-5	Y
IMR-11-6	Y
IMR-11-7	Y
IMR-11-8	Y
Compliance %	**100%**

Primary: **In Compliance**
Secondary: I**n 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."**

Results

Tabular results for compliance for paragraph 35 are presented below.

Provision of Medical Attention

	In Compliance
IMR-11-1	Y
IMR-11-2	Y
IMR-11-3	Y
IMR-11-4	Y
IMR-11-5	Y
IMR-11-6	Y
IMR-11-7	Y
IMR-11-8	Y
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)."

Results

Provision of ECW Notifications

	In Compliance
IMR-11-1	Y
IMR-11-2	Y
IMR-11-3	Y
IMR-11-4	Y
IMR-11-5	Y
IMR-11-6	Y
IMR-11-7	Y
IMR-11-8	Y
Compliance %	**100%**

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

4.7.24 – 4.7.25 Assessing Compliance with Paragraph 37 – 38.

Paragraphs 37 – 38 of the CASA address auditing and analysis requirements that APD must meet related to ECW use as follows:

- Paragraph 37: ECW Safeguards
- Paragraph 38: ECW Reporting

During our November 2019 site visit, members of the monitoring team met with personnel responsible for the tasks delineated in Paragraphs 37 and 38. We continue to be impressed with the work being done in APD's Compliance Bureau and in particular the Performance Metrics Unit (PMU). Members of the team come prepared and are self-starters in terms of identifying problems and devising ways to isolate causes of those problems. The sophistication of thought currently being demonstrated by the auditing crew at APD is continuing to mature and is evolving into a law enforcement best practice. In past reporting periods, the monitoring team spent time providing perspective and feedback to APD, and the technical assistance we gave has clearly been embraced and built upon. APD previously achieved Operational Compliance for Paragraph 37, so we centered our attention on their ability to sustain their momentum and maintain operational success. As outlined below, we determined APD has sustained their compliance standing for Paragraph 37 for IMR-11.

PMU continues to self-identify issues and create solutions that have a meaningful impact on compliance efforts across the organization. Most impressive is their self-assessment and willingness to be critical of themselves. This is the mark of a true learning organization, one that self-reflects and gets better with each revolution of the work product cycle. Their interest in exceeding basic expectations of the CASA will be valuable in the future since the margin for error for Operational Compliance in the field is narrow. We believe PMU is the most positive resource APD has for moving forward with their Operational Compliance efforts across the organization. We observed that PMU continues to create and modify internal auditing methods that will allow effective business processes to take hold and be sustainable. PMU reported that Area Commands are embracing their audits, and in some instances, even requesting audits be conducted of their individual commands. Frankly, that is an incredible departure from past experiences we have had with APD, so we are encouraged in what the future could hold with respect to APD's self-monitoring capabilities. As APD advances proposals for different CASA Paragraphs to be removed from regular monitoring, we believe that all CASA parties should first look to ensure PMU has a prominent seat at the table, as it has been the central figure in devising each self-monitoring plan for the agency.

PMU came prepared for our meeting and, as in past site visits, provided a comprehensive presentation of the status of their unit's efforts. In the past we

discussed PMU staffing levels and learned that a request was made to increase the unit by three auditors. We were encouraged to learn that PMU has been "fully staffed" and now has a PMU Manager, Senior Auditor, and five auditors. Now that the unit is staffed, we believe properly leveraging the skill set of PMU will influence CASA compliance in the field in a meaningful way.

We reported during IMR-10 that PMU initiated a pilot program of field inspections that allows it to measure compliance with CASA paragraphs principally focused on ECW, OBRD, APD firearms requirements, IA complaint forms and requirements related to 72-hour extension requests during use of force investigations.[13] PMU directly correlated data to specific CASA related policy provisions and provided commentary on their impression of data reliability and other relevant observations analysts make during assessment that are helpful to APD supervisors.[14] We reviewed course of business documentation that demonstrated APD is maintaining Operational Compliance with Paragraph 37, and among the documents were "Scorecards" prepared for the six Area Commands in the Field Service Bureau. This represents a "best practice" in the field.

PMU collect pre-determined sets of data that measure compliance efforts across the six (6) Field Services Bureau (FSB) Area Commands and generate "Scorecards" that are shared back to those commands. The broad areas being assessed receive percentage scores for compliance for each Area Command. Scores are color-coded making the reports quickly digestible, which is an important quality for a field supervisor. We noted in IMR-10 that when scores began to be shared with FSB personnel, PMU began to receive inquiries from the field because categories were found to be below target scores of 95% compliance. Once the Inspection Reports were explained, PMU found FSB to be very receptive to the feedback because, they believe, there was a sense of reliability in the data that was being reported.

During our site visit PMU reported these additional points of interest:

1) PMU created an internal database portal for Area Command rebuttals when a commander believes there is a mistake in an audit finding. This portal allows the Commander to include a description of their concern and attach any written proof

[13] The pilot program ran between February and May 2019. The specific paragraphs noted in PMU's "Inspections Pilot Status Report" included ECW paragraphs 26, 27, 30, 31, 32, 35, 36, 37; OBRD paragraphs 225, 230; Firearms paragraphs 18, 20; Compliance Forms paragraphs 165, 168; and 72-hour extension paragraph 53.

[14] We have commented elsewhere that IA's focus on CASA related policy compliance is critical to their Operational Compliance efforts. We believe that the data being collected by PMU, if shared and analyzed from an IA perspective, could be a tremendous resource. PMU isolates the data by Area Command and Unit and focuses even deeper on individual policy provisions that are being adhered to or violated.

that demonstrates compliance. PMU then assesses all documentation to determine if their initial audit findings were accurate.

2) PMU includes an internal "Peer Review" for instances when a mistake is made for their own continuous growth. They attempt to use each instance where their audit was incorrect as a personal learning opportunity and then modify processes to ensure the mistake is not repeated.

3) PMU reports will eventually be accessible through an app so Commanders can download Scorecards since PMU auditors update the data fields in real-time.

4) PMU personnel are starting to gather information and making IA referrals so they can track whether there is a change in the field.

5) PMU continues to receive calls from the Area Commands asking questions concerning data and Scorecard findings. PMU now sees instances where Area Commands are having their own personnel checking data prior to a PMU inspection. This is precisely the type of reaction we hoped to see from the Area Commanders. PMU's primary responsibility is to drill down on CASA requirements, where the Area Commander's role is more diverse. These routine Scorecards will allow Area Commanders to focus on problems areas in real time before they become a wide-spread issue.

6) PMU is now looking at non-compliance data based on an officer/supervisor's years of service within a command with an additional focus on specific watch commands. PMU expects to be able to better inform Commanders, based on collected data and set criteria, which officers are more or less likely to violate a policy provision.

7) As noted above, PMU is starting to receive invitations to have audits conducted from different APD Commands. We see this as a "tipping point" as Area Commanders are turning to the internal experts to assess the nature of their commands, and their compliance processes. This is a critical seminal change to APD's methods of operation.

8) PMU is reviewing cases the monitoring team reviews and looking at raw data to determine where violations of policy are occurring and when and where they are being identified. So far, they have noted that most problems are being identified during the lieutenant level of reviews. Compliance falls off at the Commander level since they normally "concur", so they are prone to miss violations at a lower level, and they are not necessarily identifying new policy violations. This observation by PMU is consistent with our previous findings. Further, it indicates

that APD is beginning to become a "Learning Organization," a sophisticated step on the path to compliance.

With respect to Paragraph 38 the monitoring team requested course of business documentation that demonstrated provisions had been met. In the past we have been provided with Interoffice Memoranda that did not constitute course of business documents and instead were status reports. The contents of the reports we were provided in the past only served to verify that APD had not yet developed ways to meet the provisions of Paragraph 38. Following our meeting with the APD personnel responsible for tasks associated with Paragraph 38 during our May 2019 site visit (IMR-10), we shared our impressions of the lack of progress with the Compliance Bureau Commander, who was very receptive.

During our November 2019 site visit we weren't provided an Internal Memorandum again, but this time we were provided a more sophisticated draft of a methodology APD is considering for the assessments that are required by Paragraph 38. The thoughtfulness of this particular document suggests to the monitoring team that IAFD is beginning to take on the tasks associated with data collection. For instance, the document frames data collection needs for the assessment as follows: "Does ECW use result in an increase in the use of force…" into a series of questions: 1) Would force have been used if an ECW were not an option?, 2) Was force warranted?, 3) How often is ECW the first use of force option?, 4) Would the level of force used been lower or higher if an ECW was or was not used? The documents we were provided to review for Paragraph 38 demonstrate progress, but they are in draft form and unfinished, so they will not impact APD's current compliance standing.

As noted in IMR-10, APD published its 2016 and 2017 Annual Reports[15] in March of 2019, having not published an Annual Use of Force Report since 2015. APD decided to organize use of force data from the years 2016 and 2017 together, which we found to be an appropriate approach under the circumstances. The "Use of Force Report for the Years 2016/2017" was finally published in March of 2019. The fact that nearly a year later the 2018 report is not finalized signals to the monitoring team that APD is still struggling to build reliable systems to capture accurate data. We highly encourage APD to consider our past comments concerning annual force reporting and to incorporate feedback they have been provided. We know policy violations and failures to report uses of force extended into the IMR-11 reporting period, so the qualifying language we have previously called out will be necessary for any

[15] The report was dated February 2019 and was published on March 14, 2019. We have stressed the need, where use of force and show of force statistics are provided, that the Annual Reports need to call out and qualify the validity of relevant statistics in light of the many issues the monitoring team has brought to APD's attention over the past three years. This is not meant to disparage the efforts APD made, but in our opinion, APD could not "ensure" the information in the report is accurate, though we are confident it is more accurate than past reporting efforts. See our comments below concerning SOD data.

higher level of compliance to be achieved with this paragraph. This is described in greater detail in Paragraph 79.

We recommend APD continue to assess the workload and staffing of PMU, since the organization's reliance on their work product should continue to expand. Becoming a data-driven police department requires commitment, with the expectation that making smarter decisions creates effectiveness that results in significant organizational efficiencies. As a consequence of their efforts at PMU, we assess that APD maintains its Operational Compliance for Paragraph 37 during this reporting period.

Paragraph 38 maintains its Primary Compliance status. We encourage APD to advance more meaningful work product with respect to ECW data assessments, and to consider the feedback provided related to future Annual Reports on Use of Force.

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."**

Results

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

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."

Results

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

Recommendations for Paragraph 38

4.7.23a: APD should conduct an internal review of compliance for paragraph 38 and ensure that its review is responsive to the elements of paragraph 38.

4.7.23b: APD should produce 2018 and 2019 use of force annual reports as soon as practicable.

4.7.23c: Require specific and meaningful "intervention," based on errors attributable to sergeants, lieutenants, and area commands. Multiple failures should not be addressed through verbal reprimands, but should be addressed by re-training, documented counseling, or other tangible methods consistent with APD disciplinary policy.

4.7.23d: Six months after remedial steps, re-visit the respective area commands and sample a second set of ECW reviews to determine if compliance levels have improved.

4.7.24f: If compliance levels have not improved, consider appropriate remediation or discipline for the responsible sergeants, lieutenants, and area commanders.

4.7.24-25g: Repeat steps 1-6 until error rates are less than five percent.

4.7.24-25h: The internal review should focus on areas of non-compliance noted by the monitor and internal processes at APD.

4.7.26 – 4.7.27 Assessing Compliance with Paragraphs 39-40: Crowd Control Policies and After-Action Reviews.

Paragraphs 39-40 of the CASA address requirements that APD must meet related to crowd control policies, and the management and supervision of APD responses to events involving mass demonstrations, civil disturbances, and other crowd situations.

While the policies apply to all APD officers, the tasks associated with Paragraphs 39 and 40 are overseen by members of the APD Emergency Response Team (ERT).

The monitoring team met with ERT members during its November 2019 site visit and discussed their efforts in advancing the requirements associated with Paragraphs 39-40. We discussed the ERT policy and training requirements that are pending relating to ERT protocols and learned that ERT was updating and recasting SOP 2-29 with a new number --- SOP 2-35 "Emergency Response Team (ERT)". The monitoring team reviewed a resolution draft of SOP 2-35 and provided final comments back to APD, after the close of this reporting period. The following paragraphs represent our findings related to Paragraphs 39-40.

Beginning with IMR-9 we documented ERT's effort to develop training and how it intended to address its requirements through a 3-Stage training process as follows:

> **Stage 1** – All department personnel will receive training on SOP 2-29 (now 2-35) through an on-line training platform, which will also cover aspects of use of force concerning chemical munitions and NFDDs.[16]
>
> **Stage 2** – All ERT supervisors will receive an in-person "train the trainer" course on the new (when approved) ERT SOP, which will incorporate practice in crowd control formations and movements, so they are consistent across the entire ERT. (There are a total of 5 teams of ERT, and approximately 90 personnel who will need to attend the training)
>
> **Stage 3** – All other ERT personnel will receive in-person training to review use of force, including force related to chemical munitions and NFDDs. In addition, training will be necessary regarding the ERT SOP, and squad formations and movements utilizing ERT supervisors as trainers.[17]

As reported in IMR-10, ERT worked with the Academy to advance their Stage 1 training through the 7-Step Training Cycle. The proposed training was submitted to and approved by the monitoring team at the end July 2019. APD promulgated Special Order 19-73 "Crowd Control Gap Training" on July 22, 2019, that required that the training be completed by July 29, 2019. We were provided with a July 30, 2019, "Close Out" memorandum that documented the to-date compliance with Special Order 19-73.[18] 1,001 APD personnel were required to attend the training, and the documentation we reviewed demonstrated that APD achieved an overall performance score of 96%.

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[16] This stage of training was completed at the end of the IMR-10 reporting period.
[17] Supervisors who attended the "train the trainer" course will be used as trainers.
[18] APD providing the "Close Out" memorandum is encouraging to the monitoring team. Incorporating this type of document as a routine part of their training process has been called out many times in the past. When it becomes routine it is considered a course of business document that the monitoring team can then rely upon in future compliance assessments.

During our site visit ERT advised that they are refining their administration of routine training ERT personnel attend to ensure that if a member misses a training date there is a process in place to track the officer until make-up training is attended. We were told that if an ERT member misses three training sessions within a year they are dismissed from the team. We encourage ERT Commanders to standardize their routine training documentation and mirror larger programs that they coordinate with the Academy staff. Daily training programs may be cumbersome to run through the 7-Step Training Cycle, but the basic tenets of learning objectives, testing outcomes, and post-training reporting are valuable when tracking performance in the field for individuals or entire units.

The monitoring team, as a part of the normal data collection process, requested that APD provide documentation for any mass gathering responses that occurred during the IMR-11 reporting period. We reviewed an After-Action Report (AAR) that was generated following a September 16, 2019 Presidential visit to Albuquerque. The AAR was particularly concise because no protests, gatherings, or issues were encountered during the visit. Under the circumstances we found no issues with the documentation we were provided. As we noted in IMR-10, low frequency, high impact events carry the most risk to an agency, so ERT remaining aware of their requirements, past commitments, and emerging trends is even more important. We recommend that current ERT supervisors review past monitor reports and comments that were provided concerning the quality of records associated with ERT deployments. Previous ERT Commanders put forms in place that are required to be used to gain feedback from other agencies when APD's ERT is activated. This would be a part of the After-Action Reporting process. These reports should be refreshed, when appropriate, and appended to SOP's they pertain to as revisions occur.

Based on our review, we have determined Primary Compliance should be continued for Paragraphs 39 through 40. Secondary Compliance will be achieved once APD has an approved ERT policy and their Stages 2 & 3 training have been completed. We highly recommend that as APD complete SOP 2-35 and submit training related to that policy, that they ensure each required topic in Paragraph 39 is properly incorporated in that training and consider guidance we have provided in past IMRs related to training methods. Failure to do so could result in additional delays.

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 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."

Results

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

4.7.27 Assessing Compliance with Paragraph 40

Paragraph 40 stipulates:

"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."

Results

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

Recommendations for Paragraphs 39 and 40

4.7.26-27a: Recommendation: APD must develop and deliver a meaningful training program to its ERT and Field Services members that is centered on crowd control policies. That training should include scenarios, practical exercises, and lessons learned from previous APD responses to events. Training must meet the instructional objectives documented within APD lesson plans.

4.7.26-27b: APD must ensure that its After-Action Reports follow a standard structure and include mechanisms for communicating needed revisions to policy, training, or operational rubric within the agency. We encourage APD's ERT Commanders to review past reports and to incorporate AAR procedures and forms (previously agreed upon) into SOPs.

4.7.26-27c: Any recommendations made from After-Action reporting should follow a logical and repetitive cycle wherein APD can demonstrate it adequately "closes the loop" on lessons learned.

4.7.28 – 4.7.46 Assessing Compliance with Paragraph 41-59: Supervisory Review of Use of Force Reporting

This series of related Paragraphs (41 through 59) encompass requirements for reporting, classifying, and investigating uses of force that require a supervisory-level response based upon the type and extent of force used. The CASA delineates this larger group of paragraphs 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 following represents our findings relative to these series of paragraphs.

The CASA requirements stipulate that a use of force by APD personnel shall result in an investigation of force, which shall comply with applicable laws and comport to best practices. Central to these investigations shall be a determination of each involved officer's conduct to determine if the conduct was legally justified and compliant with APD policy. We have commented extensively in the past that APD's reporting and investigation of uses of force have demonstrated serious deficiencies that have hindered compliance efforts. As with other reporting periods, the monitoring team spent time during the IMR-11 reporting period in consultative processes providing perspective, feedback, and technical assistance to APD personnel regarding force investigations. We provided perspective to APD to help the administration better understand and deal with historical difficulties the agency has had in achieving compliance, and provided ideas concerning how they could best be addressed moving forward. We have seen examples of our technical assistance being implemented in certain areas, as well as an improvement with the overall handling of use of force incidents. However, we still find evidence of force reporting and investigation issues, as well as system and process disconnects that will continue to hinder operational compliance moving forward.

During IMR-11, the monitor and the parties continued to collaborate on a way forward to resolve the lingering issue of ACMs. Several tenuous issues were created by the past practice of ACMs, many of which we have dealt with since IMR-8. In short, ACMs appeared to create a second category of policy violations that were not properly investigated (if investigated at all) and were observed to be poorly documented conclusory statements not supported by careful documentation or analysis. More importantly, they were virtually completely devoid of meaningful corrective action. During IMR-10, APD promulgated Special Order (SO) 19-25, entitled, "Internal Affairs Request Through BlueTeam." Internal Affairs Professional Standards (IAPS) Division became the central intake for "all identified or suspected violations of Department Standard Operating Procedures (SOP)," thus rescinding the problematic use of ACMs and the Supervisory Action Report (SAR)."

During IMR-11, the monitoring team has observed evidence that SO #19-25 is being adhered to in practice. While its acceptance was diluted in IMR-10 and the early part of the IMR-11 monitoring period by IA personnel reacting slowly to opening IA cases based on reporting from the field and Commanders not wanting to cede authority over policy violations, in the latter part of the monitoring period the monitoring team has observed numerous examples of personnel requesting IA investigations on policy violations. A number of cases reviewed during this monitoring period contained requests for the IA review of policy violations. These requests will be examined by the monitoring team to the point of their logical conclusions, to determine if APD is properly administering its IA oversight processes.

The monitoring team has given exhaustive technical assistance and feedback to APD concerning the problems associated with their IA processes. This technical assistance included on-site support up to the last day of the monitoring period. This feedback from the monitoring team has encompassed best practices in internal affairs operations, as well as the lack of timeliness of APD's use of force investigations, and the disparity in discipline that exists by deferring disciplinary decisions (especially on matters originating from use of force incidents) to Area Commands. This concern about criteria and timelines also extends to the Paragraph 53 requirement of completing supervisory force investigations within 72 hours. In past monitoring periods, the monitoring team observed numerous incidents of what seem to be Commanders elongating the amount of time (up to 60 days) that supervisors have to submit supervisory force investigations for Commander review by summarily granting longer extensions than requested by supervisors.[19] The process of reviewing non-serious use of force investigations often occurs two months after the actual use of force. As an exemplar, the following table lists the date of the use of force and the date the Commander signed off on the non-serious use of force investigation for the eight ECW cases examined for Paragraphs 24-36 in this report. The elapsed time from the use of force incident date to the date the Commander signs off on the investigation underscores the timeliness issue.[20]

See chart below.

[19] We note that when a first line supervisor requested an initial extension to submit their use of force investigation, that initial request essentially ensured that the case will not be completed before 60 days. There appeared to be no variance to the timeline extension, an initial request almost always sets in motion elongated chain-of-command reviews, which eliminate the possibility of positive (counseling, retraining, closer supervision) and punitive (suspensions, etc.) discipline.

[20] The inability of some command officials to meet established timelines for non-serious use of force cases, undermines the IA disciplinary process. As a consequence, APD's approach to IA has been perfunctory at best.

	UOF incident Date	Commander Review Date	# of Days
IMR-11-1	08/07/19	10/08/19	62
IMR-11-2	08/12/19	12/04/19	114
IMR-11-3	08/19/19	10/25/19	67
IMR-11-4	09/03/19	01/29/20 [21]	117
IMR-11-5	09/20/19	11/20/19	61
IMR-11-6	10/02/19	undated	Unknown
IMR-11-7	10/08/19	12/04/19	57
IMR-11-8	10/19/19	12/19/19	61

The monitoring team opines that the process of missing deadlines during the commander review is problematic on a number of levels. For example, in IMR-11-8, the supervisor conducting the non-serious use of force investigation e-mailed the Commander requesting an extension, indicating that in addition to APD sanctioned training events, the supervisor was scheduled for vacation for almost a two-week period commencing immediately after the use of force incident. The Commander responded via email four days later extending the investigation deadline until one day before the supervisor was due back from vacation. The Commander's lack of responsiveness and appreciation for deadlines here is obvious. As a mechanism to improve timeliness in the completion of use of force investigations, limiting the duration of extensions, as it appears to be the case in this matter, is one way to be more punctual. On the other hand, if a supervisor will not be available for the next 16 days immediately after a use of force due to previously approved training or vacation[22] (October 20 through November 4 in this case), commanders need to consider reassigning the supervisory use of force investigation to another supervisor. If APD fails to perceive and act with such management prerogative, compliance in Paragraphs 41-59 will remain elusive.

Timeliness continues to plague APD on a number of fronts, beyond just supervisory use of force investigations. Whether the genesis of this problem is merely APD's culturally ingrained *laissez faire* approach to deadlines or the intentional failure of individuals to act with any sense of urgency (and collaterally undermining the spirit of the CASA), the outcome is the same—the reduction of APD's ability to impose corrective measures and discipline against officers for policy violations. A prime example of this has been showcased during this monitoring period.

At the start of this monitoring period, the monitoring team had a conference call with members of APD and the City Attorney's office pertaining to the impact of SO #19-25 on the policy violations identified in any ACM/SAR in the 90 days immediately preceding the promulgation of SO #19-25. The City and APD made clear it did not intend to review any ACM/SAR generated in the 90 days immediately preceding that SO for the intention of initiating an IA (against an officer) for policy violations addressed by a supervisor in

[21] This case was incorrectly classified as a serious use of force and investigated by IAFD.
[22] It appears this supervisor attempted to work on the investigation while on authorized vacation time.

an ACM/SAR --- regardless of the seriousness of the policy violations. However, the monitoring team was assured that 28 IA investigations had been initiated against supervisors for policy violations dating back as far as 2018, and those 28 cases were moving forward for disciplinary action. However, in December 2019, the monitoring team learned that the 28 cases missed their deadline for the imposition of discipline and, as a consequence, the IA Commander had been removed from his position. To date, the monitoring team has little information as to the exact timeline transgressions that impacted these 28 cases. More troubling is that the monitoring team has found no evidence that an internal affairs investigation was opened to determine the culpable inefficiency of chain-of-command personnel involved in decisions or oversight that contributed to the unacceptable status of the 28 cases.[23] Such deliberately indifferent responses to potentially intentional attempts to neuter the CASA must be identified assiduously, and must be met with certain, timely and forceful responses by APD's command structure. Further, the cause for those actions need to be permanently documented. No one, no matter his or her rank, should be able to be part of such deliberate, or even presumably incompetent, laissez-faire approaches to deliberate contradiction of the CASA without being subject to investigation and response. It appears that many of the supervisors involved were confused about process and intent of the target letters. Supervisors received two target letters for the same case, the original and amended, and were, evidently unclear about the allegations. This created confusion, not only for the involved supervisors, but for the monitoring team as well.

We reiterate: the facts behind this oversight process must be investigated fully, findings developed, and action taken—even if timelines are past, some "notice" and correction -- even if it is only retraining via personal interview—must be effectuated. At this point in the monitoring process, such failures are not understandable.

Focusing on supervisory use of force investigations initiated during this monitoring period (August 1, 2019 through January 10, 2020), data indicate that APD opened 241 new cases. This represents the same number of supervisory use of force investigations under examination in IMR-10. As of the first week of February 2020, only 59% (143 cases) of the 241 cases were complete. During the first three months of the monitoring period, 145 investigations were initiated. At the end of the monitoring period, eighty-two percent (119 cases) of the 145 investigations initiated between August 1 and October 31, 2019 were completed. During IMR-10, ninety-three percent of the 107 supervisory force investigations initiated during the first three months of that monitoring period had

[23] In preparation of this report the monitoring team asked APD to provide all documentation related to this failure by IA, to include internal memos, transfer orders, and IA numbers and reports that were initiated and investigated against any APD member, at any level, for the misconduct cited here. We were provided with only a one-page transfer order, thus signaling that an internal affairs investigation was never opened! If it were not for our experience dealing with APD's past approaches to the oversight of misconduct, that failure would be incomprehensible. As it stands, this fact pattern indicates a need to rethink the concept of discipline at APD, and to ensure that deleterious issues such as favoritism, inability to call out intentional circumvention of established policy, and other actions interfering with the disciplinary process are identified, assessed, and adequately managed.

been completed prior to the close of the period.[24] The table below provides a comparative analysis of completion rates for supervisory use of force investigations across the last three monitoring periods. This analysis provides a snapshot of how APD struggles to complete these investigations in a timely manner. More importantly, the table below illustrates the troublesome trend in declining completion rates for cases initiated in the first three months of a monitoring period as well as the overall variability in completing cases during the entire monitoring period.

Monitoring Period	# of Sup. UOF Cases Initiated (Months 1-3) of the Mon. Period	# of Sup. UOF Cases (Months 1-3) Completed within the Mon. Period	Total # of Sup. UOF Cases Initiated during the Mon. Period	Total # of Sup. UOF Cases Completed within the Mon. Period
IMR-9	142	142 (100%)	222	162 (73%)
IMR-10	107	99 (93%)	241	121 (50%)
IMR-11	145	119 (82%)	241	143 (59%)

As of January 11, 2020, APD has implemented a new suite of use of force policies, as well as a new classification system for investing uses of force. While these changes will certainly change the dynamics of how uses of force are categorized and investigated, APD should conduct an analysis of causal factors leading to a decline in the efficiency of completing the investigations over the last 18 months. While the monitoring team recognizes the causal factors impacting these past investigations may be uniquely associated with the pre-January 11, 2020 system for investigating use of force incidents, some information may be gleaned that will positively impact the effectiveness and efficiency of use of force incidents moving forward.

In the next monitoring period, the monitoring team will focus on how APD implements and oversees the revised suite of use of force policies and how this implementation impacts the pace and quality of force investigations.

Paragraphs 41-59 started IMR-11 in Primary Compliance only. One of the reasons cited for this poor compliance status was persistent outstanding training gaps that relate to these paragraphs. However, APD took successful steps to remediate these outstanding training gaps during the last monitoring period. During this monitoring period (IMR-11), the APD Academy has successfully implemented a training program to integrate the new suite of use of force policies into practice, as well as a new classification system for

[24] We note that the completion rate of use of force investigations is not an indicator of the quality of the investigations submitted.

investigating uses of force.[25] This is discussed extensively in Paragraphs 86 through 88, below.

A number of APD functions accrue to various aspects of Paragraphs 48-52. For example, during our November 2019 site visit, the monitoring team met with APD representation from the Multi-Agency Task Force (MATF). A review of the MATF case ledgers and other documents continues to indicate the task force's activation for criminal investigations related to officer-involved shootings, in-custody deaths, felonious force against officers, criminal conduct cases resulting from a use of force by officers, as well as coordination with APD's Internal Affairs Division.

Other APD functions related to these paragraphs continue to demonstrate the spirit and rigor that will ultimately be required to achieve compliance. Specifically, the Internal Affairs Force Division's (IAFD) use of data, workload analyses, keen attention to detail, and role-specific training has clarity in purpose and grasp of the relevant CASA language. These processes continue to stand as the gold standard for the rest of the APD who have a role in progressive discipline. The rotation of newly promoted field supervisors through the IAFD to see first-hand the current methodology employed to investigate and review supervisory use of force cases continues to be a positive process. The full staffing of IAFD, consistent with workload analyses and data projections, is vital to the quality of their work and the ability of APD to conduct effective and efficient investigations at all levels of the new classification system for investigating uses of force.[26]

As we noted in the earlier paragraphs of this report relative to ECWs (Paragraphs 24-36), several trends have been identified during supervisory use of force investigations that can enhance or undermine APD's recent efforts to improve its ability to address CASA compliance. In order to reduce redundancy, those specific trends and observations will not be restated here. However, a number of other areas give rise for concern, since they relate directly to much of the specific feedback, we have provided APD in the past. That feedback deserves to be reiterated here:

1. Activation of OBRDs continues to be an issue, but not to the extent once experienced. As noted during past monitoring periods, potential problems can arise

[25] As of the close of the IMR-11 reporting period, APD's Academy successfully delivered 3 of 4 Tiers of training, leaving defensive tactics and RBT as the lone component left to deliver to its officers. Prior to the close of the reporting period, DOJ and the monitoring team were provided with the curriculum associated with Tier 4 and both provided feedback. Parenthetically, APD has provided documentation demonstrating they were responsive to the feedback.

[26] The monitoring team was provided with an internal memorandum that illustrated to APD's upper command staff what the consequences, in terms of self-created backlogs for use of force investigations, would be in the event that IAFD were not adequately staffed. The analysis called upon nearly two years of experience and data IAFD compiled since they first began investigating uses of force. This internal assessment essentially validated what the monitoring team has been telling APD for the past few years, that to be successful units with CASA-heavy responsibilities have to be staffed appropriately.

with OBRDs based upon local practice and guidance. One such area that concerns the monitoring team is the muting of OBRD's and the toggling of the OBRD on and off during prolonged encounters and operations. APD has issued two "special orders" related to the issue of OBRD operation. The first was issued in June of 2019 and related to guidelines regarding muting of OBRD recordings. The second was issued in December 2019, and prohibited muting. Further, APD used the Evidence.com system to disable the muting functions.

2. There has been a noticeable increase in the recorded admonishments to officers as a reminder to refrain from discussing uses of force, pending investigation. This is a positive development on the part of on-scene supervisors.

3. Evidence suggests that canvassing of neighborhoods and areas surrounding uses of force continues to improve. The narration of supervisors looking for security cameras continues to be a positive trend.

4. APD legitimately addressing CASA related policy violations will likely have a noticeable impact on Operational Compliance in the field. Historically tepid approaches applied moving forward will likely elongate the monitoring process.

5. At the end of this reporting period, APD implemented a new set of use of force policies that include three levels of reportable force, with the initial categorization responsibilities still falling on field supervisors. Historically, those same field supervisors have struggled with that responsibility. We have mentioned to APD numerous times over the past two years that once this new reporting system was implemented, APD must focus considerable attention on the initial use of force classification efforts in the field. That would likely require conducting independent random sampling and auditing of incidents of use of force where only a Level 1 was reported. We reiterate that same advice here.

We have seen positive strides by APD with respect to handling uses of force, including instances where the chain of command reviewing use of force incidents has documented performance issues, policy violations, and improperly categorized uses of force. During IMR-12, the monitoring team will increase its case review volumes to assess compliance with this set of Paragraphs.

During this reporting period, the monitoring team was provided documentation following its Tier 2 and Tier 3 use of force training programs, which pertain to APD's new use of force suite of policies.[27] Members of the monitoring team also attended the training during its November 2019 site visit and provided feedback to the Academy staff. Overall, the training was well done and is discussed in greater detail in Paragraphs 86-88. The only training remaining to be delivered related to the new use of force policies is Tier 4, Reality-Based Training (RBT).

[27] The new use of force suite of policies were implemented on January 11, 2020.

APD submitted that curriculum to the monitoring team and parties prior to the end of the IMR-11 reporting period and it was reviewed. The monitoring team found the training to be reasonably organized and thoughtful and provided feedback we felt was important for APD to consider prior to the delivery of the course. The monitoring team will conduct quality assurance reviews of Tier 4 during the IMR-12 reporting period to ensure the Academy's performance remains effective.

APD has achieved Secondary Compliance based on our review of Tier 2 and Tier 3 use of force training. APD training efforts during the IMR-11 reporting period are a marked improvement over past efforts, and we encourage them to maintain their efforts with Tier 4 to ensure they maintain Secondary Compliance moving forward. This is an important milestone for APD, as this will be the first time Secondary Compliance has been achieved with respect to their use of force training. As a cautionary note, APD has relied heavily on training referrals when policy violations have been identified in the field, and in the past pointed to ineffective training as a causational factor they considered when deciding how to address misconduct. The monitoring team will be circumspect in its Operational Compliance determinations moving forward as it assesses whether APD is applying meaningful corrective actions for officer or supervisor misconduct. We would be misleading the reader, however, if we did not also acknowledge our past observations that many referrals to re-training by some APD supervisors appeared to have failed to draw a link between an observed transgression in the field, and the actual training provided by the agency. For example, assuming an overt use of excessive force was due to a training issue, instead of a loss of self-control on the part of a given officer.

In short, Operational Compliance will require renewed focus and point-by-point adherence to applicable CASA paragraph requirements. It will also depend on APD's assertiveness in identifying and stopping supervisory and mid-level command usurpation of executive authority by overlooking, incorrectly characterizing, or delaying action regarding blatant policy violations. The latter issue is of particular concern to the monitoring team, and we will have a heightened awareness of the training referral process in coming months.

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

Paragraph 41 stipulates:

> **"Uses of force will be divided into three levels for reporting, investigating, and reviewing purposes. 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."

Results

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

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 review or the APD officer conduction 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."**

Results

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

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."**

Results

Primary: **In Compliance**

Secondary: **In Compliance**
Operational: **Not In Compliance**

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."**

Results

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

4.7.32 Assessing Compliance with Paragraph 45: OBRD Recording Regimens

Paragraph 45 stipulates:

> **"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."**

Results

A complete discussion of this topic is found in Paragraphs 220 – 231, below.

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

4.7.33 Assessing Compliance with Paragraph 46: Force Investigations

Paragraph 46 stipulates:

> **"The three levels of use of force will have different kinds of departmental review. All uses of force by APD shall be subject to supervisory review, and Level 2 and Level 3 uses of force are subject to force investigations as set forth below. All force reviews and investigations shall comply with applicable law and comport with best practices. All force reviews and investigations shall determine whether each involved officer's conduct was legally justified and complied with APD policy."**

Results

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

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

Paragraph 47 stipulates:

> **"The quality of supervisory force reviews shall be taken into account in the performance evaluations of the officers performing such reviews**."

Results

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

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 three categories of types of force that will determine the force review of 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 promote greater efficiency and reduce burden on first-line supervisors, while optimizing critical investigative resources on higher-risk uses of force. The levels of force are defined as follow:**
> **a. Level 1 is a force that is likely to cause only transitory pain, disorientation, or discomfort during its application as a means of gaining compliance. This includes techniques which are not reasonably expected to cause injury, do not result in actual injury, and are not likely to**

result in a complaint of injury (i.e., pain compliance techniques and resisted handcuffing). Pointing a firearm, beanbag shotgun, or 40 millimeter launcher at a subject, or using an ECW to "paint" a subject with the laser sight, as a show of force are reportable as Level 1 force. Level 1 force does not include interaction meant guide, assist, or control a subject who is offering minimal resistance.

b. Level 2 is force that causes injury, could reasonably be expected to cause injury, or results in a complaint of injury. Level 2 force includes use of an ECW, including where an ECW is fired at a subject but misses; use of a beanbag shotgun or 40 millimeter launcher, including where it is fired at a subject but misses; OC Spray application; empty hand techniques (i.e., strikes, kicks, takedowns, distraction techniques, or leg sweeps); and strikes with impact weapons, except strikes to the head, neck, or throat, which would be considered a Level 3 use of force.

c. Level 3 is force that results in, or could reasonably result in, serious physical injury, hospitalization, or death. Level 3 force includes all lethal force; critical firearms discharges; all head, neck, and throat strikes with an object; neck holds; canine bites; three or more uses of an ECW on an individual during a single interaction regardless of mode or duration or an ECW application for longer than 15 seconds, whether continuous or consecutive; four or more strikes with a baton; any strike, blow, kick, ECW application, or similar use of force against a handcuffed subject; and uses of force resulting in a loss of consciousness. 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."

Results

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

4.7.36 Assessing Compliance with Paragraph 49

Paragraph 49 stipulates:

> **Under the force classification procedures, officers who use Level 1 force shall report the force to their supervisor as required by Paragraph 42; Level 1 uses of force that do not**

indicate apparent criminal conduct by an officer will be reviewed by the chain of command of the officer using force. Level 2 and 3 uses of force shall be investigated by the Internal Affairs Division, as described below. When a use of force or other incident is under criminal investigation by the Multi-Agency Task Force, APD's Internal Affairs Division 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 Division, as appropriate and in accordance with applicable laws, to ensure timely and thorough administrative investigations of uses of force.

Results

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

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 all Level 1, 2, and 3 uses of force to ensure that the use of force is classified according to APD's force classification procedures. For Level 2 and Level 3 uses of force, the supervisor shall ensure that the Force Investigation Section of the Internal Affairs Division is immediately notified and dispatched to the scene of the incident to initiate the force investigation."

Results

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

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."

Results

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

4.7.39 Assessing Compliance with Paragraph 52: Supervisory Force Review

Paragraph 52 stipulates:

> **For all supervisory reviews of Level 1 uses of force, the supervisor shall:**
> **a. respond to the scene and immediately identify the officer(s) involved in Level 1 use of force;**
> **b. review the involved officer's lapel video, determining whether the incident involves a Level 1 use of force;**
> **c. review the lapel video of other officers on-scene where uncertainty remains about whether the incident rises to a Level 2 or Level 3 use of force;**
> **d. examine personnel and the subject for injuries and request medical attention where appropriate;**
> **e. contact the Internal Affairs Division to conduct a Level 2 or Level 3 use of force investigation if lapel video does not affirm a Level 1 use of force;**
> **f. gather any evidence located at the scene of the Level 1 use of force;**
> **g. capture photographs of the officer(s) and subject involved in the Level 1 use of force;**
> **h. require the submission of a Use of Force Report from the involved officer by the end of shift; and conduct any other fact-gathering activities while on-scene, as necessary, to reach reliable conclusions regarding the officer's use of Level 1 force.**

Results

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

4.7.40 Assessing Compliance with Paragraph 53: Force Review Timelines

Paragraph 53 stipulates:

> **Each supervisor shall complete and document a supervisory force review of a Level 1 Use of Force within 72 hours of the use of force. Any extension of this 72-hour deadline must be authorized by a Commander. This review 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; 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 monitoring team met with members from APD assigned to this paragraph during the November 2019 site visit. The purpose of this meeting was to ensure that the department continued to a) utilize the changes implemented during the previous site visit and b) sustain the corrective actions implemented to maintain compliance with this portion of the paragraph. APD has made remarkable progress with this paragraph as it relates to the 72-hour requirement. APD submitted 50 Use of Force files for review by the monitoring team for the time period August 2019 through January 2020. Two (2) reports failed to meet the criteria as set forth in the CASA:

- Case number **IMR-11- 9** (No request on file)
- Case number **IMR-11- 10 (**Request made within 72-hour rule, but no approval given for request)

Results

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

4.7.41 Assessing Compliance with Paragraph 54: Command Review of Force

Paragraph stipulates:

Upon completion of the review, the reviewing supervisor shall forward the review through his or her chain of command to the

Commander, who shall review the entry to ensure that it is complete and that the findings are supported using the preponderance of the evidence standard. The Commander shall order additional review when it appears that there is additional relevant evidence that may assist in resolving inconsistencies or improving the reliability or credibility of the findings. These reviews shall be completed electronically and tracked in an automated database within the Internal Affairs Division.

Results

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

4.7.42 Assessing Compliance with Paragraph 55: Force Review Evidence Standard

Paragraph 55 stipulates:

> **"Where the findings of the supervisory review are not supported by a preponderance of the evidence, the supervisor's Commander shall document the reasons for this determination and shall include this documentation as an addendum to the original review. The supervisor's superior shall take appropriate action to address the inadequately supported determination and any deficiencies that led to it. Commanders shall be responsible for the accuracy and completeness of the Level 1 force reviews prepared by supervisors under their command."**

Results

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

4.7.43 Assessing Compliance with Paragraph 56: Force Review Quality

Paragraph 56 stipulates:

> **"Where a supervisor repeatedly conducts deficient supervisory force reviews, 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 review immediately and notify the Internal Affairs Division and the Chief. The Force Investigation Section of the Internal Affairs Division shall immediately initiate the administrative and criminal investigation."

Results

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

4.7.44 Assessing Compliance with Paragraph 57: Force Review Board

Paragraph 57 stipulates that:

> **"When the Commander finds that the supervisory force review is complete and the findings are supported by the evidence, the file shall be forwarded to the Performance Review Unit of the Compliance Bureau. The Performance Review Unit shall review the supervisory force review to ensure that it is complete and that the findings are supported by the evidence. The Performance Review Unit shall ensure that the file is forwarded to the Internal Affairs Division for recordkeeping. Where the Performance Review Unit of the Compliance Bureau determines that a supervisory force review, which has been completed by the supervisor and reviewed by the chain of command, is deficient, the Performance Review Unit shall forward the review to the supervisor for correction. Any performance deficiencies in the investigation or review will be noted in the affected Commander's performance records."**

As with other reporting periods, the monitoring team spent extensive time providing perspective, feedback and technical assistance to APD personnel responsible for the tasks associated with the Force Review Board (FRB) during its November 2019.[28] While on site, the monitoring team attended a November 7, 2019 FRB that heard three tactical response cases. We have also reviewed training records, case files, and ledgers related to the FRB. In the past, the FRB was ineffective and failed to provide any meaningful oversight for APD uses of force. Convening an FRB serves several key purposes, chief among them is to create a forum for executive oversight that pushes department level expectations down through all levels of supervision. The FRB is a safety

[28] Parenthetically, during our site visit we convened a meeting with APD personnel responsible for the tasks associated with the FRB. Due to meetings being rearranged to accommodate the monitoring team's schedule, the FRB meeting was cut short and APD was unable to provide a presentation they prepared us. That presentation was ultimately delivered following the close of the monitoring period on February 14, 2020.

mechanism to identify errors, refer cases for additional investigation, make referrals for discipline, and to monitor use of force trend data so the organization stays on the correct path. In the past, FRB meetings simply went through the motions, which clearly influenced the view APD, as a whole, had toward use of force oversight and accountability. Our initial impression of the newly constituted FRB was positive, but APD has a substantial task before it that will likely take most of the year 2020 to resolve. The following paragraphs represent our findings related to Paragraphs 57 and 78:

As we noted in IMR-10, during our May 2019 site visit we met separately with members of the APD Academy, the FRB development team and SOD, all of whom played a role in reconstituting the FRB. APD had already developed a training program for a (new) FRB and requested that the monitoring team review the training materials so they could begin delivering it to APD command staff. We set aside time, and before the end of the week we provided our feedback for the FRB "Introduction" and "Tactical Activation Review and Analysis" lesson plans. APD was approved to deliver the training if they incorporated the feedback.[29] Following our site visit, APD was given an additional approval to deliver a third lesson plan entitled, "Previously Investigated UOF Review" that was intended to be delivered by APD's IAFD.[30]

As noted in IMR-10, APD conducted its FRB training on July 30 and 31, 2019 to personnel that were expected to be members of the FRB. The monitoring team reviewed records from the training, including sign-in sheets, pre/post test results and an academy "Close Out Memo"[31]. Special Order 19-55 scheduled 27 command-level personnel to attend, but due to various issues only 20 commanders were able to attend and successfully complete the course.[32] We requested and reviewed videotapes of the training to assess the quality of the instruction in the classroom. Quality reviews of in-classroom instruction from past APD training revealed serious deficiencies that required remediation efforts and caused significant delays in compliance efforts. We found similar issues during the FRB training, which were immediately brought to the attention of APD's Academy Director. We documented our observations and findings in IMR-10, so we will not repeat them here.

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[29] APD intended to deliver FRB training in three parts, which was documented in the following lesson plans: 1) FRB Introduction; 2) Tactical Activation Review and Analysis; and 3) Previously Investigated UOF Review. APD was committed to first addressing tactical activations at the FRB first, since they feel they are easier to assess. That would provide them with an opportunity to assess the mechanics and flow of the new FRB before scheduling more complex uses of force. We agreed with that approach.
[30] Following meetings with the monitoring team and discussion among the parties, APD received approval from the Parties and the monitor for their new Force Review Board policy (SOP 2-58) on July 25, 2019.
[31] The "Close Out" memorandum was dated August 30, 2019 and was apparently completed in response to a monitoring team request.
[32] Additional training was provided on October 29th, 2019 for FRB representatives that missed the initial training.

By the start of IMR-11, APD had not convened an FRB meeting since November 2017 (nearly two years) and that lapse clearly enabled policy violations by officers and supervisors to continue unchecked in any meaningful way. Over the past few years, we have called out, loudly and often, issues APD has with its overall oversight of uses of force, in particular with its Internal Affairs function. As we note in other areas of this report, we still find instances where use of force reporting and investigations are problematic, as well as systemic failures with APD's IA oversight. IA and the FRB should be the cornerstones of APD's reform effort, so the fact that both have been ineffective for this long will likely result in further performance deficiencies and misconduct repercussions. Until recently, APD's IAFD focused its attention on investigations of a "backlog" of uses of force and reported finding hundreds of misconduct violations that were missed, went unreported, and/or were not addressed by supervisors in the field.[33] Since IAFD recently assumed primary responsibility of investigating Level 2 and Level 3 uses of force on January 11, 2020, it is reasonable to expect similar violations would be found up to and through 2019 cases.[34]

The monitoring team spent more than a year meeting with, and providing technical assistance to, members of APD regarding the tasks associated with reconstituting the FRB. We always found the APD's team receptive and enthusiastic, but progress toward a reconstituted FRB was slow. As we noted in IMR-10, APD had two distinct populations of use of force cases to address, (1) those that occurred under their standing policies (November 2017 to present) and (2) those that occur after their new use of force policies are launched.[35] During our November 2019 site visit, we met with APD's SOD regarding the backlog of tactical deployments that have yet to be heard by the FRB. We learned that APD's FRB had begun hearing cases from January 1, 2019 forward, leaving unresolved the issue of use of force cases and tactical deployments from November 2017 through December 2018. That, in practice, created a third sub-group to be addressed by the FRB.[36] We were told APD intended to provide a plan to the monitor that would propose a methodology for

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[33] There have been instances in which, during the process of reviewing the backlog that IAFD would also review cases that originated outside the list of backlog cases. For instance, serious use of force or if in the course of reviewing a case from the backlog they identify problematic behavior of a particular officer, they would pull contemporary cases to determine if there were other similar instances involving the same officer.

[34] We discuss the implementation of APD's new use of force suite of policies elsewhere. IAFD now investigates all Level 2 and Level 3 uses of force, however, initial classifications and Level 1 use of force investigations still are processed by field supervisors. IAFD has been investigating serious uses of force but that is a smaller population of cases overall.

[35] APD received approval for a new use of force "suite of policies" on January 29, 2019, at the very end of the IMR-9 reporting period. They have been working toward training those policies through a Four Tier process that has carried into the beginning of 2020.

[36] APD will now have two groups of cases that occurred under the old use of force policies, those that occurred before 2019 and those that occurred through 2019 and up to January 11, 2020.

handling pre-2019 cases, but as of the end of this reporting period that plan had still not been received. It is unclear why APD would reconstitute the FRB and begin hearing cases without first reconciling their responsibilities for the older cases, but we have grown accustomed to this type of flawed approach to problem solving.[37] In the monitor's opinion, these older cases should be addressed, as they are invaluable in informing APD of the nature of problems and issues that may (or may not) be extant in the field.

The monitoring team reviewed records for FRB meetings that occurred throughout the IMR-11 reporting period. As of the close of this reporting period, APD held 22 separate meetings, heard 36 tactical deployment cases, 7 serious use of force cases, 4 non-serious use of force cases and 3 officer-involved shooting cases. A total of 5 meetings were canceled for various reasons. The ledgers we reviewed capture attendance at the meetings and other relevant information that will be helpful to APD as it moves the FRB forward. However, a combination of the pace of meeting dates, implementation of the new use of force policies, and unresolved pre-2019 cases have compounded into a potential problem for APD compliance efforts moving forward. We have advised APD frequently, and will continue to do so, that backlogs of critical reviews, whether internal affairs cases or FRB cases, mask critical "learning organization" information from APD.

The monitoring team attended a tactical FRB while on site during our latest site visit. We were particularly impressed with the professionalism of the meeting and the manner in which it was overseen by the Chairperson. We found the interaction among the FRB members to be concise, yet meaningful, all of which we commented on to the Chief prior to our departure. As APD's FRB continues its effort, we share a word of caution to not allow reviews to become *pro forma* once they begin hearing cases investigated by IAFD. We have been very complimentary of IAFD's investigative efforts; however, the workload placed on that unit could impact the quality of investigations and the supervision of cases. Having IAFD conduct investigations should result in a higher confidence that cases delivered to the FRB are thorough and accurate, but a consequence of staffing levels and workload for IAFD will impact quality if not monitored closely and staffed according to workload.[38] We have not yet encountered that problem, since IAFD only took initial investigation responsibilities of all Levels 2 and 3 uses of force on January 11, 2020. However, moving forward we strongly

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[37] The monitoring team is sensitive to the time and effort that would be required to address the pre-2019 cases. However, the existence of this problem entirely falls on APD's management—past and present. We have advised APD that if a reasonable, thoughtful, and methodical proposal for handling the pre-2019 cases is submitted, it will be received favorably by the monitor. The fact that one has not yet been submitted is, quite frankly, unacceptable. This is not an issue that can be ignored.

[38] We recommend that APD continually monitor FRB output against new FRB caseloads and maintain a constant time-to-case completion measure. We strongly suggest that measure should be reported weekly during the monitor's weekly meetings with the Chief.

advise APD to monitor cases closely to protect Operational Compliance efforts. Also, since the initial classification of force still falls to field supervisors who have historically struggled with that responsibility, we believe APD's FRB should take a thoughtful approach to overseeing Level 1 uses of force as an additional proactive measure.

APD is assembling meaningful data and gathering lessons from FRBs that occurred during the IMR-11 reporting period including: 1) Use of force data by Area Command, 2) Types of force used, 3) Effectiveness of different types of force, 3) Notable issues encountered during meetings that impact policy changes, 4) Adjustments to FRB voting sheets, and 5) Updating referral methods and monitoring of referrals to ensure the referrals are closed out properly. We reiterate to APD the importance of not only collecting data but also analyzing the data to determine what it means to the organization. This will help them assess the proper allocation of resources and whether there are "hot spots" that need to be looked into further. Asking "why" something is occurring can be as important as "what" is occurring. The information APD is compiling will help inform their Annual Use of Force Reports moving forward.

We believe the FRB is a key organizational feature for influencing organizational reform. As we noted in the past, if APD is ever to achieve Operational Compliance in its use of force requirements, having a fully functional, engaged and well documented FRB will be essential. During the IMR-12 reporting period we will look to see if APD is meeting its time requirements, is maintaining quality reviews of cases it hears, and whether they advance an acceptable approach for handling pre-2019 cases.

Based on our review, we have determined Secondary Compliance is continued for Paragraphs 57 and 78.

Results

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

Recommendations for Paragraph 57:

4.7.44a: Report regularly on progress on the established goals and objectives related to the FRB process.

4.7.44b: FRB should focus attention for Level 1 uses of force to ensure field supervisors are properly classifying cases.

4.7.44c: Closely monitor referrals that are made from the FRB to ensure that each referral is clear and is followed through on by the impacted command.

4.7.44d: APD should organize its pre and post FRB meeting documentation in a manner that clearly demonstrates how it meets each of the relevant provisions of the CASA.

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 review 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 review or analysis. This assignment or re-assignment shall be explained in writing.**

Results

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

Recommendations for Paragraph 58:

4.7.45a: Develop an early intervention system that triggers alerts when clusters of poorly investigated use of force incidents arise, and address these issues early with Area Command staff, requiring Commanders affected to develop and implement written "Intervention Plans" designed to identify the causes of failure and remediate those causes systematically.

4.7.45b: Routinely monitor the intervention process for integrity to the proffered plans.

4.7.46 Assessing Compliance with Paragraph 59: Abuse of Force Discipline

Paragraph 59 stipulates:

> **"Where, after a supervisory force review, 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."**

Results

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

Recommendation for Paragraph 59:

See recommendations 4.7.44.1a-4.7.44dj, above.

4.7.47 - 4.7.64 Assessing Compliance with Paragraphs 60-77: Force Investigations by the Internal Affairs Division

Paragraphs 60–77 of the CASA address requirements that APD respond to and investigate serious uses of force, as follows:

Paragraph 60: IAB Force Review
Paragraph 61: Criminal and Civil Force Investigations
Paragraph 62: Revision of IAB Manual
Paragraph 63: IAB Staffing
Paragraph 64: Training IAB Personnel
Paragraph 65: Referral of Force Investigations to MATF
Paragraph 66: MATF Assistance to IAB
Paragraph 67: Notice to External Agencies of Criminal Conduct in Use of Force
Paragraph 68: Consultation with External Agencies and Compelled Statements
Paragraph 69: IAB Responsibilities in Serious Uses of Force
Paragraph 70: Use of Force Data Reports
Paragraph 71: IAB Investigative Timelines
Paragraph 72: IAB Report Review
Paragraph 73: IAB Findings Not Supported by Preponderance of the Evidence
Paragraph 74: IAB Quality Control
Paragraph 75: IAB Quality Control (Force Review Board)
Paragraph 76: Force Investigations by MATF or FBI
Paragraph 77: Discipline on Sustained Investigations

As with other reporting periods, the monitoring team spent time working with APD's Compliance Bureau and Internal Affairs Force Division (IAFD) personnel during its November 2019 site visit. These personnel continue to demonstrate a genuine level of receptiveness and a sincere interest in attaining CASA compliance. This receptiveness and interest, along with skilled, investigative tenacity, was largely responsible for its success in its review of the backlog of cases. The work done by these units in the past 18 months stands as an exemplar of how reform processes should be managed.

While the need to be detailed in the review of use force cases is self-evident, it is equally apparent that the need to become proficient with the detailed investigative regimen of serious use of force matters is proving to be challenging to APD, especially with respect to contemporary investigations. Paragraph 71 of the CASA requires APD to conduct "complete administrative investigations within 90 days after learning of the use of force."[39]

During IMR-11 (data current through January 10, 2020), APD recorded 40 cases involving serious uses of force by its members (compared to 54 cases in IMR-10 and 46 cases in IMR-9). Seventeen of these 40 investigations (approximately 43%) were classified as completed by February 7, 2020 (seven days post-IMR-11 monitoring period). The average completion time for these cases was 106 days (compared to 72 days in IMR-10 and 140 days in IMR-9). During the IMR-11 reporting period, only one case was completed within 60 days and six cases were completed within 61-90 days. The monitoring team noted that the failure to report serious uses of force and the initial failures by field supervisors to properly categorize serious uses of force have been significantly reduced. However, the monitoring team is concerned about the lack of timely completion of for these cases. While the analysis of cases reflects the efforts of APD to complete serious use of force investigations in compliance with the standards reflected in the original CASA, the monitoring team also has concerns regarding how APD will handle the projected workload of investigations moving forward. As noted in previous paragraphs in this report, as of January 11, 2020, APD has implemented a new suite of use of force policies, as well as a new classification system for investigating uses of force. These changes will certainly change the dynamics of how uses of force are categorized and investigated. The monitor feels that it is critical that APD conduct an analysis of causal factors leading to the decline in the efficiency of completing serious use of force investigations over the last 18 months. While the monitoring team recognizes the causal factors affecting these past investigations may be uniquely associated with the pre-January 11, 2020 system for investigating use of force incidents, some information may be gleaned that will positively impact the effectiveness and efficiency of use of force investigations moving forward. This may enhance APD's abilities to prevent losing opportunities to appropriately prescribe corrective processes (e.g., policy revisions, training, performance improvement plans, etc.) and administer discipline for policy violations. This is especially important based upon the availability of preliminary data and workload of IAFD under the new use of force reporting system. At this point we need to be clear. We are convinced that, when it comes to discipline, APD has difficulty executing effective strategies surrounding the need to identify specific behaviors that are in violation of accepted police practices and are in contradistinction to APD policy and CASA requirements. Even more importantly, there is a seriously degraded willingness to impose remedial discipline when those violations occur. See, for example, the incidents described at page 155, in which IAPS

[39] The two-month standard is from the original CASA and applicable to serious use of force cases initiated prior to January 11, 2020.

apparently deliberately held notices of pending discipline until the deadline for action had expired.

The monitoring team has reviewed data on use of force reporting from January 11 through January 30, 2020. These data represent the first cases reported and investigated under the post-January 10, 2020 system for investigating uses of force and the new suite of use of force polices that became effective on January 11, 2020. These data reveal APD recorded 59 cases of force being used by officers. Seventy-five percent (43 cases)[40] of these cases are deemed to be Level 2 or Level 3 cases. Level 2 and Level 3 cases are classified as serious uses of force and investigated by IAFD.

So that it is abundantly clear as to the workload and compliance challenges APD is facing with IAFD handling all of the Level 2 and Level 3 cases, the monitoring team has focused on the following information, presented below in bullet and table format:

- During IMR-11, APD recorded 40 cases involving the serious use of force in a span of 163 days (August 1, 2019 through January 10, 2020). By comparison, APD recorded 44 cases of serious use of force (Level 2 and Level 3) in the span of 20 days (January 11 through January 30, 2020) under the new reporting and investigation system. In short, under the new protocols, APD reported 10 percent more uses of force in 2020 than in 2019, during a timespan that was 87.5 percent shorter! The portent for the need to increase staffing for IAFD under this new system is clear. A detailed staffing analysis for IAFD is in order at this point.

- When APD recorded 40 serious use of force cases in a span of 163 days, the department required an average of 106 days to complete the cases.
    - Only one case was completed within 60 days and six cases were completed within 61-90 days.

- Pursuant to Paragraph 71 of the CASA, APD had three months (90 days) to complete serious use of force cases. It completed only one case within 60 days.
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    - Pursuant to the revised CASA, APD has 90 days to complete Level 2 and Level 3 investigations. Pre-January 11, APD completed seven (17.5 percent) of these types of cases within 90 days.

[40] The 43 cases do not include Case **IMR-11-11**. This was a Level 1 case incorrectly classified as a Level 2 case. Since IAFD initially responded to the use of force, IAFD has retained control of the case.

Time Span	Serious UOF Cases Initiated	Cases Completed (within 90 Days)	Avg. Completion Time
163 Days (Aug 1 – Jan 10)	40	7	106 Days
20 Days (Jan 11 – Jan 30)	43	NA	NA

Frequent readers of the monitor's reports will recall the issues experienced in the past with use of force investigative backlogs. APD cannot afford to allow another backlog in this critical area to continue to develop. We are aware of APD's staffing issues; however, continuing with the current process and staffing almost certainly guarantees another IA backlog.

In past reports, the monitoring team wrote at length about the need for APD to conduct and be guided by staffing and workload analyses. The monitoring team will be brief here: the data give tremendous concern that compliance will not be achieved with existing staffing levels. APD has been planning this shift to a new suite of use of force policies and new system (largely called for and designed by APD) for investigating use of force incidents. This effort cannot be allowed to fail simply because appropriate staffing resources have not been dedicated to implement and operationalize the system designed and built by APD.[41] The monitoring team made this explicitly clear to the Chief prior to departing our site visit on November 7, 2019.

During our November 2019 site visit, we also met with the IAPS Commander and the City Attorney's staff and discussed the interrelationship of use of force investigations and misconduct that is uncovered during those investigations. We have been very critical of APD's IA oversight since the inception of our monitoring of the CASA. To be clear, APD's ability to "police" itself is the centerpiece of its organizational reform efforts and sits at the very heart of long-term sustainability of those reforms. In spite of exhaustive feedback and technical assistance over the years, APD has yet to enable an effective internal affairs function. Having a meaningful IA system where there are legitimate corrective actions and consequences for misconduct or performance deficiencies continues to elude APD. We continued to see indications of systemic failures during IMR-11.[42] This was evidenced at the beginning of this reporting period when the parties convened a meeting in which APD's interpretation of 90-day

[41] The monitoring team was provided with an Interoffice Memorandum authored within APD that outlined the current IAFD staffing level that predicted the number of Level 2 and Level 3 use of force cases that would become a backlog by the close of 2020 depending of different staffing levels.
[42] Examples were provided in Paragraphs 41-59 that we will not repeat here. We have encountered this before, where the monitoring team points out potential misconduct and APD reacts as though that misconduct is "water under the bridge." This is a proven path to failure of the reform effort.

disciplinary timelines was discussed.[43] We verified during our site visit that for allegations of misconduct that originate with a use of force event, APD acquiesced to a position that the timeline to take disciplinary action begins at the point the force is reported. During our IMR-10 case reviews we called out potential incidents of misconduct and attempted to determine what follow up activities APD took to address those cases. It was clear that the former IA Commander was not familiar with the cases and that no corrective action had been taken. When combined with established use of force investigation and chain of command timelines, and delays that occur during those touch points, it is clear APD has an IA system likely incapable of correcting itself.

This was even more evident later in the monitoring period (December 2019) when the monitoring team learned that the 24 cases that IAPS and the City Attorney's staff assured us were "on track" for disciplinary action missed their deadline for the imposition of discipline, because the request for extension of that deadline was issued two days late. The monitor firmly believes this missed deadline was deliberate. As a result, even though 24 counter-CASA events occurred: known misconduct was not corrected. We have attempted to guide APD away from this reality on numerous occasions. IAFD's efforts will likely address some of the problems we have seen, but other negatively contributing factors will still exist. The monitoring team is, as always, available to work with APD to correct these issues, and in fact have given substantial advice and guidance concerning ways forward at IAPS. We are awaiting movement on this critical process, and remain, as always, available for further discussion and action planning with APD. In the interim, the monitoring team has had multiple productive conversations that have taken place between the monitoring team and AOD. AOD has developed documents identifying "problem, issues, needs, and solutions" for the issues identified by the monitor. These documents are responsive to the issues identified by the monitoring team.

Continued deference to the Area Commanders to influence investigative timelines and discipline will continue to plague compliance efforts. Until Internal Affairs is a central, well-staffed APD function handling all interventions and discipline, desired CASA-compliant outcomes for Paragraphs ranging from 41-77 can, and probably will, be undermined. This was addressed as part of additional in-depth on-site technical assistance provided in person to APD in the form of on-site consultation on the last day of the monitoring period. We note, again, that these seemingly minor "administrative errors" appear to us to be intentional yet are routinely assessed by APD to be just inadvertent mishaps. The monitor disagrees. We believe these "minor errors" are direct, intentional, and purposely crafted roadblocks intended to obstruct potential discipline.

Pursuant to Paragraphs 65, 66, and 76, certain CASA-defined uses of force can be assigned to the MATF for investigation. Consistent with Paragraphs 81-85 of this report,

[43] The purpose of the call was to discuss APD's plan to deal with issues of misconduct that were improperly documented in ACMs and SAR reports.

the MATF reported receiving 12 cases during this monitoring period. Nine of those cases originated with APD, including six officer-involved shootings, one in-custody death, one case referred by the chief, and one criminal allegation call-out. All but one of the APD cases are still pending.

Paragraphs 70-74 deal with the quality of the investigative process of Internal Affairs. The monitoring team has observed and noted extensively in past reports the Force Division's significant efforts to improve the quality of use of force investigations, reviews, and the quality of the personnel assigned to these functions. These observations still hold true, especially in light of observing those efforts result in improvements to resolve investigative inconsistencies and findings not supported by a preponderance of evidence. As APD has shifted to operationalize a new suite of use of force policies and a new system for investigating use of force incidents, APD leadership will have to embrace the fact that by shifting responsibility off of field supervisors and onto IAFD, adequate staffing will need to be in place in IAFD or the untimeliness of supervisory use of force investigations will merely be borne by IAFD as opposed to field Commanders. To not provide IAFD with the resources that will be necessary to properly review and investigate new use of force policy violations, would be, in the monitor's opinion, short-sighted, counterproductive, and unacceptable.

With the advent of the new three-level use of force classification system, remaining vigilant and maintaining close oversight of Level 1 uses of force will be crucial to APD's long-term success, as those cases (when not accompanied by a higher level of force) typically fall outside of the purview of IAFD. This should be concerning to the department since the initial categorization for a use of force still falls to field supervisors. Historically, those same field supervisors have struggled with that responsibility. We have mentioned to APD numerous times over the past two years that once this new reporting system was implemented, APD must focus considerable attention on the initial use of force reporting. AOD's Performance Review Unit is conducting reviews of Level 1 use of force cases, effective January 11, 2020.

During our November 2019 site visit, we met a new analyst assigned to IAFD who will be helping the unit drive better decisions relating to compliance efforts, collect more meaningful data, and analyze that data more critically. Following our technical assistance, IAFD intends to focus the analyst's attention on Level 1 uses of force, not only to collect raw data, but they have gone a step further. When misclassifications occur, IAFD will attempt to isolate contributing factors that may have led to the mistake (e.g., supervisors being tired at the end of a shift, understaffed, etc.). IAFD will also focus attention on dispatchers to encourage them to pay closer attention to activities associated with a call for service. Finally, IAFD is developing a 40-hour training program centered on the oversight of uses of force that can be attended by APD officers for purposes of professional development. This is all the type of proactive thinking we have come to appreciate with IAFD. Other personnel on the critical path to compliance would be well suited to emulate the ethos currently extant in IAFD.

The new analyst has already begun to assess data collection systems that are in place, with the objective of increasing efficiencies and assembling more accurate data moving forward. Information assembled will be incorporated into monthly trend "newsletters" that IAFD presents to the Command Staff. IAFD will also provide their trend data to the academy to assist with organization-wide training efforts.

Compliance Findings

Based on our review, we have determined at least Secondary Compliance is continued for Paragraphs 60 through 77. As of the close of this reporting period, the monitoring team was still expecting APD to advance a plan to address those groups of backlogged cases.

4.7.47 Assessing Compliance with Paragraph 60: IAB Force Review

Paragraph 60 stipulates that:

> **"The Force Investigation Section of the Internal Affairs Division shall respond to the scene and conduct investigations of Level 2 and Level 3 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 Division by the Chief. In cases where an investigator in the Force Investigation Section initiates a Level 2 or Level 3 use of force investigation and identifies indications of apparent criminal conduct, the Section shall refer the use of force to an investigator in the Section, with no involvement in the initial administrative investigation into the Level 2 or 3 use of force, to conduct a criminal investigation. The criminal investigation shall remain separate from and independent of any administrative investigation. In instances where the Multi-Agency Task Force is conducting the criminal investigation of a use of force, the Internal Affairs Division shall conduct the administrative investigation."**

Results

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

Recommendation for Paragraph 60:

4.7.47a: APD should continue its current planning processes related to re-constituting an effective FRB process. We have reviewed work completed to date by the department regarding the reconstituted FRB, and find it methodical, based on lessons learned from other agencies working through consent decrees, and focused on past comments by the monitoring team related to FRB processes.

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

Paragraph 61 stipulates:

> **"The Force Investigation Section of the Internal Affairs Division will be responsible for conducting both criminal and administrative investigations, except as stated in Paragraph 60. The Force Investigation Section of the Internal Affairs Division shall include sufficient personnel who are specially trained in both criminal and administrative investigations."**

Results

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

Recommendation for Paragraph 61:

4.7.48a: Continue to monitor internally the progress of Internal Affairs in conducting effective intake, assessment, assignment, investigation, and resolution processes for criminal and civil investigations in order to ensure that staffing levels are appropriate, and processes are effective in producing acceptable and timely results.

4.7.49 Assessing Compliance with Paragraph 62: Revision of Internal Affairs Manual

Paragraph 62 stipulates:

> **"Within six months from the Operational Date, APD shall revise the Internal Affairs Division 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."**

Results

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

Recommendation for Paragraph 62:

4.7.49a: Continue work on revision and update of the IAB manuals, ensuring they comply with the updated CASA, the new use of force policies that became operational on January 11, 2020 as well as the new investigation procedures for Level 1, 2, and 3 uses of force, and known best practices in the field.

4.7.50 Assessing Compliance with Paragraph 63: Staffing IAB

Paragraph 63 stipulates:

> **"Within 39 months from the Operational Date, APD shall ensure that there are sufficient trained personnel assigned to the Internal Affairs Division and Force Investigation Section to fulfill the requirements of this Agreement. APD shall ensure that all Level 2 and Level 3 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 Division or Force Investigation Section."**

Results

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

Recommendation for Paragraph 63:

4.7.50a: Identify the department's expected milestone date for staffing at IAB based on data related to incoming cases, average time for case completion, and calculations of the number of staff needed to effectively investigate incoming cases within established parameters.

4.7.51 Assessing Compliance with Paragraph 64: Training Force Division Personnel

Paragraph 64 stipulates:

> **"Before performing force investigations, Force Investigation Section 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. Force Investigation Section personnel shall also receive force investigation annual in-service training."**

Results

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

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 indicating apparent criminal conduct by an officer to the Multi-Agency Task Force for criminal investigation."**

Results

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

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 Force Investigation Section of the Internal Affairs Division or the Multi-Agency Task Force in the investigation of any Level 2 or Level 3 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."

Results

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

4.7.54 Assessing Compliance with Paragraph 67: MATF Assistance to IAB

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."**

Results

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

4.7.55 Assessing Compliance with Paragraph 68: Consultation with External Agencies and Compelled Statements

> **"If APD initiates a criminal investigation, or where APD requests a criminal prosecution, the Force Investigation Section 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 administrative investigation shall be held in abeyance unless specifically authorized by the Chief in consultation with the agency conducting the criminal investigation."**

Results

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

Recommendation for Paragraph 68:

4.7.55: APD should move forward with process design, policy development and training regarding investigations regarding potential criminal prosecutions and compelled interviews of officers.

4.7.56 Assessing Compliance with Paragraph 69: IAB Responsibilities in Serious Uses of Force

Paragraph 69 stipulates:

> **"In conducting its investigations of Level 2 or Level 3 uses of force, as defined in this Agreement, the Force Investigation Section 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 the use of force has been classified according to APD's classification procedures, 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 Level 2 or Level 3 use of force by another officer provide a use of force narrative of the facts leading to the use of force;**
>
> **e) provide a written admonishment to involved and witness officer(s) to the use of force that they are not to speak about the force incident with anyone until they are interviewed by the investigator of the Force Investigation Section;**
>
> **f) conduct only one-on-one interviews with involved and witness officers;**
>
> **g) review all Use of Force Reports to ensure that these statements include the information required by this Agreement and APD policy;**
>
> **h) 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;**
>
> **i) 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;**
>
> **j) record all interviews;**
>
> **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; and

m) train all Internal Affairs Division force investigators on the factors to consider when evaluating credibility, incorporating credibility instructions provided to jurors.

Results

APD has provided the policy and training components of this paragraph to IAB personnel. What remains to be accomplished is consistent and persistent supervision and review to ensure that IAB findings are consistent with best practices. We consider this issue to be on the "critical path" to compliance.

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

Recommendations for Paragraphs 68 and 69:

4.7.56a: Conduct detailed failure analyses for all IAB investigations deemed improperly completed or delayed.

4.7.56b: Using these failure analyses, routinely modify training, procedures, practice, and supervision/oversight until IAB findings are greater than 94 percent complete and adequate on each of the elements addressed in paragraph 69.

4.7.56c: Resolve IA administrative (use of force) and misconduct investigative timelines to ensure they are practical and allow corrective and disciplinary actions to routinely occur within those timelines.

4.7.57 Assessing Compliance with Paragraph 70: Use of Force Data Reports

Paragraph 70 stipulates:

> **"The Force Investigation Section 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."**

Results

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

Recommendations for Paragraph 70:

4.7.57a: Conduct a data analysis of Use of Force Data reports to determine why they take longer than 24 hours to process and develop recommendations to relieve the major bottlenecks affecting this process.

4.7.57b: Ensure that any ECW errors noted based on the monitor's recommendations in response to identified issues with ECW usage are used to make changes to use of force data analyses moving forward.

4.7.58 Assessing Compliance with Paragraph 71: IAB Investigative Timelines

Paragraph 71 stipulates:

> **"The Force Investigation Section shall complete Level 2 or Level 3 administrative investigations within three 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 Force Investigation Section through consultation with the Chief or by the Chief. At the conclusion of each use of force investigation, the Force Investigation Section 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 Force Investigation Section'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 Force Investigation Section'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.

Results

Primary: **In Compliance**
Secondary: **In Compliance**
Operational: **Not in Compliance**

Recommendations for Paragraph 71:

4.7.58a: Conduct a review of a sample of cases completed by IAB in the past 3-6 months that failed to meet established timelines by reviewing the key failure points causing delay. The review should:

a. Identify key causes of failure;
b. Identify where the failure points were in the IAB process related to Paragraph 71;
c. Identify the cause of the failures;
d. Identify who is responsible for the cause of the delays; and
e. Recommend actions to remedy the top five causes of failure to meet the established timelines.
f. Repeat this process until failures re Paragraph 71 are less than 95 percent.

4.7.58b: Implement recommended actions and conduct a follow-up assessment to determine what impact, if any, the implemented actions had on failures to meet established timelines.

4.7.58c: Determine if these processes need to be revised, expanded, or refocused given our comments re ECW usage failures in the field, contained in paragraphs 24-36, 41-59, and 60-77.

4.7.58d: Repeat until 95% of cases completed meet established requirements for quality of IA investigations.

4.7.59e: APD should carefully review the changes its use of force policy viz a viz this paragraph to ensure that in-field systems related to this

paragraph are in compliance with all aspects of the new use of force policy suite and the new IA investigations rubric.

4.7.59 Assessing Compliance with Paragraph 72: IAB Report Review

Paragraph 72 stipulates:

> **"Upon completion of the Force Investigation Section investigation report, the Force Investigation Section investigator shall forward the report through his or her chain of command to the commanding officer of the Internal Affairs Division. The Internal Affairs Division 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 Division 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."**

Results

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

Recommendation for Paragraph 72:

4.7.59a: Conduct a review of a sample of cases completed by IAB (in the past 3-6 months) that failed to meet established timelines by reviewing the key failure points causing delay. The review should:

- ***a. Identify key causes of failure;***
- ***b. Identify where in the IAB process related to Paragraph 72 the failure points were;***
- ***c. Identify the cause of the failures;***
- ***d. Recommend and implement actions to remedy the top five causes of failure to meet the established timelines;***
- ***e. Revaluate performance and repeat the process, with a focus on supervisors who routinely fail to meet established timelines; and***
- ***e. Repeat as necessary until the failure rate is below five percent.***

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 Force Investigation Section investigation are not supported by a preponderance of the evidence, the Internal Affairs Division 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 Division shall take appropriate action to address any inadequately supported determination and any investigative deficiencies that led to it. The Internal Affairs Division commanding officer shall be responsible for the accuracy and completeness of investigation reports prepared by the Internal Affairs Division."**

Results

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

Recommendations for Paragraph 73:

4.7.60a: ***Conduct a review of a sample of cases completed by IAB in the past 3-6 months that failed to meet established quality requirements regarding preponderance of the evidence and review the key failure points causing insufficient investigations relative to preponderance of the evidence. The review should:***

> ***a. Identify key causes of failure to meet preponderance of the evidentiary standards for IA investigations;***
> ***b. Recommend actions to remedy the top five causes of failure to meet the established requirements related to preponderance of the evidence.***

4.7.60b: Implement recommended actions and conduct continual follow-up assessment to determine what impact, if any, the implemented actions had on the unit's ability to meet established preponderance of evidentiary standards.

4.7.60c: Repeat until 95% of cases completed meet established requirements regarding evidentiary standards.

4.7.61 Assessing Compliance with Paragraph 74: IAB Quality Control

Paragraph 74 stipulates:

> **"Where a member of the Force Investigation Section repeatedly conducts deficient force investigations, the member shall receive the appropriate corrective and/or disciplinary action, including training or removal from the Force Investigation Section 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."**

Results

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

Recommendations for Paragraph 74:

4.7.61a: ***Conduct a review of a sample of cases completed by IAB in the past 3-6 months that failed to meet quality standards by reviewing the key failure points causing the failure. The review should:***

a. Identify key causes of failure;
b. Identify where in the IAB process related to Paragraph 74 the failure points were located;
c. Identify the cause (of the failures); and
d. Recommend actions to remedy the top five causes of failure to meet the established timelines.

4.7.61b: Implement recommended actions and conduct a follow-up assessments to determine what impact, if any, the implemented actions had on failures to meet established quality standards for IA investigations.

4.7.61c: Repeat until 95% of cases completed meet established evidentiary standards.

4.7.62 Assessing Compliance with Paragraph 75: IAB Quality Control

Paragraph 75 stipulates:

> **"When the commanding officer of the Internal Affairs Division 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."

Results

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

Recommendations for Paragraph 75:

4.7.62a: ***Once FRB is returned to action, conduct a review of a sample of cases completed by IAB in the past 3-6 months that failed to meet the requirement to forward the case to the FRB by reviewing the key failure points causing incomplete cases to be forwarded to the FRB. The review should:***

a. Identify key causes of failure;
b. Identify where in the IAB process related to Paragraph 75 the failure points were; and
d. Recommend actions to remedy the top five causes of failure to meet the established protocols, e.g., training, supervision, staffing, etc.

4.7.62b: Implement recommended actions and conduct a follow-up assessment to determine what impact, if any, the implemented actions had on failures to meet established evidentiary and quality standards.

4.7.62c: Repeat until 95% of cases completed meet established evidentiary and quality standards.

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 Force Investigations Section for further investigation or analysis. This assignment or re-assignment shall be confirmed in writing."

Results

We note that this paragraph is "permissive" in nature, not prescriptive: it uses "may" instead of "shall." We have noted no instances in past reporting period in which a case was inappropriately assigned to the MATF or the FBI.

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

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 Division 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."**

Results

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

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 Level 2 and Level 3 uses of force. The Force Review Board shall be comprised of at least the following members: Deputy Chief of the Administrative Support Bureau, Deputy Chief of the Field Services Bureau, the Deputy Chief of the Investigative Bureau, a Field Services Commander, the Academy Division Commander, and the Legal Advisor. The**

Force Review Board shall conduct timely, comprehensive, and reliable reviews of Level 2 and Level 3 use of force investigations. The Force Review Board shall:

a) review each use of force investigation completed by the Force Investigation Section 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 Division investigation, shall not be present;

c) 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;

d) 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;

e) 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;

f) 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; and

g) 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

A full discussion of paragraph 57 and 78 are found in Paragraph 57.

Results

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

Recommendations for Paragraph 78 are located in Paragraph 57.

4.7.66 – 4.7.67 Assessing Compliance with Paragraphs 79-80: Annual Use of Force Reporting

4.7.66.1 Assessing Compliance with Paragraph 79: Annual Use of Force Reporting

Paragraph 79 states:

> **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, and uses of force by Level;**
> **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

Paragraph 79 of the CASA addresses requirements APD must meet by publishing a Use of Force Annual Report:

The monitoring team has previously spent time providing perspective, feedback, and technical assistance to APD regarding Paragraph 79 during past site visits. We continued that practice during the IMR-11 reporting period and as in the past, the Department were receptive to our perspective and were prepared to discuss the provisions of this paragraph. In preparation of this report we requested APD's 2018 Annual Use of Force Report and were provided with a draft version to review.

As we have reported in the past, there have been many instances where APD personnel failed to properly report or investigate uses of force, which obviously impacts the veracity of statistics they may publish in their Use of Force Annual Reports. While we have seen positive steps in this regard, especially with respect to the Internal Affairs Force Division's (IAFD), we still see evidence of

those historical issues when conducting case reviews. As noted in IMR-9 and IMR-10, IAFD identified hundreds of historical policy violations while performing their work over the past 18 months, to include unreported uses of force. While we are encouraged by the thoroughness of the IAFD's work, we reiterate to APD that we are still concerned with the legitimacy of statistics that would be contained in reports like the 2018 Use of Force Annual Report. In prior conversations we made clear the need to qualify information contained in their Use of Force Annual Reports, since the accuracy of past reporting was significantly compromised for a host of reasons.

As noted in IMR-10, APD had not published an Annual Use of Force Report as required by Paragraph 79 since 2015. As a result, they decided to organize use of force data from the years 2016 and 2017 together, which we found to be an appropriate approach under the circumstances. The "Use of Force Report for the Years 2016/2017" was finally published in March of 2019. The fact that nearly a year later the 2018 report is not finalized signals to the monitoring team that APD is still struggling to build reliable systems to capture accurate data. We highly encourage APD to consider our past comments concerning annual force reporting and to incorporate feedback they have been provided. We know policy violations and failures to report uses of force extended into and through 2018, so the qualifying language we have previously questioned will need to be addressed for any higher level of compliance to be achieved with this paragraph.

Reporting errors have been historically prevalent in the Field Services Bureau, but during this reporting period we reviewed an ECW use of force event involving APD investigative personnel that had unreported force and supervisory issues. The case was problematic for safety issues as well. These issues were not identified by APD supervisors (or the chain of command), so we immediately brought these issues to the attention of APD. This case illustrates our point that APD force statistics are a work in progress and should be communicated to the public in a manner that acknowledges that fact. As APD transitions to a new three-tiered reporting structure we believe they will continue to be vulnerable to mistakes at the lower reporting levels, unless the agency implements closer oversight protocols, and if there continue to be no legitimate consequences to reporting or investigatory failures. We believe that even with good policy and strong training programs APD's data will be compromised until meaningful corrective actions are taken in the field. To date, we have not observed a meaningful commitment to deal with obstinate supervisors and mid-level command officers on this issue.

We note that we have expressed concern with the quality of supervision and mid-management at APD for an extended period of time, across several IMRs. Historically, in all of the monitoring projects with which the monitor is familiar, supervision is *the* sticking point to attaining compliance. APD should continue

its focus on these areas, with an intense focus on identifying and eliminating resistance to the CASA at the supervisory and mid-management levels.

We have determined that APD maintains its Primary Compliance status for Paragraph 79. We will revisit the compliance standing once we are provided the final draft of the 2018 Annual Use of Force Report.

Results

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

Recommendations for Paragraph 79

4.7.66a: APD should monitor use of force, serious use of force and show of force reporting discrepancies that are found. Reporting errors must be reconciled to ensure that statistics published in APD's Annual Use of Force Reports are accurate.

4.7.66b: As APD transitions to a three-tiered use of force reporting system, they should create an auditing process for tier-one uses of force to ensure proper categorization is taking place. Data collected from these audits should feed the Annual Use of Force reports, and when appropriate referred to IA and the Academy.

4.7.67 Assessing Compliance with Paragraph 80

Paragraph 80 states:

> **"APD shall be responsible for maintaining a reliable and accurate tracking system on all officers' use of force; all force reviews carried out by supervisors; all force investigations carried out by the Force Investigation Section, Internal Affairs Division, or Multi-Agency Task Force; and all force reviews conducted by the Performance Review Unit of the Compliance Bureau and 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."**

Results

Primary: **In Compliance**
Secondary: **Not In Compliance**

Operational: **Not In Compliance**

Recommendation for Paragraph 80:

4.7.67a: Conduct a detailed failure analysis for this paragraph and identify where, when, and what types of "causes" are responsible for the failures in this system.

4.7.68 – 4.7.72 Assessing Compliance with Paragraph 81-85: Multi-Agency Task Force (MATF) Participation by APD

Paragraphs 81- 85 of the CASA address requirements that APD continue to participate in a MATF, consult with the participating jurisdictions to establish investigative protocols for the task force, and generally consult and coordinate with the participating agencies regarding investigative briefings and the release of information relevant to MATF investigations.

APD members assigned to the MATF are now assigned from the Violent Crimes Division, as opposed to being previously assigned from Internal Affairs. The MATF now investigates only officer-involved shootings, in-custody deaths, felonious force against officers, and criminal conduct cases resulting from a use of force by officers. This is reflected in a review of the 2019-2020 MATF case log. APD continuously ensures personnel assigned to the MATF are full-time detectives or supervisors with member agencies, ensures a representative of each member of the MATF is present during interviews of involved personnel, addresses perceived deficiencies in a MATF investigations, and maintains the confidentiality of MATF investigations.

MATF protocols have evolved over time and address multiple CASA requirements (e.g., canvass for and interview of witnesses, ensuring officers involved in a use of force incident remain separated until each has been interviewed and/or complete a report, etc.). As protocols have evolved, the MATF Memorandum of Agreement (MOA) is currently being redrafted to accurately reflect current protocols and membership participation. A review of this draft MOA reveals that the required protocols are accurately reflected in the document and are consistent with the letter and spirit of the CASA.

APD members assigned to the MATF have formally proposed a succession plan for members currently assigned to the MATF. The proposal seeks to address potential turnover issues when transfers or other personnel actions impact the complement of personnel assigned to the Task Force. During this monitoring period, members of the monitoring team met with APD personnel assigned to the MATF. Documents reviewed at this meeting revealed a Department Memorandum (DM #19-85) was promulgated for MATF Collateral Positions. These positions would complement a succession plan by allowing interested

officers to learn how to conduct criminal investigations during MATF call outs while not formally assigned to the MATF.

Based on our review, we have determined operational compliance should be continued for Paragraphs 81 through 85.

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 Agreement.**

Results

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."**

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."**

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."**

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."**

Results

Primary: **In Compliance**
Secondary: **In Compliance**

Operational: **In Compliance**

4.7.73 – 4.7.75 Assessing Compliance with Paragraph 86 – 88: Review of Use of Force Policies and Training; Use of Force Training Based on Constitutional Principles; and Annual Supervisory In-Service Training.

APD's training team has made significant strides toward overall compliance throughout 2019, but especially during the IMR-11 reporting period. Since the onset of the CASA, APD has found it difficult to assemble quality training programs, experiencing issues in both its documentation and delivery of those programs, which has had a significant impact on overall compliance efforts. Through a series of missteps and lost opportunities over the past several years, APD had never attained Secondary Compliance with Paragraphs 86-88. As a consequence, Secondary Compliance was not attained in a number of other CASA paragraphs that are focused on use of force, use of force reporting and supervisory investigations of use of force. During the IMR-11 monitoring period, APD remedied most of the issues we encountered in the past and we can report that they are poised to "close the loop" regarding Secondary Compliance with Paragraphs 86-88,[44] once the new training is delivered.

Throughout the IMR-11 reporting period and during our November 2019 site visit, APD continued to receive feedback on training programs they intended to deliver to officers and supervisors. As will be discussed later, the monitoring team attended Tier 2 (In-person use of force) and Tier 3 (supervisory investigation of force) training programs and were impressed with the overall quality of the instructors' delivery and interaction with the class. As we noted in IMR-10, the overall structure and standardization of training documents we now receive are a marked improvement over what we received when our CASA oversight began. While there is still room to grow, APD's commitment to delivering quality use of force training was particularly evident during IMR-11.

Use of Force Suite of Policies Training

As we have noted in the past, APD's Academy was charged with the enormous task to develop and deliver effective training for APD's new use of force policies,

[44] We feel it is necessary to give APD's upper command staff a direct cautionary note based on our many conversations with them related to the staffing of units with heavy CASA-related tasks. Proper staffing of the Academy will continue to be critical to long-term CASA compliance and the sustainment of reform. Most issues APD has encountered over the past few years could have been avoided by accepting the technical assistance and guidance provided to them. APD's Operational Compliance in the field is intrinsically woven with the Academy's ability to quickly collect needs and translate them into meaningful training programs. There are still innovative ways APD can consider, to address, in real time, performance issues in the field through its Academy function. We realize the many priorities being balanced by APD's command staff, but if training efforts are not supported by acceptable staffing levels there is no doubt in our mind overall Operational Compliance will be negatively impacted in the future.

which were approved by the Monitor at the end of the IMR-9 reporting period. The Academy has worked diligently and continues to show signs of the type of sophistication that is needed to positively impact APD's training programs. There is no comparison between the quality of training that was presented at the onset of the CASA and that which is now provided to the monitoring team. The poor systems and thought processes APD had toward training at the early stages of the CASA would likely be unrecognizable to the current Academy staff. There are still meaningful challenges, however. We are aware of APD's staffing challenges related to the CASA (and APD's budget); however, it is our impression that the Academy is understaffed given its position on the critical path to compliance. We recommend that APD consider tactical modalities for addressing the staffing challenges at the Academy. For example, provision of content-savvy civilian administrative assistants for the Academy director may be a good place to start. This would allow the director to focus on strategic planning, program evaluation, and systems growth.

The documentation APD prepares and submits to the monitoring team is still a work in progress, and solidifying standards and systems around their 7-step training cycle will be crucial to long term sustainability. For instance, we have commented favorably on APD's "Closeout Memo" that is supposed to be completed following a training program. The Closeout Memo is an important piece of the 7-Step Cycle, but we are concerned that it may be intermittently completed or completed only when requested. The Closeout Memo should be seen more like a standard training after action report that addresses all things relevant to a particular program. It need not be an expansive document, but it should capture important information about the journey of a training program that may include lessons learned, adjustments made along the way, feedback from class critiques, and responses to that feedback, as well as testing/attendance outcomes.[45] Without prompting, APD created post-training videos to reinforce important issues and concepts that were covered in Tier 2 and Tier 3, which we saw as a perfect item to capture in a Closeout Memo. This type of comprehensive report should become a standard business practice for APD's Academy, as it has in other areas of the department (i.e. SOD). There will come a time in the future when the CASA no longer exists and APD Commanders will wonder why certain procedures or standards are in place. Without proper documentation to reflect back upon, those Commanders will be left without the perspective that is needed when deciding on adjustments to those procedures or standards.

Beginning in the summer of 2018 the Academy proposed addressing use of force training in four (4) distinct "Tiers" that would provide different learning modalities. The following is a synopsis and update of the four (4) Tiers of training the

[45] Likewise, APD should append important attachments and other information it may find beneficial.

Academy has created and delivered, to date, related to APD's use of force suite of policies:

Tier 1 included an introduction by the Chief of Police and the delivery of all new use of force policies through APD's on-line learning system. That delivery method was meant to front load the policies and reduce the amount of time in the classroom that is typically dedicated to introducing each policy provision. APD's intent was to enhance learning in the classroom (for Tiers 2 and 3), by introducing policy provisions prior to officers arriving for the in-class portions of the training. That would allow later Tiers to focus more on applying the policies to scenarios through exercises and group discussions. APD also collected meaningful data during Tier 1 to help inform the curriculum development for Tiers 2 and 3.[46] After a series of submissions of lesson plan drafts and the monitoring team providing feedback, APD delivered Tier 1 and as reported in IMR-10 they successfully completed that training at a compliance rate that exceeded 95%.

Tier 2 included in-person instruction of the use of force policies and incorporating information gleaned from the on-line testing data and student surveys during Tier 1. Tier 2 would consist of lecture-based classroom instruction and a heavy reliance on scenarios and adult-based learning methods.[47] The video and scenario reviews, along with group exercises, would allow officers to cognitively apply the new use of force policies by observing them being implemented in a controlled setting. In order to attend Tier 2, officers are required to have first successfully completed Tier 1 training.

Tier 3 was provided to all supervisors and acting supervisors in a lecture-based, classroom training program. The instruction included video scenarios and adult-based learning methods to ensure the class understands their responsibilities related to SOP 2-57. APD intended to implement their monitor-approved use of force policies following the successful completion of Tier 3.

Tier 4 will include Reality Based Training (RBT) for every enlisted member of the organization. There will be a defensive tactics component of the training, and scenarios that require the interwoven use of APD use of force provisions with proper defensive tactics, as well as report writing.[48] Feedback on issues

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[46] Officers and supervisors were required to take a pre-test and submitted issues or questions they had to the Academy after attending Tier 1. The test data and questions were assembled and collated and used by the Academy staff to hone the training in on areas of confusion and allow APD to reconsider ambiguous or conflicting policy provisions. It is our understanding that APD found the feedback they received from these efforts to be very helpful.

[47] DOJ strongly recommended APD academy personnel attend an LAPD Advanced Instructor Certification Course, which was attended by APD Academy staff toward the end of the IMR-10 reporting period.

[48] Training materials reviewed indicated that members of IAFD would be on hand to assess reports that are submitted during the training and will provide direct feedback to officers on areas of improvement.

encountered in the field would be solicited from officers prior to the delivery of Tier 4, since officers and supervisors now have insight following the implementation of the new use of force policies and training. The information obtained from the field would help inform the final Tier 4 training curriculum.[49]

During our November site visit we met with the Academy staff responsible for the tasks associated with Paragraphs 86 – 88. As in the past we found the Academy personnel to be professional, interested in success, and receptive to feedback. Likewise, the Deputy Chief who oversees the Academy was conversant with the issues and fully engaged in the process. Conceptually, the 4 Tiers of training have been positively received by the parties and the monitoring team; therefore, our meeting was intended to address any remaining issues, provide perspective on Tiers 2 and 3, and refine the training before too many delivery dates occurred.

The monitoring team reviewed the curriculum for Tiers 2 and 3 prior to our visit and expressed to APD our concern over items that we felt were critical for future success. Overall the training was reasonably organized and documented, but the following issues were of particular interest to the monitoring team:

1) The most pressing item of concern was the manner in which the Academy was attempting to distinguish between transitory pain and an injury during field categorizations of a Level 1 versus Levels 2 or 3 uses of force. We agreed to revert to the CASA Second Amended and Restated CASA language pertaining to the three levels of force and remove language that would likely create problems in the field. We saw this is as such a critical issue that if it were not adjusted would have negatively affected a Secondary Compliance determination. APD was very receptive and the change was made to the training. In the end, we agreed that anything above transitory pain is a Level 2 or 3 use of force. Any scuff, bruise, scrap, cut, abrasion (as examples only) AND any other lasting (as opposed to brief) pain remaining with a person after, and as a result of, an application of force is considered an injury. When that occurs, it will not only trigger IAFD responding, but it will also trigger those instances to be investigated as a Level 2 or 3 use of force, as appropriate.

2) As noted elsewhere, APD attended outside training in August 2019 to help them develop high level, adult-based training programs. When that happened, the manner in which Tiers 2 and 3 were approached pivoted significantly toward in-class group exercises and away from straight lecture-based training. Those tiers were always meant to be

[49] The Academy Director has indicated that surveys were submitted to the field and information they glean will be incorporated into the training materials.

exercise/scenario-based, but it appeared to the monitoring team that the manner in which the training was devised was so group centric it allowed each specific class to essentially direct the topics that were being covered. Our concern was not that group exercises were problematic (in fact we believe they are essential training tools) but the way APD was approaching the training could create great disparity among different training classes in terms of what was actually being taught. We discussed options and the monitoring team recommended APD consider including a "take-a-way" slide at the end of each group exercise. This allowed a robust and open discussion to still occur during each section of the training but would redirect the class back to the main points that each class had to know. We felt the inclusion of a "take-a-way" slide was a good way to keep the adult-based learning methodology and at the same time standardize all class sessions so each class left with the same information that connects to the learning objectives and test questions (We asked APD to look at that slide as a springboard that connects learning objectives to test questions). This approach will also help make training more defensible in the event the organization's training is ever challenged or produced for litigation, In addition it makes the training capable of being replicated consistently for future classes. APD agreed and adjusted the training accordingly.

The monitoring team attended both Tier 2 and Tier 3 use of force training while on-site. The training was delivered by instructors from the Academy Staff and detectives from the Internal Affairs Force Division (IAFD). When entering the room, it was immediately clear that APD was implementing new training strategies. The overall setup of the classroom was excellent and very conducive to learning. Tables were set into square workgroups and the room was adorned with flip charts for the group exercises. Instructors were engaging the class participants as they arrived. These may seem like nominal contributions to the program but setting the right tone as officers arrive in the class is an essential component of training success.

The participants were fully engaged in learning exercises. During the day, the class would rotate from group to group to ensure that "cliques" did not occur and that officers were exposed to new perspectives. It would be an extreme understatement to say that APD's attempt to create an atmosphere for learning was better than in the past -- in short, APD created a positive training atmosphere that, based on our observation, would be envied by many police academies. In the past, people working at APD's Academy would not have believed they could accomplish such a task, where now it was embraced by the staff. Anecdotally, we heard several officers comment during both the Tier 2 and Tier 3 sessions that it was the best training they have attended. That is an

extreme departure from APD's previous attempts to deliver use of force training, when officers left the class complaining that they were more confused after training than when they arrived.

The Academy and IAFD instructors were engaging and clearly commanded the material they were presenting. They moved about the room, ensuring all the class members took part in the exercises and that any questions were fully answered. During the Tier 2 training the monitoring team took special note of an officer who was exhibiting poor body language and not even facing the instructor. We intended to point it out to the instructor on a break, but on his own he professionally addressed the officer and convinced him to take part in the discussion. For the remainder of the day that officer was fully engaged in the class and taking part in discussions. This is but one example of the excellent instructional efforts we observed. We note that these were long days in the classroom, but the officers and supervisors who attended the programs stayed engaged and participated to the end. Likewise, the instructors did not skip materials or sacrifice any exercise in order to end the day earlier. Following each training day, the monitoring team met with the Academy Director, her staff, and the instructors to provide perspective and feedback, which was received positively.

We were highly impressed with the quality of APD's instruction during Tier 2 and Tier 3 and we commend the Academy personnel for their efforts. Likewise, the Academy leadership are commended for their oversight of the training, and for ensuring that what started as a training concept in the summer of 2018 turned into an excellent final product. Achieving Secondary Compliance has been a long-time effort, but we believe APD's Academy delivered use of force training programs that should impact performance in the field. It will be crucial for Operational Compliance determinations that field implementation of training be monitored closely and often by APD's command staff. Good policies and training need to be present for reform to occur, but they are not self-executing. We have commented in other CASA paragraphs that APD has been reluctant to address performance or misconduct that occurs in the field through the application of legitimate consequences. Now that APD have provided their officers and supervisors with good training, we will focus more attention on how APD responds to instances when that training is not being implemented in the field.[50]

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[50] We have communicated many times to APD that additional training is not a default starting point to remediate poor performance or misconduct, especially for CASA-centric policies. An example that has lingered for years is the proper use of OBRDs, and officers failing to turn them on, or leave them on, during a use- of-force event. Absent emergent circumstances, this likely is not a training issue and instead is an issue needing a more significant response by the organization at the supervisory, mid-management, management, and executive levels. In our opinion, APD's tepid approach to addressing such issues is the main reason those issues still exist.

The monitoring team was provided documentation following Tier 2 in the form of learning management system records (attendance and testing), as well as status and "Closeout" Interoffice Memorandums, dated January 15, 2020. APD reported that of 934 sworn officers required to attend Tier 2, 21 were on extended and authorized duty leaves (i.e. FMLA or military), and unable to attend. That left 913 active duty officers that were required to attend Tier 2 training. Of the total sworn officers in APD, 97.75% attended the training and 100% of the total active officers attended and passed a multiple-choice test. APD has committed to ensuring efforts are made to provide the training to officers as they return from extended duty leave.

The monitoring team was provided documentation following Tier 3, in the form of learning management system records (attendance and testing), as well as status and "Closeout" Interoffice Memorandums, dated January 15, 2020. APD reported that of 296 sworn supervisors required to attend Tier 3, 10 were on extended and authorized duty leaves (i.e. FMLA or military), and unable to attend. That left 286 active duty supervisors that were required to attend Tier 3 training. Of the total sworn supervisors in APD, 96.62% attended the training and 100% of the total active supervisors attended and passed a multiple-choice test. Efforts will be made to provide the training to supervisors as they return from extended duty leave.

As noted earlier, APD submitted two training videos for our review that were designed to reiterate and refresh key learning topics that were covered in Tier 2 and Tier 3 before the use of force policies were implemented on January 11, 2020. APD did this of their own initiative, since they felt some topics were crucial to reinforce, and because significant time had passed since some officers attended Tier 2 classes. As a result, the Academy wanted certain topics repeated. We found this to be a good idea and a practice the Academy should routinely use in the future under similar circumstances.

The only training remaining to be delivered related to the new use of force policies is Tier 4, Reality-Based Training (RBT). APD submitted that curriculum to the monitoring team and parties prior to the end of the IMR-11 reporting period and it was reviewed. The monitoring team found the training to be reasonably organized and thoughtful and provided feedback we felt was important for APD to consider prior to the delivery of the course.

Of particular importance was the opportunity APD has to collect contemporary information from the field, now that the new use of force policies have been implemented. Surveying officers and supervisors to identify questions or issues prior to delivering Tier 4 could provide a trove of beneficial information. It was our understanding that it was APD's intent to collect such information for Tier 4, so we expected to see it incorporated into the training, but it appears the agency did not incorporate same. It would be a missed opportunity to not collect

information and remediate issues in the field early, when all the officers will be attending Tier 4 RBT. APD will deliver Tier 4 during the IMR-12 reporting period, and we will report our findings in the next Monitor's report. The monitoring team will conduct quality assurance reviews to ensure the Academy's performance remains effective.

The Academy is continuing to manage systems that will benefit APD's long-term training initiatives. When APD implemented the 7-Step Training Cycle, it was a strong step toward establishing a legitimate training development process (which did not exist in the past at APD). APD's ability to implement their system is still maturing and we still see occasional issues as the Academy staff struggles to advance acceptable training documentation. We have seen a significant increase in quality of APD lesson plans, but there continue to be areas of needed improvement. APD has to continue working to ensure that they connect training needs from across the organization and incorporate those needs into the curriculum development process as measurable learning objectives. As other organizational systems mature, they will likely integrate well and provide meaningful data for the Academy to consider when developing training. Notwithstanding the significant strides APD made in Tier 2 and Tier 3, we continue to recommend that APD seek out and attend training courses that are focused on training development and the measurement of performance outcomes. This type of continuing education will greatly benefit the whole organization and should not be confined to Academy staff alone. Any command personnel responsible for curriculum development should receive advanced training in these areas.[51]

APD has achieved Secondary Compliance based on our review and attendance of Tier 2 and Tier 3 use of force training. APD is commended for their efforts during the IMR-11 reporting period and we encourage them to maintain their efforts with Tier 4 to ensure they maintain Secondary Compliance moving forward. APD must continue to be diligent with their organizational training development, and Operational Compliance will be assessed as field implementation of training continues to be measured. We are concerned that APD may face the loss of secondary compliance, as training for Tier 4 use of force elements may not be delivered due to issues arising from current Covid-19 response protocols.

[51] DOJ strongly recommended APD academy personnel attend an LAPD Advanced Instructor Certification Course, which was followed by APD toward the end of the IMR-10 reporting period. This recommendation has proven to be extremely beneficial to the Academy's pursuit of Secondary Compliance.

4.7.73 Assessing Compliance with Paragraph 86: Review of Use of Force Policies and Training

Paragraph 86 stipulates:

> **"Within 36 months of the Operational Date, 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."**

Results

Primary: **In Compliance**
Secondary: **In Compliance**
Operational: **Not in Compliance**

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."

Results

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

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 Division, 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. "**

Results

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

Recommendations for Paragraphs 86-88

4.7.73-75a: The Academy staff should be properly augmented to ensure the quality of training curriculum and training systems are not negatively impacted due to staffing shortages.

4.7.73-75b: APD Academy Staff should seek out and attend training courses focused on the proper development of training curriculum and how to connect that curriculum to the measurement of performance outcomes. Likewise, proper test question construction should be emphasized in Academy personnel's future training plans.

4.7.73-75c: APD personnel assigned to non-academy commands who carry significant training requirements should receive training commensurate with the Academy staff. This will ensure continuity in curriculum development across the organization.

4.7.73-75c Ensure that the Academy is the central point for review and approval of all training development and delivery processes for APD.

4.7.73-75a-c: APD should produce a draft training-related covid-19 response document, identifying salient training-related problems-issues-needs-solutions (PINS) related to covid-19, viz a viz training-related issues.

4.7.76 Assessing Compliance with Paragraph 89: Annual Firearms Training

Paragraph 89 stipulates:

> **"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

The methodology outlined in Paragraphs 17-21, serves as the baseline for compliance determinations for paragraph 89.

The 2019 annual firearms training cycle was completed during this monitoring period. APD received a bid from Smith & Wesson for the replacement of weapons and the department decided that it made little sense to conduct training with the old weapons, and then retrain officers with the new weapons, when they became available. The

firearms staff eventually completed the training of 100% of the active-duty personnel, with 900 sworn attending training and 30 individuals out on various types of leave (Military, FMLA, Restricted duty, etc.). Those who missed the initial training reportedly will be trained as they return to duty, according to APD training staff.

APD is required to provide sufficient training courses to allow officers to gain proficiency and meet firearms qualification requirements. During past site visits, members of the monitoring team attended firearms training programs. APD Range Staff have changed range hours to enable officers to practice firearms in a low-light environment, and the firearms staff have added additional days and times to allow more practice. In reviewing data related to failures to qualify, firearms staff routinely document the referrals to additional training for poorly performing shooters.

APD has completed the required Firearms training cycle for 2019.

Results

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

4.7.73 – 4.7.75 Assessing Compliance with Paragraph 90 – 105: Management of Specialized Units, and accompanying paragraphs focused on the Special Operations Division.

Paragraphs 90 – 105 of the CASA address requirements that APD must meet related to management and supervision of functions inside the Special Operations Section (SOD) as follow:

Paragraph 90: Management of Specialized Units
Paragraph 91: Composition of Specialized Tactical Units
Paragraph 92: Training of Specialized Tactical Units
Paragraph 93: Tactical Unit Missions and Policies
Paragraph 94: Tactical Units Policy and Procedure
Paragraph 95: Annual Review of Tactical Policies
Paragraph 96: Documentation of Tactical Activities
Paragraph 97: Tactical Mission Briefings
Paragraph 98: Tactical Uniforms
Paragraph 99: Force Review Board Assessments
Paragraph 100: Eligibility Requirements for Tactical Teams
Paragraph 101: Tactical Team Training
Paragraph 102: K9 Post Deployment Reviews
Paragraph 103: Tracking K9 Deployments
Paragraph 104: Tracking K9 Bite Ratios
Paragraph 105: Analyzing Tactical Deployments

As with other reporting periods, the monitoring team spent time, during our November 2019 site visit, providing perspective and feedback to APD's Special Operations Division (SOD) personnel. We also met with personnel responsible for the tasks associated with these paragraphs. As in the past, we found personnel from the division to be professional and sincerely interested in reform efforts that increase their capabilities. In IMR -10, we noted that SOD spent the latter part of 2018 and early 2019 implementing technical assistance the monitoring team provided that was meant to address CASA-related issues related to the proper reporting of NFDD and chemical munitions deployments as uses of force. Their efforts continued into IMR-11 with the promulgation of an additional special order and procedural guidance in the form of an internal memorandum to address NFDD and chemical munitions deployments.[52] We previously commented in monitor's reports about the evolution of APD's SOD not properly reporting uses of force related to NFDD and chemical munitions use when they are activated, so we will not repeat here what transpired in the past. However, we do note that since this issue emerged, the SOD's responses to our concerns has always been positive. There was never any sense of resistance. Instead, when the issue was first recognized SOD immediately went to work to conduct their own independent research and organize that research into recommendations to remediate the problem. We continued to see evidence during IMR-11 that SOD reports those instances as uses of force, and other documentation related to SOD deployments have shown an increase in quality.[53]

The following paragraphs represent our findings related to Paragraphs 90-105.

SOD enlisted and civilian support staff have established administrative business processes that help them sustain operational compliance. We found that continuity of information in the Division has remained stable during this reporting period. In the past, we have commented on the need for strong systems and policies across APD, since they help ensure that reform efforts are not impacted as a consequence of command level changes. That said, it has been our experience that if the monitoring team identifies an issue, SOD is equally interested in remediating that problem. Their strong attitudes toward compliance

[52] We reviewed Special Order 19-118, dated October 28, 2019, entitled "The Use and Reporting of Chemical Munitions and Noise Flash Diversionary Devices" and an Interoffice Memorandum, dated October 14, 2019, entitled "Directives for Chemical Munitions and Noise Flash Diversionary Devices Uses of Force, and Reporting and Investigation Procedures." Previously, the monitoring team was consulted on the topics addressed in these documents and provided our feedback. APD's approach to addressing these types of use of force is consistent with the feedback we provided.

[53] We previously noted SOD After-Action reports failing to specifically note which particular supervisor authorized a particular use of force, and what specific officer deployed an NFDD or chemical munition. We saw a significant improvement beginning in April 2019 and into IMR-11. Likewise, it was partially through IMR-11 reporting period that APD decided that NFDD deployments outside a vehicle would be handled as a reportable use of force, as recommended by the monitoring team.

remained true during IMR-11. In the past, we have stressed the importance of selecting commanders for SOD who have demonstrated mature, sophisticated thought processes and people who respect the reform that has been achieved. APD has made such selections and, in our opinion, that has served them well in retaining Operational Compliance with SOD related paragraphs. As the concept of self-monitoring is now being considered, we strongly encourage APD to continue selecting Commanders for SOD who have, throughout their careers, demonstrated higher-order thinking, strong organizational maturity, and those who have sincerely embraced APD's reform efforts.

While APD proposes to excise SOD-centric CASA paragraphs from regular monitoring, we highly caution that their sustainment of attitudinal and system reforms will be of significant importance to Operational Compliance efforts across all use of force related paragraphs. As we note in Paragraphs 37-38, we believe that all parties to the CASA should ensure the Performance Metrics Unit (PMU) has a prominent seat at the table regarding compliance efforts and has central input in devising any APD self-monitoring plan before it is approved. PMU is extremely competent in this area and has frequently assembled reliable self-monitoring reports. This is a relatively new skill set at APD, and moving forward, two issues will more than likely arise: adequate staffing at PMU and ensuring that PMU has input and oversight when individual units, sections and divisions contemplate building self-monitoring plans.

In preparation of this report the monitoring team conducted reviews of the four SOD use of force cases that occurred during this reporting period. Throughout 2019, APD's Academy trained supervisors and officers regarding the new use of force "suite of policies", through a 4-tier training methodology. By the close of IMR-11, Tiers 1-3 were completed and on January 11, 2020, the new use of force policies were implemented in the field.[54] This will allow Operational Compliance reviews of use of force cases during IMR-12. In order to provide some structure and guidance to APD concerning specialized deployments, we spent a significant amount of time developing feedback and perspective on the cases we reviewed for this reporting period. We recommend that APD consider our specific reviews of the following incidents.

<u>Case Reviews</u>

Incident IMR-11-35

[54] Tier 4 training materials were provided to the monitoring team prior to the close of IMR-11. The curriculum was reasonably organized and complete; therefore, Secondary Compliance was achieved for a number of CASA paragraphs centered on use of force reporting. That will allow for Operational Compliance determinations in a number of CASA paragraphs in IMR-12.

Members of APD's SWAT responded to the scene of a barricaded subject who was wanted for a felony warrant. Extensive efforts were made to coax the subject out of the house, including at least 27 calls to the residence. Multiple NFDD deployments occurred before and after the subject exited the residence. There was a Rook deployment; 40 mm OC Ferret rounds were used; and an APD canine team was used during the final apprehension of the subject, after he exited, but then attempted to reenter, his residence.

Monitoring Team Observations

1. The quality of the supervisory investigation and chain of command reviews was poor in comparison to other use of force reviews we have seen of late.

2. One officer specifically documented in his report that during the arrest he delivered 2-3 knee strikes to the subject's side, but that is not listed anywhere in the supervisor's investigation of the event, nor was it reconciled in the chain of command reviews. This same officer's OBRD turns off at the very moment in time the knee strikes likely occurred.[55] Note – The knee strikes were not obvious on the OBRDs the monitoring team reviewed, so we are relying on the officer's self-reporting that they occurred. A use of force ledger we were provided listed "Empty Hand Techniques" for this officer, which does not adequately explain or address the knee strikes, since that term could also apply to physical force that was necessary to get the subject into handcuffs.[56]

3. The reports prepared by the officers varied widely in quality. Each was extensive, but the detail of some actions related to the force used was boilerplate language.

4. The force we observed was objectively reasonable, necessary, and the minimum amount needed to take the subject into custody, but the supervisor investigation and chain of command reviews would likely impact Operational Compliance for use of force reporting and investigation if it were being assessed for those purposes in Paragraphs 41-59. In short, the normally focused and clear oversight functions we are used to seeing from SOD failed to materialize in this case.

5. This case perfectly illustrates our earlier point that regardless if SOD-centric paragraphs are removed from regular monitoring, the activities of

[55] In the monitoring team's opinion, the fact that the OBRD turned off at that point is likely due to the struggle the officer was having with the subject, and not a purposeful action on the officer's part.
[56] We also reviewed the After-Action Report (AAR) and the knee strikes were not addressed in any manner.

SOD can impact compliance efforts in other areas of the CASA. We noted a similar case that also involved SID during IMR-11, (IMR-11-13).

6. It appears this case was submitted to the FRB based on the labeling of some of the OBRDs. During our next site visit we will use this case as an illustration of how the FRB needs to be diligent in its reviews of cases as APD moves toward Operational Compliance assessments.

7. The monitoring team will provide detailed follow up on this case with APD during the IMR-12 reporting period.

Incident IMR-11-12

APD officers were dispatched to a priority one domestic violence call where a suspect was reportedly threatening a woman with a gun. When they arrived, an officer looked into a window and saw a male holding a gun to a woman's head. A perimeter was set up and SWAT and CNT responded to the scene. Public Announcements and phone calls into the residence went on for a couple of hours. During one such call the woman began screaming, and based on the totality of circumstances, a decision was made for SWAT to breach the front door and make entry, believing the woman was in imminent danger. As the officers approached the door, the woman could be heard screaming loudly in terror. Officers reported that upon entry they encountered the male subject in a narrow hallway with the weapon (a rifle) raised and pointed at them. One officer, believing he and his partner were in imminent danger of being shot, fired multiple rounds at the subject. The subject fell to the ground and the woman was removed unharmed. A bolt action rifle possessed by the male subject was recovered from the scene.

<u>Monitoring Team Observations</u>

This Officer Involved Shooting (OIS) was investigated by the MATF and IAFD. The monitoring team was provided reports and other materials that were available. The monitoring team will allow the case to move through its normal channels and reserve comment since the District Attorney's Office has not yet reviewed the case.

Incident IMR-11-13

APD investigative personnel were made aware of a domestic violence incident, in which a female victim reported being assaulted and threatened (at gunpoint) by her boyfriend. The woman reported that her boyfriend forced her to drive to area ATMs to withdraw money from her account. After approximately an hour, the woman was able to jump from the vehicle and call police for help. The woman's vehicle information was entered into NCIC and found to be classified as stolen, and the officers learned that a similar incident was reported to a different Area Command earlier in the day. Complaints were filed in that case, as well as the latter incident. Later in the evening, the same woman

called police and said that she was with her boyfriend again in the vehicle reported stolen earlier in the day. She appeared to be in distress, so Investigative Support Unit (ISU) detectives obtained a warrant to track the woman's phone, fearing that she was in physical danger. The tracking lead detectives to an area gas station, where the vehicle was located parked next to gas pumps. The suspect was seen asleep, or passed out, in the front passenger's seat and the female victim was unaccounted for at that time. Detectives positioned their vehicles to block the suspect vehicle from being able to leave the gas station.

Numerous attempts were made to gain the attention of the suspect, including Public Announcements, audible sirens, and the deployment of an NFDD. After a reasonable period of time, detectives reported being concerned that the suspect may be in medical distress after taking some type of narcotic. A plan was devised to approach the vehicle, break out the rear (tinted) window, and remove the suspect from the vehicle. Detectives executed the plan by approaching the vehicle, opening the front passenger door, and forcibly removing the suspect from the vehicle. The suspect was clearly surprised and disoriented, and a minimal amount of force was needed to handcuff the subject and take him into custody.

Monitoring Team Observations

1. The reports prepared by the officers varied widely in quality. Each was extensive, but the detail provided in the reports related to use and show of force contained boilerplate language.

2. The force we observed was all objectively reasonable, necessary, and the minimum amount needed to take the subject into custody. However, the supervisory investigation and chain of command reviews would likely negatively impact Operational Compliance for use of force reporting and investigation if it were being assessed for those purposes.

3. The officers forcibly pulled the suspect from the vehicle, but that force was not reported, investigated, or addressed in chain of command reviews as a use of force. The descriptions used by officers in their reports were euphemistic (i.e. The suspect was "…guided out of the vehicle") and lacked sufficient detail.

4. An NFDD was deployed in the area of gas pumps, and the potential danger that created was not discussed in any manner.

5. The term "holding lethal coverage" was used more than once, which may constitute further shows of force that were not addressed.

6. This case should be reviewed closely by APD. In the opinion of the monitoring team, the types of actions in this case will likely cause

Operational Compliance issues in the future, if not properly corrected and supervised. As we have noted in past IMRs, many times the problems APD encounters are not related to the actual actions of officers, but their failure to properly report or investigate uses or shows of force. IAFD's investigations are typically well done, but this case had a lower level of force that would not have reached their attention under the new three-tiered system.[57]

7. The monitoring team will follow up with APD on this case during the IMR-12 reporting period.

Incident IMR-11-14

APD SWAT responded to the report of a wanted felon who discharged a weapon outside his mother's residence, which was located in a multi-level apartment complex. NCIC checks confirmed that the suspect was wanted for an aggravated assault with a firearm. When SWAT members arrived, they set up a perimeter and made multiple attempts to coax the suspect out of the residence. Over the course of a couple of hours an NFDD and 40 mm chemical munitions deployment was authorized and deployed. The latter had the desired effect, and the suspect exited his residence and was handcuffed without any additional force having to be used.

1. In this case SWAT exercised their typical patience and appropriately elevated their use of force options to take the subject into custody.

2. In the opinion of the monitoring team, the uses of force reported in this case were objectively reasonable and in compliance with set policies and CASA requirements.

3. This case was investigated by IAFD, as it occurred after the effective date of the new use of force suite of policies. As of the close of the reporting period, the final investigative report was not available for review, however, the preliminary reports they prepared were well done.

In past Monitor reports, APD's SWAT has been commended for the quality of the activations and the After-Action Reports (AAR) that they generate. SOD reports have always shown significant detail and readers could easily understand the sequence of their movements and decisions during events. That continued

[57] In this case, the NFDD was reported, but we feel this case illustrates the type of situation that could result in reporting issues in the future. Here, officers on scene did not feel that forcibly pulling a sleeping/unconscious person from a vehicle was even a low-level use of force. Their actions were reasonable, but the entire chain of command failed to address it. In fact, on one officer's OBRD you can hear him saying to the suspect, "dude, stop fighting" after he was pulled from the vehicle.

during the IMR-11 reporting period. SOD continue to document (in great detail) the thought processes a supervisor goes through when decisions are made. In IMR-9, we noted that the AARs were not capturing sufficient information that would achieve operational compliance if they were assessed as use of force investigations. During our May 2019 site visit with SOD, they expressed concern with the language in IMR-9, since they had only recently been provided with a draft of that report. SOD advised us that immediately after reading IMR-9, they met with the IAFD and created SOD specific "job aids" to assist them in their use of force reporting and investigation. We were told to expect a significant increase in quality of the SOD AARs beginning in April 2019, which is when SOD first received our feedback in the draft version of IMR-9. In IMR-10, we documented the review of 26 SOD AARs that were created between February and May 2019. We saw an increase in the quality of the AARs, and proper attributions of supervisory authorizations and officer actions were being documented. We also noted that AARs now include specific sections for the types of force used, names of the officers who used force, and the supervisor who was responsible for investigating the use of force.[58] That said, now that SOD is capturing NFDD and chemical deployments properly as uses of force, the issues we called out in IMR-9 should be remediated. Also, with IAFD talking over responsibility of Level 2 and Level 3 uses of force under the new classification system (effective January 11, 2020), we expect the issue to be resolved. For IMR-11, the monitoring team reviewed 39 AARs and found comparable detail as we began to see at the latter part of IMR-10. We want to provide the following feedback concerning the AARs we reviewed:

1. We observed in some AAR's prepared prior to October 2019, that NFDD's deployed outside a vehicle were not captured as a use of force. Procedures disseminated in October 2019 will remediate that issue.

2. We continue to find extraordinary detail in the AAR's, and several instances where SOD Commanders outlined lessons learned for future activations.

3. There was some variance in the frequency lieutenants would overtly indicate they approved a particular use of force plan in the AAR's. This was intermittent and generally related to chemical munitions plans. This may be attributable to writing styles, in which the author of an AAR believes that the report implies that they, as the author of the report, gave a particular authorization. That is not always going to be the case, so we continue to encourage APD to ensure that within the narrative of an AAR that <u>every</u> authorization for a use of force be overtly attributed to a specific supervisor. The difference is subtle but important (i.e. "A chemical

[58] They also overtly state if the SOD deployment did not result in a use of force.

munitions plan was authorized…" vs. "I authorized the chemical munitions plan…).

4. Many of these issues will be resolved with IAFD assuming their use of force investigation responsibilities. However, we also caution SOD to cross reference their AAR's, and the force listed within, against the use of force investigations conducted by IAFD. It will likely be a good place to identify gaps and remediate issues early.

To the extent necessary, we will continue to review AARs to ensure the trend we have seen continues in a positive direction. (P96-97)

As we noted in IMR-9 and IMR-10, Paragraphs 37- 38, the Performance Metrics Unit conducted an audit report for SOD SWAT, its empowering SOP, 6-8, and organized their findings into easily digestible sections with an objective perspective SOD should consider. The "Summary of Results" section provided specific recommendations for SOD to consider from policy, training, and operational perspectives. PMU reported that the audit and oversight it provided was embraced by SOD, and ultimately the SOD Commander gave positive feedback to other APD Commanders. In fact, SOD essentially agreed with each PMU recommendation, but in their response provided some perspective why parts of the PMU recommendation were either not feasible or were not within the control of SOD.[59] This is an exceptional example of field expertise melding with oversight capacity to improve process, effectiveness, and outcomes. In July 2019, a PMU audit of SOP 6-7, "Explosive Ordinance Disposal Unit (Bomb Squad) was finalized. In it, SOD agreed with the two recommendations PMU made and provided documentation to demonstrate their efforts to adjust their business processes. We also reviewed a PMU audit of a K9 Unit and SOP 6-9. Generally, the final recommendations were agreed with by SOD; however, there was disagreement whether a K9 handler's annual bite ratio should be included in the handler's Employee Work Plan. This recommendation will be reconciled once APD has an effective and operational Early Intervention System (EIS) in place.

The monitoring team previously reviewed documentation for the delivery of organization-wide training on the proper use of the SOD Risk Assessment Matrix (RAM) and approved it being delivered to the department. We reviewed documentation for the delivery of training regarding the RAM, which occurred during the IMR-10 reporting period, including rosters, test results, and an academy "Close Out" Memorandum that indicated an overall "pass" rate of 98% for the RAM training. APD documented their intention to continue addressing those officers who had not successfully completed the RAM training. In

[59] The PMU Audit of SOP 6-8 was finalized in July 2019.

response to a request for information, APD provided an October 29, 2019 Interoffice Memorandum indicating that there were four officers still on extended and authorized leave, four officers who had not yet attended the training, and three officers who failed the RAM course and needed remedial training. Although APD's overall attendance score exceeded 98% we encourage them to ensure that they continue efforts to provide these officers the required RAM training. This is simply a matter of effective risk management.

SID consults with SOD for specific types of search warrants and is required to fill out a Risk Assessment Matrix (RAM)[60] to determine if they are required to call out SOD. During the IMR-10 reporting period, in its normal course of business SOD audited the RAM records for SID and found they assembled the correct documentation for one particular case, but mis-scored the event. We noted that APD unearthed an important issue that required a resolution, since the SID Commander disagreed with SOD's opinion of the score. The monitoring team recognized this interaction as healthy but were unclear how the issue is resolved when two commands disagreed over the finding of a RAM audit. In response to IMR-10, SOD and SID worked together and developed protocols to reconcile this type of event should it occur in the future. SOD established a "RAM Audit Remediation Process" that was approved by the agency. Moving forward, if there is a discrepancy found during a RAM audit, and the affected unit Commander disagrees with the finding, that Commander will document their position and forward it through the chain of command. The final decision will rest with the SOD Commander, who will also be responsible for determining any remediation steps that may be necessary. SID has also established their own checklist for each of their units to use to ensure they are assembling and considering appropriate elements of justification for each scoring category when preparing a RAM before a mission. Early in the monitoring process, SID and SOD routinely demonstrated their responsiveness to monitoring team observations and feedback. The establishment of these protocols is just another example of how these two units work together and continue to work intelligently to meet their CASA-related responsibilities.

We saw these protocols in action during IMR-11 as we reviewed seven separate RAM audits SOD conducted of SID operations. In two, we observed good interaction between the units over the proper scoring of a RAM by a member of SID. One particular audit identified the fact that SID RAM documentation (in this case a search warrant) noted the presence of children in the target residence. That fact would have elevated the final RAM score, although still not to a level that would have required a SWAT call-out. SID responded and adequately clarified the information to demonstrate that their investigation revealed children would not have been present when the search warrant was executed. This

[60] There are pre-set and scored categories APD units must consider when filling out a RAM, and a score of 25 or more requires a SOD call out. Units are also required to append proofs that they made inquiries for specific risk categories (i.e., an assessment as to whether the suspect has a violent history requires criminal histories to be attached).

interaction verified a couple important facts: 1) SOD is conducting in-depth reviews of source documentation during its audits to ensure the RAMs are accurately scored, and 2) The protocols set in motion by SOD are already operationalized. This interaction is beneficial on many levels for both SOD and SID, and if continued will allow self-correction before issues arise.

The monitoring team reviewed SOD records related to the selection of APD personnel into the unit and found those records to be sufficient. The records reviewed included Department Personnel Circulars with job descriptions, Transfer Orders, and Unit Handbooks for SWAT, K9, and the Bomb Unit. SOD continues to maintain strong records that track the selection process from the posting of an opening through to the selection of an officer for assignment to SOD. We reviewed internal SOD training records for the SWAT, K9, and Bomb Units, and found them to be sufficient. In the past, we recommended SOD review its lesson plans and enhance them to reflect new Academy standards.[61] The routine training SOD conducts at the Division level now includes goals, objectives, and measures for training they provide, but there is still room to grow. As we noted in IMR-10, APD's 7-Step Cycle has been used for agency-wide training SOD provided, and we believe that processing individual, daily SOD training sessions through that cycle would be too cumbersome. That said, we still believe that SOD and Academy training programs would find a mutual benefit by creating SOD lesson plan templates and reporting system that meets the Academy's standards but does not hinder SOD's ability to quickly address training needs. Generally, SOD would benefit from better-crafted learning objectives and specific measurements of success following their routine training. (P91-92; 101).

Based on our review of the existing SOD policy requirements and other related documentation, we determined that SOD remains in Operational Compliance with respect to tactical unit missions and policies and annual reviews of policies (P93-95; 100). During this reporting period SOD revised and recast their policies as follows: 1) Explosive Ordnance Disposal Unit (Bomb Squad) 1-42 (Formerly 6-7); 2) SWAT SOP 1-92 (Formerly 6-8); and 3) K-9 Unit 1-64 (Formerly 6-9). As noted earlier, SOD promulgated Special Order 19-118 to address the "Use and Reporting of Chemical Munitions and Noise Flash Diversionary Devices" to address reporting gaps the monitoring team had previously identified. The monitoring team also reviewed SOD handbooks prepared during IMR-11, which demonstrated that SOD is continuing the "on-boarding" practice established by previous Commanders. We note that SOD's practices of diligently reviewing monitor's reports, and implementing suggestions from those reports where possible, is a model that should be required practice

[61] During IMR-11 we were provided lesson plans for NFDDs and chemical munitions training that were reviewed by the Academy's Comprehensive Training Unit.

for all APD commands. Compliance processes and rates would more likely than not be enhanced by such practices.

We reviewed Monthly Inspection Reports that were completed for the months of August 2019 through January 2020 and determined that SOD continues to capture information regarding uniform cleanliness and completeness, equipment, as well as proper identification markings, and whether an officer's Taser video recorder is working properly. Informal site inspections of SOD personnel occurred during our November 2019 site visit and we observed them to be in appropriate tactical attire, as was the case during our last site visit.

APD has resumed conducting Force Review Board (FRB) sessions related to SOD Tactical Deployments during the IMR-11 reporting period. With respect to Operational Compliance for Paragraph 99, our review of AARs, training materials and other data demonstrated that SOD processes remain stable, and they continue to track cases that are required to be reviewed by the FRB once it is fully re-constituted. As we noted in IMR-10, the quality of training SOD provided the newly constituted FRB staff was superior.[62] That said, we reiterate the importance of SOD remaining vigilant with its self-assessments and ensuring it collaborates closely with IAFD in terms of use of force reporting. Like the Field Services Bureau, an area of risk for unreported uses of force resides at the lowest level of classification since those instances will be outside the routine view of IAFD. We know that SOD takes their role in overall CASA compliance seriously and would not want to be the source of any type of non-compliance determinations in the future. We comment more extensively about the newly constituted FRB in Paragraphs 57 and 78.

SOD tracks SOD deployments through their Activation Data Reports, which were reviewed by the monitoring team. PMU previously identified tracking errors and made specific recommendations to remediate those issues. When we previously met with SOD, they provided proof for modifications to their tracking methods showing they were responsive to the PMU report. We reviewed Annual Assessment Reports for each SOD unit, and examples of Performance Work Plans for officers indicated that SOD completed Annual Assessments for its personnel.

APD continues to track K9 deployments and bite ratios consistent with monitor-approved methodologies. The monitoring team reviewed a K9 Bite Ratio report and tracking ledgers documenting SOD K9 handlers and K9 bite ratios for this reporting period. During that time frame, two K9 handlers were reported as having a bite ratio that exceeded 20%. The monitoring team reviewed two supervisory Interoffice Memoranda that documented the reviews of the data and

[62] We previously commented that SOD was overtly calling out ways for the FRB to hold them accountable in the training.

interviews with the K-9 handlers. In each instance, the SOD Commander reviewed relevant information and provided appropriate justification and context before concluding that the bite ratio was not problematic, and that the officers' K-9 use was within APD policy. Post-bite deployment reviews previously prepared by K9 supervisors contained a documentation of facts, tied officer actions to specific APD policy, and the assessment of the use of force was typically well done. Moving forward, post-bite reviews prepared by SOD will be encompassed within IAFD use of force reports as the new use of force policies are implemented. It will be important that proper coordination occurs between IAFD and SOD, in particular when a K-9 handler's bite ratio exceeds 20% for a given period of time. In those instances, SOD would be wise to consult and include IAFD in their assessments before reaching conclusions.

The monitoring team reviewed SOD Tactical Unit Deployment Tracking Sheets for the monitoring period. APD continues to monitor 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. (Paragraphs 102-105).

SOD continues to demonstrate a positive attitude toward CASA compliance and is now properly reporting uses of force related to NFDD's and chemical munitions. SOD was the first APD Division to demonstrate the commitment that was necessary to achieve CASA compliance. In the opinion of the monitoring team that commitment was sustained for IMR-11. Based on our meetings with SOD and review of documentation, we have determined Operational Compliance should be continued for Paragraphs 90 through 105.

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.**

Results

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

The monitoring team asked for and received data for the IMR-11reporting period (August 2019 through January 2020) from APD's Special Operations Division staff. The documentation supplied covered the selection process and training for the specialized units that consist of SWAT, Canine, and Bomb Squad/EOD.

APD's Special Operations Division data included training for, but not limited to, the following:

Specialized Weapons and Tactics Unit;

- Breaching: Manual, Mechanical, Ballistic, and Explosive;
- Vehicle Assaults, Barricades, Containment;
- Less Lethal and Firearms Proficiency;
- Square Range/House Runs;
- Defensive Tactics;
- Firearms Training;
- Team Movement;
- High Angle Rappelling;
- Entry Training.

Bomb Squad;

- Radiological dispersal device with agency turnover from local team to a National Response Team;
- FBI Advanced IED electronics course;

- Explosive tools loading and hand grenade identification;
- Multi-Agency training;
- Homemade device sensitivity training;
- Robot training;
- X-Ray, det diagnostics, basic electronics, rigging;
- Round robin bomb tech skills training;
- Bomb scenarios
- RSP tool selection/scenario-based response to bomb emergencies
- Electronic demolition via shot;
- Bomb range-disposal techniques and procedures.

K9 Unit

- Obedience and building search training (Perform general obedience around team members; utilize different search scenarios within building to expose to different situations; identify behavior changes of PSD during a building search.

For this reporting period the monitoring team reviewed reports to ensure the CASA requirements for this paragraph were met. SOD documentation is maintained on monthly reports with specifically detailed aspects of all training received by the units.

After review of the documentation supplied by SOD personnel, the monitoring team sees SOD's tracking of training as a positive example of attention to detail and a model to be emulated throughout the department.

The monitoring team reviewed "Swat Officer Field Training and Evaluation Program Swat Manual" for the two) members who tested and passed all requirements to be selected into Special Operations. As reflected in the previous report, the two members continued to progress with the requirements as reflected in documentation supplied to the monitoring team. All criteria for the process was documented and reviewed by the monitoring team. APD is in the process of updating their Swat Officer Field Training and Evaluation Program Swat Manual.

Results

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

We reviewed the Special Operations training conducted by APD for the eleventh reporting period (August 2019 through January 2020) and confirmed that the operational functions included in this paragraph are regularly covered and documented. During the November 2019 site visit, the monitoring team was invited to view live tactical training at the SOD facility. The monitoring team also reviewed data that included, but was not limited to, forms indicating the date, location of training, instructors, synopsis of training, and approval from a supervisor.

APD provided COB data, contemporaneous Special Operations Division Tactical Section training sheets for their Swat Unit, Bomb Squad, and K9 Unit. These data display training by officer, by unit, and by operational function trained, that correspond to those listed in paragraph 92. See paragraph 91 of this report for various areas of training received to fulfill requirements of the CASA. All documentation reviewed was timely, accurate, and fit the requirements of the CASA relative to special operations operators.

Results

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."**

Results

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."**

Results

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."**

Results

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

The monitoring team was provided COB documentation for the reporting period (August 2019 through January 2020). The documentation reviewed by the monitoring team consisted of twenty-nine (29) After Action Reports and four Operational Plans.

The monitoring team reviewed the After-Action Reports and Operational Plans for compliance with the CASA provisions of this paragraph. SOD prepared a detailed synopsis of their involvement in the events, and analyzed the deployment for policy, training, equipment, and tactical issues/concerns. The review of the After-Action Reports Based for concerns related to Policy, Training, Equipment and Tactics were all negative for this reporting period. All the reports were well documented on Tactical Activation Data Ledgers and demonstrate positive attitude toward CASA compliance.

Results

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

For this reporting period, the monitoring team reviewed Four Operational Plans:

- International Balloon Fiesta;
- Search warrant execution;
- Visit to Albuquerque by President Trump; and
- Mayor's State of the City Address.

This documentation was assessed for Operational Compliance with the requirements of Paragraph 97. The Operational Plan contains all information delivered to the specialized tactical unit(s) that include, but is not limited to:

- Location(s);
- Entry / Arrest / Search Teams;
- Other Units;
- Suspects;
- Plan / Purpose of Operation;
- Other Considerations;
- Additional Information;
- Briefing and Debriefing Location;
- Danger signal;
- Radio Frequency;
- Nearest Hospital; and
- Tactical Lieutenant.

As in the previous reporting period, the monitoring team verified compliance by means of personal inspections, review of policies, observation of actual briefings, and discussions with SOD staff during site visits. The monitoring team will monitor any

training affected by policy changes in future site visits and review data from APD. Based upon case reviews, the monitoring team verified that Tactical Section commanders, supervisors and officers have a working knowledge of operational planning, and routinely applied that understanding and skill to actual operations. Special Operations continues to conduct extensive training at all levels and conforms to best practices nationwide and to the specifics of this paragraph.

Results

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."**

Results

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."**

Results

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."**

Methodology

The monitoring team requested and received data from SOD for the reporting period August 2019 through January 2020. The team received and reviewed APD SWAT Unit Annual Assessments, K9 Unit Annual Assessments, and Bomb Unit Annual Assessments. A random sampling from each unit was reviewed, and, as in past IMR's, the annual reports reflect that members from the tactical units continue to perform exemplary work in constitutional policing, integrity, community policing, and critical police functions. These reports show compliance with eligibility criteria as required by the CASA. 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. These are listed in the Bureau SOPs that cover Bomb Squad (4-03), K-9 Unit and SWAT (4-04). APD's SOD remains in compliance with the requirements of this paragraph and constitutes, in the monitoring team's assessment, a best practice in the management of tactical units and personnel.

Results

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:

Data collected and reviewed by the monitoring team for this reporting period confirm that training by the Tactical Section continues to be conducted on a regular basis, in accordance with national standards (National Tactical Officers Association) for high-risk tactical operations. The training as documented in all the SOD paragraphs of this report covers all subjects required in this paragraph in a wide array of training modalities. The goals and objectives are well defined and trained by all units of SOD on a continual basis. The well documented findings of the monitoring team's review of data for APD tactical teams reveal continual operational success during this reporting period.

During this reporting period the monitoring team observed a Crisis Negotiation Team training session for the tactical section. The training objectives included but were not limited to:

- Updates at beginning of activations and while online;
- Expectations of Tactical and CNT when online;
- Identifying the three issues that risk assessment is concerned with in negotiations; and
- Discussion of immediate tactical actions versus negotiations.

As noted in previous reports, CNT continues to be an essential operational component in tactical activations.

Results

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."**

Results

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

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."**

Results

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

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."**

Results

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

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 requested and received data for SWAT activations for the reporting period (August 2019 through January 2020.) The SWAT Activation Data consisted of forty activations for this reporting period. Training of Specialized Tactical Units is well covered and documented in several paragraphs of this report. APD continues to monitor and analyze the number, type, and characteristics of deployments, and states a clear reason for each tactical deployment and outcome, as well as the number of arrestees in each deployment. The statistics reviewed by the monitoring team are evidence of the success, effective oversight, and accountability norms within the APD as related to special operations.

Results

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

4.7.93 – 4.7.96 Assessing Compliance with Paragraphs 106-109: Special Unit Policies, and accompanying paragraphs focused on the Special Investigation Division.

Paragraphs 106 – 109 of the CASA address requirements that APD must meet related to management and supervision of functions inside the Special Investigation Division (SID) as follow:

Paragraph 106: Specialized Unit Policies
Paragraph 107: High Risk Situation Protocols
Paragraph 108: Inspection of Specialized Units
Paragraph 109: Tracking Specialized Unit Responses

APD's Special Investigation Division (SID) personnel demonstrated their commitment to CASA compliance early in the monitoring process and continue to be receptive to feedback. They come to meetings enthusiastic to discuss their progress and the proactive steps they are taking to increase the efficiency and effectiveness of their operations. As always, the overall professionalism we encountered with SID command and civilian staff was exceptional.

During our November 2019 site visit we met with the SID Commander responsible for the tasks associated with CASA compliance. The Commander came prepared for the meeting with exemplars of their compliance and discussed ideas to not only meet, but to exceed, CASA compliance standards.

SID continues to self-reflect and self-correct by routinely calling out areas of improvement, and documenting steps they will take to resolve potential problems.

In IMR-10 we noted good interaction between SID and SOD regarding RAM audits and how SOD found issues with a particular SID RAM score before an operation. We note the need for APD to establish procedures, for instances, in which an audit finds mistakes or issues with a RAM and a means for reconciling disagreements between two commands. As we expected, SID and SOD agreed and came together during IMR-11 to establish protocols for such instances. That is the type of responsiveness we have routinely encountered with both SID and SOD.

During ECW case reviews we did note a troublesome instance where investigative personnel used force, and then investigated that use of force during which occurred during a multi-jurisdictional crime suppression detail. The incident had at least one unreported use of force and had tactical and safety issues we felt were important enough to immediately bring to APD's attention. The ECW use was found to be in compliance with policy, but reporting and investigation failures were noted.[63] That event is important to identify and discuss, since overall operational compliance determinations with use of force reporting and investigations will undoubtedly involve SID cases. While APD has since written, trained, and implemented its new use of force policies, it is important to note that as operational compliance efforts move forward, the monitoring team will review use of force incidents across the organization, and will specifically include cases involving SID. The SID Commander must be diligent in the oversight of Operational Compliance with respect to use of force reporting and investigations since that will be critical to organization-wide success.

The following represent our findings related to Paragraphs 106-109.

The monitoring team was provided documentation to demonstrate that the business processes that helped establish operational compliance continue to exist. Specifically, we reviewed the following documentation taken from this monitoring period:

1. SID 2018 Annual Review;
2. APD Special Operations Division – "Risk Assessment Matrix (RAM) Audit Remediation Process" Memorandum of Procedures;
3. SID SharePoint Records and an October 29, 2019 Interoffice Memorandum entitled, "SharePoint Audit;"
4. Revised SID Unit Handbooks, draft Unit SOPs and policy ledgers;

[63] The monitoring team noted its concerns within our ECW case reviews for Paragraphs 24-31.

5. SID Orientation and proficiency training records;
6. SID inspection forms
7. Operational plans / after-Action Reports, and an October 21, 2019 Interoffice Memorandum entitled, "Operational Plan Audit"
8. Internal Memorandums and Department Circulars for Transfers
9. Risk Assessment Matrix (RAM) forms and Ledgers, and SOD Audit Memorandums

As we noted in IMR-10, SID's 2018 Annual Review was well organized, easy to digest and contained meaningful information to alert APD's leadership of their current CASA-related activities and key accomplishments.

SID consults with SOD for specific types of search warrants and is required to fill out a Risk Assessment Matrix (RAM)[64] to determine if they are required to call out SOD. During the IMR-10 reporting period, in its normal course of business SOD audited the RAM records for SID and found they assembled the correct documentation for one particular case, but mis-scored the event. We noted that APD unearthed an important issue that required a resolution, since the SID Commander disagreed with SOD's opinion of the score. The monitoring team recognized this interaction as healthy but were unclear how the issue is resolved when two commands were in disagreement over the finding of a RAM audit. In response to IMR-10, SOD and SID worked together and developed protocols to reconcile this type of event should it occur in the future. SOD established a "RAM Audit Remediation Process" that was approved by the agency. Moving forward, if there is a discrepancy found during a RAM audit, and the affected unit Commander disagrees with the finding, that Commander will document the command's position and forward it through the chain of command. The final decision will rest with the SOD Commander, who will also be responsible for determining any remediation steps that may be necessary. SID has also established their own checklist for each of their units to use to ensure they are assembling and considering appropriate articles of justification for each scoring category when preparing a RAM before a mission. Early in the monitoring process SID and SOD routinely demonstrated their responsiveness to monitoring team observations and feedback. The establishment of these protocols is just another example of how these two units work together and continue to meet their CASA related responsibilities.

SID previously developed and implemented unit-level handbooks that set forth the unique standards, missions, and duties for each of its subordinate units, which were updated in 2019 across all SID units. The handbooks from each

[64] There are pre-set and scored categories APD units must consider when filling out a RAM, and a score of 25 or more requires a SOD call out. Units are also required to append proofs that they made inquiries for specific risk categories (i.e. An assessment as to whether the suspect has a violent history requires criminal histories to be attached).

unit serve several purposes, including SID incorporating and reinforcing APD's use of force policies, and including the provisions of the CASA. We previously observed that SID standardized the format of the handbooks, which gives the entire Division's submission a professional appearance. The monitoring team was provided course of business documentation that supported the task of tracking an initial Department Circular that announced an opening in SID, through to an officer's assignment and orientation training. We specifically looked at records of nine officers who were transferred into SID during this reporting period. Within its 2018 Annual Report, SID documented that they created an "SID Transfer In and Transfer Out" form, which was in direct response to issues they self-identified related to CASA compliance. SID reported they were encountering difficulty tracking the retrieval of property from personnel who transferred out of SID, and this report was designed to alleviate the problem. We reviewed "Transfer In and Out Forms" that were completed and were able to cross-reference those forms against the same nine SID personnel who were transferred into the Division during this reporting period. Finally, we were provided records that demonstrated that personnel from SID received training related to the Financial Crimes Handbook that was created during the IMR-10 reporting period.

SID has implemented a new procedure wherein they self-audit SharePoint records to ensure that proper information is being captured. We reviewed an October 29, 2019 "SharePoint Audit" memorandum prepared by the SID Commander. The document cross-referenced thirty-six records between April 1, 2019 and September 30, 2019. The monitoring team reviewed SharePoint tracker records against the Commander's memorandum and found it to be accurate. This new SharePoint Audit is another example of SID putting systems in place to capture potential discrepancies early before they become an issue. In IMR-10 we noted that following an internal review of SharePoint records, an SID supervisor prepared a May 10, 2019, memorandum in which he documented the need to define "investigative response" within their procedures, and that SID personnel should be required to document more fully the agency that requests their assistance. The "investigative response" definition has reportedly been submitted within draft SID SOPs that have not yet been approved. In his October 29, 2019 memorandum the SID Commander indicated that the proper documentation of agencies requesting their assistance is still being resolved internally. We will follow up on this during our next site visit with SID.

The monitoring team reviewed SID RAM records for eight separate and distinct cases that occurred during this reporting period, and SOD memorandums for RAM audits they conducted of those cases. SOD RAM audit reports are now routine, and we were able to review those audits against the records SID provided. It is clear that APD implementing these audits is valuable for long-term sustainability and helps ensure that problems can be quickly self-identified. We saw one such instance in December 2019, in which the documentation needed for one case to be evaluated was not assembled, which prevented the SOD representative from being able to make a determination that

the case had been properly scored on the RAM. SOD prepared their evaluative memorandum, which was appropriately responded to by SID. This type of internal oversight and response between SID and SOD is indicative of a system that has taken hold and can be relied upon in the future. It serves as a model for APD self-evaluation moving forward.

In IMR-9 and IMR-10 we commented that SOD Operational Plans have areas that need improvement. For IMR-11 we reviewed twenty-three Operational Plans and After-Action Reports. Operational Plans and After-Action Reports are meant to connect planned activities and policy provisions for organizational units during field investigations. Records we reviewed contained scarce information, in particular with the After-Action Reports, which are essentially a brief check list and narrative section.[65] We continue to see this as a clear area of needed improvement and again encourage SOD to treat Operational Plans as essential tools for compliance and safety.

The monitoring team continues to be impressed with SID and their efforts to meet CASA requirements. SID has shown consistency through several reporting periods in adhering to their CASA related requirements, which demonstrates internal business processes have taken hold. As monitoring efforts begin to transition to sustained compliance determinations related to uses of force in the field, APD should not lose sight of the relevance SID has toward those efforts. We believe there is a natural tendency for APD to focus its attention on the Field Service Bureau, since they will likely have the majority of reported uses of force. Moving forward, the monitoring team will be conduct case reviews across the organization, to include SID. Therefore, as APD conducts their own internal reviews and audits of case event reports, SID should be included in that review, since regular field supervisors may have less repetitions and experience classifying and investigating uses of force.

Based on our review of documentation, we determined that Operational Compliance is maintained by SID for paragraphs 106-109 for this reporting period.

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**

[65] While the narrative section could be used to document a wide range of important information, records we reviewed were commonly as brief as a few words or a single sentence. Presumably, more information is contained in investigative reports, but as we have noted in the past, a good Operations Plan, in particular, can be critical to the safety of an operation. These reports should not be prepared pro forma, but need to be incident specific, well thought out, with close consideration as to whether or not the plan can be safely implemented.

procedures that incorporate APD's agency-wide policies on use of force, force reporting, and force investigations."

Results

Primary: **In Compliance**
Secondary: **In Compliance**
Operational: **In 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."**

Results

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

4.7.95 Compliance with Paragraph 108: Inspection of Specialized Units

Paragraph 108 stipulates:

> **"Within three months of the Operational 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

The monitoring team requested and received SID Inspection Forms for this reporting period. The forms clearly document all equipment to include weapons and vehicles assigned to SID personnel and whether the condition of the equipment inspected is in satisfactory condition or not. The monitoring team's review of all personnel assigned to SID revealed all equipment to be in satisfactory condition. An Interoffice Memorandum

completed during the normal course of business for this reporting period (SID's Yearly Inspection), was also submitted to the monitoring team for review. The report stated, in part, that no personnel were involved in events exhibiting issues of concern. The memorandum, completed during the normal course of daily business, stated in part that all sworn personnel were in compliance with APD's policy provisions regarding weapons inspections. We remind the reader that only the monitor can make compliance decisions; however, internal pre-screening and review can improve compliance rates, particularly if issues are identified and effectively resolved prior to the monitoring team's involvement.

During the November 2019 site visit, the monitoring team, as in previous visits, inspected the inventory of all weapons stored in the SID facility to ensure the documentation supplied to the monitoring team corresponded with the items kept in their storage safe. All items were properly labeled and accounted for.

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."**

Results

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

4.7.97 Assessing Compliance with Paragraph 110: Individuals in Crisis and Related Issues

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."**

This overarching paragraph refers to the paragraphs 111-137, below. As such, this paragraph will not be in compliance until such time that other related required paragraphs are found to be fully in compliance. The monitoring team assessed data from the relevant policies, which guide the requirements of the Crisis Intervention section of the CASA, as noted in the table below.

Results

Two of the policies in this suite are past-due for review and revision. One policy in this suite (addressing hostage situations, barricaded individuals, and tactical threat assessments) was updated, but just after the end of the reporting period. Without policy, training is not feasible, and operational compliance is not attainable. In the monitoring team's experience, mental health practices are in reasonably regular flux, as new practices are developed and old practices are revised, updated, and re-crafted. APD is in primary compliance for this paragraph—it has policies in place. Until these policies are updated regularly, we caution APD to be circumspect about re-training its officers regarding mental health practices, absent these updates. As with the early stages of the CASA-implementation process, delays in policies generate delays in training, which lead to delays in adequate supervisory processes, which are the definition of non-compliance. See Table 4.7.97, on the following page.

Table 4.7.97 Policy Renewal Status for Behavioral Health Policies

Policy	Policy Name (Relevance to 110)
SOP 1-11; now SOP 1-20	BEHAVIORAL SCIENCES SECTION – Effective August 31, 2018; was due for Review August 31, 2019, and review is in process but past due; also, this SOP's number has changed from 1-11 to 1-20.
SOP 1-37	CRISIS INTERVENTION SECTION AND PROGRAM--Effective April 4, 2019; due for Review April 4, 2020. As of January 2020, APD seeking feedback from MHRAC.
SOP 2-19	RESPONSE TO BEHAVIORAL HEALTH ISSUES--Effective April 4, 2019; due for Review April 4, 2020. As of January 2020, APD seeking feedback from MHRAC.
SOP 2-20	HOSTAGE SITUATIONS, BARRICADED INDIVIDUALS, AND TACTICAL THREAT ASSESSMENTS--Effective August 5, 2019; due for Review August 5, 2020.
SOP 2-08	USE OF ON-BODY RECORDING DEVICES (contains reference to "subjects in crisis"): Effective June 2, 2017; due for Review June 2, 2018 and review is in process but past due. As of January 2020, MHRAC was engaged in review processes, providing comments.

Results

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

4.7.98 – 4.7.115 Assessing Compliance with Paragraphs 111-128: Mental Health Response Issues.

Paragraphs 111-128 address how mental health response issues are required to be treated. In determining compliance outcomes for these paragraphs, the monitoring team reviewed normal course-of-business documentation related to mental health response practices by APD. We discuss our findings below.

Data available to the monitoring team show regular monthly meetings of the community's Mental Health Response Advisory Committee (MHRAC), involving at times highly detailed discussions of problems, issues, needs, and solutions. MHRAC continues to be one of the success stories in APD's community engagement processes. MHRAC's reports, recommendations, communications, and assessment processes during this reporting period continue to be a source of valuable insight for APD's mental health, crisis intervention, and homelessness strategies. A broad spectrum of community mental health leaders, APD command staff, APD Crisis Intervention Unit members, APD's Crisis Outreach and Support Team members (COAST), and mental health professionals attend and participate in MHRAC meetings. Our reviews of MHRAC's agendas and meeting minutes indicate broad-based input from community mental health experts, advocates, individuals with lived experience, and providers.

In assessing APD's compliance with this paragraph, we reviewed APD processes designed to:

- Structure and improve mental health processes in the community;
- Foster close coordination between APD and mental health leaders; and
- Create meaningful, flexible, and effective mental health services throughout the communities served by the APD.

We note that APD has met, and in many cases far exceeded, the requirements of the CASA related to mental health response planning, crisis intervention, and service delivery. Our review indicates that APD crisis outreach services personnel have worked diligently with the advisory committee to assess, improve, and serve the target communities.

4.7.98 Assessing Compliance with Paragraph 111: Mental Health Response Advisory Committee

Paragraph 111 stipulates:

> **"Within six months of the Operational 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

In assessing compliance with this paragraph, the monitoring team reviewed the following documentation:

- MHRAC's reports, recommendations, communications, and processes during this reporting period;
- Meeting agendas and minutes for MHRAC meetings;
- Meeting minutes for subcommittee meetings;
- MHRAC's Annual Report, comprised of a letter from the Co-Chairs, the Training Subcommittee Report, and the Information Sharing and Resource Subcommittee Report (all available on the City of Albuquerque's website); and
- Various communications regarding policy reviews between APD and MHRAC.

The monitor is encouraged by the new members of MHRAC and guests who attended and participated in these meetings during this reporting period. The monitoring team observed the November 2019 meeting. We believe the MHRAC is on the right path to being sustainable, stable, and able to withstand changes in leadership, should they occur. The MHRAC continues to address emerging issues within sub-committees, which include the Training Subcommittee and the Information Sharing/Resources Subcommittee (which merged in April 2019).

MHRAC meetings occurred monthly during this reporting period, along with some subcommittee meetings. Table 4.7.98a, on the following page, briefly describes major topics covered during the MHRAC meetings and subcommittee meetings. In addition to the topics discussed during MHRAC meetings, a review of emails and other communications demonstrate that MHRAC members also addressed a variety of other issues during this reporting period, including a review of the on-body recording device policy and process mapping around serving Certificates for Evaluation.

See table below.

Table 4.7.98a Topics of IMR-9 Reporting Period MHRAC Meetings

Reporting period month	Meeting date	Issues discussed
August 2019	8/13/19	Law Enforcement Assisted Diversion; resources for people experiencing homelessness; possibility of a new shelter; launch of SCION (officer self-care initiative); CIT training.
September 2019	9/17/19	Consent Decree Status Conference; plans for new shelter; Tiny Home Village Project; Project Guardian; Albuquerque-based documentary: Mental Health: Youth, Families, Communities.
October 2019	10/15/19	Coronado Park – concerns about belongings, public health, New shelter for those experiencing homelessness; APD CIU data book presentation; APD wellness program; certificates for evaluation.
November 2019	11/19/19	New shelter update; Coronado Park update; IMR-10 review; Police Service Aide Outreach. *IMT attended this meeting.*
December 2019	12/17/19	New shelter update; cadet training.
January 2020	1/21/20	New shelter update; SOP 2-28; motion re: CASA paragraphs.

Table 4.7.98b: MHRAC Subcommittee Meeting Topics

Subcommittee	Issues discussed
Information Sharing & Resources: 8/13/19, 9/10/19, 10/8/19, 12/10/19, and 1/14/20	Complete revamp and update of cards listing resources for homelessness and mental health; Certificates of Evaluation processes; lack of standardized C of E form, so committee created one - looking into how it could be used statewide.
Training: 9/23/19, 12/2/19, 1/27/20	CNT Needs Assessment review; CNT Training curriculum and cooperation with CIU

Results

Primary: **In Compliance**
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 service providers, homeless service providers, interested community members designated by the Forensic Intervention Consortium, and other similar groups."**

Methodology

The monitoring team reviewed MHRAC's membership rosters, agendas, and meeting minutes (which include attendee names and affiliations) for monthly meetings that occurred during this reporting period.

Results

All specified groups named in this paragraph regularly participated in MHRAC meetings during this reporting period, and minutes reflected discussions 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

The monitoring team reviewed MHRAC's reports, recommendations, communications, and processes, and conducted interviews with specific members of the MHRAC. In addition, we reviewed MHRAC monthly meeting agendas and minutes, and MHRAC subcommittee meeting minutes, various email communications, 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 APD's policies, responses to homelessness, and trends reflected in CIU data and analysis. During this reporting period, the MHRAC worked closely with APD and other City entities on two complex issues: the creation of a new homeless shelter, and sweeps of encampments in Coronado Park, during which some people lost valuable belongings. The conversations around these issues were thoughtful and anchored in principles of collaboration and problem solving.

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

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

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 MOU between APD's CIU and the University of New Mexico Health Sciences Center/UNM Health Systems remains in place and has not been updated since the monitoring team's previous reviews (signed and dated 10/6/17).

Results

APD's existing mental health training courses contain content regarding the MOU between APD and the University of New Mexico. Training related to these modules was completed between September – November 2019. The monitoring team reviewed the lesson plan and PowerPoint presentation for training APD officers regarding the MOU, which includes its purpose, guiding principles, and use. Furthermore, the MHRAC and APD continued to have important discussions around protected health information and HIPAA concerns, as they relate to the mobile crisis teams and the use of on-body recording devices. These e-mail communications were examples of productive discussion and problem-solving and may also affect future iterations of the MOU and should inform future approaches to information sharing. We note that a proposed revision to CIU and CIT operations is underway, with a goal of consolidating efforts and provision of more comprehensive approaches to address the issues involving this paragraph. In the interim, the work currently being done meets minimum qualifications for compliance. Execution of planned changes will be necessary for operational compliance to be observed. The current MOU is not being used as written, and a revised MOU has not been finalized as of this report.

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

4.7.102 Assessing Compliance with Paragraph 115

Paragraph 115 stipulates:

> **"Within nine months of the Operational 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 Operational 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

The monitoring team reviewed data provided to MHRAC by APD relating to provisions of Paragraph 115, including data analysis in the form of PowerPoint slides; and MHRAC and subcommittee meeting agendas and minutes.

Results

APD continues to work with staff to produce meaningful data analyses of the data elements specified in paragraphs 129 and 137 and to think analytically about what those data reveal about operational decisions (i.e., deployment, staffing, etc.). APD presented these data to the MHRAC during the meeting on October 15, 2019 (and shared it via email). APD is exploring a partnership with UNM's Institute for Social Research to advance their data analysis efforts.

APD continues to provide all behavioral health training curricula (including updates and changes) to the MHRAC for review, and the feedback processes between the MHRAC and APD have been improving, particularly since the introduction of the MHRAC Feedback Map, which assists in the flow of communication and timing of information, feedback, and reviews.

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

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

The monitoring team reviewed data provided to MHRAC by APD relating to enhancing coordination within and among MHRAC's service base, including memos, emails, and MHRAC meeting minutes.

Results

The MHRAC continued its work to enhance coordination of services for chronically homeless individuals and people experiencing mental health crises. APD and MHRAC regularly provided updated cards listing community resources to APD officers for them to provide to people with whom they interact while on patrol. CIU detectives, COAST members, and MCT members also regularly distribute the resource cards. The monitoring team's review shows a substantial and tangible degree of interaction and cooperation between local behavioral health systems and the APD on these issues, as well as tangible results in systems improvement recommendations. Further, during this reporting period, several new members joined the MHRAC and several new community members began attending MHRAC meetings.

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 Operational 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

The MHRAC produced its annual report during this monitoring period and it has been available on the City's website since its posting on January 24, 2020. The report includes information about the topics MHRAC addressed during 2019.

Results

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

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 July 15, 2016."**

Methodology

The monitoring team reviewed training records maintained by APD relating to basic behavioral health training, including pre-tests and post-tests of training participants and other documentation related to training activities.

APD continues to provide state-mandated basic behavioral health training to cadets in the academy as well as 40 hours of basic CIT training to academy graduates upon completion of the field training program. APD provides the 40-hour basic CIT training to all field officers as well. The monitoring team has confirmed, through review of curricula, that the quality of CIT training remains strong. CIT training uses hands-on, scenario-based learning and its use of talented actors, specifically trained to lead scenarios, continues to enhance the learning experience for participating officers, and to improve in-field performance.

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

The monitoring team reviewed APD's training curricula relating to behavioral health. APD continues to provide training that addresses field assessment and identification,

suicide intervention, crisis de-escalation, community mental health participation, scenario-based exercises, and role-play exercises. All training emphasizes the importance of community partnerships and appropriate referrals to services. APD also continues to update their behavioral health curricula appropriately, for example, by updating scenarios in which professional actors interact with training participants.

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

The monitoring team reviewed APD's training records relating to basic behavioral health training for tele-communicators and noted that behavioral health training for tele-communicators took place in August 5-7, 2019 and November 6-8, 2019. During this training, 23 tele-communicators participated, with all 23 completing the training. During the November training, a few public safety professionals from other agencies participated as well, allowing for robust class discussions.

Results

APD's 20 hours of behavioral health training for tele-communicators includes all topics noted in paragraph 121, as well as role-play scenarios drawn from actual 911 calls fielded by APD tele-communicator personnel.

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

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."**

The monitoring team reviewed APD's training records relating to basic behavioral health training for officers and tele-communicators.

Results

APD remains in compliance with the requirement of bi-annual training according to training records. During this reporting period, APD's CIU conducted several training courses that meet these requirements, including ECIT refresher courses.

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

The monitoring team reviewed training and assignment records for CIU officers for the reporting period. According to APD records, 199 field officers are ECIT trained, making them "certified responders" per this paragraph.

APD maintains a Crisis Intervention Unit staffed with detectives housed at the Family Advocacy Center. The number of detectives in the CIU is currently 14, meeting the

recommended number of detectives noted in the "Albuquerque Police Department Comprehensive Staffing Assessment and Resources Study" conducted in 2015 by Alexander Weiss Consulting. We note here, as we have elsewhere in this report, that staffing studies such as that conducted by Weiss Consulting have relatively short "half-lives," thus the reliability of those numbers tends to decrease as time passes.

During the last reporting period, APD made significant strides in their work toward compliance with the requirements of this paragraph with regard to determining what "sufficient number" means to APD. APD's CIU has worked diligently on its ECIT workload analysis, and members of APD created an ECIT workload analysis and staffing model "to ensure a sufficient number of Enhanced Crisis Intervention Team (ECIT) officers city-wide." The model considers: number of behavioral health calls for service by shift and area command; the number of Field Services officers by shift and area command; the average length of a behavioral health call for service; the yearly shift bid; and the APD requirement for 70% minimum staffing (which considers vacation time, sick time, other circumstances that may affect staffing on any given day). The model assumes that since 40% of Field Services Officers are required to be ECIT trained (per paragraph 124), then 40% of behavioral health calls should be answered by ECIT trained officers. The analysis concludes that the required 40% ECIT certification rate leads to 68% of behavioral health calls for service being responded to by ECIT officers.

While the model is certainly a work in progress and will likely be refined over time, as the CIU continues to revisit and recalculate it monthly, we are encouraged by this work. The CIU notes consistent improvement in response rates of ECIT officers responding to mental health-related calls for service. At this time, the monitoring team has no tangible information to indicate that the ECIT workload analysis and staffing model has been embraced by APD leadership and is actively being used to guide staffing decisions. We are concerned that a failure to be attentive to actual staffing needs may attenuate CIU's effectiveness in an area critical to the CASA.

Results

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

Recommendation for Paragraph 123:

4.7.110a: Implement the data-driven, methodologically appropriate workload, staffing planning and analysis protocol developed by CIU that ensures that reliable "staffing levels" for ECIT officers are regularly 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 Operational 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

The monitoring team reviewed training records for the ECIT officers, who meet the definition of "field services officers who volunteer to take on specialized crisis intervention duties in the field," along with the ECIT workload analysis and staffing model (see paragraph 123). The APD's model indicates that currently 45 percent of Field Services officers who are ECIT trained, respond to 68 percent of calls for service that have a behavioral health component.

Results

The current staffing levels of crisis intervention "certified responders" consistently met the 40% goal during this reporting period, varying from 45.1 to 49.0 percent. Table 4.7.111 below notes the percentages by month. Please see above comments related to paragraph 123 for further information about APD CIU's reassessment of the number of ECIT certified responders and their assessment of compliance with the 40% requirement.

See Table 4.7.111, below. The CIU held both Enhanced CIT courses as well as ECIT Refresher courses during this reporting period.

Table 4.7.111 Staffing Level of Enhanced CIT- Certified Responders

Percentage of APD Enhanced CIT Certified Responders	
August 2019	45.8
September 2019	46.1
October 2019	45.1
November 2019	49.5
December 2019	47.6
January 2020	49.0

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

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

The monitoring team reviewed recommendations obtained and assessed by training facilitators, along with recruiting emails to field services officers during this reporting period.

Results

The APD CIU instructors routinely identify and recommend field officers well suited for the Enhanced CIT (ECIT) course. Members of the CIU reach out to those officers via email and recommend that they enroll in an upcoming ECIT course.

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

4.7.113 Assessing Compliance with Paragraph 126

Paragraph 126 stipulates:

> **"Within 18 months of the Operational Date, APD shall require crisis intervention certified responders and CIU to undergo at least eight hours of in-service crisis intervention training biannually."**

Methodology

The monitoring team reviewed training records for CIU and field services personnel as well as updates to the training curriculum.

Results

APD provided 8-hours of "re-certification" training to its certified responders via ECIT refresher training during this reporting period.

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

4.7.114 Assessing Compliance with Paragraph 127

Paragraph 127 stipulates:

> **"Within 18 months of the Operational 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

During this reporting period, the APD CIU accomplished significant work toward determining whether the initial goal of 40% is "sufficient" for Albuquerque, including internal discussions and memoranda about how to define and measure "sufficient coverage." Our relevant discussion in paragraphs 123 and 12, above, and our recommendation that APD "implement the data-driven, methodologically appropriate workload, staffing planning and analysis protocol developed by CIU that ensures that reliable 'staffing levels' for ECIT officers are regularly calculated, reported, set as staffing goals, and attained" have been well received by APD and it is moving toward implementing these refinements.

Results

As noted above, APD's CIU has determined that 40% is a proportion they were comfortable with when they calculated their ECIT response rates to behavioral health calls for service. During this reporting period, the proportion of APD officers maintaining ECIT training certification was consistently above 40%, and in some months approached 50%.

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

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

The monitoring team conducted ride-alongs with a Mobile Crisis Team on November 18, with a patrol officer in the Foothills Area Command on November 19, and with a field sergeant in the Northeast Area Commend on November 20 during this monitoring period.

Results

We observed that the requirements of this paragraph were routinely met in the field.

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

4.7.116 – 4.7.124 Assessing Compliance with Paragraphs 129-137

Monitoring team members reviewed (via report review and ride-along processes), the APD's current activities related to provision of policing services to individuals with mental illness and individuals in behavioral crises (paragraphs 129 through 137). Our observations indicate that the behavioral health paragraphs of the CASA have received careful and meaningful attention during the reporting period.

As part of the monitoring process, the monitoring team:

1. Reviewed minutes of MHRAC meetings, subcommittee meetings and observed the MHRAC meeting in November;

2. Reviewed extant and proposed policies guiding APD's service delivery to individuals experiencing mental health crises;

3. Assessed APD's service delivery mechanisms focused on the homeless populations of Albuquerque;

4. Assessed APD procedures for connecting to support services people who are homeless and people with mental illnesses;

5. Evaluated APD's interagency communications and cooperation practices regarding mental health services;

6. Assessed staffing at the Crisis Intervention Unit;

7. Reviewed the interaction protocols and processes among COAST/CIU with individuals from community mental health resource providers;

8. Assessed APD's mental health data collection and analysis processes; and

9. Reviewed APD training curricula related to community mental health processes.

10. Rode along with an officer, a sergeant, and a mobile crisis team to make field observations.

The data and processes we reviewed indicate that APD's outreach and support efforts to those in the communities served by CIT processes are resilient, effective, and problem-oriented. Data collection, analysis and reporting processes and protocols have been updated with much improved accuracy and reliability, and training remains a strong point of this effort.

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)."**

Results

APD continues to update its "CIU Data Book" entitled *Police Response to Behavioral Health Incidents in Albuquerque* The most recent version "Fall 2019" is available on the City's website. This document reflects all of the elements required by this paragraph. APD is exploring a partnership with UNM's Institute for Social Research to advance their data analysis efforts. In fact, on September 6, 2019, the City issued a press release highlighting the CIU Data Book and citing the first decrease in behavioral health-related calls in recent years.

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

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."**

Results

APD's behavioral health units continue to innovate and address the requirements of this paragraph, including utilizing actual encounters to inform training. APD has analyzed the most recent data available during this reporting period. This analysis is critically important to the agency's decision making. It is used to "develop new response strategies for repeat calls for service" and to "identify systemic issues that impede APD's ability to provide an appropriate response."

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."**

Results

APD updated this policy (SOP 2-20) in August 2019 and issued the new version of this policy (Effective August 5, 2019; due for review August 5,2020). APD continues to struggle, however, to identify a collaborative approach to policy, training, and implementation around this important issue. Executive intervention may be necessary.

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

Recommendation for Paragraph 131:

4.7.118a: Work with advisory committees to ensure the protocols are updated and that related policy and protocols are reflective of "best practices." Develop appropriate training strategies, deliver training, implement the policy, and evaluate results.

4.7.118b: APD command should <u>require</u> cooperative approaches between CIU, CNT and SOD, establishing timelines for assessments as to why inter-unit cooperation on the issue of barricaded suicidal individuals has lagged and follow-up on findings and recommendations at regular intervals.

4.7.118c: APD executive leadership should pay particular attention to the results of the implementation of cooperative approaches between CIU, CNT and SOD. This project should be goal-driven, should include production of specifically articulated tangible objectives and measurable timelines to ensure progress is made.

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."**

Results

Based on our review of program documentation, it is apparent from in-field reports, data analysis, and real-time response to identified issues that APD's COAST, and CIU routinely follow up with members of the community who would benefit from COAST and CIU services. During this reporting period, COAST members continued to use creativity and solid problem-solving approaches to address persistent issues. During this reporting period, CIU, MCT, and COAST conducted numerous home visits and worked together to assist a veteran who was facing eviction, assisted a family facing transportation issues, provided food to an individual in need, and connected many people to community resources. Beyond that, COAST and CIU function as a bulwark against those in the community confronted by persistent mental health issues.

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."**

Results

Based on our review of program documentation, it is apparent from in-field reports, data analysis and real-time response to identified issues that APD's COAST and CIU routinely follow up with critical elements of the population who would benefit from COAST and CIU services. Some of the work done this reporting period by COAST and the MCTs is, quite simply, excellent. The programs are becoming a further bulwark for those members of the Albuquerque community suffering from mental and personality challenges

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."**

Results

Based on our review of program documentation, it is apparent from in-field reports, data analysis and real-time response to identified issues that APD's COAST and CIU routinely follow up with critical elements of the population who would benefit from COAST and CIU services. The weekly and monthly reports of COAST and CIU members indicate a wide variety of referrals, connections, and coordination with services and treatment options.

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."**

Results

APD provided the monitoring team with a detailed tracking report for all COAST members and detectives within the CIU. The number of COAST clinicians held steady at five throughout this reporting period, and as of January 31, 2020 the number of CIU detectives was 14 (not including 2 sergeants and 1 lieutenant). The monitoring team also notes that having two sergeants in this unit seems to be working nicely in terms of supervision, division of labor, and morale.

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

We note parenthetically that the use of a data-driven, methodologically appropriate workload and staffing planning and analysis to ensure expansion (or contraction) of CIU

staffing based on workload and other factors could positively affect the COAST and the MCTs. This would ensure reliable staffing levels for mental health professionals in COAST and in the MCTs are attained. At this point, the data exist to support this analysis, and such an analysis is something that APD should consider carefully.

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**."

Results

COAST and CIU have developed robust relationships with service providers throughout the city and interact with them regularly to discuss new ideas and solutions. In fact, APD CIU members have been active in recruiting new members of MHRAC and encouraging new partners to attend MHRAC meetings, which serve in large part as exercises in problem solving, brainstorming, and coordinating local services.

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

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)."**

Results

APD continues to update its "CIU Data Book" entitled "Police Response to Behavioral Health Incidents in Albuquerque." The most recent version "Fall 2019" is available on the City's website and reflects all of the elements required by this paragraph. APD is exploring a partnership with UNM's Institute for Social Research to advance their data analysis efforts. In fact, on September 6, 2019 the City issued a press release highlighting the CIU Data Book and citing the first decrease in behavioral health-related calls in recent years.

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

4.7.125 Assessing Compliance with Paragraph 139[66]

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".**

APD continues to produce effective policy and procedures that are compliant with the CASA. The monitoring team continue to be intensively and extensively involved with policy development and review at APD and continue to make recommendations for improvement in the process and product. All CASA-related policies are reviewed and approved by the monitor prior to publication and training by APD.

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

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."**

[66] Paragraph 138 is judged to be prefatory to the following section on training, and as such establishes goals, but not quantifiable objectives. These are dealt with in paragraphs 139-148.

Results

No substantial changes to the indexing and numbering systems have been recommended or made by APD, except for the recent revisions necessitated by APD's move to a more manageable use of force classification, review, assessment, and processing system. APD remains in compliance with this paragraph based on past and current practices.

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 Operational 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 remains in compliance with this paragraph based on internal practice. Policies are provided to all sworn members of APD via intra-net and are available to the public via the internet. Critical policies are specifically trained at the Academy, and officers are tested for comprehension of those policies.

Results

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 Operational 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

APD's responses to the requirements of this paragraph were implemented early in the compliance process with creation of the PPRB. Early in this project, the monitoring team, as part of their routine practice, observed PPRB meetings and found them to be comprised as required by the CASA. That composition continues to this day.

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 Operational 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 monitor, over the past three years, has routinely assessed PPRB practice, and found it consistent with the CASA and established practices in the field. Past practice at PPRB has been, for the most part, effective and not deleterious to decisions of the command staff at APD, the Parties and the monitor.

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 Operational 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."**

APD remains in compliance with this task based on past performance.

Results

The technical requirements of this paragraph are routinely met by the official requirements of APD policy and are executed in practice.

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

APD remains in compliance with this task based on past performance.

Results

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

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

Over the last five years, members of the monitoring team have continually assessed the processes designed to implement this paragraph. Three issues have proven consistently problematic with APD's execution of practices responsive to this paragraph. First, we have noted consistently over the years, APD's apparent reluctance to execute appropriate discipline in the face of improper conduct in the field. Secondly, we have noted high degrees of variance in corrective actions initiated by the organization when out of policy behavior occurs. Similar unwarranted behaviors in the field have been addressed differently, with no clear explanations for the rationale behind these different approaches.

Finally, as we have noted frequently in past reports, many policy infractions have been addressed by methods outside "normal" policy channels. The past use of "additional concerns memos" and the ubiquitous abuse of investigative timelines have crafted internal disciplinary systems that have proven virtually ineffective over the years. Recently, APD has heeded long-term advice from the monitor, and taken steps to control the extra-policy effects of these processes. APD has initiated a formal review of ACMs and has re-focused its attention on established disciplinary timelines. The monitoring team has devoted a substantial amount of time advising APD during this process, and the end result is a department-wide internal assessment of those two practices by the Accountability and Oversight Division.

The monitoring team has been in near-constant communication with AOD concerning this assessment. AOD has launched a case-by-case review of past ACMs in a systematic and methodical way. The monitoring team has worked with AOD to ensure a methodologically sound "review" of existing ACMs, and we anticipate that the work product produced by this review will produce a summary of the content of ACM files and detailed recommendations for a way forward that will ensure that relevant information is generated. This will allow APD to work with the Parties to resolve any issues remaining with the now-discontinued ACM process. We will provide recommendations for this paragraph once that review is completed.

Results

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

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. If the Monitor or DOJ objects to the proposed new or revised policy, procedure, manual, or other administrative order or directive, because it does not incorporate the requirements of this Agreement or is inconsistent with this Agreement or the law, the Monitor or DOJ shall note this objection in writing to all parties within 15 business days of the receipt of the policy, procedure, manual, or directive from APD. If neither the Monitor nor DOJ objects to the new or revised policy, procedure, manual, or directive, APD agrees to implement it within one month of it being provided to DOJ and the Monitor."

Methodology

Members of the monitoring team routinely reviewed policies, procedures, administrative orders, and special orders for compliance with this paragraph. APD's practice regarding special orders (temporary instructive mechanisms designed to revise workflow, review, and or decision-making processes at APD) are now routinely routed through the monitoring team for review and comment.

Results

APD routinely complies with the requirements of this paragraph.

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

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

The provisions of this paragraph seldom need to be invoked. The Parties have tended to be mutually supportive in getting policies moved through the approval process. This speaks well for the City and APD, and their joint determination to do the right thing.

Results

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

4.7.135 Assessing Compliance with Paragraphs 149

Paragraph 149 stipulates:

> **"Within two months of the Operational 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

Paragraph 149 identifies requirements for action by APD early on in the compliance process. This paragraph references the briefing of all officers on the requirements of the CASA, as well as the briefing and training of officers relative to their methodology.

The monitoring team requested and received records for all new APD employees to ensure that they are briefed and presented the terms of the CASA. During this reporting period (August 2019 through January 2020), the monitoring team reviewed records from the department's PowerDMS system to ensure all personnel signed off in acknowledgment that the material was received and reviewed. Included in these reports was Cadet Class #121 and Lateral Class #22 that started in the previous reporting period and extended into this reporting period. Records received by the monitoring team show that they were briefed and presented the terms of the Agreement, all the students met the criteria to ascertain compliance with the CASA requirements.

The City remains in compliance with this paragraph based these findings and 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

APD remains in compliance with this paragraph based on earlier performance. As stipulated in the requirements of this paragraph, APD trained its personnel on Use of Force Tier 2 and 3, and documented the results for this reporting period:

- Number of currently sworn 934
- Leave 21
- Attended 913
- Need to attend 21
- Percentage attended 97.75%

Use of Force Tier 3:

- Current Supervisors and Acting Supervisors 296
- Leave 10
- Attended 286
- Need to attend 10
- Percentage attended 96.62%

APD submitted documentation via PowerDMS reports to the monitoring team for review

to ensure all personnel sign off in acknowledgement of the training received during this reporting period. The monitoring team will continue to monitor new policies and changes to policy that are pending approval to ensure that the requirements of this paragraph are maintained. We note again that "sign and acknowledge" is not the best of strategies to evaluate comprehension and the ability to execute critical policy. That is why the role of training, and that of in-field supervisors and mid-management oversight of the policing processes is so critical. We also noted a paradigmatic shift during this reporting period in APD's approach to training, moving from a purely Power-Point driven "lecture" modality to a more sustainable "adult learning model." We are aware that the shift was time-consuming and challenging. Nonetheless, class evaluations tended to indicate an overwhelming acceptance of the new model by members of APD who have processed through the training.

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 Operational Date, and annually thereafter. Within six months of the Operational 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 and maintains a current training schedule fulfilling the requirements of this paragraph. APD supplied the monitoring team with an updated 2020 "Working Training Calendar". In future reporting periods, the monitoring team will continue to monitor new policies and changes to policy that are pending approval to ensure that the requirements of this paragraph are maintained, and that appropriate training is delivered and adhered to in the field.

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

No Lateral classes were conducted during this reporting period. The monitoring team will continue to monitor the selection and assessment practices to ensure compliance with this paragraph.

Results

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

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

The monitoring team's requests for, and subsequent review of, records responsive to Paragraph153 produce ample evidence that the requirements of the paragraph are being met by APD. The material reviewed for this reporting period (August 2019 through January 2020) included but was not limited to:

- 2019 Day and Low Light Firearms Qualification;
- Less Lethal Distraction Devices;
- Use of Force Tier 2;
- Use of Force Tier 3;
- Taser 7 User Certification; and
- Supervisor training.

APD continues to maintain compliance by maintain course-of-business records and making those records available for inspection by the monitoring team during site visits.

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."**

No changes to relevant case law and statutes were noted during this reporting period. Based on past performance by the Advanced Training Unit, APD remains in compliance.

Results

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

4.7.141 – 4.7.147 Assessing Compliance with Paragraphs 155-161: Field Training and Evaluation Program

The monitoring team reviewed and examined the data required for APD to maintain compliance with paragraphs 151 thru 161, respectively for the reporting period (August 2019 through January 2020), in the form of policy reviews, program assessments, and results. APD retains Operational Compliance with the paragraphs in the CASA that relate to the Field Training and Evaluation Program, except for paragraph 161.

During the November 2019 visit the monitoring team met with the APD Academy personnel responsible for maintaining the program development and implementation records, as per SOP 6-1 "Training Division." As in the previous reporting period, no known applicable changes to case law, core principles, or values had taken place. Also as noted in the previous reporting period, revisions to SOP 1-46 "Field Training and Evaluation Program (FTEP)" had been submitted and are still pending approval. The monitoring team has received a draft copy of submitted revisions to the Field Training and Evaluation Program. Those revisions remain under review in the chain of command

and will be assessed for compliance by the monitoring team, once APD produces a final product.

The FTEP requires that academy graduates receive sixteen (16) weeks of field training and that recruits not be released from the program without completing the sixteen-week program.

The monitoring team reviewed Special Orders for the FTO Classes for this reporting period. They are as follows:

Field Service Bureau Special Orders

- 22nd Lateral Class SO 19-37, 42, 45, 49, 55, 56 and 64
- 121st Cadet Class SO 19-43, 51, 58, 60, 63, 65, 68, 70, 73, 76 and 81

These Field Services Bureau Special Orders maintain APD's 100% compliance with the program's requirement of sixteen weeks of field training and no early release from the program.

The number of officers serving as FTO's for the FTO program during this monitoring period is 50 available FTO's. This review indicated that all requirements of the CASA were met. APD submits backgrounds and applications (on an on-going basis) to the monitoring team for review to ensure compliance. During this reporting period, ten applicants signed up for the program with seven having passed all requirements to become members of the FTEP. The monitoring team reviewed the vetting process for the applications and backgrounds of those seven individuals. In addition to the seven new members, all current FTO personnel received and completed the annual FTEP/FTO In-Service Course as required by the CASA.

The following criteria were met during this period:

1) Recruits are trained in multiple Area Commands;
2) Recruits are trained in different shifts; and
3) Recruits are exposed to different Field Training Officers.

As reflected by the supporting documentation mentioned earlier in this section, APD maintains compliance with these requirements.

Members of the monitoring team also requested COB documentation to ensure APD continues to afford recruits with:

- A mechanism for confidential feedback regarding quality of field training;
- Consistency between instructional processes developed in field training and at the training academy; and

- APD's consideration of feedback and what, if any, changes are made as a result of that feedback.

The monitoring team reviewed the anonymous survey utilized by APD to comply with the requirements of the CASA. The 121st Cadet Class and the 22nd Lateral Class, like previous classes, maintained a high degree of participation. The monitoring team paid particular attention during this reporting period to the following areas:

- Use of technology (working with Tech Services);
- Investigations/Knowledge of traffic Codes/Criminal Codes;
- Report writing;
- Proactive Policing;
- Handcuffing;
- Use of Force policy and practice; and
- Traffic Stops/SOP.

The APD Academy continues to monitor the surveys and submit course-of-business memoranda covering these areas. An Interoffice Memorandum dated January 15, 2020 addresses the following topics:

"Report Writing/Criminal Complaints"

As a result of feedback from the recruits, the FTEP staff, in coordination with the Academy, have added staff from the Records Division to the academy staff to assist in training development and delivery relative to report writing and criminal complaints, with the goal of eliminating critical errors or omissions and common errors in the recruit officers reports.

"Handcuffing of Prisoners"

Handcuffing was also a topic in the recruits' feedback that was addressed in the aforementioned Memorandum. As a result of this topic being raised by a recruit in the program, the FTEP has reached out to the academy in search of joint methods to improve training on this topic. The monitoring team will continue to monitor this topic in future visits to ensure any potential issues with training are addressed.

Interoffice Memorandum dated January 23, 2020 addresses:

The monitoring team as in previous reporting periods reviewed the critiques and the response from the FTEP. The majority of critiques are positive in nature with very few negative comments. The memorandum addresses the critiques and any actions to be taken.

During this reporting period, the Director of the Academy created three new critique processes to better evaluate the performance of the FTEP. The focus on the critiques is on the Field Training Area Sergeants. The monitoring team will follow-up on actions or omissions by the academy as it relates to suggestions submitted in future visits.

The current staffing levels continue to be an issue of concern to the monitoring team. Documentation submitted for this reporting period for the FTO program indicate the total enrollment to be at sixty-four available members . That includes six Lieutenants, eight sergeants and fifty FTOs active in the program.

APD had 26 recruits in the program during this period with fifty FTOs available. This is still under any recommended ratio as it relates to law enforcement best practices, but it demonstrates an improved ratio compared to the prior reporting period. The academy staff continues to work with the Executive Staff of APD to resolve the staffing issue. The Lieutenant's position added to the program during the last reporting period appears to be paying dividends, and the program has plans to run more FTEP classes. With the signing of an MOU regarding Field Training Officers pay, the program has another incentive for APD officers to join.

The monitoring team will follow up on the progress of the program with this latest addition to measure the impact on the program.

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."**

Results

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."**

Results

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 three 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."**

Results

Members of the monitoring team reviewed documentation associated with paragraph 157's requirements and found that all current FTOs meet or exceed the requirements of this paragraph.

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 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."

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."**

Results

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."**

Results

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

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."

Results

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

Recommendations for Paragraph 161

4.7.147a: APD should conduct independent research to identify the optimum level of FTOs for projected hiring levels moving forward.

4.7.148 Assessing Compliance with Paragraph 162

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. To achieve these outcomes, APD and the Civilian Police Oversight Agency shall implement the requirements below."**

This Paragraph is an introductory paragraph for IAPS-Misconduct Division and CPOA-related CASA requirements. As such it requires no direct evaluation but is subsumed by the IAPS and CPOA-related individual requirements below.

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 Division 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 Division. Failure to report or document alleged misconduct or criminal behavior shall be grounds for discipline, up to and including termination of employment."**

Methodology

Paragraph 163 of the CASA pertains to the duty of all APD officers and employees to report misconduct by APD officers and employees, the duty of supervisors to document information regarding misconduct of subordinates, and to report same to IA. It also requires failure to comply to be grounds for discipline.

During the monitoring period and the 11th site visit, members of the monitoring team reviewed eight investigations completed by IAPS Misconduct Division and eleven investigations completed by CPOA. The eight IAPS investigations are [IMR-11-15, IMR-11-16, IMR-11-17, IMR-11-18, IMR-11-19, and IMR-11-20, IMR-11-21, and IMR-11-22]. The eleven CPOA investigations are [IMR-11-23, IMR-11-24, IMR-11-25, IMR-11-26, IMR-11-27, IMR-11-28, IMR-11-29, IMR-11-30, IMR-11-31, IMR-11-32, and IMR-11-33].

A non-concurrence letter issued during the monitoring period, [IMR-11-34], was also reviewed along with the underlying investigation to determine if the non-concurrence letter articulated a reasonable and understandable basis for differing with the investigative findings and recommendations of CPOA. The monitoring team also reviewed APD regulations, had on-site meetings with the IAPS and staff and the CPOA Director and staff.

Results

The findings related to Paragraph163 indicate the following CASA-related outcomes.

This monitoring period we found that 7 of 8 IAPS misconduct cases [IMR-11-15, IMR-11-16, IMR-11-17, IMR-11-18, IMR-11-19, IMR-11-20, and IMR-11-21] implicated the tasks of paragraph 163. Each of these cases we reviewed met the requirements of Paragraph 163. Given the different ways misconduct comes to the attention of a supervisor, and considering the fact that reporting cases to IAPS Misconduct is often done in memorandum form, “immediately document and report” is interpreted in context of the case. In all of the cases noted above, we found the referral to be satisfactory.

The final IAPS investigations [IMR-11-22] was referred to IAPS by CPOA and therefore did not implicate paragraph 163. Thus, the compliance rate for the data sample the monitoring team drew for this paragraph continues to be 100 percent.

Of special note is the fact that five of the investigations came from referrals to IAPS that arose out of Use of Force reviews [IMR-11-15, IMR-11-18, IMR-11-19, IMR-11-20 and IMR-11-21], and one referral to IAPS arose out of a supervisor’s review of a civil lawsuit. [IMR-11-16]. As noted in IMR 10, this continues to be a prime example of the improvement we are seeing at APD: many violations of policy and practice are being noted, assessed, and “called” prior to any need for the monitoring team to bring these issues to APD’s attention. While this process is not seen at levels necessary for a finding of in-compliance, it is a marked and laudable change to past practices at APD. It

is offset, however, by a tendency at times for APD command ranks to neutralize or minimize potential violations during the normal course of their daily work processes.

As set forth in the narrative pertaining to paragraphs 60-77 of this IMR, the monitor continues to see issues pertaining to the timeliness of referrals to IAFD regarding cases now being completed that were originally referred by CIRT. These timeliness of referral issues are linked to the Use of Force backlog reduction initiative, and an ongoing interpretation issue of when a referral to IAPS should be made during a Use of Force review (when the review is complete or when reasonable indications of misconduct first arise). APD would improve process by clearly articulating the "start" and "finish" definitions regarding internal investigations.

The backlog and interpretive issues arising out of Use of Force reviews are more fully discussed in regard to paragraphs 60-77 of this IMR. We note that CIRT has been replaced in the IA process with the more carefully constructed and supervised IAFD. Nonetheless, the non-compliant practices engaged in by the old CIRT unit have left a residual of force cases that were remarkably poorly investigated and documented. IAFD has completed investigation of all the backlogged cases.

The above backlog issues arising out of Use of Force reviews notwithstanding, based on our review of the random sample as set forth above, we find operational compliance with paragraph 163. While the data we sampled for this paragraph show compliance, we remind APD that it is highly likely that supervisors continue to be erratic in identifying and reporting misconduct. This is an issue that APD needs to monitor closely. It is entirely possible that our random sample taken during this reporting period has missed instances of failures to identify and report. The solution to these problems is internal monitoring on a consistent basis.

Results

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

4.7.150 – 4.7.154 Assessing Compliance with Paragraphs 164-168: Public Information on Civilian Complaints

Paragraphs 164 through 168 of the CASA pertain to the informational program required of APD and CPOA to make the public aware of the procedures for making civilian complaints against APD personnel. These paragraphs also direct that APD and CPOA provide to the public information, in Spanish and English, and in different informational forums that increase the public's accessibility to complaint forms and facilitate the reporting of misconduct. These paragraphs also require the acceptance of civilian complaints and require that officers identify themselves upon request.

Members of the monitoring team continued to review the APD and CPOA websites, in addition to reviewing public information made available at APD headquarters, the CPOA office, and City Hall. In addition, during the 11th site visit the monitoring team again made eight unscheduled visits to APD substations, City libraries, and community centers for the purpose of determining whether informational brochures and Complaint and Commendation forms were available. They also had meetings with IAPS and CPOA personnel.

We continue to observe full compliance with Paragraphs 164 through 168 of the CASA. Indeed, APD, CPOA, and the City have excelled with these requirements of late. In all of the on-site visits this monitoring period to APD, CPOA, and City properties, the monitoring team found the informational brochures and Complaint and Commendation forms to be available, as well as visibly displayed for easy public access.

The monitoring team continues to find the informational program to be effective. Information on complaint filing is available on the APD and CPOA websites, and in informational materials, brochures, and posters. This information and the actual complaint forms are available online (in English and Spanish) on both the APD and CPOA websites. CPOA has implemented the use of a new brochure, which provides a tear-off of a postage pre-paid complaint and commendation form, thereby making it easier for the public to engage the agency. The information clearly explains the "mechanisms" for filing complaints and includes complaint and commendation forms that can be filed electronically or downloaded. Complaint forms are not only readily accessible in hard copy at APD, CPOA, City buildings. They are also available from individual patrol vehicles. Like the website, information on the hard copy forms is in Spanish and English. The information does not discourage the filing of complaints and makes clear that complaints can be filed anonymously or by third parties.

Further, based on our review of a stratified random sample of IA and CPOA investigations, we found no instances of allegations of refusal to provide name and badge numbers when requested.

4.7.150 Assessing Compliance with Paragraph 164: Public Information on Civilian Complaints

Paragraph 164 stipulates:

> **"Within six months of the Operational 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. The requirements below shall be incorporated into this program."**

Results

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

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."**

Results

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

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."**

Results

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**."

Results

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

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."**

Results

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

4.7.155 – 4.7.168 Assessing Compliance with Paragraphs 169-182: Training Regarding Complaint Intake

Paragraphs 169 through 182 of the CASA pertain to the necessary steps in the receipt, acceptance, and processing of complaints. These paragraphs require APD and CPOA to receive all complaints, regardless of whether they are made internally or externally, and regardless of whether they are made in a timely manner. They require an effective and uniform system that is allegation-based for classifying complaints, and internally referring and appropriately assigning complaints for investigation.

During the monitoring period and the 11th site visit, members of the monitoring team utilized the same methodology as prior periods, meeting with the IAPS Misconduct Division Commander and members of his staff, the CPOA Executive Director and members of his staff, reviewing complaint log-in and classification records, selecting (by way of a stratified random sample) and reviewing 8 IAPS and 11 CPOA investigations completed during the monitoring period. The monitoring team also reviewed the APD and CPOA websites and CPOA minutes relative to approval of investigations.

The monitoring team continues to find full compliance in regard to paragraphs 169 through 181. However, we have found that APD has not regained compliance in regard to paragraph 182. Accordingly, the findings related to Paragraph 169 through 182 indicate the following outcomes, related to requirements of the CASA.

Based on our present reviews, and consistent with prior IMR findings, internal and civilian (external) complaints continue to be accepted, reviewed, classified, and assigned for investigation according to CASA requirements and approved policy.

Regarding acceptance of complaints, in our review of the stratified random sample of investigations as well as IAPS and CPOA processes, we found no instances of a refusal by APD or CPOA to accept a citizen's complaint. Further, we are not aware of any information either formally, through our report review processes, or informally, through our contacts with *amici* and other interested persons, that suggest this is an issue.

It has been, and continues to be, a long-standing policy among APD personnel that refusing to accept a complaint, or the discouraging of a complaint, are grounds for discipline. Although timely complaints are encouraged, untimely complaints are accepted, as well as anonymous and third-party complaints. The monitoring team has reviewed written requests from APD to relevant judicial officials requesting that APD be made aware of all allegations of officer misconduct made by judicial officials.

Of the total cases reviewed, we found none during this IMR period that were initiated by an online anonymous complaint. Although this aspect was non-observable this monitoring period, based on past operational compliance in regard to this task, APD and CPOA continue to be in full compliance with paragraph 172.

APD has developed, and continues to use, a centralized numbering and tracking system that assigns unique identification numbers to all received complaints. Complaints are received and classified according to allegations and not potential outcomes. The systems also note and track allegations of misconduct alleged by individuals who are homeless or have a mental illness.

We found no instances of complaints being improperly classified. The tracking system is being used correctly, and appears to maintain accurate data, based on our comparisons with "known data". APD's Blue Team management software enables the tracking of allegations of misconduct from the homeless or those who have a mental illness. Our review of the relevant log and investigations continues to show that all complaints referred or made to APD IA, that are within the jurisdiction of the CPOA, are referred to CPOA within three business days.

In regard to paragraphs 173 and 178, of the total investigations reviewed by the monitoring team this monitoring period, we found one in which APD personnel received a complaint from a third party, [IMR-11-33]. This matter involved a complaint made at the scene by a father whose daughter had been involved in a traffic stop due to outstanding warrants. The complainant made a complaint to an officer about the demeanor and actions of a second officer in ordering the complainant back into his car. The officer about whom the complaint was made, properly explained the options for making a complaint, and also asked the complainant if he wanted to speak to a supervisor, and immediately contacted a supervisor. The supervisor was involved in another matter and indicated he would not be able to respond for about 20 minutes, after which the complainant gave his phone number and asked instead that the supervisor telephone him. The supervisor followed up in a timely manner. We find that the taking of the complaint and the officer's interactions with the complainant were executed professionally, and the overall handling of the complaint reflects understanding by APD not only of the importance of taking a complaint, but also the importance of professional interactions with a complaining member of the public.

This case is a clear illustration of APD properly taking complaints from a third party and making a timely referral to IAPS, as well as honoring a request for supervisors to be called to the scene or to be otherwise involved in the taking of a complaint. Moreover, we continue to find no cases in which APD received a civilian complaint of misconduct and failed to inform either supervisors or IAPS, nor did we find any incidents in which APD failed to timely refer a complaint to IAPS. Thus, we find operational compliance with paragraphs 173 and 178.

Our stratified random sample found one instance [IMR-11-18] in which a supervisor investigated an incident in which the supervisor could have been deemed a "participant" in the incident under review. This investigation involved allegations of a deficient Use of Force review. The investigation identified but did not address as a possible violation: the issue of whether the sergeant who conducted the use of force review should have handled it because of involvement in the incident by authorizing a PIT (Pursuit

Intervention Technique) during the vehicle pursuit. Although this was not a case of a "participant" conducting an IA complaint investigation, rather it was a Use of Force review, for purposes of paragraph 182 compliance, the monitoring team expects Use of Force Reviews to not be conducted by a "participant", and would expect an IA investigation to address the issue. In this case the sample size is small enough that one error (of eight cases reviewed) constitutes and error rate of 12.5 percent, well above the allowable five percent). APD remains out of operational compliance for paragraph 182.

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**."

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."**

Results

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

4.7.157 Assessing Compliance with Paragraph 171: Prohibition of Refusal to Take Complaints

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."**

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."**

Results

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

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 Division by the end of the shift following the shift in which it was received."**

Results

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

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."**

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."**

Results

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 Division, 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 Division 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."**

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 Division'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.**

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 Division. All information should be referred to the Internal Affairs Division by the end of the shift following the shift in which the misconduct complaint was received, absent exceptional circumstances."**

Results

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

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 Division shall refer the complaint to the Civilian Police Oversight Agency."**

Results

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 Division for review and classification. The Internal Affairs Division shall determine whether the internal complaint will be assigned to a supervisor for investigation or retained by the Internal Affairs Division for investigation. In consultation with the Chief, the commanding officer of the Internal Affairs Division shall also determine whether a civilian or internal complaint will be investigated criminally by the Internal Affairs Division, the Multi- Agency Task Force, and/or referred to the appropriate federal law enforcement agency."**

Results

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 Division in determining where an internal complaint should be assigned."**

Results

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."**

Results

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

Recommendations for Paragraph 182:

4.7.168a: APD should ensure notice of violation and explanation to the supervisor noted in paragraph 168, above. Determine if this was an isolated incident or something that was missed in training, etc.

4.7.168b: If the error noted in paragraph 168 is due to policy, poor training, or other internal issues, ensure the error is corrected by special order, retraining via PowerDMS, or other corrective actions.

4.7.169--4.7.180 Assessing Compliance with Paragraphs 183-194: Investigation of Complaints

Paragraphs 183 through 194 of the CASA pertain to requirements for best practices in the investigation of misconduct complaints. They contain requirements related to quality of investigations, as well as timeliness. For example, they require that all relevant evidence be considered and that investigations be fair, impartial, and reach reliable findings. These paragraphs also create time limits for completion of investigations, designate permissible findings with the corresponding standards of proof, and an assessment regarding whether the facts of an investigation indicate a need for change in policy, procedure, or training. In addition, requirements are set forth

regarding the situations in which there may be simultaneous criminal and administrative investigations of the same subject matter.

In regard to paragraphs 183 through 194, during the 11th monitoring period members of the monitoring team reviewed a stratified random sampling of 8 investigations completed by IAPS Misconduct Division and 11 completed by CPOA. The monitoring team also met with the Chief and the City Attorney, the CPOA director and members of CPOA, IAPS Misconduct Division Commander. In addition, we met with CPOA Board members, reviewed CPOA Board meetings, agendas, minutes, and findings posted on the CPOA website.

The findings related to Paragraphs 183 through 194 address the following requirements of the CASA.

APD personnel are required by policy and practice to cooperate with the internal affairs system. This cooperation is required by regulation and practice. As in past IMRs we find no instances in which APD personnel refused to cooperate with an investigation.

Based on past reviews, we have found that investigations conducted by IAPS Misconduct Division and by CPOA generally have been of good quality. Absent extraordinary circumstances, statements are taken from complainants and relevant witnesses. When statements are not taken, or are taken telephonically instead of in-person, adequate explanations are contained in the investigation report. Interviews are recorded, accurately assessed, and given appropriate evidentiary weight. Investigations are documented in writing and reflect salient training and policy assessments. The appropriate case dispositions are generally made with findings based on the appropriate quantum of proof, except as noted below. This monitoring period, however, our stratified random sample revealed an increase in investigations that we deem to be deficient, as more fully detailed below.

The findings by the monitoring team indicate six deficient investigations of the total 19 investigations (8 IAPS and 11 CPOA) cases we reviewed by way of a stratified random sample. This yields a collective compliance rate of 69% relative to the “quality requirements” set forth in paragraphs 183 and 190 of the CASA, well less than the 95% required for operational compliance. This finding should be appropriate cause for internal assessments at IAPS and CPOA as to the cause for the failure to meet established timelines.

First our review of the stratified random sample of investigations revealed five investigations that were administratively closed or had allegations that were partially administratively closed [IMR-11-23, IMR-11-24, IMR-11-25, IMR-11-26, and IMR-11-19]. Two of these five, specifically [IMR-11-24 and IMR-11-19], were not proper administrative closures, as required by the CASA and established CPOA and APD policy. One of these five, [IMR-11-26] had a correct resolution, but due to a unique fact pattern, required additional comment.

In [IMR-11-24], the allegation involved inappropriate police action in responding to a call from the New Mexico crisis line. The complaint was that the officers improperly forced the complainant to go the hospital in handcuffs and also committed a HIPAA violation because of sharing protected health information with a community engagement team. The OBRD video showed proper actions by the officers in forcing the complainant to go to the hospital for an evaluation. Based on that evidence, the allegation was administratively closed. However, the video did not close out the allegation of a HIPAA violation. We assume that the investigator correctly concluded that the HIPAA applies only to "covered entities" and APD and the officer did not meet the definition of a "covered entity" under the HIPAA statute and implementing regulations. Thus, as a matter of law, the sharing of this information with a community engagement team who needed the information to perform their duties was not a HIPAA violation. However, such a finding was not expressly made in the investigation. It either should have been made, thus closing out the complaint of a HIPPA violation, or an investigation should have been conducted on the HIPAA issue, and thus the administrative closure was improper. We do not consider this to be a major investigative shortcoming, rather it is a failure to document a finding that very easily could have been made by referring to the HIPAA statute or to a HIPAA interpretation from the CPOA legal advisor. We remind CPOA and APD of the necessity of "closing the loop" on all issues raised by a complaint.

In [IMR-11-26], a complaint was made against an individual whom the complainant believed was an off-duty officer. The Executive Director timely (within 3 days) and correctly notified the complainant that the officer had retired approximately a year earlier than the incident and therefore CPOA had no jurisdiction to investigate. However, due to lack of internal communication CPOA personnel went ahead and conducted a preliminary review and then administratively closed the matter. The complainant alleged he had been in an automobile accident with the officer who was off-duty and who bullied the complainant to not call the police to respond to the accident, and encouraged the complainant to utilize a mechanic the officer recommended. Assuming the ex-officer was still on the force, the CPOA investigator conducted a preliminary review and administratively closed the matter based on the fact that the insurance company information had been exchanged, the officer never identified himself as an officer, and the officer was off-duty in his personally owned vehicle. We find that the correct result – administrative closure – was reached in this matter because of a lack of jurisdiction, albeit we do not concur with the CPOA basis for doing so. If in fact the ex-officer was still a member of APD and thus CPOA had jurisdiction to investigate, administrative closure without an interview of the complainant and officer would have been deficient given the allegation of bullying, which can still occur even if legal obligations of exchanging insurance information takes place. However, given the correct result in this matter based on the fact that the officer was no longer a member of APD, we do not count this matter as deficient but rather use it as an illustration of where care must be taken not to over utilize administrative closures in lieu of an investigation.

[IMR-11-19] involved allegations against a Sergeant, Lieutenant, and a Commander for insufficient Use of Force review. Violations were sustained on the allegation against all three. The sustained violations notwithstanding, the allegations against the Sergeant and Lieutenant were administratively closed as minor violations not of a repetitive nature. The administrative closure of these charges was improper. First, sustained violations that pertain to the most crucial and central issue of the CASA – supervisory reviews of Use of Force incidents – should not be resolved by way of administrative closure regardless of how *de minimis* the violations may be deemed to be. Secondly, in regard to the Lieutenant, his retention card showed a level 7 violation within one year of the conduct that formed the basis of the sustained violation in [IMR-11-19], and thus administrative closure was improper. Good practice requires an in-depth administrative review of all processes and involved parties connected to this case.

For the reasons stated above, we find that the use of administrative closures in [IMR-11-24 and IMR-11-19] rendered these investigations deficient. Our review of another four investigations [IMR-11-18, IMR-11-21, IMR-11-22, and IMR-11-30] has revealed additional deficiencies in the conduct of investigations and/or findings rendered during this reporting period.

[IMR-11-18] involved allegations of a deficient Use of Force review. Two issues that were identified in the IA investigation – whether the sergeant who conducted the Use of Force review should have conducted the investigation because of involvement in the incident by authorizing a PIT maneuver (Pursuit Intervention Technique) during the vehicle pursuit, and an issue of untruthfulness in representations made in a Use of Force checklist – were not addressed as possible violations not contained in the original complaint, as would be expected. In addition, there was a second allegation of repeated deficiencies in Use of Force investigations that was dismissed because prior allegations did not result in discipline. We know of no such prohibition in APD policy. Further, APD should carefully review these circumstances to determine exactly who has been undermining the investigative process. These prior incidents should have been reviewed to determine whether there was a pattern of deficient reviews. Imposed discipline in the prior instances is not a prerequisite of finding a pattern of prior deficient supervisory reviews. These are the types of deeply ingrained counter-CASA behaviors that are antithetical to the full empowerment of the reform mandate. We would expect a complete written explication from APD on these “processes” in the next 30 days.

In the monitor’s opinion, we are beginning to find documented evidence of what appears to be pressure against the requirements of the CASA, resulting from the application of pressures from inside the CASA compliance mechanisms, e.g., CPOA and APD IAPS. APD should conduct immediate and forceful internal investigations to determine the source and motivations of this pushback. When located, it needs to be swiftly eliminated. We are aware that these deficiencies were generated by command personnel who have since been transferred to non-CASA involved duties. APD should ensure this was not just a command deficiency, and that they are not dealing with a systemic problem inside these units.

Another case, [IMR-11-21], involved allegations of improper statements of gang affiliation by an officer while trying to calm hostilities and break up an altercation between parties involved in an auto accident. A second allegation was that he allegedly remarked to his sergeant that the sergeant may see the officer affiliated with a gang on You Tube. Based on a thorough review of the OBRD videos, a finding of unfounded was properly entered on the issue of a statement of gang affiliation to an individual involved in the hostilities. However, the allegation of the statement to the sergeant remained unaddressed. That issue should have been closed by interviewing the officer and the sergeant. As such, the investigation was less than thorough, and is not compliant with the requirements of the CASA.

[IMR-11-22] involved a criminal investigation against an officer based on allegations of fraudulent use of a bank account made by an ex-wife. The criminal investigation was properly unfounded, as the evidence revealed administrative error as opposed to fraudulent conduct. There was no additional administrative investigation. Instead the administrative investigation relied on the criminal investigation. Even if the criminal investigation revealed no evidence of a criminal violation based on an administrative standard of proof, there remained the possibility of a standards of conduct issue based on whether the officer reacted quickly enough once notified of the banking discrepancy, which could have been put to rest by administrative interviews of the officer and ex-wife. At best, this process can best be characterized as a short-cut that did not close out a serious potential issue.

In [IMR-11-30], allegations were made against an officer for making an arrest for reckless driving and speeding. The factual complaint implicated potential violations of a false statement in charging reckless driving, abuse of authority/permitting personal feelings to influence official decisions, and improper towing. Charges were unfounded and exonerated. The administrative investigation found that the reckless driving was committed in the presence of the officer and therefore under New Mexico law the arrest was legal. What was not clear from the investigation, however, was why the officer used his discretion to arrest as opposed to issuing a citation. On the video, there was very little discussion between the officer and the driver before the officer asked the driver to get out of the car, and then immediately put the driver under arrest. Conditions that would militate in favor of an arrest for a traffic misdemeanor were not apparent in the video at the time of the interaction between the officer and the driver, nor are they revealed in the IA investigation other than it was a legal action (legal under New Mexico law does not *per se* mean the action does not violate policy). During the IA investigation, the arrestee refused to cooperate with the investigator. The officer apparently was not compelled to submit to an interview but was given the choice of an interview and declined to be interviewed.

What was not set forth in the investigation was that a reading of APD SOP 2-40-3A1d indicates an arrest is mandatory for the charge of reckless driving. This finding would have closed out the allegation of the officer allowing his personal feelings to interfere

with his discretion and decision-making in effecting an arrest. There was a good factual analysis by the investigator of the video of the incident, but the investigation lacked documentation and reference to the applicable policy, which would have closed out the issue of an unwarranted arrest based on personal animosities or feelings. In addition, either the officer should have been compelled to submit to an interview or a finding that the interview was not necessary should have been made.

Several cases reviewed this reporting period at first appeared to employ "short-cuts" and appeared to be less than thorough. Although we agree with the resolutions in these cases, we utilize them to point out the concerns we have regarding findings based on preliminary review or less than complete investigations.

In [IMR-11-20], adverse findings of deficient Use of Force reviews were made solely from an IA review of videos and the Use of Force review. There was no standard IA investigation. That notwithstanding, the findings of deficient Use of Force review were supported by the videos, and the Use of Force review, and were proper. This was less than a complete investigation, a reverse administrative closure where adverse findings were made without a full IA investigation, which could easily be claimed to be an improper investigation on appeal. Notwithstanding the apparently correct findings, the practice is problematic.

[IMR-11-32] involved a complaint against officers for not doing a thorough investigation and for not issuing summonses in a matter involving a custody dispute. The charges were unfounded based on APD's review of extensive videos, and from our review, these findings were correct. However, there is no investigative report, and the matter was treated like an administrative closure, albeit with findings of unfounded. Where findings are based solely on a review of videos, there should be an explanation in the packet as to why further investigation and the taking of statements were not warranted, and why the videos themselves constitute "clear and convincing evidence" to support unfounded findings.

[IMR-11-28]] involved allegations of improper actions against officers who responded to a purported domestic violence, but instead mediated a dispute between a wife and mother-in-law. The amount of evidence from the OBRD video, as well as the interviews that were conducted, clearly provided enough evidence to reach the "unfounded" findings and to show that interviews of other logical witnesses to the incident were not necessary. However, we again caution that, where the interview of logical witnesses is deemed not necessary, an explanation should be given as to why the interviews are not warranted, and why the videos themselves constitute "clear and convincing evidence" that the allegations are unfounded. We note from a review of the CPOA Board meeting minutes that the number of investigations administratively closed by CPOA has been steadily rising. Although the monitoring team agrees that a full investigation may be not be necessary when a preliminary investigation reveals the allegations cannot be minimally sustained and show no other potential areas of misconduct (not based on the original complaint), we again caution CPOA and also IAPS not to utilize this route for

the sake of expediency to counter the effect of an increased workload and present staffing levels. We again signal that findings based on a preliminary review or less than complete investigation should only be used where the review clearly shows the allegations cannot be sustained, there is no indication of a violation not contained in the original complaint that would warrant an investigation, and the videos and/or other evidence in the preliminary review support the standard of proof necessary for the finding.

The advisements to complainants regarding the reopening of administratively closed cases and of appeal of CPOA findings, as well the actual practices related to these advisements, are firmly in place. Although appeals of the findings and recommendations of the Executive Director are not commonly granted, they do occur, as evidenced by the minutes of the CPOA Board meetings. In one such case completed this monitoring period, [IMR-11-29], an investigation had been administratively closed based on erroneous assumptions by the complainant that were later disproven. The complainant asserted her right to appeal to the CPOA Board, and the matter was reopened. A timely and thorough investigation ensued in which charges were properly sustained based on the appropriate standard of evidence. This case illustrates that the reopening of administratively closed cases based on new evidence, and/or the right to appeal, are requirements of the CASA that are honored and with which there is compliance.

In the cases reviewed by the monitoring team this reporting period, we found two cases that had preliminary indications of criminal conduct, [IMR-11-17 and IMR-11-22]. These cases both showed evidence of proper coordination with prosecutorial authorities.

We again point out in this IMR that paragraphs 186 through 188 of the CASA do not allow for *carte blanche* delays of administrative investigations *in toto* during the investigation of a related criminal investigation. In such cases, all aspects of the administrative investigation are to continue, except the taking of statements from witnesses who may incriminate themselves. When that situation occurs, a timely request to the relevant prosecutorial authority must be made before the taking of statements from witnesses who IAPS believes may incriminate themselves. We found no cases where this principle was violated.

We also found no cases in which an officer failed to submit a public safety statement by claiming that the statement would be self-incriminating. The monitor continues to find APD in compliance for the requirements of Paragraph 189.

In regard to the time requirements contained in Paragraph 191, the past performances of IAPS and CPOA generally have been consistent in terms of timely completion of investigations once they are assigned. However, in our current stratified random sample, we have identified six investigations [IMR-11-24, IMR-11-27, IMR-11-32, IMR-11-30, IMR-11-31, IMR-11-28], that did not proceed as expeditiously as required by paragraphs 191 and 281 of the CASA.

In three of the investigations in our review, the exact timeline is difficult to establish, but the investigations appear to be untimely. In [IMR-11-24], the letter to the complainant administratively closing the case is almost six months after the complaint was made and the investigation materials do not reflect when the investigation ended. In [IMR-11-27], a citizen complaint was made in May 2017 and was not assigned for investigation until August 2, 2017. The investigation materials do not make clear when the investigation terminated. However, the close-out letter to the complaining citizen was not dated until March 7, 2020, a grossly overdue action. The investigation in [IMR-11-32] does not show when the investigation was assigned or completed, nor does it indicate whether an extension was given. A draft letter to the complainant reporting findings was dated less than 120 days after receipt of complaint, but was not forwarded to the complainant until approximately six months after receipt of the complaint. We are unclear as to the reasons for this unusual delay. Such delays should be documented and explained in investigatory complaints.

Three other investigations involved both untimely assignments and untimely investigations. [IMR-11-30] involved a delay of 12 days between receipt of complaint and assignment for investigation, and although the investigation materials do not make clear when the investigation ended, the close-out letter to the complainant was more than 10 months after receipt of the complaint. [IMR-11-31] involved a delay between receipt of complaint and assignment of more than a month. In addition, despite an extension of 30 days, the report was not completed until approximately six months after assignment, and there was a delay of a month between completion of the investigation and the start of review by the chain of command. In [IMR-11-28], the complaint is dated December 7, 2018, and the complaint form as well as the investigation materials do not indicate when it was received by CPOA, an administrative lapse on the part of CPOA. The matter was assigned for investigation on February 2, 2019. This is an untimely assignment. The investigator received a signed extension on April 29, 2019, but the investigative materials do not show when the investigation was completed. Even if the investigation was completed within 120 days of assignment, notice of findings did not go out to the complainant until November 15, 2019, more than a year after the date of the complaint and more than nine months after assignment for investigation. The monitor notes that, on many levels, these delays are problematic.

We therefore find that these six investigations (of 19 reviewed) were deficient in meeting required timelines, a compliance rate of only 68 percent with the time requirements of the CASA, an improvement over the 62 percent exhibited in IMR 10, but still less than the 81 percent compliance rate exhibited in IMR 9 and the 95 percent required to obtain compliance.

Although not part of the stratified random sample discussed above, in regard to the time requirements of paragraph 191, in the 11th IMR monitoring period, the monitoring team learned of 28 untimely investigations discovered at IAPS that had missed their time deadline for the imposition of discipline, and of the discovery of 50 unprocessed files at

CPOA that are likewise out of line with CASA and CBA time requirements. “Errors” of this sort simply must cease in order for operational compliance to be achieved with the time requirements of paragraph 191 and 281, and the disciplinary requirements of paragraph 202. We note that a detailed fault analysis by the Accountability and Oversight Division is currently underway and will result in a report identifying the top five reasons for the issues noted above, as well as an assessment of individual culpability in the identified failures. Once this internal review is completed and approved by the monitor, the monitor will work with APD and CPOA to recommend specific steps for any proposed changes to processes, and to develop specific timelines and responsibilities for implementing needed changes. Finally, we will work with AOD and CPOA to identify measurable outcomes indicators by which the effectiveness of our collaborative process can be assessed. Both AOD and CPOA need to carefully assess what created these anomalies and implement policy, training, or supervisory processes to ensure they do not re-occur. Failure analyses on critical aspects of the CASA involving CPOA and IAB should be a routine part of the management process.

The ability, capacity, and demonstrated commitment to investigate, in a timely manner, allegations of misconduct and to review completed investigations in a timely and effective manner, determine whether discipline actually is permitted, thus this is a critical issue. Exact timelines are not only required under paragraphs 191 and 281 of the CASA but are also required by virtue of the application of the Collective Bargaining Agreement (CBA). These documents directly impact APD’s obligation to provide consistent, fair, and progressive discipline on sustained charges, as required by paragraphs 201 and 202 of the CASA. APD and CPOA performance, from taking a complaint of alleged misconduct, to the imposition of discipline (when warranted), in a timeframe that is not barred by the CBA, will continue to be an area of scrutiny by the monitoring team in future IMRs. To be clear, these are mission-critical shortfalls at both APD and CPOA, and cannot be allowed to continue.

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.”**

Results

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

Recommendations for Paragraph 183:

4.7.169a: The practice of utilizing ACMs for CASA-related issues was prohibited by Special Order in April of 2019; however, this prohibition must be supported by assiduously careful internal processes to ensure that the prohibition is followed by supervisors and command personnel, and that those who do not adhere to these requirements are noted, and corrective action is taken.

4.7.169b: The City should appoint a review and approval authority for all external APD IA investigations that are conducted by an independent investigator. The appropriateness of determining the need for external investigation should be documented in writing.

4.7.169c: In investigations in which the complainant(s) or logical witnesses are not interviewed, or in matters that are administratively closed, the investigation should include a clear written explanation of why the interviews were not conducted and/or why further investigation steps were not warranted to reach the resolutions/findings in the investigation.

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."**

Results

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 Division 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."**

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**."

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 Division 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**."

Results

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 Division 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 Division. The Internal Affairs Division 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 Division shall continue with the administrative investigation of the allegation. Consistent with Paragraph 186, the Internal Affairs Division 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 Division deems such interviews appropriate**."

Results

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

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."**

Results

No instances of officers refusing to provide a public safety statement were noted during, this reporting or in previous reporting periods.

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

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."

Results

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

Recommendation for Paragraph 190:

4.7.176a: For investigations found to be deficient, follow up on any deficiencies noted by this IMR, and analyze, discuss, and use critical failures as illustrations and learning points guiding needed changes.

4.7.176b: Enforce policies, timelines, and review protocols to further refine investigative quality.

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 Division 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."**

Results

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

Recommendations for Paragraph 191:

4.7.177a: APD and CPOA should refocus their efforts related to this paragraph by conducting a quantitative analysis of the reasons that cause any case to be delayed past 90 days.

4.7.177b: Once causes for these delays are identified, develop recommendations for changes to policy, staffing, procedure, or practice that are designed to eliminate such delays.

4.7.177c: All investigations should include a clear timeline that delineates date of receipt of complaint, date of assignment, date of extension if applicable, date investigation is completed, dates review period begins and ends, and date of notice of intent to discipline if applicable.

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."**

Results

Primary: **In Compliance**
Secondary: **In Compliance**

Operational: **Not In Compliance**

Recommendation for Paragraph 192:

4.7.178a: : ***Although the monitoring team agrees with the use of dispensing of a full investigation in cases in which a preliminary investigation reveals the allegations cannot be minimally sustained and show no other potential areas of misconduct (not based on the original complaint), we caution APD and CPOA not to utilize this method of preliminary investigations /less than full investigation for expediency sake in instances in which the complaint, in conjunction with the underlying facts, calls for a complete investigation.***

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."**

Results

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: (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)."**

Results

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

Monitor's Note:

The Parties and the monitor have discussed potential issues related to the requirement in paragraph 188 of the CASA that the IAPS Commander coordinate with the Chief when consulting with the relevant prosecuting agency in instances where a misconduct complaint intake or investigation reveals "there may have been criminal conduct by … APD personnel."

The practical problem with a strict interpretation of this language is that prosecutors are reluctant to discuss cases where there is less than probable cause or less than at least reasonable suspicion that a crime has been committed, whereas the phrase "may have been" alludes to a mere suspicion standard. This is a tension that needs to be addressed and resolved either by a revision to the CASA, or by revised procedural or process changes at APD.

Absent final written confirmation, the parties have reached a negotiated solution agreeable to the monitor that will allow a preliminary or continued administrative investigation to take place and a determination of probable cause that a crime was committed to be developed before the coordination with relevant prosecuting agency is required under paragraph 188. Despite our urging in IMR 9, this refinement of process has still not been agreed to in writing. This is another item on the critical path for both APD and CPOA and must receive careful and expeditious consideration.

As noted in the Civilian Police Oversight section of this report, CPOA has utilized the Administratively Closed disposition in situations where a preliminary investigation cannot minimally sustain the allegations contained in a complaint. In such cases, based on this initial evidence, the investigation is cut short and administratively closed without necessarily interviewing all relevant witnesses or even the complainant in some instances and has also started to reach findings other than administrative closures based on preliminary investigations. The monitor realizes the need to wisely and economically deploy resources, and thus does not specifically disapprove of this practice in theory. However, we again caution that in following this practice, other policy violations that are not contained in the initial complaint could be missed. As noted earlier, the number of administrative closures has risen steadily since the agreement of the monitor and the Parties that administrative closures may also be used where a preliminary investigation cannot minimally sustain the allegations contained in a complaint. Therefore, we suggest that APD and CPOA utilize this practice only when the preliminary investigation has developed a preponderance of the evidence that

substantially "closes the door" on the alleged policy violation and any reasonably foreseeable-related violations.

As stated earlier in this IMR in regard to staffing of IAFD, and later in paragraphs 271-292 regarding CPOA, full staffing of these units must be commensurate with the requirements of policy vis a vis when the investigative timeline begins for complaint investigations, and resulting deadlines, workload analyses, and data projections. This is crucial to the ability of APD and CPOA to conduct effective, thorough, and efficient investigations that result in factually supported findings, and demonstrate fair and progressive discipline and corrective actions when allegations are sustained. Particular attention must be paid to CASA related violations, which for the sake of consistency and importance to the CASA compliance process, should be investigated by IAPS and not by members of Area Commands, nor should they be resolved by way of administrative closure. Given these newly accepted processes at APD, staffing of units on the "critical path" involving misconduct and force assessment may need to be revisited.

4.7.181 – 4.7.183 Assessing Compliance with Paragraphs 195-197: Preventing Retaliation

Paragraphs 195 through 197 of the CASA pertain to the City's requirement to prevent retaliation against anyone who reports misconduct or cooperates in a misconduct investigation, by any employee of the City, including of course APD members, and making it a ground for discipline.

Members of the monitoring team have reviewed both City and APD policies regarding the prohibition of retaliation, and they remain unchanged. The monitoring team also selected and reviewed a stratified random sample of IA and CPOA cases completed during the 11th IMR review period. They also met with members of IAPS and CPOA during our bi-annual site visits and received updates in the practices of each agency.

Retaliation is clearly prohibited both as a matter of City and APD policy. The Albuquerque Code of Ordinances prohibits retaliation for reporting improper governmental action and APD policy prohibits retaliation and/or making it grounds for discipline is found in SOP (AO 3-41-4-A, GO 1-1-E-10, GO1-4-3-C-2, and GO 1-5-3-B-4).

As reported in IMR 10, the monitoring team has received an attestation showing that the annual meeting requirement between CPOA and IAPS, in which APD's anti-retaliation policy is reviewed, occurred on June 5, 2019. During that meeting, the Commander of IAPS and the Executive Director of CPOA concurred that the anti-retaliation policy in its present form met the needs of the APD and CPOA. We would expect a similar attestation in or about June of 2020, outside of the current monitoring period, that would

again meet this annual requirement. They also confirmed that there were no allegations involving retaliation during the monitoring period.

The monitoring team again found no investigations in its review of the random sample involving complaints of retaliation. Although this aspect was non-observable this monitoring period, in light of APD's clear policy and the IAPS investigative performance with past retaliation complaints, APD remains in compliance with paragraphs 195-197. All data reviewed by, and observations made by, the monitoring team for this reporting period continue to demonstrate compliance for the tasks in paragraphs 195-197.

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."**

Results

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 Operational Date, and annually thereafter, the Internal Affairs Division 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."**

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.**

Results

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

4.7.184 – 4.7.186 Assessing Compliance with Paragraphs 198–200: Staffing and Training Requirements

Paragraphs 198 through 200 of the CASA require the City to adequately fund and resource internal affairs functions (IAPS and CPOA and the CPOA Board), and also require that APD personnel who conduct misconduct investigations and CPOA investigators to receive a baseline amount of initial annual training.

Consistent with past site visits, the monitoring team met with IAPS and CPOA on several occasions including visits to their respective offices and inspection of physical space. The monitoring team discussed staffing needs and training, also reviewed staffing charts and training records, and assessed the timelines of processing complaints and information of potential misconduct in investigations that were randomly selected, as well as assessed the quality of the investigations. The findings related to Paragraphs 198 through 200 indicate the following outcomes, related to requirements of the CASA.

IAPS staffing appears to be adequate at this time to meet its responsibilities. However, consistent with what was stated in IMR 10, it bears repeating that additional staff may still be required to complete thorough investigations in a timely manner under the time constraints of the CASA and CBA. The CASA and the CBA utilize the same timeline (90 days or 120 days with an extension approved by the Chief). The CASA specifies the investigative timeline begins with "the initiation of the complaint investigation" (paragraph 191), whereas the CBA is silent on when the timeline begins. Compliance with the CBA time constraints obviously affects the APD's ability to impose discipline on sustained charges (and compliance with CASA paragraphs 201 and 202).

The CPOA Ordinance and the CASA require that CPOA and the CPOA Board be given staff sufficient to carry out the agency functions contained in the Ordinance. By virtue of the original Albuquerque Police Oversight Ordinance, CPOA was provided a dedicated and independent source of funding equal to, at a minimum, ½ of 1% of the APD annual operational budget. This funding was adequate in the past. However, the requirement of ½ of 1% has since been removed by City Council when it amended the Oversight Ordinance (CS/2 O-18-23) in March 2019. Although we cannot determine that the present CPOA budget was less than adequate during the IMR 11 reporting period (as set forth more fully in our discussion regarding paragraphs 278 and 279), we are beginning to observe indications of understaffing at CPOA. Examples are the discovery of fifty unprocessed files that are now out of time with CASA and CBA time requirements, and the number of untimely cases revealed by our stratified random sample, discussed more fully in conjunction with paragraphs 191 and 281 of this report. The CPOA budget and staffing, and the correlation with CPOA's ability to comply with its CASA requirements, will be a focus of the monitoring team in future review periods.

We note that CPOA was contracting with the Institute for Social Research, University of New Mexico, for data and trend analysis tasks in order to meet its public reporting responsibilities. We indicated in IMR 10 that CPOA had been given approval to hire a data analyst. Consistent with our discussion regarding paragraph 292 of this IMR, we can report that this hiring has been affected, and a data analyst is now on the CPOA staff. The data and trend analysis reportedly will again be conducted internally. The monitoring team notes that this must be a seamless transition so that it does not adversely impact CPOA's timeline in meeting its public information responsibilities.

As we have pointed out since IMR 8, we have found that work processes of those APD units charged with conducting misconduct investigations exhibited issues in complying with elements related to paragraph 199 of the CASA. We are satisfied that the training requirement is met for those members of IAPS who are doing the bulk of the investigations and the investigations involving serious misconduct. Both the 24-hour preliminary and the 8-hour in-service training address the requirements of this paragraph. However, the paragraph requires annual training of at least 8 hours not only for IAPS personnel, but also for members of the Area Commands who may be assigned internal affairs investigations to conduct. There is a practice of assigning IA investigations to members of an Area Command, at the rank of Sergeant, to conduct investigations alleging minor misconduct against APD members of the same command. Since the 9th IMR, we put IAPS on notice that a satisfactory training policy must be developed and implemented for members of the section.

We had seen preliminary indications that APD developed an annual training plan that would meet the 8-hour annual requirement for these personnel. Although that policy was not finalized by the end of the 10th monitoring period, we were informed that the policy was near completion during the 11th reporting period. Despite two IMRs in which the necessity of this training policy has been flagged as an issue, the policy still was not finalized, approved, and implemented by the end of the 11th monitoring period. During

this monitoring period, we were informed that the IA investigations training policy that was being developed for Area Command sergeants had undergone revisions, and at the end of this monitoring period the revised policy was undergoing review at the training academy. Once this Training Academy review is complete, the policy will eventually undergo an analysis by the parties and be presented to the monitor for approval. The slow pace of development of this training package at IA has kept APD out of compliance for CASA paragraphs that are on the critical path to success.

This continuing lack of a detailed training plan is more than concerning. The process has been noted for scrutiny in IMR 12, including the proposed content of policy and training plans, and assessment of the degree that they meet the mandates of paragraph 199 ("policies and protocols on taking compelled statements and conducting parallel administrative and criminal investigations").

Also, in regard to CPOA training requirements, since IMR 8 we have noted that the initial training provided by CPOA's legal counsel was well organized and delivered. It addresses all salient points of the CASA and of internal complaint investigations. The annual training for the past years for CPOA investigators involved the annual NACOLE (National Association of Civilian Oversight of Law Enforcement) conference. The agenda for the NACOLE training can be found online. Although we found it generally relevant to the CPOA mission, testing measures and results could not be evaluated.

In response to our observations in IMR 8 and 9, CPOA has diversified its annual training beyond the annual NACOLE conference. CPOA Board members, as well as CPOA staff, have attended Force Review Board training that included a pre and post-test to gauge whether training objectives have been met. Counsel for the CPOA also provided training to the CPOA Board regarding the Police Oversight Ordinance updates and revisions. In addition, during this monitoring period, a CPOA investigator again attended the Use of Force Summit conducted by the Daigle Law Group, a law firm that specializes "in management consulting services in support and development of effective and constitutional practices".

To date, and despite noting the issue in the past several IMRs, testing measures for external training have not been developed. We again reiterate that adequate testing measures must be presented to and approved by the monitor for CPOA external training in furtherance of the annual training requirement, in order to achieve operational compliance with paragraph 199. This is particularly critical given recent issues we have noted at CPOA.

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 Division 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."

Results

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

4.7.185 Assessing Compliance with Paragraph 199: IA Initial and Annual Training

Paragraph 199 stipulates:

"All APD personnel conducting misconduct investigations, whether assigned to the Internal Affairs Division, 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."

Results

Primary: **In Compliance**
Secondary: **In Compliance**
Operational: **Not 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 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."

Results

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

Recommendations for Paragraphs 199 and 200:

4.7.185-186a: Identify the cadre of Area Command sergeants who may be assigned misconduct investigation and develop an annual IA training program for them and have them complete same on an annual basis.

4.7.185-186b: Do not assign a misconduct investigation to any APD personnel who have not met the annual training requirement.

4.7.185-186c: CPOA should develop an assessment mechanism to measure the effectiveness of outside training such as the NACOLE conference. That can easily be done by "testing" by CPOA once the CPOA investigators have completed the NACOLE training.

4.7.185-186d: Investigations involving allegations that are CASA related should remain with IAPS and not be transferred to Area Command personnel.

4.7.187 – 4.7.188 Assessing Compliance with Paragraphs 201- 202: Discipline and Transparency

Paragraphs 201-202 require discipline be imposed for sustained violations that are fact-based, with adequate consideration of aggravating and mitigating circumstances. These paragraphs also require the use of a disciplinary matrix in imposing discipline and sets forth required elements for the disciplinary matrix. Read together, these paragraphs require progressive discipline that is fair, consistent, and commensurate with a balancing of the aggravating and mitigating factors.

The monitoring team reviewed a stratified random sample of cases investigated during this review period. We also met with the Chief of Police, the City Attorney, the CPOA Director, and IA Misconduct Division Commander and reviewed APD discipline processes.

As we commented in IMR-8 through IMR-10, marked improvements have been made to the technical components of the APD disciplinary system. These changes provide the supervisory chain and the chief with the information necessary to facilitate the accurate calculation of the appropriate level of discipline. The continued use of the "Disciplinary Action Packet" (DAP) is an enhancement in the disciplinary process. The DAP serves as a guideline by giving the subject officer's supervisory chain and the Chief information

regarding each disciplinary matter in which discipline can be imposed. The following information elements are included in the DAP:

a. Recommendations regarding the class designation of the policy violations under consideration;

b. An accurate "snapshot" of the subject's disciplinary record and prior offenses; and

c. A recommended preliminary disciplinary calculation, based on the appropriate elements in the disciplinary matrix, setting forth the range (minimum and maximum) of discipline.

In addition, retention cards are being updated to provide the classification of any prior sustained offenses and dates of imposition of discipline. Classification levels for SOP violations continue to be reviewed and updated. This greatly facilitates the calculation of the appropriate offense level, the identification of applicable prior offenses, and selection of the appropriate range within the disciplinary matrix. We note that these "process changes" do not always affect the "hidden side" of the disciplinary process. As we have described fully in this report, supervisory and command elements often use (or create) loopholes, such as delaying response long enough to preclude discipline.

Although the DAP is a marked improvement, it is being utilized only in cases that are investigated by IAPS and is not yet utilized by CPOA. This results in the Chief receiving sustained charges in two different formats, which is not an ideal situation. Consistent with our recommendation below, we strongly urge a uniform system and recommend that CPOA adopt the practice of utilizing the DAP on investigations with sustained charges.

SOP AO 3-46 ("Discipline System") with its Appended Chart of Sanctions (Discipline Matrix) is still under review and a draft has not yet been distributed to the Parties for comment as of the date this report was written. The matrix is crucial to the disciplinary process, and thus to CASA compliance, that a new AO 3-46 be approved and implemented as soon as practicable. It is further imperative that the policy be trained, and that the training be assessed for efficacy. Although policy correctly requires that any deviation from the presumptive range of discipline (appropriate range as established by the Chart of Sanctions) be justified in writing (3-46-5B4), as currently written, the extant guidance is confusing in that it does not allow for a clear and uniform way of calculating progressive discipline. Since IMR-6, we have noted that a discrepancy exists between paragraphs 5c2 and 5c4 of AO 3-46, that allows for different interpretations of what constitutes a prior offense, based on whether the prior offense is, or is not, in the same class as the present offense. We have also noted that SOP 3-46-5G allows for the imposition of non-disciplinary corrective action in addition to applicable discipline, but it does not contain notice that non-disciplinary corrective action should not be the only resolution, if the matrix calls for the imposition of discipline. We

have learned that these past recommendations are being addressed in the current review and revision of the “Discipline System” policy. APD should ensure that AO 3-46 is a priority for the IMR 12 period, as it implicates operational compliance. We are concerned that APD could take such an extended time to remedy issues with such a critical system as discipline.

We urge APD to continue its efforts to upgrade retention cards to reflect all prior sustained violations and the corresponding levels of classification. We also applaud the efforts to upgrade the classification of violations, that is to designate the proper classification level for each violation, and where a range of levels is selected, to offer guidance on what level within the range is appropriate. These efforts will enhance the disciplinary system by decreasing subjectivity in calculating the appropriate discipline, while allowing the Chief to retain justifiable discretion in imposing discipline within the parameters of A0 3-46.

Notwithstanding the recent improvements in the disciplinary process, our review continues to note issues with elements related to the imposition of discipline. The monitoring team reviewed a stratified random sample of cases completed during the review period. In that review, we identified six cases in which discipline was imposed or should have been imposed [IMR-11-29, IMR-11-15, IMR-11-17, IMR-11-18, IMR-11-19, IMR-11-20].

Of those six cases we found three in which discipline was deficient, either because discipline was not imposed when it should have been, the tenets of the discipline regulation (AO 3-46) or the Chart of Sanctions (Disciplinary Matrix) were not followed, or the level of discipline was otherwise inappropriate. This equals a compliance rate of only 50% with the requirements of paragraphs 201 and 202, a slight improvement from the 40% compliance rate set forth in IMR 10. A fifty percent compliance rate with a process so critical to effective order and discipline is simply not acceptable.

These cases are discussed below.

[IMR-11-29] was a matter reopened by CPOA based on an appeal by a civilian complainant. Allegations were sustained against an officer for violations involving failing to conduct a preliminary investigation on a felony or misdemeanor, for conduct unbecoming, failure to answer questions truthfully, and failure to enter an item into evidence. The CPOA recommendation was for termination. Despite a recommendation of termination from the Chain of Command and the Chief initially indicating he intended to impose a termination subsequent to a PDH, the Chief imposed a 32-hour suspension with 16 hours to be held in abeyance. One of the four findings was a sustained finding of untruthfulness. Given fact that finding regarding untruthfulness was sustained, the execution of a simple two-day suspension was simply inadequate, as it clearly did not equal the appropriate range for a level I violation. There is also a dichotomy in that a recording of the PDH itself reflects that the Chief, as the finder of fact based on evidence presented at the PDH, was not actually making a finding of untruthfulness. On

the other hand, the Chief's final memorandum of discipline does indicate that the truthfulness violation was sustained. One of two actions should have occurred. Either, there should have been no finding of untruthfulness contrary to the findings of the CPOA recommendation and investigation, with an adequate explanation as to why the CPOA findings were not being adopted, and appropriate discipline issued, or there should have been a finding of untruthfulness in which greater discipline should have been imposed. In addition, a review of the PDH evidenced more of a counseling session than a disciplinary hearing, and given the fact that there was an active defense and APOA involvement, we see a prime example of why a representative of IAPS or an administrative prosecutor should be present at a PDH. In short, we find the disciplinary process in this case to be woefully deficient, and we see no policy, procedure, rule, regulation, or training that would preclude repeated examples of this process. This needs to be rectified immediately.

Another case of deficient discipline involved a matter with a mistaken level classification [IMR-11-18]. The allegations were an improper Use of Force review and also a pattern of deficient reviews on prior occasions. The allegation of a deficient Use of Force was sustained. The classification level was a range of 4-7. This matter was addressed as a level 7, with an only a verbal reprimand imposed. We find the selection of a level 7 to be erroneous; there were overtones of untruthfulness in this matter regarding the truthful completion of a Use of Force checklist, as well as a documented attitude of not embracing the Use of Force review process by the subject sergeant. The classification level was, in the monitor's opinion, too lenient, given the counter-CASA elements of the case; therefore, incorrect and resulting discipline was also too lenient, failing to properly weigh aggravating factors.

[IMR-11-19] involved sustained findings against a Commander, Lieutenant, and Sergeant for deficient supervisory Use of Force reviews in failing to spot an issue regarding the use of a Taser against a fleeing suspect. Notwithstanding the sustained findings, the violations against the Lieutenant and Sergeant were administratively dismissed as minor and not of a repetitive nature. These administrative closures were improper, even more so for the Lieutenant, whose retention card showed a level 7 violation within one year of the conduct that formed the basis of the IA investigation. Regarding the Commander, he was given a verbal warning even though his retention card showed prior violations emanating out of the backlog cases. Given the rather obvious issue that was not addressed in the Use of Force review, a verbal reprimand is deficient discipline, especially in light of the repeated disregard for the CASA requirements in this area. The monitoring team emphasizes that "good order and discipline" cannot be maintained under such disciplinary deviations from established policy. Given recent facts related to discipline at APD, such lapses are beginning to occur in sufficient volume as to affect behavior in the field.

As we have stated in our discussions regarding the timeliness of investigations, (paragraphs 191 and 281), and in regard to sufficiency of staffing (paragraph 198), this reporting period revealed the discovery at IAPS of 28 untimely investigations (with no

evidence of extensions requested) that had missed their time deadline for the imposition of discipline, and for which no extensions had been requested. We were informed of an additional 50 unprocessed files at CPOA that are likewise out of time with CASA and CBA time requirements. Insofar as a certain percentage of these 78 matters likely would have indicated sustained allegations and discipline obviously cannot be imposed (due to time limitations in the CBA), we find these cases to have been egregiously mis-managed. Based on this and our review of the stratified random sample of internal cases, APD remains out of compliance with two critical paragraphs of the CASA: 201 and 202. Paragraph 201 requires that "APD shall ensure that discipline for sustained allegations of misconduct is consistently applied". Paragraph 202 requires "APD shall establish a disciplinary matrix that: "requires that any departure from the presumptive range of discipline must be justified in writing." While the reasons for these untimely cases are different (IAPS cases were simply not timely, and CPOA cases were due to the discovery of more than fifty unprocessed case files simply not processed by the intake employee responsible), the outcomes are the same—discipline is prohibited due to untimely investigations.

The Monitor again notes that in regard to paragraphs 198 through 200 of this report, compliance with the CBA in not imposing discipline that is "time-barred" does not excuse APD's failure to meet the requirements of paragraphs 201 and 202 of the CASA to impose appropriate discipline on sustained charges. The monitoring team expects APD and CPOA to be staffed sufficiently to meet its investigative responsibilities in a timely manner, to operate efficiently, and to bring sustained charges to the Command review process in time for the review process to run its normal course. We also expect that the Command review will take place in an efficient manner, such that when discipline is appropriate, the Notice of Intent to Discipline letter will be issued within the requisite time period. Investigations ending with "failure to impose discipline on sustained charges due to time considerations" are marked as deficient for purposes of paragraph 201 and 202 assessments. The time-honored practice of letting sustained charges wither on the vine must stop.

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."**

Results

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

Recommendations for Paragraph 201:

4.7.187a: Ensure that all disciplinary decisions address the presumptive range of the disciplinary matrix, unless written reasons for departure from the matrix recommendations accompany the decision.

4.7.187b: Ensure that adequate explanation is given for the selection of a classification level where there is more than one level of classification associated with a regulation for which a sustained finding is made.

4.7.187c: APD should designate the Commander of IAPS or a Deputy Chief as the only person in the organization who has the authority to determine that discipline cannot be imposed due to time violations, and that designation should not be made without the approval of the City Attorney, based on persuasive and factual evidence.

4.7.187d: All investigations involving sustained charges where discipline cannot be imposed due to violations of time constraints should be reported quarterly to the Chief, the City Attorney, DOJ, and the Monitor.

4.7.187e: APD should adopt the practice of having a representative of IAPS or an administrative prosecutor attend PDHs and represent the findings and recommendations set forth in the investigation.

4.7.187f: Ensure uniformity in the amount and format of summarizing information presented to the Chief with investigations. CPOA should follow the IAPS practice and adopt the use of Disciplinary Action Packets to accompany its investigations in which charges are sustained.

4.7.188 Assessing Compliance with Paragraph 202: Discipline Matrix

Paragraph 202 stipulates:

> **"APD shall establish a disciplinary matrix that:**
>
> **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."

Results

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

Recommendations for Paragraph 202:

4.7.188a: Ensure that all disciplinary decisions either conform to the recommended ranges included in APD's disciplinary matrix or that they are accompanied by written detailed explanations for the departure from the recommendations of the disciplinary matrix.

4.7.188b: Ensure that all disciplinary decisions related to actions (or inactions) that are reasonably on the "critical path" regarding compliance with the CASA reflect a steadfast resolve to foster behaviors required by the CASA.

4.7.188c: Ensure that all disciplinary packets are complete and self-explanatory, including documentation that all steps in the investigation and disciplinary processes were completed as required by policy.

4.7.188d: Ensure a more exact calculation of prior offenses for purposes of calculating the presumptive range of the disciplinary matrix.

4.7188e: Ensure that all disciplinary decisions address the presumptive range of the disciplinary matrix, unless cogent, written reasons for departure from the matrix recommendations accompany the decision.

4.7188f: Adopt a revised AO 3-46 on a priority basis and ensure it reflects the tenets of the CASA and principles of fair and consistent discipline, and clearly set forth the information necessary to meet recommendation 4.7188d, that is, what offenses count as a prior offense and how to calculate the appropriate range of the disciplinary matrix in accordance with the principles of progressive discipline.

4.7188g: Ensure that a revised AO 3-46 addresses when a suspension can be held in abeyance and the criteria for doing so, and that a cogent explanation consistent with the tenets of progressive discipline be given whenever a suspension is held in abeyance.

4.7188h: Insert an additional column in the disciplinary decision matrix that identifies whether or not the range of discipline is enhanced by prior offenses.

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."**

Methodology

Members of the monitoring is aware of past external staffing study work at APD by the Weiss Group that articulated staffing goals. Despite that work, no "magic number" exists to identify the exact number of officers APD needs to establish staffing levels that will facilitate its ability to meet its workload in the field. Based on the monitor's experience, these numbers tend to change almost annually. During 2018, APD has received an increased number of applications for entry-level patrol positions—along with a substantial increase in applications for lateral-entry positions. The agency has also made a palpable and commendable shift from "traditional" policing methods to community-oriented policing methods. These changes have yet to be reflected in APD's police staffing practices, nor has any assessment of changes to staffing models etc. been documented.

Results

Given the apparent new pool of individuals interested in careers at APD, it seems appropriate for APD to develop clearly articulated goals and objectives for its recruiting and hiring processes. Outcome variables are available, such as calls for service per officer per shift, specific response time goals, etc. In the monitor's experience, the static numbers generated over four years ago become invalid after as little as a year.

Outcome variable-based staffing levels can and should be updated and assessed annually.

APD remains in secondary compliance with this paragraph based on current staffing, efforts to improve outreach, and current numbers of recruits and lateral transfers who have expressed interest. Over the last year, APD has moved from a sparse recruiting environment to a reasonably abundant recruiting environment. Whether the change is due to the new leadership at APD, the shift in focus at APD from pure enforcement to service delivery and community-oriented policing, or improvements in APD's salary structure is unclear. What is clear is that interest in APD careers has elevated recently. Operational compliance will depend on meeting established recruiting goals, based on the calculated number of officers needed to meet the policing objectives of the City of Albuquerque's neighborhoods. These new goals should be based on detailed analysis of calls-for-service rates, new community-oriented goals, quantitative workload analyses, and detailed historical "perspective" information.

Primary: **In Compliance**
Secondary: **In Compliance (based on Weiss study)**
Operational: **Not In Compliance**

Recommendations for Paragraph 203:

4.7.189a: Review the available literature and process on staffing goals. Where practicable make staffing goals contingent upon desired outcome goals, e.g., average response times; committed hours per officer, by patrol shift; available non-committed time to pursue community-oriented policing goals, etc.

4.7.189b: Consult with other police agencies who have incorporated community-oriented policing into their service delivery functions to determine how they collect, track, calculate and analyze staffing needs and community policing goals.

4.7.190 Assessing Compliance with Paragraph 204: Comprehensive Staffing Study

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 Operational 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

Alexander Weiss and Associates completed an APD staffing study in 2015, and specific staffing standards were identified. Since 2015 APD has encountered difficulties meeting those standards. In IMR-6 we found APD in compliance with the requirements of Paragraph 204. Staffing standards were articulated by APD. Historically, APD has had difficulty generating the number of recruits and lateral transfers called for by the results of its staffing studies. That issue seems to have changed markedly recently, with APD experiencing substantial increases in applicants. The staffing plan developed by APD during the last year meets the standards articulated by Paragraph 204. We note in our analysis in Paragraph 203 above that "traditional" staffing analyses often poorly translate into community policing staffing analyses. Our recommendations for Paragraph 203 also apply to paragraph 204. We note the staffing analysis for community-oriented policing is a newly identified need, necessitated by APD's recent successes in transitioning to processes supportive of community-oriented policing. As we have observed in other agencies moving to community-oriented policing, staffing decisions often can only be made after careful study of the time requirements of intensive community-oriented policing efforts. This holds true for APD.

APD maintains its past status on this paragraph; however, the juxtaposition of APD's old staffing calculation methods are somewhat archaic when confronted by the needs of community-oriented policing. In order to maintain current compliance levels, APD needs to plan, develop, and move forward (with some alacrity) in developing a working model of calculating staffing needs for its new community-oriented style of policing. The somewhat archaic Weiss calculations will be less and less effective as APD moves from a "call response model" to a community policing model and may well need to be revisited and revised.

Results

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

4.7.191 – 4.7.194 Assessing Compliance with Paragraphs 205- 208: Supervision and Related Paragraphs

The following paragraphs of this report correspond to the Supervision (and related) paragraphs, as delineated in the CASA sections 205 through 208. These paragraphs address supervision requirements for first line supervisors, the span of control and levels of supervision, supervision within the chain of command, and the close supervision of officers by lieutenants and commanders.

During the November 2019 site visit, the monitoring team met with the APD staff tasked with paragraphs 205 through 208. Data for any and all progress from the last reporting period was requested during this visit. In the previous reporting period, the monitor reported that APD implemented a process to best position their organization to achieve the requirements of the CASA as it relates to these paragraphs. As stated in the last report, APD believes it will take twelve to eighteen months to fully implement all necessary changes. Once again during this reporting period, as was the case in the previous period, more attention was given to improving monthly activity reports, monthly check-off lists, monthly line-inspection forms, video inspections, and firearms. APD's PMU conducted quantitative evaluations and audits on particular areas of the agreement as it relates to the supervision aspects of these paragraphs. The monitoring team has requested and received the following documents and documentation of processes related to these paragraphs:

- Supervision Scorecards Status Reports (2019 through January 2020);
- Scorecards encompass four area commands and each topic covered (carry approved firearms, carry approved ammunition, qualification with primary duty weapon, supervision 8:1 ratio, ECW carried on weak-side, and two video reviews per officer);
- Line-up reports for six area commands (8:1 Ratio); and
- CAD entry reports for six area commands.

During this reporting period, APD conducted pilot audits in four of its area commands. The documents supplied address the issues that APD has identified and assessed for this reporting period. The documentation also shows improvement in the work quality of APD supervisors and a higher level of compliance. However, as reported in IMR-10, the monitoring team will need to review larger data samples. This will allow the monitoring team to determine if APD is meeting their short-term goals set for the reporting period and if they are moving in the right direction to meet the requirements of the CASA and strive for full compliance.

The monitoring team visited each of APD's six area commands during the November 2019 site visit. The monitoring team inspected daily line-ups at each Area Command to ensure that staffing levels were met and that a first-line supervisor was assigned to the field officers on patrol. Our on-site visits for this reporting period indicate that the staffing levels reflect operational compliance. First-line-supervisors were on duty at all locations at the time of the site visit. The normal day-to-day operations of the APD patrol units are supported and supervised at levels required by the settlement

agreement. APD continues to maintain adequate supervisory personnel at ratios required by the CASA. The monitoring team will continue to track staffing levels and effects in future site visits.

As in previous IMRs, the monitoring team have concerns related to the assessment of use-of-force incidents as required by Section IV of the CASA. During this reporting period, APD completed the Tier 2 and Tier 3 training for supervisors related to force investigations. The monitoring team will continue to assess the training in future site visits. APD continues to work to formalize and routinize processes currently in place regarding supervisory monthly reports, but until a working process is complete and fully implemented, APD cannot attain operational compliance for this requirement. The monitoring team will continue to review and comment on new pilot audits and steps implemented to reduce repetitive oversight errors in the next reporting period.

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."**

Results

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

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."**

Results

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

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."**

Results

During the site visits at Area Commands this reporting period, we found no unit, shift, or operational command that failed to meet this articulated span of control.

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."**

Results

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

Recommendations for Paragraphs 205, 206, and 208

4.7.191-4.7.194a: Now that training has been completed, APD must move its focus to the next (and much more difficult task) of ensuring applicable policies

and training are actually implemented in the field. Based on our past experience with APD's supervisory cadre, this will be a complex task requiring daily oversight, assessment, follow-up, and correction.

4.7.191-4.7.194b: Unless rigorous field-wide inspections and audit processes are implemented, we foresee a potentially significant amount of "slippage" at command levels regarding adherence to existing policy and training. APD should anticipate this potential as well and should plan and implement meaningful assessment and internal monitoring practices related to the business practices outlined in these paragraphs.

4.7.195 - 4.7.197 Assessing Compliance with Paragraphs 209 -211: Review of Sergeants' Training

Paragraphs 209 and 210 address various supervisory training requirements APD must meet for the CASA. "Every sergeant shall receive 40 hours of mandatory supervisory, management, leadership, and command accountability training before assuming supervisory responsibilities". Data requested and received by the monitoring team for this reporting period:

- August 2019 eighty-hour course and December 2019 eighty-hour course;
- Evaluations for eighty-hour courses;
- Critiques for eighty-hour course; and
- Rosters for eighty-hour course.

As in other monitoring periods, data requested and received by the monitoring team indicate that these portions of the requirement have been addressed by APD in the supervisory course delivered during the eleventh reporting period.

APD continues to improve the new system for supervisory monthly reports that will report any results designed to measure the impact of the training received under paragraphs 209 and 210 for this reporting period.

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."**

Results

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

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) categorizing and reviewing 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."**

Results

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

Recommendations for Paragraphs 209 – 210

4.7.195-6a: APD should carefully consider mechanisms to ensure that trained practices are rigorously adhered to by its supervisory cadres and personnel assigned to oversee those cadres. This my prove to be the most difficult of all remaining tasks yet to reach full 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

During this reporting period APD supervisors received in-service management training in the following:

- DDACTs (8 hrs.);
- EPIC (8 hrs.);
- Tier 2 UoF (4 hrs.); and
- Tier 3 UoF (10 hrs.).

During this reporting period an eight-hour block of instruction (IA Investigations) was scheduled but was not delivered due to State contracts and department negotiations. Two four hour blocks of instruction was delivered to lieutenants and above:

- Intro to Blue Courage
- Franklyn Covey 4DX

Due to the removal of the eight hour block of instruction APD did not meet the requirements of this paragraph. APD determined that it would be imprudent and impractical to create a course just to check a box and will deliver the previously scheduled class during the next reporting period, using the appropriate number of hours and content.

Results

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

Recommendations for Paragraph 211:

4.7.197a: Ensure that training and supervisory processes are, at a minimum, compliant with the basic requirements of the CASA by using internal checkpoints

reflective of CASA requirements that must be used by those at APD's Training Academy responsible for training development and assessment.

4.7.198 – 4.7.205 Assessing Compliance with Paragraphs 212-219 EIS/EIRS/PMEDS

During the November 2019 site visit, the Performance Evaluation and Management System (PEMS) policy 3-33 was still making its way through the review process. During this monitoring period, the policy was submitted to the monitor and returned with comments. Members of the monitoring team have reviewed draft versions of a curriculum for supervisors and a PEMS handbook. While not yet approved by the monitor, APD has come a long way toward understanding the value of an "early intervention system."

While APD is currently utilizing the existing system (IAPro) to attempt to identify officers who exceed current thresholds and may require intervention, the draft versions of policy, curriculum, and plans to move forward with a system that has the capability to meet or exceed CASA requirements have been included in planning for the new system. PEMS is proposed to be a data-driven system with thresholds supported by data analysis and research, using a statistical process based on an 80/20 percentage principle to establish thresholds rather than arbitrarily assigned incident numbers (as we have long-recommended). The monitoring team will again closely examine the methodology APD is considering during the June 2020 site visit. APD is pilot testing both systems at several Area Commands and should have enough data to determine which system will work for them and conform to national standards and practices and the requirements of the CASA.

APD submitted Excel spreadsheets of data collected at Area Commands using its planned percentage principle. Unfortunately, this raw data came with no analysis, explanation, or "after action" report to show what they had discovered or planned with this data. Additionally, the monitoring team has been questioning (for four years) how APD plans to capture several areas of data required by the CASA. The requirements of Paragraph 215 c, g, and k have so far gone without clear plans to establish data collection. Finally, several other CASA requirements affect system development. Paragraph 23 requires firearm discharge data; Paragraph 38 requires ECW data and Paragraph 105 requires Tactical Unit data to be entered into the system. Plans for these requirements are unclear at this time.

Training and supervision are the next major objectives that need to be addressed by APD once policy has been approved. During the next site visit, the monitoring team will conduct a thorough review of the trial data being captured at the Area Commands with respect to the system's ability to identify deficient behavior via the proposed 80/20 percentage-based system. We continue to work with the APD and the City to craft acceptable policies, curricula and supervisory procedures that conform to national standards for these paragraphs.

APD envisions the entire process as a significant project based upon policy approval, system selection, training, and implementation. This is a major project which will require time, focus, input, and assessment from multiple levels of the organization. The monitoring team believes this to be, of necessity, a long-term process, based on prior experience with Early Intervention Systems in Pittsburgh and New Jersey. While this timeline is problematic with regards to attaining compliance with the requirements of the CASA, the monitoring team believes that APD has finally grasped the importance of an Early Intervention System. While approved policy guidance exists, it is highly probable that, when new systems are developed, policies will need to change. Nonetheless, APD is currently in primary compliance, as existing policies have been promulgated and approved.

4.7.198 Assessing Compliance with Paragraph 212

Paragraph 212 stipulates:

> **"Within nine months of the Operational 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."**

Results

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

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."**

Results

Primary: **In Compliance**

Secondary: **Not In Compliance**
Operational: **Not In Compliance**

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."**

Results

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."

Results

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

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."**

Results

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

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."**

Results

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

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."**

Results

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

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."**

Results

Primary: **In Compliance**

Secondary: **Not In Compliance**
Operational: **Not In Compliance**

Recommendations for Paragraph 212 - 219:

4.7.198-205a: Complete and submit for approval the curriculum for PEMS training for supervisors and ensure that the new PEMS system addresses all required components of paragraph 219 and the additional requirements of Paragraph 23 (Firearm discharges), Paragraph 38 (ECW data) and Paragraph 105 (Tactical Unit data).

4.7.198-205b: Document and demonstrate that the proposed "Pareto Principle" or 80/20 principle as a statistical tool that works effectively and can be used to demonstrate both acceptable and unacceptable behavior from officers as required by the CASA.

4.7.198-205c: Document learning assessment processes for the training provided for supervisors.

4.7.198-205d: Design and document audit protocols for supervisory review and reporting of PEMS processes.

4.7.206 – 4.7.217 Assessing Compliance with Paragraphs 220-231

During this last reporting period, APD submitted an OBRD Curriculum to the monitoring team. The curriculum and its accompanying PowerPoint presentation were reviewed by the monitoring team, returned with comments, revised, and finally approved by the monitor. The final product was an excellent training curriculum. A 4-hour class was presented to all new acting sergeants and newly promoted first-line supervisors during an 80-hour Supervisory Training block. The monitoring team views well-trained supervisors as the lynchpin to making this entire process function properly.

During the team site visit in November 2019, the OBRD policy 2-8 was pending as "in review" and has been submitted to the monitor and DOJ for review as this report is being written. Members of the monitoring team visited several Area Commands and other duty locations and had supervisors explain their understanding of the existing policy requirements and asked the supervisors to demonstrate that they in fact had completed the required video reviews. All supervisors contacted were aware of the policy requirements, fluent in their use of the system, and had documented their completed video reviews. This is a marked improvement over past performance in this area and a direct result of OBRD refresher training conducted, with more than 97% of scheduled APD personnel completing the refresher via Power DMS.

During this monitoring period (August 1, 2019-January 31, 2020), APD has been actively engaged in auditing Area Commands for OBRD-related activities. The findings

so far yielded enough information to conclude there is much work to be done with respect to APD's execution, training, and supervisory processes related to their OBRD requirements. Few areas of the internal audit process showed a compliance rate of 95% or higher. The actual take-away from these processes are more than positive. APD has matured in management oversight of critical processes and has begun addressing known problems without first querying the monitoring team for assistance. This is the type of indicator of self-reliance that will lead, eventually, to full compliance. The final step in this process, internalizing lessons learned while the monitoring team is engaged almost daily with APD, will begin in earnest with the release of the internal audit of OBRD activity, and APD's response to the release of that internal audit. This will be an important test of APD's ability to self-manage.

The Force Backlog Review of Internal Affairs cases was closed out during the last monitoring period. The findings of those investigations also indicated there is much work to be completed with regards to OBRD requirements. In cases reviewed for IMR-11, OBRD violations were identified in 214 cases. These are violations of policy 2-8 and were not broken down into which CASA paragraph(s) were violated. Of these 214 cases, Verbal Reprimand was issued in 64 cases. Letters of Reprimand in 42 cases. Suspension in five cases with the remainder of cases having no action due to various reasons (retirement, administratively closed, exonerated, etc.). Due to conflicts with the APOA contract regarding disciplinary timelines, cases noted for suspensions did not result in actual suspensions, but the "intended" discipline was noted as "suspension."

APD has begun to develop systems and processes to outline methods of conducting internal inspections and audits with regards to several requirements of the CASA relating to OBRD. Course of business documents regarding the above data were supplied to the monitoring team. Members of the monitoring team will work with Internal Affairs and OBRD-focused personnel during the next site visit to address the requirements and explore methods to capture and report this data.

The significant take-away from our analysis, however, is highly positive: APD is developing robust self-monitoring and self-correcting processes in this area. These types of interventions are the type of oversight processes that can lead the department into the future.

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 Operational 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."

APD has developed compliant policy for OBRD operation and has trained all appropriate personnel in the operation of OBRD units with respect to those policies. To date, we have noted that the pilot audits at several Area Commands illustrated compliance levels of in-field operations of OBRDs below the 95 percent level. Based on our knowledge and experience, this is attributable to inadequate processes of supervision and review by first-line supervisors and command cohorts. The important information, however, is that these audits were conducted internally by APD, not externally by the Monitor. Operational compliance will require demonstrable and effective internal responses to the issues noted by these internal (to APD) findings.

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

Recommendations for Paragraph 220:

4.7.206a: Prepare, quarterly, a written assessment of the results of the inspections and audit outcomes, identifying the top five areas of non-compliance with the requirements of OBRD field processes.

4.7.206b: Based on the quarterly audits, identify the top three reasons for non-compliance with OBRD policies and procedures, and develop specific, targeted responses to address and remediate each of the top three non-compliance areas.

4.7.206c: Repeat steps a and b until field OBRD error rates are below five percent.

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."**

Results

Policies responsive to paragraph 221 have been developed and trained. As of the end of this reporting period, those policy and training initiatives have not had the desired effect on in-field operations of OBRDs *viz-a-viz* policy and performance gaps. We continue to note violations of OBRD policies that are not noted by supervisory or mid-management levels at the individual Area Commands.

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

Recommendations for Paragraph 221:

4.7.207a: Develop, implement, and assess supervisory protocols to ensure violations of applicable policy are identified by supervisors and are addressed and remediated, many of which have already been recommended to APD by the monitoring team.

4.7.207b: Publish quarterly "OBRD Failure" reports identifying the top five reasons for OBRD failure in the field, and identifying the Area Command, shift, and supervisors associated with those failures.

4.7.207c: Retrain, counsel or discipline supervisors with repeated failures in noting, assessing, and correcting officers with repeated OBRD operations failures.

4.7.207d: Repeat until error rates on OBRD operation fall below five percent.

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."**

Results

Monitor-approved supervisory training for OBRD operations in the field has been implemented during this monitoring period. However, it is too soon to assess the rates of compliance. Failure rates related to OBRD operations in the field this reporting period are still unacceptably high. These failure rates, it appears to the monitoring team, are not related to problems with policy, but are directly related to problems with supervision. The majority of OBRD errors noted by the monitoring team (and APD's Force Backlog Review) indicate a failure of supervisors to review, assess, and act upon OBRD failures exhibited by line personnel. In effect, it appears that in most Area Commands, in-field OBRD performance is not viewed as important. This is a critical compliance issue. Until supervisors are fully engaged and insisting on and ensuring proper performance in the field, operational compliance will be elusive. Until lieutenants and commanders note and remedy these lapses in policy and supervision, compliance levels will be adversely affected.

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

Recommendations for Paragraph 222:

4.7.208a: Reinforce the established clear, concise, and reasonable requirements for supervisory review of in-field activations of OBRDs, requiring field supervisors to review OBRD activations and recordings for compliance to established policy.

4.7.208b: Establish a routinized process for command oversight of the OBRD review process, requiring lieutenants to assess, in a methodical way, the OBRD review processes of sergeants under their command, and commanders to assess the OBRD review performance of lieutenants under their command, to ensure compliance with reasonable assessments of actions in the field.

4.7.208c: Establish a routine administrative review, via Compliance Bureau Personnel, of Area Command OBRD review efficiency, including performance metrics such as overall review rates, error rates, and remediation protocols. This review process should be on-going and assigned to the Performance Metrics Unit.

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."**

Results

APD reports that from the beginning of this reporting period (August 1,2019) through the monitoring team site visit in November 2019, fifty- three cameras were returned to Axon for the following reasons:

- 15 Damaged
- 19 Charging Issues
- 13 Malfunctions
- 6 Docking issues

No "after action" report was provided and APD is working with Axon to obtain these data. APD supervisors are continuing to fail to properly document equipment checks at an acceptable level. Supervision and documentation are key to elevation of compliance rates.

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

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."**

Results

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

Recommendations for Paragraphs 223 – 224:

4.7.209-210a: Ensure that supervisors who fail to note errors in OBRD operation are counseled, or for multiple offenders, retrained and/or disciplined for ineffective OBRD review processes. If, after counseling or retraining, supervisors continue to miss OBRD activation or usage violations, ensure appropriate discipline is imposed.

4.7.209-210b: Identify the top 20 supervisors who have substandard performance on OBRD activation review and retrain them in the process. Place these supervisors "on notice" that their performance on this task will be routinely reviewed, and continued failures will result in discipline.

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."**

Results

During site visits to the various area commands during this and past visits, APD supervisors have been able to demonstrate that they understand the policy with regards to video reviews and have documented that they have in fact conducted these reviews. Those reviews demonstrate whether or not the officer is acting within policy and that the equipment was in working order.

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

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."**

Results

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

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."**

Results

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

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."**

Results

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

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)."**

Results

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

Monitor's Note: The majority of OBRD errors noted by the monitoring team (and APD's Force Backlog Review) indicate a failure of supervisors to assess and act upon OBRD failures exhibited by line personnel. Again, these are not policy or training errors, but errors in implementation of approved policy. The errors are those of supervisory and management personnel failing to insist on compliance with the CASA.

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."**

Results

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

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 Operational 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."

Results

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

Recommendations for Paragraphs 228, 229, and 231:

4.7.217a: Conduct detailed failure analyses designed to identify the causes of incidents of "failure to record," and identify the true cause of these failures: equipment, training, supervision, or "other."

4.7.217b: Rank order the failure rates and develop action plans to eliminate the causes of failure, beginning with the most frequent and working to least frequent.

4.7.217c: Identify a frequency-based list of supervisors who fail to enforce OBRD requirements, and schedule these supervisors for retraining, counseling, or discipline, as appropriate.

4.7.218 – 4.7.226 Assessing Compliance with Paragraphs 232-240 (Recruiting)

Members of the monitoring team reviewed APD data related to these requirements in the form of policy, programs, Course of Business documents, and results. APD continues attracting and hiring qualified individuals, and therefore remains in Operational Compliance with each of these CASA paragraph requirements. APD Recruitment staff continue to provide an impressive array of strategies and concepts for recruiting police officers at a time in history in which interest in the profession is down significantly nationwide.

Members of the monitoring team met with Training Academy personnel responsible for the development and implementation of a strategic recruitment plan. The APD Training Academy has provided the monitoring team with the "2019 Annual Report & 2020 Strategic Recruitment Plan." APD plans to add 100 officers per year—requiring the hiring of closer to 150 to offset retirements and other retention issues. The 2019 Annual

Report reflects positive results and lists ongoing challenges, including strategies that have not been as productive as others, such as the sparse attendance and interest at Job Fairs. APD continues to promote the agency via web-based applications, with expanded emphasis on minority group sites. Additionally, APD continues to provide documentation of attendance at many diverse community group events including military, faith-based, educational, and sports-related events. APD showed a large increase in attendance at recruiting events this year, due in part to additional staffing among recruiters. State and national events were also targeted by APD recruiters, including the NM State Fair and the Balloon Fiesta. In addition to contacting prospective recruits, APD has been able to collect valuable information from its recruiters regarding hiring strategies. APD has accepted applications from several law enforcement officers employed at other agencies who were contacted at these events. APD is working to make the application process available to applicants who rely on their mobile devices and have added a "scan code" to its recruiting brochure that will take an applicant directly to the APD online registration website (this is another example of implementation of a suggestion received at a CPC meeting). The "blind" on-line application process, in which applicants can remain completely anonymous until they arrive for testing, is a laudable and effective process.

The University of New Mexico worked with the APD to develop a comprehensive recruiting plan, and the partnership continues. APD recruiting staff have met with the UNM athletic recruiters to discuss tactics of attracting highly qualified individuals, and to establish access to athletes who may be interested in APD careers. A Recruiting Sergeant met with UNM Vice President for Equity and Inclusion, who agreed to assist in contacting African American students to further diversify APD. New Mexico Highlands University in Las Vegas (NM) was visited in September 2019 and provided hiring information to many students unaware of the benefits being offered by APD. One campus security guard immediately applied and was scheduled for testing. APD continues to conduct "no score" physical fitness tests during campus visits to educate interested parties and eliminate fears that they might not be able to complete academy physical training.

The Central College of New Mexico (CNM) has begun a police academy program.[67] APD has begun to accept recruits who have completed 16 weeks of police training by CNM and then complete APD training. We note that this increased collaboration and outreach comes at a cost: APD must continually monitor results (number of interested individuals, number of individuals who pass screening processes, tracking of recruits successfully passing Training Academy requirements, etc.

The "2020 Strategic Recruitment Plan" lists impressive goals/objectives and activities to attract a diverse pool of applicants for 2020. In September 2019, recruiting officers attended the 5th annual NAACP conference. The recruiting Sergeant was able to obtain

[67] https://catalog.cnm.edu/preview_program.php?catoid=41&poid=10104

an agreement from the local chapter of the NAACP that APD would be invited to attend and recruit at any event deemed appropriate. During Rosh Hashanah, recruiters met with leaders at Congregation B'Nai Israel. Permission was granted to post recruiting business cards on the announcement board and the gathering was grateful for the police presence and relieved fears of an attack during the holiday. A Sergeant for the Ramah Navajo Police Department agreed to invite APD to the community for any events appropriate for the recruiting staff.

APD has expanded its web-based advertising with more emphasis on minority group sites (Native People Recruits, The Cause, and *Saludos* websites) in addition to the military and university communities. APD had cancelled a marketing contract with Ad House and APD's online interest cards dropped by an average of 1000 applicants per year. The Recruitment staff is recommending that advertising on nationwide job search platforms such as Monster, LinkedIn, CareerBuilder, etc. be used as they are not currently utilizing any outside job boards. APD has expanded its efforts with the high school "Career Enrichment Center," designed to recruit students into the Public Service Aide (PSA) program, and foster processes to facilitate the transition from PSA to police officer. This process has been so successful that all PSA positions have been filled. A recruiter has been assigned to mentor all current PSAs and encourage them to apply to the APD Training Academy as soon as they become eligible.

APD has provided documentation that demonstrates changes to the recruiting process based on community feedback. During 2019, APD recruiters continued to attend meetings with all six Community Policing Councils (CPCs). CPCs recommended that APD post Albuquerque demographic data on its website, and that was effectuated last reporting period. Additionally, the CPCs recommended an instructional video to demonstrate the testing and hiring process, and that video was completed, posted on *APDonline*, and is emailed to each applicant. Another CPC proposed that videos of current officers discussing their reasons for joining APD would be helpful. Members of the monitoring team have observed both print and broadcast news coverage of these videos going live, with positive comments.

A recruit class was seated during this monitoring period. The monitoring team conducted a random audit of the CASA requirements for that recruit class during the November 2019 site visit. Files of twelve of the 54 recruits seated were reviewed (a 22% sample). As illustrated in the figures below, 100% of the CASA requirements were met. There were no lateral hires during this monitoring period.

In addition to the initial APD test with related skills questions, the background questionnaires for both a candidate's former employers and personal references contain questions related to employment, criminal and credit history, and questions regarding controlled substance use and abilities to work with diverse communities. A random audit (twelve of 54 seated, or 22%) of applicant files found each one to contain the relevant questionnaires with answers to the specific questions related to the

requirements of this paragraph. The results of that review are included in Tables 4.7.218a and 4.7.218b below and indicate 100 percent compliance for this task.

Table 4.7.218a
Screening Points for Recruits and Lateral Hires

	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
Recruit 7	1	1	1	1	1
Recruit 8	1	1	1	1	1
Recruit 9	1	1	1	1	1
Recruit 10	1	1	1	1	1
Recruit 11	1	1	1	1	1
Recruit 12	1	1	1	1	1
Total	**12**	**12**	**12**	**12**	**12**
Number in Compliance Total all Incidents	**12**	**12**	**12**	**12**	**12**
% in Compliance Total by Category	**100%**	**100%**	**100%**	**100%**	**100%**

Table 4.7.218b

Screening Points for Recruits and Lateral Hires

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
Recruit 7	1	1	1	1	1
Recruit 8	1	1	1	1	1

Recruit 9	1	1	1	1	1
Recruit 10	1	1	1	1	1
Recruit 11	1	1	1	1	1
Recruit 12	1	1	1	1	1
Number in Compliance Total all Incidents	**12**	**12**	**12**	**12**	**12**
% in Compliance Total by Category	**100%**	**100%**	**100%**	**100%**	**100%**

For the requirement of random drug-testing of current officers (Paragraph 237), APD submitted course of business documentation of testing current APD officers during this monitoring period. The monitoring team notes that only seven officers were tested during the month of November 2019 and due to a change in vendors, no testing was completed during January 2020. The Monitor will discuss the low number of November 2019 tests during the next site visit.

APD has met or exceeded all established requirements for Paragraphs 232-240.

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."**

Results

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."**

Results

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."**

Results

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."**

Results

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

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."**

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."**

Results

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."**

Results

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."**

Results

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."**

Results

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

4.7.227 – 4.7.229 Assessing Compliance with CASA Paragraphs 241-243: Promotions

The monitoring team conducted a random audit of the promotions made by APD during this reporting period. On September 23, 2019, seven officers were promoted to the rank of sergeant. The monitoring team reviewed three of the seven sergeant promotions (a 43% sample). One of the Sergeants was reduced to his former rank due to not successfully completing all the requirements during Sergeant Training and the probationary period. The other two promotions were within current, court-approved policy. On November 14, 2019, APD promoted six officers to the rank of Sergeant and six Sergeants to the rank of Lieutenant. Members of the monitoring team reviewed three of the six Lieutenants (a 50% sample) and three of the six Sergeants (a 50% sample) and found APD to be in full compliance with the requirements of these paragraphs, and the court-approved promotional policy regarding promotions for all nine promotions we reviewed for this reporting period. Records were checked in Human Resources, Internal Affairs, and the Training Academy.

APD provided members of the monitoring team the Human Resources Department's Police Department Promotional Procedures Policy (dated January 31, 2019). This policy was adopted after approval by the monitor. Based on the monitoring team's review of promotions recently made by APD, the department has promoted individuals who meet applicable standards and existing policy.

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."**

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."**

Results

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

4.7.229 Assessing Compliance with Paragraph 243

Paragraph 243 stipulates:

> **"Within six months of the Operational 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."**

Results

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

4.7.230 – 4.7.232 Assessing Compliance with CASA Paragraphs 244-246 (Performance Evaluations and Promotional Policies)

APD has completed the review and approval process for policy3-32 Employees Work Plan/Performance Evaluations during this 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 goals are not met. Additionally, it outlines actions for the supervisor should the software issues that have plagued the current system continue.

During the November 2019 site visit, members of the monitoring team visited several Area Commands and several other duty locations including Investigations Divisions. Supervisors demonstrated the Talent Management System to the monitoring team. All

supervisors were fluent in their use of the system and were able to show examples of work plans and achievements of subordinates. Supervisors had completed the requirements of the policy, the CASA, and the system functions. We did note a few issues, however.

APD is planning to implement the replacement of the current Talent Management System. Contracts have been finalized and prefatory meetings began just after the close of this reporting period. APD has found that the existing Talent Management System is not fully capable of conducting evaluations of supervisors, especially with respect to CASA requirements as outlined in Paragraph 47. The new system will take into account use of force incidents as well as a supervisory review of a use of force. Completed Staff Work (CSW) documentation has been presented to the monitoring team identifying the shortcomings of the existing system and providing recommendations for corrections. It is especially noteworthy that APD is discovering its own weaknesses/errors and developing solutions rather than waiting for the monitoring team to find weaknesses in APD systems. This is a positive outcome for APD as it works toward compliance.

The monitoring team was provided with course of business documentation, generated through the automated system that showed compliance rates at 95.4% (815 of 854 officers evaluated) for the September 2019 checkpoint. The APD Lead Commander responsible for the Performance Evaluation requirements referred approximately 39 supervisors to Internal Affairs for administrative investigations regarding the failure to complete their checkpoints in a timely manner. Additionally, the monitoring team was provided with data related to upcoming checkpoint reminders, failures to meet the requirements, and the responses to the reasons for those failures. The reasons for failing to meet the checkpoint requirements included administrative errors of failing to assign an officer appropriately, military leave, FMLA, and other medical leaves. Other reasons for failures have been noted by APD as training issues and plans for additional training are under development. Software issues have caused evaluations to not pass from initial supervisor to second line supervisor in two of the cases and was responsible for some supervisors not seeing the correct personnel within their system. The newly approved policy addresses these issues. Nonetheless, this is another example of APD self-correcting without monitor involvement.

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."**

Results

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

4.7.231 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."**

Results

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

4.7.232 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."**

Results

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

4.7.233 – 4.7.239 Assessing Compliance with CASA Paragraphs 247-253: Officer Assistance and Support

Paragraphs 247 through 253 of the CASA pertain to the City's requirements to offer an

Officer Assistance and Support Program to all employees and family members. The monitoring team reviewed the Behavioral Sciences Section (BSS) Program documentation supplied during the visit as well as documentation requested covering the remainder of the review period to ensure that officers and employees of the department were provided ready access to mental health and support resources as required by the CASA. The program continues to provide critical incident services, therapy services, and a training component to APD personnel.

The Behavioral Sciences Section (BSS) program is run by a Medical Director, supported by certified clinicians; a policy analyst; a public information officer and quality assurance auditors. The monitoring team met with staff for the program responsible for the requirements associated with the aforementioned paragraphs, and as in previous visits, found the staff to be dedicated to their assigned functions, and extremely professional.

During the November 2019 site visit, the monitoring team met with BSS personnel responsible for maintaining the program's development, revisions, and upgrades. Additional documentation outlining the program's functions were supplied to the monitoring team via a data request at the end of the reporting period.

Revisions to the BSS process are on-going and are reviewed at regularly scheduled meetings to maintain the most current best practices in the industry. As documented in previous IMR's, BSS continues to explore and work on areas to improve the program.

These areas include but are not limited to:

- Curricula for crisis negotiation training;
- Promoting wellness and reducing substance abuse;
- Collaboration between APD, UNM, and Pacific University (Portland) to promote mindfulness and stress reduction research;
- Maintain of the Self-Care Interactive Online Network (SCION) website with program information was developed (goSCION.org);
- Behavioral Health Services Handbook;
- Expansion of the BSS unit and hiring of an additional provider;
- Changes to upcoming surveys;
- Academic research on various interventions to support law enforcement; and
- Revisions to SOPs.

The monitoring team reviewed the122nd Cadet Class Schedule to ensure compliance with the CASA. The monitoring team also reviewed training materials for management and supervisors for compliance with the CASA requirements.

As we have stated in previous IMRs, that the nature of the documentation is highly

confidential and again, as in previous site visits, aggregate data was reviewed where it was deemed practicable. In all cases, notes taken by the monitoring team were devoid of any direct or circumstantial information that would allow an individual to be identified.

On-site inspections of the BSS facilities were conducted to ensure security and confidentiality in the program and to ensure that only BSS staff has access to records maintained within the program. As reported in past site visits, APD continues to meet all requirements with the CASA.

Peer Support Services COB documents were reviewed by the monitoring team for this reporting period, August 1, 2019 thru January 31, 2020. Documentation for this period included the following:

- Peer Support Reports, which include dates of activities, method of contact, initiating party, personnel from peer support group;
- Peer Support Survey results; and
- SCION program updates.

The Peer Support Program activities for this reporting period indicate continued positive growth and willingness to be forward-thinking. As documented in previous IMRs, the program continues to explore and work on areas to improve the program. During this reporting period, Peer Support personnel attended the COPS National Conference in Oak Brook, Illinois, to enhance the program's effectiveness and better serve APD personnel. APD's BSS programs continue to be industry-standard and compliant with the relevant paragraphs of the CASA.

The data reviewed by the monitoring team for BSS paragraphs during this reporting period indicate that there is an appreciation that confidentiality of program records is more protected than in the past. BSS will conduct an anonymous survey during the next site visit. Previous surveys conducted indicate a positive trend for the program.

During this reporting period, BSS continues to maintain updated Excel spreadsheets of available health professionals. Records indicate that the unit maintains and distributes flyers about BSS services at all of APD's Area Commands. Material for BSS programs is documented on their "Daily 49" system in APD briefing rooms throughout the department, describing the most current information for the program. As the result of the hard work, time and dedication that has been evidenced in this program, APD maintains full compliance with the requirements of the CASA.

4.7.233 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."

Results

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

4.7.234 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."**

Results

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

4.7.235 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."**

Results

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

4.7.236 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."

Results

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

4.7.237 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."**

Results

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

4.7.238 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."**

Results

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

4.7.239 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."

Results

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

4.7.240 – 4.7.255 Assessing Compliance with Paragraphs 255 -270: Community Policing and Community Engagement

4.7.240 Assessing Compliance with Paragraph 255

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 evaluations, resource deployment, tactics, and accountability systems."**

Methodology

Paragraph 255 requires APD to develop policy guidance and mission statements reflecting its commitment to community and problem-oriented policing and supporting administrative systems. APD has revised its mission statement, reflecting its commitment to community-oriented policing.

During a previous reporting period, an APD working group produced a mission and vision statement reflecting the agency's commitment to community policing principles. The product identified APD's vision as "an Albuquerque where citizens and the police department work together through mutual trust to build a thriving community." The mission statement identified by APD was "to reduce crime, increase safety, and build relationships through community policing."

During this reporting period, APD continues to make progress in integrating community policing principles into its management practices (policies, procedures, recruitment, training, deployment, tactics, and accountability systems). Most notable is the increased connectivity to community partners and resources in APD enforcement activity as evidenced by the City's violent crime reduction strategy, which includes community partners, resources, and an emphasized social service intervention to help deter future violence. During this reporting period, APD also reported the following activities:

- Completed development of 16 hours of updated and revised community policing curriculum which will be delivered throughout 2020;
- Plans for conducting four “Camp Fearless” summer youth day camp sessions in collaboration with several law enforcement and community partners, and two junior police academy sessions;
- Implementation of a newly established program called IMPRINT, a program designed to engage youth, starting with First grade school children. Albuquerque Public Schools and APD hope to reach up to 700 children;
- Launching the “Connecting Youth and Communities with Law Enforcement” program for high school students, covering topics ranging from contemporary law enforcement issues, to adolescent brain development, and impact on behavior;
- Additional sessions of this 16-hour course are planned for 2020; and
- APD hosted a Faith-Based Alliance event, concerning responding to active shooting situations that included about 350 participants representing a multitude of faiths.

We are reasonably certain that current issues with the COVID-19 virus will impact APD’s plans. APD also reported that findings from the culture survey will be shared with department members in 2020. APD also indicated that a second survey is planned for February 2020. APD acknowledges that deficiency areas identified in the last survey have yet to be addressed but reportedly has plans underway to address them.

APD continues its expansion of youth outreach efforts in this reporting period with the addition of program IMPRINT, for elementary school students, and the “Connecting Communities with Law Enforcement” program for high school students. APD also plans to continue its Camp Fearless (formerly DEFY) that brought law enforcement officers together with groups of at-risk youth in a summer camp experience, in which life skills were also taught. APD also has plans to initiate a junior police academy. APD needs to build on these efforts and scale programming that can reach a significant number of the over eighty thousand young people residing in Albuquerque.

APD command staff have continued progress in transformation efforts in many areas, especially community outreach, encouraging and tracking officers’ non-enforcement contacts, and the deployment of more officers engaging in proactive policing in the area commands. An important milestone was reached in the transformation of the culture of the department with the completion of the community-oriented policing curriculum. The internalization of the core principles of community policing through the training process will provide a foundation for APD’s planned cultural transformation.

We do note, however, that the failure of APD to release the results of the most recent “culture survey,” and lack of follow up actions in those areas where the department was found deficient has set community outreach process back significantly. APD is now scheduled to conduct another survey without acting on results from the first one administered several months ago. Such failures to assess community input, and

validate that input through action-based processes are often a severe blow for community involvement.

We find APD still working towards implementing verifiable changes in the field-based delivery of processes and services that are designed to effect a sea-change in the way APD relates to the communities it serves. Once these changes become a normal part of the way APD does business, the agency will have achieved operational compliance with these paragraphs.

Results

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

Recommendations for Paragraph 255:

4.7.240a: Conduct a semi-annual review including culture change survey of progress made across the department in achieving "culture change" and the integration of community policing principles throughout APD operations, and move more expeditiously to address deficiencies highlighted in the report;

4.7.240b: Provide training that meets national standards for School Resource Officer Units;

4.7.240c: Continue to work with other law enforcement and community partners to expand and reach significantly higher numbers high-risk youth through various levels of engagement programming.

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."**

Paragraph 256 requires APD to realign its staffing allocations and deployment, as indicated, and review its recruitment and hiring goals to ensure they support community and problem-oriented policing. APD's PACT (Police and Community Together) plan was approved on December 27, 2016, and staff re-alignment responsive to the plan was continued during the seventh reporting period. Implementation of the PACT plan was terminated during the eighth reporting period and replaced with deployment of

response teams designed to implement problem-oriented policing efforts in all six Area Commands. We increasingly find this new team approach to be a marked improvement to the old PACT process, with strong goals related to problem-solving policing processes, as opposed to PACT's enforcement-based processes. The new processes provide more visibility and contact with community residents.

During this reporting period, APD continued to increase their deployment of response teams to all six Area Commands, and remains committed to assigning at least one sergeant and two officers to each of the Area Commands. At the end of this reporting period, three of the Area Commands were operating with only two assigned community officers. A policy was developed for the new process during the prior reporting period (SOP1-81 Proactive Response Teams) and submitted to the Policy and Procedure Review Board for final approval. APD reports that the policy, at the end of this reporting period, was being finalized for review and approvals. Once the policy is approved, it will be sent to the Training Academy to develop a curriculum suitable for training the entire department regarding the functioning of these new processes.

These new activities are beginning to shift staffing resources to area commands resulting in more non-enforcement contacts and engaging in more proactive policing practices. Officers are sometimes assigned to micro beats or blocks and tasked to get acquainted with community members through increased non-enforcement contacts. Officers are also assigned to support community events and are deployed to crime hot spots for enforcement activity, based on analytic information.

During this reporting period, APD continued to collect data regarding these new approaches. The data focused primarily on enforcement activity including "suspicious person" contacts and "disturbance" contacts. There remains minimal data that specifically captures non-enforcement activity for these processes, or any associated efforts to more closely assess operational impact and effectiveness of these new deployment strategies. APD indicated that statistical data are captured, but no reports or analysis are evident that assess impact of this new deployment strategy.

If APD are to have complete implementation of these processes, APD will need to complete its full deployment, conduct training as required, and develop more specific measures and analytic methods to determine effectiveness and guide program revision and adaptation,

Results

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

Recommendations for Paragraph 256:

4.7.241a: ***Continue to make new staffing allocation and deployment a priority, and take the necessary steps to gain important input and support from settlement agreement partners and community stakeholders including CPCs;***

4.7.241b: Adjust the staffing plan as required based on initial experience and consider a partnership with a local university criminal justice department to assist in developing more specific performance metrics and how to use as those metrics as effective management tools.

4.7.241b: Ensure that PRT activity is expanded as needed, fielding adequate numbers of specifically trained PRT officers who are guided by specific, tangible, and quantitative goals and objectives.

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

The monitoring team reviewed documentation from APD outlining the newly implemented "digitized" bid packet process (information about areas assigned to police officers) and to create better utility, tracking, and accountability within the department. While full implementation is not yet achieved, the digitized process is operational and has replaced the Area Command paper documentation. This new process will not only house important information about the area assigned to an officer, but when complete, will create a beat discussion forum providing officers assigned to an area opportunities to share information with one another about trends or emerging problems. Officers will also be able to download information about the communities they serve including community leaders, neighborhood associations etc. Officers will be tested on their knowledge of bid packet information, which will now be updated quarterly. APD now anticipates full implementation of the digitized bid process by September 2020.

APD developed and provided instructional videos for all officers receiving and updating bid packets, so that they will fully understand the new process. APD plans to have additional instructional videos covering the gathering and reporting of beat information to be shared among officers working in the same geographical areas

APD has taken a huge step forward with the investment and initiation of its digital structure for its bid packets. Full implementation will create easy access to up-to-date information for officers, and track emerging trends, and problem-solving efforts. For this reporting period, APD also continued with its documented Problem Oriented Policing (POP) projects in each of the six Area Commands, with improved detail and tracking information. The monitoring team will continue to confirm issuance of bid packets to APD staff and will assess how that information is being utilized to advance APD's community policing goals. We anticipate a comprehensive review of the completed digitized bid process during the next reporting period. The monitor will also be looking for evidence of the application of information generated through this bid process to enhance community engagement. Operational compliance requires full implementation of these digitized processes and evidence of application in community policing practices.

Results

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

Recommendations for Paragraph 257

Recommendation 4.7.242a: Continue with existing planning processes, while eventually adding detailed statements of program-related goals and quantifiable objectives for the proposed processes.

Recommendation 4.7.242b: Include quantifiable, measurable objectives for each program element, and evaluate success rates at least quarterly.

4.7.243 Assessing Compliance with Paragraph 258: Officer Outreach Training

Paragraph 258 stipulates:

> **"Within 12 months of the Operational 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 partnerships, 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

During this reporting period, APD completed restructuring of its required 16 hours of Community Oriented Policing (COP) training that better reflects the department's 21st century community policing philosophy, incorporates into training new and changing departmental policies and orders, and better aligns training requirements with community oriented policing. APD submitted its reconstructed training to the monitoring team for review. The monitoring team noted several deficiencies, which were addressed by APD training staff. The monitoring team subsequently approved the COP training allowing for its first delivery when normal training operations can resume. The COP training was developed using a documented seven-step process and covered all of the required elements outlined in paragraph 258. During upcoming reporting periods, the monitoring team will assess how APD delivers this training not only to cadets, but also as part of their in-service training program. The monitoring team is also aware of the dynamic nature of current community policing practices and consequently the need to routinely update COP processes, curricula, oversight, supervision, and evaluation.

APD's decision to overhaul the required 16 hours of COP training was initially necessitated by a paradigm shift in the department's policing philosophy, placing a much greater emphasis on community policing and engagement. The approved curriculum and its eventual delivery in some form to all APD officers will represent a major milestone for APD in their transformative journey to full community-based policing. The training will help officers internalize a different way to perceive their relationship with the community members they serve, and to assess alternative ways of interacting with the community. This allows APD to bring "change" to the forefront of its community policing processes. The monitoring team believes that delivery of the COP training curriculum is key to achieving some of the most important elements of the CASA, and that these further investments in improving the quality and relevance of this training will be instrumental in driving culture change throughout APD.

To achieve operational compliance, APD needs to complete the in-service training that is planned for this March and demonstrate COP training's impact on APD community policing practices.

Results

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

Recommendation for Paragraph 258:

4.7.243a: ***Ensure that supervisory processes are oriented with the COP training and new COP goals and objectives.***

4.7.244 Assessing Compliance with Paragraph 259: Measuring Officer Outreach

Paragraph 259 stipulates:

> **"Within six months of the Operational 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

APD continues to make progress this reporting period regarding its capability to track officer community engagement and outreach activity goals. Previously, APD standardized and simplified the collection of non-enforcement contact data by revising the non-enforcement contact form in the TRaCS (Traffic and Activity System (which tracks officer activity). The department also created standardized tracking spread sheets for all area commands. The new form also requires documentation of APD follow-up on community concerns that surface during these contacts. During this reporting period, APD was able to generate a comprehensive list of events accompanied by metrics to provide some aggregate data about officer participation in community events and other non-enforcement contacts. APD continues to acknowledge a need to further refine and improve its tracking processes, report-generating capabilities, and to develop performance metrics and reporting protocols.

During this reporting period, APD identified 362 contacts with various businesses and organizations they have worked or shared information with this reporting period. The list remains mostly event-driven, and still does not adequately differentiate in terms of information provided to an organization, and on-going relationships involving referral agreements or understandings, information sharing protocols, etc. Future reporting should capture, in more detail, the significant on-going partnerships with community entities that serve at-risk populations who often come into contact with the police. APD

should use these data to generate summary and performance-based standard reporting on partnership activities. APD should also begin to set specific partnership goals and document the effectiveness of these goals.

Results

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

Recommendations for Paragraph 259:

4.7.244a: Develop additional standard reporting protocols of TRaCS and partnership data; and

4.7.244b: Identify community service organizations and advocacy groups that serve and represent high risk populations, and better document those partnerships including background, referral arrangements, if any, resource sharing if any, decision-making, roles, and responsibilities of parties.

Assessing 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

During this reporting period, APD reported developing a process that allows each Area Command to post relevant and timely information about their Area Command. Crime prevention specialists from each Area Command develop monthly events calendars with information about the events and photos. This information is shared with the Senior Crime Prevention Specialist who then screens and forwards the information to the APD Social Media Director. Information submitted is then posted on an Area Command specific group page. Each Area Command also maintains its own website which currently capture crime information, agendas for upcoming CPC meetings, schedules of upcoming events, other news items, information on how to report crimes, information regarding how to file complaints, and recommendations for officer commendations.

Although APD is putting in place a process to capture and share positive stories and valuable information that is Area Command specific, this process does not constitute a community outreach and public information program that is customized for each Area Command. APD needs to fully develop a program description that has program goals,

processes, key activities, and resource requirements, and ways to assess effectiveness. The Area Command-based public information plans and programs should specifically address community outreach, messaging, reaching marginalized audiences, and using social media to enhance community engagement.

Results

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

Recommendation for Paragraph 260:

4.7.245a: ***Seek outside assistance to develop and document Area Command public information strategies and programing by developing planning templates and aiding Area Commands in formulating customized approaches for each Area Command.***

4.7.246 Assessing 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

In this reporting period, APD continues to use CPCs as a platform to share information about implementation of CASA requirements. There were six presentations covering CASA topics or providing updates in five of the six Area Commands, with the exception of the Southeast Area Command.

APD has in place six functioning CPCs that provide a community platform for APD to convey relevant and timely information to community stakeholders and members. The CPCs are now being utilized as a conduit for updates on policy changes, new training, policing strategies, and tactics, and addressing residents' safety concerns. The monitoring team suggests that APD continue to refine use of CPC processes to provide a public forum to discuss broader policy, training, and crime prevention strategies.

Results

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

4.7.247 Assessing 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

We note that all CASA-related reports are posted on the APD website. Further, the APD website has information on an individual's rights and responsibilities during a police encounter.

Results

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

4.7.248 Assessing 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

For this reporting period, APD continues with its development and refinements of its TRaCs reporting system. APD reports that Commanders are currently submitting all non-enforcement contact information in a standardized format on a spreadsheet to command staff for tracking purposes. APD now can report the aggregate number of community meetings including meeting types. We note that APD previously established, through SOP-3-02-1, the requirement and tracking mechanisms to implement this task. APD reports that the form used has the officer document any issues raised at meetings and actions for the officer to in consider in response. APD also reports that it is a considering having officers use an application to help collect and disseminate information in a more efficient manner.

APD should continue in its enhanced community outreach data management structuring and tracking capabilities that will better inform managers and guide targeted adjustments in operations as required. These measures will allow APD to achieve detailed capturing, tracking, and reporting on non-law enforcement contacts and community engagement activities across the department. The monitoring team looks forward to the continued evolution of officer non-enforcement contact tracking systems and expanded utilization of information generated from these systems to both inform and promote community policing practices.

Results

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

4.7.249 Assessing 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

During this reporting period, APD maintained its contract with a service that provides up-to-date crime mapping services based on "calls for service". Those data can be accessed on APD's website. This has proven to be a very useful tool to members of the CPCs. However, APD has recently failed to post updated crime statistics on its website. Current postings only display 2018 aggregate crime trends. This is of special concern since APD had previously achieved excellent results for this requirement. The failure to post timely crime data and information by Area Command is especially disconcerting

with increasing community concerns about crime. New-found hardware issues with the city's central data processing system are partially responsible for this lack of timely data.

Results

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

Recommendation for Paragraph 264:

4.7.249a: Post 2019 crime statistics on APD's website as soon as practicable.

4.7.250 Assessing 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

All requirements stipulated by this paragraph continue to be 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. During this reporting period, APD also posted monitoring team reports on the APD website in a timely fashion.

Results

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

4.7.251 Assessing 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

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 tended to meet once a month, far exceeding the once every six-month requirement. During this reporting period, several of the CPCs experienced turmoil with numerous conflicts mostly relating to voting membership criteria issues and personality clashes. The monitoring team believes that much of the turmoil and confusion stemmed from new voting members challenging long-term practices, changeover in CPC leadership, and most importantly changeover and instability in the APD management and oversight of the program. In spite of these and other challenges, attendance data indicate excellent participation levels in most of the CPCs. For example, during this reporting period, attendance at these meetings ranged from a low of 15 to as high as 52. Even those CPCs experiencing challenges were able to generally maintain their participation levels. In every meeting there were community members, sworn officers, and CPC voting members.

The regular interface between community members and the officers who serve them indicate that the structure CPCs provide is evolving into an institutionalized practice and a community expectation. APD over the years has found increased value in CPCs, using them to brief residents on CASA progress, new crime fighting initiatives, and provide crime prevention tips. The CPCs also provide APD an opportunity to hear directly from residents about their concerns and enforcement priorities. Residents have an opportunity to directly address their Area Command staff and provide documented recommendations to APD that require a response.

Community members, APD, and the City Attorney's office are now meeting to explore future governance structures for CPCs. Currently, and for the last five years, CPCs operate as a requirement of the CASA. CPC members have expressed an interest in exploring an ordinance to provide a statutory underpinning for CPCs. An ordinance would not only define mission, roles and responsibilities for the CPCs but would also stipulate their governance requirements. Currently, the City designated APD as responsible for the management and oversight of CPCs, but an ordinance could statutorily re-assign that responsibility to another agency or office, such as the CPOA.

APD has consistently exceeded CASA requirements with CPCs meeting monthly since their inception. In spite of some of the ongoing challenges, most of which the monitoring team believes can be addressed with more effective management, technical support, and oversight, CPCs represent a success for APD's CASA compliance efforts. The CPCs provide what may become a national "best practice" opportunity for meaningful community input in police operations, fostering relationships, and building trust among police and community members. The monitoring team expects APD to

continue to support the maturation of this program, and to strengthen management and oversight, while fostering independence, and working with CPC leadership to devise the most appropriate governance structure for this program. We note that there is a critical balance between supporting CPCs and "directing" CPCs. We strongly recommend the former approach.

Results

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

4.7.252 Assessing 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

CPC membership criteria and selection processes came under criticism and scrutiny during this reporting period. Each CPC establishes their own selection criteria within the parameters of the CASA, including background check requirements. These requirements have excluding factors limited to current warrants and/or violent felonies in the last three years. The requirement to complete the 12-week Citizen Police Academy course (CPA) was modified during an earlier reporting period, with APD developing and providing an option for CPC members to complete a two-weekend (four day) version of the course (condensed CPA). In the prior reporting period, APD unilaterally, without advising the Parties or the monitor, abolished the condensed CPA, and thus reverted to the requirement that all CPC members complete the 12-week CPA course. The 12-week course requirement, according to CPC members, can deter membership interest because of the time requirements. We are unclear why APD felt it best to replace a process that had been working well, especially given the recruitment and retention problems such a change creates for CPC effectiveness and viability. We are further confused by the lack of consultation with the parties or the monitor regarding such drastic change to a well-functioning process.

APD, during a previous reporting period, had discussed with CPC members the prospect of creating opportunities for some aspects of the 12-week Citizen's Police Academy to be completed online or through means other than attendance for the full duration at the Training Academy. These options never came to fruition. When an audit of CPC voting members revealed that several members had not completed the CPA requirement, these members were dismissed from the CPCs by APD for failing to meet the requirement. The monitoring team suggested to APD that, in light of the ongoing discussions to eliminate or modify the CPA requirement, they reinstate the members. APD eventually reinstated these members, and there are on-going discussions between CPCs, APD, and the parties to review and revise membership selection criteria and processes. The City has expressed an interest in eliminating the CPA requirement, which may require a court-approved modification of the CASA. The monitoring team strongly urges APD and the parties to work expeditiously to revise and or clarify CPC member selection criteria. We view this ill-advised piece of process change (the elimination of the condensed CPA) to be a clear and present danger to what has become a true success story in APD's compliance processes. It was a major departure from past practice, without the knowledge or consent of the parties or the monitor.

APD continues to post CPC membership criteria for each of the six Area Commands on their websites, although the exclusionary criteria were altered by APD, without consultation with CPCs, the Parties, or the monitoring team, to exclude all membership applicants with any felony. The monitoring team, during a routine review of the website, noticed this change and brought it to the attention of APD. The criteria were immediately changed back to the original language, but no explanation was ever provided for the initial change to more restrictive exclusions. We highly recommend that APD conduct a failure analysis to determine who, when, and why these changes were made, who made them, and why the anticipated changes to existing CASA-compliant processes were made without consultation with the monitor, the parties, or, evidently, APD command and executive-level personnel. The process behind these changes resembles another counter-CASA process. If so, those involved in the changes—all made without consultation with or notice to the monitor-- should be interviewed regarding their intent and purpose. If warranted, disciplinary action should be taken.

APD documented efforts to recruit a more representative cross-section of community members as CPC voting members. APD identified and conducted outreach to several faith-based groups and other advocacy groups and community organizations. Others, including staff from the U.S. Attorney's Office, were also instrumental in encouraging interest in CPCs for further diversification. The result was a more diverse pool of CPC membership applicants during this reporting period. Diversification of membership continues to be a challenge. APD has indicated a willingness to re-tool outreach efforts to achieve greater diversity of CPC voting membership in order to better reflect the demographics of their area command.

CPCs are, in some instances, making greater use of social media tools to help reach young people and other hard-to-reach population groups, but need to be more effective in their use of social media platforms to grow CPC participation.

Results

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

4.7.253 Assessing 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 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

During this reporting period, APD continued, on a regular basis, to assist CPCs with minutes, agenda, social media posts, and providing audio-visual equipment. Area Command staff remained supportive, regularly attending CPC meetings, providing updates, and often making special presentations. APD leadership of the CPC program experienced setbacks during this reporting period. Changes in staffing and leadership proved disruptive on many levels for CPCs. There were periods in which decisions were made regarding important matters related to CPCs without consulting CPC leadership, APD leadership, or the monitor. There were other instances where conflicts arising within several CPCs were not addressed by APD and left to fester until the situations became much more problematic. The CPC program needs strong APD oversight that is willing to work collaboratively with CPCs and the parties to fine tune governance mechanisms, resolve conflicts among members and further diversify membership. We note that the monitoring team had previously provided direct training to CPC leadership relative to these areas. We considered that training to be state-of-the art, but it may be that a refresher process is in order. We will leave that decision to APD.

The monitoring team recognizes the challenges of working with volunteer-based advisory bodies. Many of the challenges currently affecting CPCs involve managing conflict, not atypical within advisory bodies. The City Department of Neighborhood Coordination, which routinely works with advisory bodies, provides extensive information on their website about managing conflicts within advisory bodies. APD should consider a consultation with this City department, and also consider training for CPC voting membership regarding how to manage conflict and work more effectively together, similar to what the monitoring team has already provided.

The monitoring team urges the City to stabilize the CPCs with the appointment of permanent staff who will be empowered to engage in a collaborative process to guide the further development and sustainment of CPC operations.

Results

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

4.7.254 Assessing 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

During this reporting period, the CPCs, continued to offer a wide range of agenda items, often including special presentations from APD covering various aspects of their operations. In January of this year, there were presentations at CPC meetings covering the APD body-worn camera program, the APD gang unit, and an update on APD compliance with the settlement agreement. These meetings devoted considerable time

discussing immediate community safety issues, and APD's proposed responses. CPCs are also now being regularly used as platforms for APD briefings on CASA implementation efforts and monitoring outcomes. The agenda items and CPC recommendations at most CPCs often continue to closely align with the issues and topics identified in the CASA.

APD also continues to make progress in tracking, reporting, and feedback for CPC recommendations. They have formats for reporting recommendations and have developed status charts indicating submission and review status, that are now posted on the APD/ CPC website. Some recommendations from this reporting period included:

- Re-establishing a Police reserve unit;
- Recording all CPC meetings; and
- Creating a volunteer unit to help with APD paperwork, freeing up officers for street duty.

There remain ongoing challenges with sustaining and enhancing CPC activities, including holding regularly scheduled meetings, addressing basic requirements of information sharing, and engaging in community safety and problem-solving activities. APD's continued assistance remains vital in helping to ensure the permanence and ongoing viability of this critical community input modality for APD operations. Most importantly, APD needs to provide leadership necessary to sustain and advance CPC operations, and formulate a policy to guide CPC oversight. In addition, APD needs to address long-term options concerning CPC future governance.

Results

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

4.7.255 Assessing 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

During this reporting period, APD posted the 2019 CPC annual report. All six CPCs produced 2018 annual reports, and for the first time presented them in a standard

format. These reports often captured CPC annual activities and achievements. APD held training programs during a prior reporting period, which helped to promote standardization in annual reports among CPCs. As a result, the 2018 annual reports demonstrated more reporting consistency. The monitoring team expects APD to provide 2019 annual reports from the remaining five CPCs during the twelfth reporting period.

Results

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

Recommendation for Paragraph 270

4.7.255a: Develop and deliver required annual reports.

4.7.256 through 4.7.277 Assessing Compliance with Paragraphs 271-292: Community Police Oversight Agency

Paragraphs 271 through 292 of the CASA pertain to the Civilian Police Oversight Agency (CPOA) including its Board, previously known as the Police Oversight Board, now renamed the CPOA board. These paragraphs require an independent, impartial, effective, and transparent civilian oversight process, one that not only investigates civilian complaints but also renders disciplinary and policy recommendations, conducts trend analyses, and provides community outreach, including the publishing of reports.

During the monitoring period and the November 2019 site visit, members of the monitoring team met with the CPOA Executive Director and members of his staff at the CPOA office, with the CPOA Attorney, and with members of the CPOA Board. We also met with the Council Director and City Councilors. The monitoring team also reviewed CPOA training records and selected (by way of a stratified random sample) and reviewed 11 CPOA investigations completed during the monitoring period. We also identified and reviewed one non-concurrence letter in the Chief's response to disciplinary recommendations of CPOA and the CPOA Board regarding CPOA case [IMR-11-34].

The findings related to Paragraphs 271 through 292 indicate the following outcomes, related to requirements of the CASA.

The CPOA Board has demonstrated itself to be an impartial and productive body that provides effective civilian oversight of APD. It is an independent agency whose appointed members (the Board) are dedicated individuals of diverse backgrounds drawn from a cross-section of the community. They are committed to the goals of the CASA, as are all members of the CPOA.

The initial and annual training requirements for the Board members continue to be met. Regarding annual training requirements under paragraphs 275 and 276 of the CASA, Board members have attended the annual National Association for Civilian Oversight of Law Enforcement (NACOLE) conferences, have received Force Review Board Training, had changes to the CPOA Ordinance addressed by legal counsel to the CPOA, and are current with their annual ride-a-long requirements. A CPOA Board Post-Training Examination for Board members was developed and administered by the Executive Director. This testing was a step forward and was helpful in measuring Board members' comprehension of the provided Use of Force Training.

As we noted in the past several IMRs, the investigations produced by CPOA, once complaints are assigned, are generally thorough. (We discuss in more detail the quality of investigations in the Investigation of Complaints section of this report). The Executive Director has the authority to recommend disciplinary action in the cases CPOA investigates, as well as the cases that are reviewed by CPOA (Serious Use of Force and Officer-Involved Shootings), and the Board has a mechanism for approving the recommendations of the Executive Director. The Chief or his designee retains the discretion to impose discipline.

As noted in IMR 10, the Board's Complaint Review Committee (CRC) has been restored. A review of their meeting agendas and minutes shows that they are active and productive. In its January 2020 meeting, the CRC voted to recommend to the Board that the CRC meet quarterly (less often than the current monthly meeting) and develop a more clearly articulated auditing function for completed complaint investigations, as opposed to reviewing every single investigation to approve or disapprove CPOA's findings and recommendations. It remains to be seen whether the Board will adopt this recommendation. Although the monitoring team would generally approve of a Board's attempt to improve the auditing of the quality of CPOA investigations, it cautions that an adequate mechanism must exist for the Board to review and approve the findings and recommendations of individual CPOA investigations.

Cooperation between CPOA and IAPS continues to be satisfactory. In general, both agencies continue to respect each other's role, and realize it is in their best interests, and that of the CASA, to cooperate and facilitate their intertwined missions and related areas of responsibility. CPOA has the necessary access to information and facilities reasonably necessary to investigate complaints and review serious use of force and officer-involved shootings.

CPOA and the Board continue to have adequate time to provide input on the policy-making process. Due to changes in the policy review procedures, the Board has adequate time to view and debate policies and policy changes as an entire body. This should prove to be an enhancement to not only the Board's policy role, but the entire APD policy making and policy revision processes as well.

During this monitoring period, we identified and reviewed one non-concurrence letter in which the Chief disagreed with the disciplinary recommendations of the CPOA and the Board. [IMR-11-34]. This case involved a matter dealing with handicapped parking, wherein the investigation was sustained on complaints of racial profiling, acting on less than reasonable suspicion, and failure to activate the OBRD. The non-concurrence letter disagreed with the racial profiling finding. Although not detailed, it correctly and adequately pointed out that the evidence showed race was used as an identification factor, a permissible use of race in law enforcement actions. We find that the system worked as it was intended: the Chief's delegate in this matter seriously considered the disciplinary recommendations and, having considered them, he transparently articulated his disciplinary decision. Therefore, the non-concurrence letters continue to be such that the public, CPOA, the Board, and the APD are well aware of the Chief's reasons and thought processes in reaching his decisions regarding the level of discipline imposed.

CPOA continues to have an active community outreach program, which also utilizes social media, in addition to other media. The Executive Director and representatives of CPOA continue to have quarterly meetings with City Council, and they also attend the quarterly meetings of the collective CPCs. They continue to attend the majority of individual CPC meetings. In addition to more closely identifying the needs and goals of the different communities that make up Albuquerque, the CPOA engagement with the CPCs allows for coordination of efforts, particularly with regard to policy recommendations. Although individual CPCs are free to make their own recommendations, where there is commonality of interests, unity in making recommendations may carry greater import.

The Executive Director and/or designees have addressed the APD Cadet class as well as the APD Lateral Hire class in prior monitoring periods. They have also addressed, community groups, and continue to stand ready to do so upon request. The Executive Director addressed the National Federation of Press Women - New Mexico Chapter, and also served as a panelist at the annual conference of the National Association of Civilian Oversight of Law Enforcement (NACOLE) during this monitoring period. As we noted in IMR 10, the use of a new brochure, which has a complaint and commendation form with a tear-off, pre-paid postage complaint and commendation form, has facilitated the process for the public to engage the agency.

As we have noted since IMR 9, the CPOA Board needs to be at full strength. We were encouraged to learn that this monitoring period the Board has seven of nine positions actively filled, and an additional applicant is in the vetting process. Once that applicant is actively participating, eight of the nine positions will be filled. The monitoring team expect that the Board will be at full strength by the end of the 12th monitoring period.

In regard to the importance of effective civilian oversight required by the CASA, members of the monitoring team attended meetings with several City Councilors and

the Council Director during this reporting period. We were convinced that they highly value and are committed to the police oversight process and realize the importance of having a fully resourced and supported CPOA Board. We are satisfied that they are taking diligent steps to vet potential candidates and to fill the vacancies of the CPOA Board.

We also note further positive developments by the CPOA and the CPOA Board. Two meetings were held with the aid of a facilitator, one between the Executive Director and members of the CPOA Board, and one between CPOA agency employees and members of the CPOA Board. The purpose of these meetings was to enhance understanding and respect for the different roles of the agency and the Board, as well as to strengthen the relationship between the agency and the Board, and to improve the working environment. A member of the Board drafted Board Standards and Ethics. This enterprise is being reviewed by the Board and its legal counsel and will be presented to the parties and the monitoring team during the 12th monitoring period. This is a significant step forward in reaffirming the Board's commitment to objective, fair, and effective civilian oversight.

In our last IMR, we pointed out an unnecessary controversy that raised concerns about the impartiality of a Board member and the overall effectiveness and public perception of the civilian oversight of APD. Based on our meetings with the CPOA and its members, with members of the CPOA Board, as well as our meetings with the Council Director and Council members, and our review of CPOA Board meetings, agenda and minutes, we are satisfied that the current Board recognizes the need to be impartial and to be perceived by the public as impartial.

For the foregoing reasons, the monitoring team believes that compliance for the CPOA Board to paragraphs 271 and 273 of the CASA has been re-attained. "Meaningful oversight" by the Board means effective oversight, which is rendered easier now that the disruptive controversies have faded, and the Board has demonstrably recommitted itself to conducting its mission impartially.

Not only does the Board need to be at full strength, under paragraphs 278 and 279 of the CASA, the CPOA must have adequate budget and staff (non-appointed members of the agency) to perform its roles. As we noted in IMR 10, previously the CPOA budget was required by Ordinance to be ½ of 1% of the APD budget. This requirement has since been removed, and the ordinance now states:

> "The CPOA shall recommend and propose its budget to the Mayor and City Council during the city's budget process to carry out the powers and duties under §§ 9-4-1-1 through 9-4-1-14, including itemized listings for the funding for staff and all necessary operating expenses." Revised Ordinances of Albuquerque, New Mexico, 1994, Section 9-4-1-4(A)(2)."

Although we cannot say the present CPOA budget is insufficient for purposes of CASA compliance, there are now even stronger indications in our review of the CPOA work performance that more staffing is required. We find that the CPOA is operating efficiently within the confines of its present staffing and number of complaints it receives, but as set forth in this IMR regarding timeliness of completion of investigations and infrequent use of expedient measures to complete investigations, the CPOA ability to meet CASA requirements is strained at this point.

On a positive note a Data Analyst position and an Administrative position to provide support to the CPOA Board and to CPOA investigative staff have been filled. CPOA currently has one investigative position open and has requested two additional investigative positions. It is evident to the monitoring team that the CPOA must increase its investigative capacity to keep abreast of its workload within the requirements of the CASA and the investigative time requirements of the CBA. This will continue to be a focus of the monitoring team.

As we pointed out in previous IMRs, a new mediation policy was developed that was a marked improvement and was expected to enable CPOA to make greater use of this effective complaint remedy and disposition tool. However, this revised policy did not prove to be successful. As we noted in IMR 10, unfortunately, complainants did not take advantage of the mediation program and have, for the most part, opted not to pursue mediation. During the 11th IMR monitoring period, a second revised version of the mediation has been completed, a draft of which been forwarded to the monitoring team and the parties. The monitoring team has approved the latest version of that version.

As the monitoring team has noted since IMR 8, when reviewing a stratified random sample of investigations, regarding the requirement of "expeditiously as possible" processing of complaints contained in paragraph 281 of the CASA, and the time requirement for completing investigations contained in paragraph 191, we look for and determine the following dates: complaint received, complaint assigned for investigation, initiation of investigation after assignment, completion of investigation, and notification of intent to impose discipline (where applicable).

During the 6th site visit, the monitoring team discussed with the parties the issue of delay between the date a complaint is received and the date it is assigned for investigation. Although the CASA does not deal directly with the issue of time to assign, the parties and the Monitor agreed that a delay of more than seven working days for assignment is unreasonable and would affect the "expeditious" requirement of paragraph 281 and the time requirement of paragraph 191. We agreed this timeline requirement would be assessed in IMR 8, and in all following IMRs.

We sampled 11 CPOA investigations completed this monitoring period. All of them had evidence of "as soon as possible" initiation of investigation after assignment. However, we note that in three cases, [IMR-11-27, IMR-11-30, IMR-11-31] assignment was made

after seven working days of having received the complaint. In addition, we found three investigations that were untimely in length [IMR-11-24, IMR-11-28, IMR-11-32]. This is a compliance rate of only 45 percent with the "expeditious" time requirements of the CASA, well below the required 95 percent.

In addition, during the 11th IMR review period, the Executive Director discovered approximately 50 investigative files, based on complaints made in 2017, that were given to a former CPOA employee for processing, that in fact had not been processed. The files were found hidden in the former employee's desk, after the employee resigned. Thus, these complaints remained unassigned for investigation. Once this matter was discovered, it was revealed by the Executive Directive in a timely and forthright manner. CPOA is now in the process of formulating a plan to investigate these complaints. This plan and CPOA remedial measures to avoid this type of error in the future will be a focus of monitoring review in the IMR 12 period.

For the foregoing reasons, CPOA continues to be out of operational compliance with the expeditious requirements of paragraph 281, and based on the discovery of unprocessed files, has lost operational compliance with the requirement of paragraph 280 to assign complaints for investigation. It is expected that with an adequate plan to address the 50 late and unprocessed cases, compliance with paragraph 280 can be restored.

It bears repeating what we have addressed in the issues above, with regard to the CPOA budget and staffing. Based on our observations and interaction with CPOA staff, we believe that the CPOA is operating as efficiently as its present workload and staffing permit. However, the ability of the CPOA to meet its investigative responsibilities is impacted by the availability of necessary staff. At the same time, we are cognizant of the fact that funding is always a central issue. Nonetheless, either funding needs to be increased, or new efficiencies need to be found in the CPOA process. To do otherwise may result in loss of compliance for these paragraphs.

We also note that CPOA has initiated a new internal tracking system of complaints received, which is starting to pay dividends in the assignment of investigations and tracking of same once the investigation is initiated.

In our review of the public information requirement for CPOA and the Board, we found that issues we have had in the past with the timeliness of release of public reports are being addressed. In regard to paragraph 292 of the CASA requiring the CPOA to file semi-annual reports with the City Council, CPOA previously attempted to meet this requirement by filing one semi-annual and one annual report per year, and quarterly reports verbally with City Council. They have now implemented a process of filing two semi-annual reports per year.

APD is currently designing improvements in reporting and analysis of statistics contained in the 2018 semi-annual reports could be made. To its credit, CPOA decided to sacrifice timeliness for quality, and the Data Analyst was assigned the responsibility

of revising the reports. These rewrites have been completed and approved by the CPOA Board. As of the closing date for this monitoring report, the revised semi-annual report for 2018 had not been submitted to Council. We are encouraged by the addition of the Data Analyst and the expected impact this position will have on the CPOA's ability to meet its public information requirement in a timely fashion. We expect that CPOA will now turn its attention to expeditious completion of the 2019 semi-annual reports. The goal should be, and the expectation of the monitoring team is, that CPOA will issue a semi-annual report every six months within 120 days of the completion of the end of a reporting period.

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."**

Results

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."**

Results

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."**

Results

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."**

Results

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."**

Results

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."**

Results

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**."

Results

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**."

Results

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."**

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."**

Results

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

Recommendations for Paragraph 280:

4.7.265a: ***CPOA and IAPS should avoid conducting independent investigations of the same alleged misconduct. Jurisdiction should lie with one office or the other.***

4.7.265b: In the rare instance in which an external complaint and an internal complaint address the same subject matter, an agreement should be made regarding which office will conduct the investigation or a joint investigation with one set of findings should be conducted.

4.7.266 Assessing Compliance with Paragraph 281: Prompt and Expeditious 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."**

Results

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

Recommendations for Paragraph 281:

4.7.266a: Continue to develop and refine an internal tracking system or other process that ensures all complaints are either assigned for investigation, referred to mediation, or administratively closed within seven working days of receipt of complaint, and once assigned for investigation proceed according to the timelines set forth in the CASA and CBA.

4.7.266b: Ensure that tardy assignments of investigations and tardy investigations are noted and discussed with the involved CPOA personnel.

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."**

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."**

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."**

Results

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."**

Results

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

4.7.271 Assessing Compliance with Paragraph 286: Documenting Executive Director's Findings

Paragraph 286 stipulates:

> **"The findings of the Executive Director shall be documented by APD's Internal Affairs Division for tracking and analysis."**

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."**

Results

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

Monitor's Note:

The CPOA Board must respect and follow the appeals process set forth in its Ordinance and apply it equally to all members of the public. The functional equivalent of allowing an appeal before the end of an investigation should be avoided.

When the CPOA Board grants an appeal and sustains violations that were not found by CPOA, or otherwise alters CPOA findings, disciplinary recommendations should be made, and training/policy issues addressed, to better enable the Chief to reach an appropriate decision.

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."**

Results

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."**

Results

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

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."**

Results

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."

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."**

Results

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

Recommendations for Paragraph 292:

4.7.277a: CPOA should specifically identify the points causing non-compliance with this paragraph and work with APD and the monitoring

team to decide upon processes that will move work processes into compliance.

4.7.278 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."**

An Assistant City Attorney has taken responsibility for providing notice to the monitoring team regarding all APD critical firearm discharges. Based on the new system's results, the monitor now receives expeditious notification, via e-mail exchanges, of all officer-involved shootings. The City's 320 notifications now match the "known data" contemporaneously maintained by the monitoring team, which is tallied from news reports, contemporaneous reviews of use of force reports, and spot checks of information reviewed from IA "course of business" data. The Parties have met recently regarding this requirement, and we have requested that the City make these notifications as soon as practicable with a "notice of event," and then follow-up with the Parties and the Monitor with a more detailed "fact brief" as additional salient information becomes available.

Results

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

5.0 Summary

The monitor's report for the eleventh reporting period, as with our past reports, tracks the Court-Approved Settlement Agreement (CASA) paragraph by paragraph, identifying APD's and the CPOA's compliance status for each requirement of the CASA. As is our usual practice, we provide a brief overall summary of compliance trends, current status, observed successes, and existing "problems and issues" related to compliance overall. The monitor continues to observe tangible evidence that compliance with the CASA is an important task to APD. Work continues among key members of the command staff, supported tangibly by staff from the City Attorney's office, to move critical elements into

compliance. As with our past reports, we find most of APD's compliance focused units to be fully engaged in meaningful attempts to define internal business practices that will move the organization further along the path to compliance.

As noted above, APD's training processes have been revised substantially during this reporting period, with APD moving to a new (to APD) adult learning model, replacing the old "lecture and memorize" model used in the past. This change has resulted in two significant outcomes: it seems to have improved content delivery related to core compliance issues, and it appears the new process resulted in higher evaluations from attendees compared to the former process. Eventually, we see this new approach being applied to all training topics at APD.

This milestone by training has been offset by our observance of further examples of the counter-CASA effect noted in the last several monitoring reports, including some instances moving beyond the epicenter of that issue (supervision) to mid- and upper-management levels of the organization. Most recently, the IAPS Commander was transferred out of that unit following observations of critical errors of process directly affecting APD's ability to discipline supervisory personnel for behavior in direct juxtaposition to the requirements of the CASA. Some in APD's command levels continue to exhibit behaviors that build bulwarks that prevent or hinder fair and objective discipline, including a process of attempting to delay—in some cases successfully—oversight processes until the timelines for administering discipline has been exceeded, thus preventing an effective remedial response to behavior that is clearly in violation of established policy and the CASA.

APD's reform efforts have produced some otherwise very positive news on the administrative and operational fronts. We have noted:

- Policy development and promulgation has improved markedly of late, with proffered policies requiring little or no pressure from the monitoring team to move them to an acceptable level of specificity, applicability, and conformance with CASA requirements;

- Training processes have been updated to a more modern (and more effective) interactive process that requires the ability to identify problems, analyze those problems, and create solutions to those problems by working in small collaborative groups and demonstrating skills actually needed to manage: listening, assessing, analyzing, decision-making, and implementation management. As a result, learning has evolved to skills-level processes, from an ability to memorize and parrot back information via multiple-choice tests.

- Some levels of supervision and management have begun to pay meaningful attention to critical tasks involving specific components of the CASA: use of force, preparation of valid reports of in-field incidents, effective supervision and oversight, well-focused managerial review and assessments, etc.

The Monitor believes that meaningful change at APD will not come without a focus on processes designed to ultimately change long-held belief systems at APD. These belief systems are, at times, not fully supportive of the change demanded by the CASA. This type of strategic change is difficult to instill and takes longer to achieve the desired change than other more "old-style" management and leadership processes. However, we see signs that this perspective is beginning to take hold and is, in some cases, engendering needed change.

We have noted since the beginning of the CASA compliance process, that there were a few at APD who were overtly resistant to the CASA. We have described a "counter-CASA effect" among some at the supervisory, mid-management, and even command levels at APD.

During this reporting period, we have observed examples of strong, reasoned, and effective compliance efforts at APD:

- The Accountability and Oversight Division's Performance Metrics Unit has expanded both its scope and capacity, and is providing meaningful, reasoned, and fact-based oversight of an expanding portion of the CASA's requirements.

- AOD and PMU are filtering that information to various command levels throughout the agency.

- Over the years, APD has mastered the policy development process, the training process, and has begun to improve the administrative oversight process. What remains is attaining mastery of the supervisory and operational management processes at the street level.

- While policy, training and administration are certainly on the critical path for the APD reform project, the proof of process is observing, in practice, routine success at the operational and street level. Until supervisory and mid-management processes are moved into compliance, there remains much to be done.

5.1 Strengths, Weaknesses, Opportunities and Threats: A Strategic Analysis of APD's Compliance Efforts and Statuses

We continue to recommend that APD take a more strategic approach to its CASA compliance efforts, by reviewing the strategic factors leading to compliance, the internal and external weaknesses in APD's compliance efforts, opportunities for advancement of compliance efforts, and threats to the organization's compliance statuses. To fail to adapt this modality will lead to the "fireman's approach" to compliance—rushing from pressure point to pressure point; applying less-than-well-thought-out "solutions" via ad

hoc responses instead of thoughtful, planned responses, such as leveraging strengths against identified weaknesses; and clearly, thoughtfully assessing threats to compliance goals and objectives, and taking reasoned approaches to minimize or eliminate those threats.

By nature, most police agencies are reactive organisms: waiting for threats and responding with strong, perceived-effective responses to those threats. Lost in this response model are the true elements of building a successful organization: identifying threats early on; assessing internal and external strengths related to the threat; identifying weaknesses that may have caused or exacerbated the threat; cataloging opportunities and strategies to effect positive change; and calculating internal weakness and/or threats to each opportunity. APD has done an effective job, for the most part, in addressing prefatory requirements of effective organizational response to threats: policy development and training. The next step is more difficult: building processes into systems and fine-tuning those systems to address effectively identified threats. These higher-level processes are commonly known as "SWOT" analyses, and using these analyses the organization can, in effect, predict the future and build systems to address critical issues before these issues actually occur.

In effect that is what processes such as the CASA are designed to do: to give the police organization clear insight into the threats they face. It is then up to the police agency to identify the elements of those threats that can (and cannot) be managed; provide a framework for addressing those threats that considers the organization's strengths (opportunities) and weaknesses (threats). The reader will note frequent use by the monitor in his reports of the phrase "Counter-CASA effect," which refers to organizational weaknesses compared to the threats confronting the organization. At times, the counter-CASA effect is merely reflective of poor policy, poor training, poor supervision, poor command decisions, or poor leadership. At other times, those threats are deliberate, unwarranted interventions or omissions designed by some members of the organization to thwart attempts to change attitudes, beliefs, established practices, and systems (defined collectively as the department's "culture").

Most readers of the monitor's reports are familiar with this rubric: we have discussed it in virtually every report we have written. The APD is no different than any other large organization. Change isn't easy, especially when it's brought to an organization by outside forces. It is even more difficult when that change is designed to change the culture of the organization. Most literature on change management—and most practical experience in change management-- warns against a "change process" that does not explicitly address the culture of the organization. Those who fail in that facet of change management do so mainly because they fail to address the culture of the organization. When the monitor refers to the Counter-CASA effect he is referring to the attempts of the "old culture" at APD to resist being replaced by the "new culture" envisioned by the CASA and APD's new executive structure. Such cultural difference often result in supervisors and managers simply not "seeing" some behaviors as occurring in

contradistinction to the CASA as problematic, since they have been “normal” for such a long period of time.

Finally, the “rules” of culture change are not as simple as writing a “policy,” training that policy, and supervising those who must implement and “live with” a policy. The rules are much more complicated and “soft,” requiring discussions; an understanding of the human side of change management; new skills and abilities; and new vision, clearly articulated and enforced by the “soft side” of management processes: persuasion, rewards, perception management, and most importantly careful direction of the management team. This is often accomplished by what many people call “soft processes” designed to build understanding. As many of us know, understanding is best constructed through timely, practical, and persistent communication from the top. Despite best efforts, however, some simply do not acquiesce to required change. These failures need to be addressed substantively by the agency. We are still finding instances in which this final step is simply not executed.

The CASA is the “communicating document” for change at APD. Change comes through building strengths effective at selling, planning, and implementing planned change across broad spectrums of the organization. APD’s leadership cadre has managed to bring substantive change to the organization over the last few years—improved policies, improved training, and improved messaging from the senior levels of the organization; however, those changes have yet to take hold among some in the agency.

Our current analysis of APD’s operational strengths, weaknesses, opportunities, and threats are outlined below.

Strengths

APD has both an external and internal mandate for change. The federal courts and the Department of Justice have developed a change mandate at APD via the CASA, and that change mandate has opened funding opportunities that, more likely than not, were not available to the “old APD.” The CASA project has engendered a process that provides APD with a group of experienced change agents to serve as guides as APD moves through the process of self-reform—all members of the monitoring team have either been through the process themselves, or have overseen multiple organizational development and planned change processes in policing.

Weaknesses

As is the case with most police agencies undergoing CASA-like reform, the rubric of change is unfamiliar to command staff, mid-management, and supervisors. Unfamiliar systems processes are required of these key elements of the agency, and not all members of the organization, almost by definition, are proponents of that change. It is not unusual in such externally mandated change processes to find members of the

organization who are not supportive of the broad-based, core-level changes required by a CASA process. This resistance is often "soft" in nature, as overt resistance can be career threatening. When the monitor uses the term "counter-CASA effect," he is referring to this persistent level of resistance—subtle failures to perform at all levels of the organization due to a lack of buy-in or support of required change. The monitor has found that this level of resistance is often difficult to recognize, as there is very little obvious difference between "counter-CASA resistance" and poor training, supervision, or motivation. Thus, the elements of the resistance are difficult to identify and address. However, as effective training, supervision, mid- and upper-level management improvements begin to "take hold" at APD these resistance modalities will become more obvious, and more difficult to not "call out" and remedy.

Opportunities

All of the CASA-like reform projects with which the monitor is familiar offer the same opportunities for the agency being "reformed:" Access external experts familiar with organizational development and planned change processes, and support from governmental entities responsible for the "changing" agency. More often than not, a separate, but equally important set of opportunities are provided by the affected community, which more likely than not has been militating for meaningful change in the agency long before the advent of the CASA-like reform project. If well managed and carefully cultivated these communities can be strong partners in the change process.

Threats

Conversely, if the communities are ignored, these communities can be a source of stress for the reforming organization, as they assertively militate against the plans of the affected police agency, and, understandably so, press for change that may not be as well thought out as the changes required by the CASA. The monitor notes that, the longer the affected agency takes to "reform," the greater the pressure applied by these outside organizations will be. Similarly, the opportunities for increased external outreach (and other elements of local government support) engendered by the reform project will wane as time passes and progress is slow.

APD is in a more fortunate situation than most agencies the monitor has worked with in the past. The communities of Albuquerque have informed, thoughtful, and supportive "champions," who have, in the past, made tangible and effective efforts to support APD as it works to conform to the CASA and reach out to the communities APD serves. In the monitor's experience, that support is not overly durable if the individual communities the police agency serves do not see palpable results progressively and regularly achieved.