

Monitor's Fourteenth 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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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 14th reporting period, which covers February 2021 through July 2021.

2.0 Executive Summary

Figure 2.1 below depicts APD's compliance levels throughout the fourteen reporting periods of the reform project. Several key interpretations can be made from these data that are indicative of APD's approach to the mandated reform project outlined by the CASA.

Organizational Successes

During this reporting period, APD has completed the 2021 Firearms training cycle, and in doing so, has moved several paragraphs back into operational compliance. APD's Training Academy has made meaningful progress in resurrecting its training processes. APD Recruitment staff continue to develop strategies and concepts for recruiting new police officers during the Pandemic. In addition, at a time when interest in the profession is down significantly nationwide, the APD Recruiting unit has managed to increase interest in APD by utilizing digital platforms to reach an applicant pool that now includes at least 43 states.

Several additional units at APD continue to be successful, as reported in this and previous monitor's reports. The Performance Metric Unit continues to create and implement strong practices to assess APD's in-field performance. The Citizen Policing Councils are thriving across Albuquerque—due in part to their new home at the CPOA. SOD and SID continue to remain in operational compliance due to the management and leadership in those units. No compliance issues were noted when reviewing ECW usage during this reporting period.

Critical Issues

Clearly, the most important issues affecting APD during the IMR-14 reporting period involve misconduct investigations, use of force investigations, the lack of progressive discipline when misconduct is found, and supervision and leadership.

All 15 non-force-related misconduct investigations completed by APD (six by IAPS and nine by the area commands) were found to be deficient. A total of 17 misconduct cases, six investigated by IAPS, and nine area command investigations were reviewed, including two that were completed by outside agencies. The only properly investigated case reviewed by the monitoring team this reporting period was completed by an outside agency.

In two consecutive reporting periods, a virtual shut down of use of force investigations has occurred in IAFD. Only seven (three percent) of the 216 Level 2 cases opened this reporting period were closed. Only one of those seven was completed within 90 days (less than one-half of a percent), as required by the CASA. Only two of 91 Level 3 use of force cases opened during this period were completed by IAFD (two percent). Neither of those cases were completed within the CASA required 90-day period. We find these failings to be more than notable, given the amount of time the monitoring team spent with APD in the last three reporting periods specifically focused on process improvement processes at IAFD.

Of the twelve cases reviewed for compliance concerning discipline, only 58 percent met the requirements for adherence to progressive discipline as outlined in the CASA.

Furthermore, a second backlog of 667 uninvestigated use of force cases (as of the draft of this report) was reported. This second backlog is more than double the initial backlog APD dealt with from 2018-2020 and does not include any of the contemporary cases left uninvestigated by IAFD. Approximately 83% of these cases are already time-barred for discipline in accordance with the CBA, should misconduct be found. Since its discovery, this backlog has been reduced from 667 cases to 660 cases (as of October 25, 2021). At this rate of case productivity, we project that it will take APD 94 months to “clear” this second backlog, which, again, would ensure no disciplinary actions for policy violations in another 667 cases. Given the amount of focus on the problems related to IAFD investigations in previous monitor’s reports, and the exceptional amounts of technical assistance provided by the monitoring team relating to IAFD processes, we can only conclude that this new backlog was intentional, and yet another canard designed to ensure that officers are not disciplined for known policy violations. We consider this another example of deliberate non-compliance exhibited by APD.

Leadership and supervision, especially in the critical areas of reform listed above, are simply lacking—or in some cases not extant. As such, these findings require direct action by the City and APD leadership to identify the causes of, and to take corrective actions responding to, what can only be described as deliberate failures

to comply with existing APD policy and with CASA requirements. Given the extensive amounts of technical assistance provided by the monitoring team related to misconduct investigations and to workload management, we can only conclude that these jarring failures are deliberate.

This reform project's evaluation process, i.e., the manner in which the monitoring team assesses and reports progress on the required reforms, has been closely aligned to the measurable tenets of effective management. First, the methodology closely conforms with the concept that effective management is based on developing cogent and coherent policies (articulation of acceptable activities required of police personnel). Officers, supervisors, managers, and leaders must be clearly "on notice" of organizational expectations, so that they understand and are willing to adhere to those expectations. Once these reformative policies have been articulated, all involved personnel (recruits, officers, supervisors, and managers) must be trained to the point that they understand and are capable of implementing these policies. Finally, and most importantly, once adequate policies are developed and effective training is delivered, police personnel (recruits, officers, supervisors, managers, and leaders) must be willing and able to ensure that the policies and training are followed in the field. Once that initial commitment is achieved, and personnel are adequately trained to the point that they are capable of implementing their training on a day-to-day basis and can implement expected operational processes, progress is possible.

This means that departmental operations should change, such that the vast majority of police interactions will occur within parameters established by policy, training, and supervision. In addition, it is assumed that those few officers, supervisors, and managers who prove they cannot or will not comply to organizational norming processes will be identified by internal oversight processes, and will be either retrained, counseled, or "disciplined" to the point that compliance either occurs or they decide to leave the agency (or in rare instances are separated from the agency). The monitor's oversight process for APD during the past six years has been based on this near-universal understanding of police operational management and control. After six years of implementation, APD has fallen significantly short in its ability to engender the supervisory, managerial, and leadership efforts that have been demonstrated much earlier in other law enforcement agencies monitored in this manner. The fact that this planned change process works, and can work well, is documented in the fact that a large majority of this monitor's staff working on the Albuquerque Police Department monitoring process are past members of organizations that have been directly monitored by the current APD monitor. These team members have "lived the change process" and done so successfully in their respective agencies, thus are uniquely situated to guide APD successfully through the change process.

Given the amount of technical assistance provide to APD by members of this monitoring team; given the fact that for every "out-of-compliance" outcome found by the monitor, there are recommendations developed to guide APD into compliance; given the inordinate amounts of "technical assistance" provided to APD by

members of the monitoring team over the past six years; the monitor can only conclude, based on his knowledge, training and experience, that these failures at APD are deliberate.

3.0 Synopsis of Findings for the 14th Reporting Period

As of the end of the IMR-14 reporting period, APD's compliance levels are as follows:

Primary Compliance	100 %;
Secondary Compliance	82 %; and
Operational Compliance	62 %.

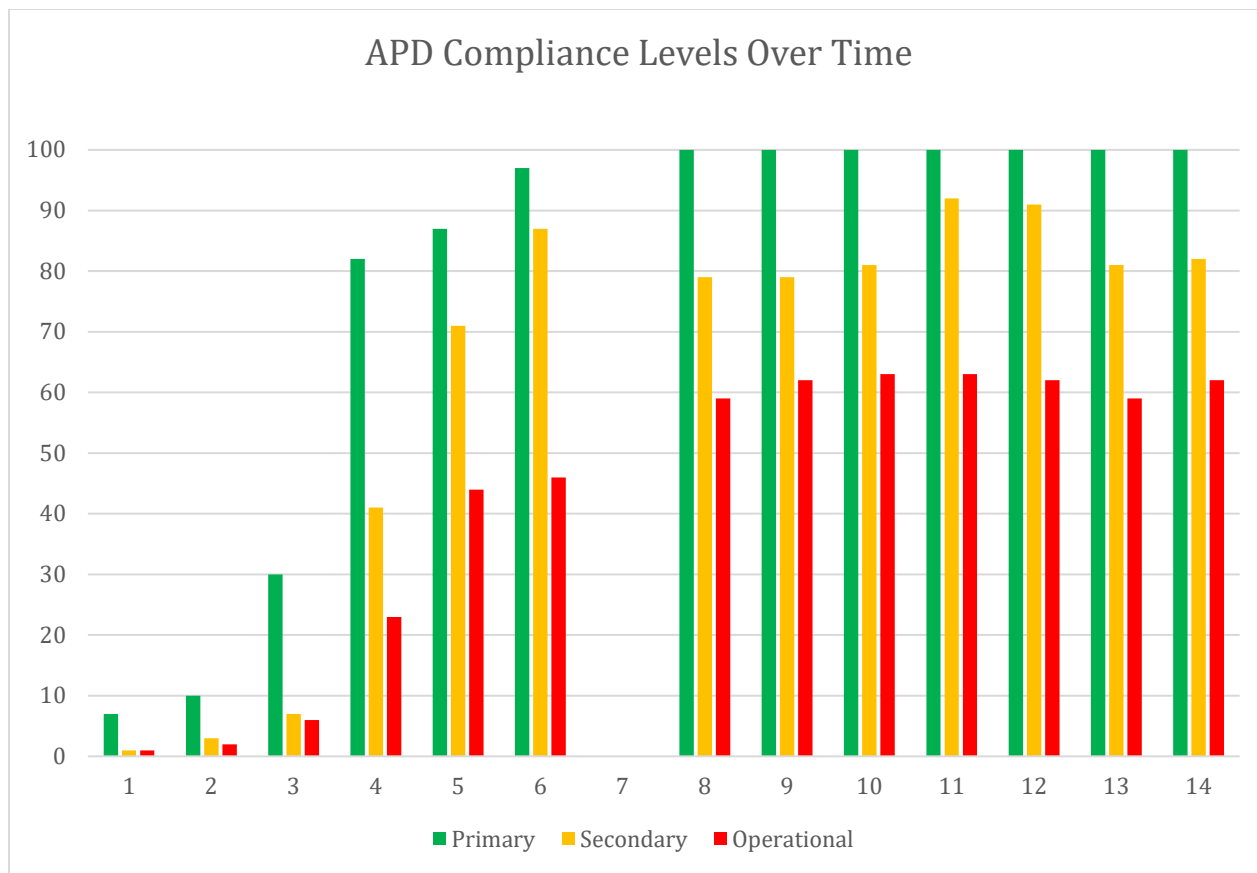
Since the last report, IMR-13, the following changes in compliance levels are noted:

Primary Compliance:	No change at 100 percent;
Secondary Compliance:	No change, at 82 percent; and
Operational Compliance:	A slight increase in Operational Compliance of 3 percentage points.

These data are represented in the bar graph, Figure 3.1, on the following page.

These data indicate that over the last seven reporting periods (three years), APD has virtually held constant in its compliance outcomes. There has been remarkably little change in operational compliance levels since IMR-8 in 2013. Compliance figures have held steady over that period of time, with operational compliance registering 59 percent in IMR-8 and 62 percent in IMR-14. When one considers the vast amounts of technical assistance, coaching, and problem-solving provided to APD by the monitoring team over the past seven reporting periods, a 3 percentage point increase in overall compliance is evidence that APD is unwilling or unable to meet the requirements of the CASA related to supervision and oversight of in-field operations.

The data depicted in the graph indicate no meaningful improvement in operational compliance at APD since IMR-8. In the monitor's experience, this represents a question



of will, not capacity. The monitoring team has expended unparalleled levels of technical assistance (TA) with APD. This remarkable lack of progress has continued virtually unabated during the IMR-14 reporting period. Current compliance assessments are reported by CASA Paragraph in section 4.0 of this report, below.

4.0 Current Compliance Assessments

As part of the monitoring team's normal course of business, it established a baseline assessment of all paragraphs of the CASA for the Independent Monitor's first report (IMR-1)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-14, 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 14th reporting period. As of the end of the 14th reporting period, APD has remained

¹ Available at www.AbqMonitor.org/documents/Appendix, pp. 1-306.

consistent with primary and secondary compliance and has improved operational compliance 3 percentage points. Primary compliance relates mostly to development and implementation of acceptable policies (conforming to national best practices). APD remains in 82 percent Secondary Compliance as of this reporting period, which means that effective follow-up mechanisms have been taken to ensure that APD personnel understand the requirements of promulgated policies, e.g., training, supervising, coaching, and implementing disciplinary processes to ensure APD personnel understand the policies as promulgated and are implementing them in the field. Operational Compliance with the requirements of the CASA for the 14th reporting period are marginally higher than they were for the eighth reporting period, from 59 percent in IMR-8 compared to 62 percent in IMR-14. This means that 62 percent of the time, field personnel either perform tasks as required by the CASA or that when they fail, management personnel note and correct in-field behavior that is not compliant with the requirements of the CASA. This sheds light on just how problematic APD's compliance practices have become.

These marginal levels of compliance come despite continuous, intensive, and extensive "hands-on" guidance and advice from the monitoring team. Obviously, operational compliance is the most important of the three compliance levels.

The monitoring team views these levels of compliance to be serious and concerning, as they reflect substantial and serious lapses in APD's command and oversight practices designed to ensure implementation of the CASA. It was clear to the monitor that as of IMR-13, APD was in serious trouble with its ability to generate compliance with the CASA. That ability has improved only marginally in IMR-14. This should sound alarms at all levels of the Albuquerque City government.

The monitor considers it extremely important to note that the point at which APD's compliance progress "stalled," is the point at which APD was required to internalize and operationalize the "change model."

We note that there was no "conventional" IMR written for the seventh reporting period. Instead, given the fact that a new administration was on board, we spent the IMR-7 period almost exclusively on TA as opposed to actual compliance monitoring. The monitor developed and published two "mini-reports" outlining that TA. The monitor's data note a remarkably small improvement in operational compliance rates at 62 percent in IMR-14, compared to 59 percent in IMR-13. At this stage of the compliance process, such dramatic failures, in the monitor's experience, are seldom accidental but are instead indicative of deliberate indifference or are linkable to changes due to exogenous variables such as significant budget constraints or new case law. This is particularly true when the variable is completely under the agency's control, i.e., training and supervision, as opposed to factors less under the agency's control, such as crime rates or officer injuries. During IMR-13, we noted "This is the first monitoring project the monitor has overseen that has seen such dramatic regressions in compliance levels." At this point, operational compliance levels have been relatively stable since the IMR-8 reporting period, with operational compliance levels holding at between 59 percent and 66 percent, and currently at 62 percent. These data depict an organization that is willing

to “chip away” at the margins, completing expeditiously tasks that improve efficiency—and even effectiveness—but steadfastly refusing to make meaningful reform to processes involving use of force, excessive use of force, the processes of police-community interactions on the street, supervision, command, and discipline. In the monitor’s experience in designing and or conducting police organizational “interventions,” the latter processes are essential for CASA compliance, yet APD continues to fail to address meaningfully these elements of CASA compliance. Over the last three years, APD’s operational compliance ratings have averaged 62.4 percent.

The following paragraphs of IMR-14 provide examples and context for the monitor’s global findings noted in the previous paragraphs.

4.2 Project Deliverables

Project deliverables are defined by the Court-Approved Settlement Agreement governing the parties’ response to the CASA, DOJ, the City, and APD. Each deliverable is discussed in detail in section 4.7 on the following page.

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 and APD’s compliance levels as well as with CPOA, 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 Agreement:

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

All 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 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 determining 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 dates."

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 selecting 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.

4.6 Operational Assessment

APD and the City (including the CPOA and CPOA Board) have agreed to comply with each of the articulated elements of the CASA. The monitoring team 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 report². 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 14th reporting period, using the *Monitor’s Manual*, included as Appendix A, in the monitor’s first report (see footnote 2, below, for a link to that methodology). We do note that the original methodology was revised at times based on the availability of records (or lack thereof) and related organizational processes. 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 14th reporting is described in the sections that follow.

² Available at: <https://www.justice.gov/usao-nm/file/796891/download>

4.7.1-4.7.3 Assessing Compliance with Paragraphs 14-16

As we have documented in the past few monitor's reports, APD reworked their use of force policies to integrate a new, three-tiered reporting system that was approved by the Monitor and the Parties and implemented on January 11, 2020. 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. Field supervisors continue to make initial assessments and classifications to determine the appropriate type of response to instances where officers use force; the Internal Affairs Force Division's (IAFD's) role is codified, and they respond for investigatory responsibilities associated with all Levels 2 and 3 uses of force.³ During this reporting period, APD entered into a Stipulated Order to use an External Force Investigation Team (EFIT) to assist APD in building their capability to properly investigate uses of force.

Those conversant with the CASA and familiar with previous monitor's reports will recall the extraordinary amount of technical assistance APD has received to date. Likewise, the monitoring team has uncovered issues and trends and predicted potential CASA compliance threats over the past several years on more than one occasion. The advice provided to APD by both the monitoring team and DOJ is always intended to guide the department away from issues that may impede CASA compliance. Balancing organizational priorities is not unique to APD, and past experience has proven that the Constitutional policing reforms sought by the CASA can coexist within those priorities. During this reporting period, we have continued to see exceptional analytical work by APD's Performance Metrics Unit; the FRB has continued to exhibit oversight of uses of force it reviews; and the Training Academy has taken steps toward returning to previously achieved compliance standings. However, the central goal of conducting timely, objective, and thorough use of force investigations has continued to suffer significant neglect during this reporting period. This will likely have a long-term impact on APD's ability to hold officers accountable for misconduct identified within those investigations, which will, in turn, slow reform efforts.

In the latter part of 2017, the monitoring team uncovered an extensive backlog of use of force investigations that APD had not reported. The total number of cases at that time was 304, and the timing of the revelation coincided with the hiring of a new Chief of Police, and a new command staff.⁴ The Internal Affairs Force Division (IAFD) was created and ultimately tasked with addressing those backlogged use of force investigations. IAFD reviewed cases throughout 2018 and into 2019. The monitoring team commented favorably about the level of performance IAFD demonstrated when assessing cases and their willingness to call out approximately 1,500 policy violations,

³ Since compliance with this series of paragraphs is intrinsically connected to CASA paragraphs later in this report, relevant information has been brought forward and addressed here as well.

⁴ Some members of the current APD Executive Staff were in place under the previous Chief of Police, including the current Chief of Police, who was named Interim Chief of Police in September 2020 and appointed Chief in March 2021.

including out-of-policy uses of force. In the summer of 2019, a meeting between the Parties concluded that, given the requirements of the Collective Bargaining Agreement (CBA), policy violations uncovered from the backlog would not expose APD officers to official discipline due to the investigations' lack of timeliness. After that meeting, we were assured that policy violations committed by supervisors over those officers and their uses of force would be subjected to discipline for any failures to oversee officer conduct properly. But again, APD missed administrative timelines to hold the supervisors accountable as well. Concurrently, APD devised a new use of force system, developed its policies, and delivered training for those policies through an APD-conceived, 4-Tiered training curriculum. The new use of force policies went live on January 11, 2020, following the delivery of the first three tiers of training.

APD's intention with the new use of force system was to centralize investigations of higher-level uses of force under IAFD; however, a key objective of APD's plan was to reduce the burden on field supervisors investigating higher levels of force, so they could attend to other field priorities. Leading up to that January 2020 date, the monitoring team repeatedly cautioned APD, and specifically IAFD, that the investigation of new use of force cases that could expose officers to official discipline would likely test APD's willingness to impose discipline when misconduct is encountered. We expressed concern that the quality of investigations and the pace at which they were completed would be impacted when IAFD was faced with having to call out actionable policy violations. Around the time the current use of force policies were implemented in January 2020, the (then) IAFD Commander projected in a staffing analysis the potential use of force investigation backlogs that would result based on varying levels of IAFD staffing. That staffing report was neither requested nor influenced by the monitoring team, but instead was generated internally to alert APD executives to the impending fate of the timeliness of use of force investigations.⁵ The Commander's predicted second backlog was realized, and we documented in IMR-13 the essential collapse of IAFD's work product between January 2020 and January 2021.

In IMR-13, we noted that a new IAFD acting commander took over near the end of the reporting period and within days of taking over temporary responsibilities, the monitoring team was advised that approximately 60 percent of the cases (381) opened since January 11, 2020, were still not completed (as of nine days after the close of the 13th reporting period). Of the 381 cases, as of February 9, 2021, approximately 260 cases were still "open" beyond 90 days, and 211 cases were still open beyond 120 days. This lack of effort obviously undermines APD's ability to discipline officers who may have committed policy violations.⁶ Since the close of IMR-13, APD has continued to experience turnover at IAFD. DOJ and the City entered into a Court-approved Stipulated Order to bring in an External Force Investigation Team (EFIT) to assist APD

⁵ The staffing study did not contemplate inefficiencies, such as investigators working on only one case at a time, that were later reported to the monitoring team. Likewise, the length of time each investigation takes an IAFD investigator has been influenced by poor supervision and an overall lack of any sense of urgency.

⁶ While the monitor rarely reports data outside a given reporting period, these numbers are particularly disturbing, and they indicate precursors to a potential second backlog of use of force case investigations, a problem already addressed, at great cost, by APD earlier in this reform project.

in increasing its capability to perform its duties. In addition, a new Superintendent of Reform was hired to oversee some of the most critical components of the CASA (IA and training included).

As illustrated throughout this report, there are still issues with uses of force and the investigation into those events, as well as issues with APD willingness to implement an effective Internal Affairs system. In IMR-13, we stated,

“...an equal and more impending crisis to compliance is a backlog of use of force cases that has become exponentially worse in IMR-13, both at the field level and within IAFD. Based on our review of data provided by APD, the department has experienced a remarkable decrease of use of force cases being opened and completed during IMR-13 that represents a very real and likely long-lasting threat to APD’s compliance efforts. When combined with the Academy failing to provide use of force training in 2020, the lack of executive oversight of these basic managerial responsibilities will likely reverberate for some time, based on the monitor’s experience in two previous monitoring projects. As experience has shown, the collateral effects of these failures may include more out-of-policy uses of force, APD not addressing concerns with officers by applying performance plans or discipline in a timely manner, and the resultant additional delays in affecting true organizational reform.”

Instead of making a concerted effort to stop and reverse the downward spiral of backlogged use of force cases, APD’s decline has accelerated. An examination of the overall use of force data and IAFD productivity data compiled by APD and provided to the monitoring team for this reporting period continues to make one thing abundantly clear: APD executives either do not monitor the productivity of IAFD (the completion of cases), or if they do monitor these productivity levels, they do nothing to intervene and change behavior to improve case completion rates. At this point in the reform process, such lack of due diligence is deliberate and simply unacceptable, in the monitor’s opinion.

During the IMR-14 reporting period (data current through August 2021), APD recorded a combined 307 Level 2 and Level 3 use of force cases (compared to 298 Level 2 and Level 3 use of force cases during IMR-13, and 311 Level 2 and Level 3 cases during IMR-12). Of these 307 cases for IMR 14, APD recorded 216 Level 2 cases and 91 Level 3 cases. One of the CASA implementation requirements to reach an Operational Compliance consideration is that 95% of the use of force cases must be completed within 90 days. This reporting period, IAFD completed only seven of the 216 Level 2 cases that were opened during the monitoring period (representing a 3.2% completion rate). Only one of these seven Level 2 cases was completed within 90 days (representing a completion rate of below 1%). During IMR-13, three contemporary Level 2 cases were completed within 90 days (yielding a 1% completion rate for Level 2 cases). When examining the Level 3 use of force cases, data provided to the monitoring team revealed IAFD investigators completed only two of the 91 Level 3 cases that were opened during the monitoring period (representing a 2.2% completion rate). Neither of these two cases were completed within 90 days. Readers of the

monitor's reports will recall a similar "crash and burn" event at the Training Academy during the IMR-12 and IMR-13 reporting period. The monitor asserts, based on his knowledge and experience, that such catastrophic command failures are not accidental.

In the first weeks of this reporting period, APD leadership characterized the *de facto* work stoppage of IAFD investigations on contemporary cases during the thirteenth reporting period as a "one-time occurrence" primarily driven by leadership changes within IAFD. Based on the data presented, what was described as a one-time work stoppage has become the routine, and desired outcomes (cases being completed within 90 days) have declined to less than single-digit completion rates.

In mid-February 2021 (approximately two weeks into the start of the 14th reporting period), APD executive staff made the determination to no longer work on backlogged cases (defined as cases that occurred in prior reporting periods). Once this determination was made, IAFD investigative and supervisory staff were not dealing with older cases.⁷ With this burden completely off the backs of investigative and supervisory staff alike,⁸ investigative staff did not complete their first case during IMR-14 until April 15 (eleven weeks into the monitoring period). It should be noted that during February and March 2021, the average complement of IAFD personnel (inclusive of investigative, supervisory, and command staff) remained at approximately 25 APD members. Thus, the 25-member IAFD staff took 11 weeks to complete their first investigation. During the last week of the reporting period, the complement of IAFD personnel numbered 27. The monitoring team fully comprehends that not every person assigned to IAFD is investigating cases. However, the monitoring team also realizes that in a six-month period, the 25-27 persons assigned to IAFD completed only 22 cases, an average (at best) of less than one case per investigator per month. Finally, at the time this report is being drafted after the close of the reporting period, based on data provided by APD, IAFD's current second backlog, at 660 cases as of October 25, 2021, is more than double the backlog IAFD was confronted with prior to the launch of the new use of force policies in January 2020. A cursory review of the currently backlogged cases reveals that approximately 93% of the cases are beyond 90-days old and approximately 83% of the 660 cases are beyond the deadline whereby APD could impose discipline if misconduct were found. The fact that APD executive leadership tolerates this lack of productivity leaves the monitoring team non-plussed. Even more remarkable is the fact that these dismal production figures have occurred after increased staffing levels at IAFD and with new management personnel at the helm.

In this reporting period, evidence revealed that APD also continues to struggle with completing supervisory force (Level 1) investigations within 72 hours. Additionally, APD supervisory and command personnel still struggle to complete their reviews of Level 1

⁷ In conversations after the close of this reporting period the monitoring team was told that IAFD detectives were dedicating time to misconduct in use of force cases that slowed the progress of the actual administrative force investigations. The monitoring team has cautioned APD about IAFD conducting misconduct aspects of a case in the past.

⁸ Anecdotally, APD often represents that investigating older cases (backlogged cases) diminishes their ability to complete contemporary cases within the 90-day timeline.

use of force investigations within the allotted 30-day time period.⁹ During IMR-14, 66 of the 116 Level 1 use of force cases (57%) opened during the reporting period were completed within the allotted 30-day period. By contrast, in IMR-13, 60% of Level 1 cases opened during the reporting period were completed within the allotted 30-day period. In IMR-12, 68% percent of Level 1 cases were completed within the allotted 30-day period. To put this into perspective, APD handled only five more Level 1 cases this reporting period than in IMR-13, but its compliance rate with the 30-day requirement resulted in a percentage decline of five percent. When the significant decline in the opening of Level 1 cases from IMR-12 (173 cases) to IMR-13 (111 cases) is considered, one would deem this a considerable reduction in workload that should enable supervisors to have more capacity to complete the case reviews. However, this 36% workload reduction yielded 12.5 percentage decline in case completion from IMR-12 to IMR-13. These data are significant because it is evident that over the last 18 months, whether the number of Level 1 cases increases marginally or decreases substantially, the efficiency of APD area commands declined.

Case reviews and cursory checks of use of force reviews and investigations conducted by the monitoring team continue to reflect numerous examples of supervisory personnel requesting IA investigations related to policy violations. These requests are referred to as an Internal Affairs Request (IAR). A number of use of force cases (Levels 1, 2, and 3) reviewed during this reporting period contained requests for IA reviews (IARs) for alleged policy violations. During IMR-14, APD's tracking data indicates 199 requests for IA review of alleged policy violations associated with use of force reviews and investigations. Since all potential policy violations observed during use of force incidents are reported now to IAPS via IARs, this aggregate data provides a rich resource for APD to analyze to determine misconduct trends. Any training conducted by the Academy or other entity within APD should, as contextually appropriate for the course being designed, examine these data as part of its needs assessment phase of curriculum development.

We comment more extensively regarding the trend in completion rates for use of force investigations, regardless of the level of force, in Paragraphs 41-77.

During this reporting period, the monitoring team interacted with APD personnel responsible for the tasks associated with training for Paragraphs 86-88 and met with them during our June 2021 site visit. In IMR-13 and prior monitor's reports, we documented extensively the circumstances that led to APD's loss of compliance standing with numerous CASA paragraphs centered on the use of force, proper reporting of force, as well as supervising and investigating those instances of force. We will not repeat that

⁹ Pursuant to SOP 2-57, supervisors must complete and document a supervisory use of force review of a Level 1 use of force within 72 hours after the supervisor leaves the scene of the use of force incident (and upon a commander's approval, supervisors may receive a seven-day extension). The lieutenant in the involved officer's chain of command has ten calendar days from receiving the supervisor's review to complete a review of a Level 1 use of force. The commander in the involved officer's chain of command has ten calendar days from receiving the lieutenant's review to complete the review of the Level 1 use of force. Thus, the maximum amount of time a Command has to complete a supervisory review is 30 days (assuming a seven-day extension was granted to the supervisor conducting the initial review).

information here. We shared our belief with the Academy personnel that the steps necessary to achieve Secondary Compliance are straight forward and with leadership and a reasonable allocation of resources, APD would likely be positioned to return to Secondary Compliance by the close of IMR-15. During this reporting period, APD and the Academy made positive strides toward that end. Specifically, APD has delivered one of two days of Tier 4 training previously reported on by the monitoring team. This training was no small undertaking, so the efforts put toward completing this training are noteworthy, but much more is required to recover from a lack of attention over the past 20 months. For more information regarding APD's progress regarding its use of force training compliance, refer to Paragraphs 86-88.

The monitoring team continued to see strong attendance and engagement by members of the Force Review Board (FRB) during this reporting period. We continue to see referrals generated to address policy, supervision, tactic, equipment, and training deficiencies. In some cases, FRB made requests for internal affairs investigations for misconduct they identified during their deliberations. At this point, it is impossible to assess how significant the impact of the current untimeliness of the backlogged use of force cases will have on the FRB's ability to refer misconduct they identify during their reviews. This is one of several responsibilities the FRB carries. All we can do is suggest that an impact will occur, which will undermine the long-term influence the FRB has over officer behaviors in the field.

Currently, the increase in quality oversight by executive-level members of the FRB during their case reviews is strong, with IAFD presenters being called to task over their case findings. However, the impact of that good work by the FRB has on Operational Compliance with Paragraph 78 will take time to solidify. While the FRB has shown consistency over the past two reporting periods, the true test will be its ability to influence field performance and the attitudes of first-line supervisors toward accountability. Achieving quality supervision at the front-line level is the key to CASA compliance. If APD systems can perform optimally elsewhere in the organization, they will be better positioned to leverage the positive strides made by the FRB. This explains why the backlog of IAFD investigations into Level 2 and Level 3 uses of force, and the residual effect on the FRB, is so critical. In IMR-13 we wrote:

“APD [needs] to immediately provision for the easily predictable swell of cases they will be required to hear because of investigative backlogs in IAFD. To mitigate the problem, we believe APD should immediately increase the number of meetings and the number of cases that are heard in each meeting so they do not create an obstacle to compliance that will undermine the positive observations that occurred during IMR-13.”¹⁰

¹⁰ In May 2020 APD, following several conversations with members of the monitoring team, prepared a PINS memo outlining how they intended to address the (then) backlog of cases required to be reviewed by the FRB. In a March 1, 2021, internal memorandum APD documented that by that time the FRB had reviewed only 36, or 42% of the cases listed in that May 2020 PINS memo. As of the writing of this report, we learned there are 660 use of force cases backlogged and incomplete in IAFD (more than twice the backlog in 2018-20), and when coupled with contemporary cases that must be reviewed, the ability for the

In past monitor's reports, we have provided perspective and technical assistance to help APD deal with this growing risk.¹¹ The alarm we sounded in IMR-13 has come to pass.¹² As has become somewhat customary, the monitoring team identifies issues early on, and when not addressed, those problems become threats which quickly turn into an administrative crisis for APD. With the positive momentum the FRB has shown recently, it would be highly unfortunate if that good work is undermined in any way. To be clear, we continue to be highly encouraged with the performance of several high-ranking executives during FRB meetings we attended.¹³ The influence the FRB can have over agency-wide operations and long-term cultural change, if sustained, cannot be overstated.

We comment more on the progress and performance of the FRB in Paragraph 78.

In the following paragraphs, the monitoring team highlights these three areas (investigative backlogs, training, and the FRB) because they are among the most critical areas APD must address in order to achieve higher compliance standings with Paragraph 14.

Findings

The CASA is meant to ensure that more effective supervision of APD officers occurs, and in response to instances where inappropriate force is used, that systems in place are capable of holding officers accountable for their conduct. Central to accomplishing that objective is the timely, objective, and thorough investigation of uses of force by APD personnel. Those investigations ensure that APD officers are adhering to the stipulated requirements of Paragraph 14 (and supporting paragraphs). As noted above, during this reporting period, APD provided data to the monitoring team that demonstrate inertia with respect to completing use of force investigations and identification of a trend moving away from CASA compliance. Notwithstanding any future gains that are realized through the implementation of EFIT, the current degrading path will likely reverberate for some time to come. Likewise, we are concerned that a culture that allows such a backlog to occur may not be capable of self-sustaining momentum generated by outside teams of investigators.

FRB to come into Operational Compliance will likely be compromised long-term. The backlog number does not include contemporary cases being generated under the EFIT initiative, which will also have to be reviewed by the FRB.

¹¹ The monitoring team has met with APD representatives during site visits. Over the past several reporting periods, we have been calling out this emerging threat that will impede Operational Compliance.

¹² Prior to the close of this reporting period, we learned that the APD was preparing another PINS memo for the parties to consider that will address the expanding list of cases that the FRB is responsible to review. We believe APD will propose again a means of addressing the growing list of cases the FRB will have to review.

¹³ In 2020, APD began holding FRB meetings remotely which allowed participants to attend even during COVID. While most on-site members are now attending in person, APD continues the practice of remote attendance.

In IMR-13 we stated, “We see it as particularly recalcitrant that APD would allow another backlog to accrue, given the exorbitant effort expended to work through the last backlog.” Timeliness continues to plague APD on several fronts beyond just the deadline to complete use of force investigations. We reiterate here, that the failure to conduct timely and thorough use of force investigations may be the most influential problem facing APD as it moves to comply with the requirements of the CASA. Likewise, examples of good performance or performance deficiencies that come from timely use of force investigations can’t be leveraged to deliver training programs that reinforce APD’s expectation of proper behaviors by officers and supervisors.

APD achieved Secondary Compliance in this paragraph in IMR-11 but due to the organization’s training failures regarding Tier 4 and its annual use of force training requirements throughout 2020, Paragraphs 14-16 reverted to Primary Compliance during IMR-13. As we comment later in this report, APD should marshal its resources to address quickly training requirements to regain Secondary Compliance. With a concerted effort, we believe Secondary Compliance is attainable by the close of the next reporting period, and short term goals for APD should be to (1) complete and sustain use of force training requirements; (2) address the backlog of use of force cases (and deal with any policy violations noted herein) and sustain the timeliness of new cases under the EFIT initiative; and (3) consider increasing the number of FRB meetings to ensure agency-level expectations are influencing field performance.

As noted in the past, the monitoring team remains committed to continuing its technical assistance to help guide APD toward success, but the simple fact is that guidance is without meaning if APD does not own the responsibilities themselves. For this reporting period, APD remains in Primary Compliance only with Paragraphs 14-16.

4.7.1 Assessing Compliance with Paragraph 14

Paragraph 14 stipulates:

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

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

Results

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

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."

Results

Primary: **In Compliance**
Secondary: **Not 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.”

Results

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

Recommendations for Paragraphs 14 – 16:

4.7.1-3a: The APD Academy should devise a fully developed and agency-approved, training plan for the year 2022 that incorporates organization-specific needs, best practices, and is properly staffed. This document should be sensitive to findings of the monitoring team have included in IMR-14.

4.7.3b: Ensure executive oversight of this process at the deputy superintendent and superintendent levels and internally monitor milestone dates and product quality.

4.7.3c: Ensure executive level oversight at deputy superintendent and superintendent levels to immediately address the current backlog of use of force cases. A comprehensive plan should be submitted to the Parties that details how APD will address the backlog and the collateral impact on misconduct violations found within those cases, as well as any residual backlog that is created at the FRB. The plan should outline all cases that APD believes are time-barred from imposing discipline, the authority for that position, and the remediation steps to curb future misconduct.

4.7.4 – 4.7.10 Assessing Compliance with Paragraphs 17 - 20

The 2021 Firearms Training cycle has been completed during this reporting period despite severe New Mexico Health restrictions in response to the COVID Pandemic. APD provided COB documentation that 98.4% of active personnel (872 of 886) completed firearms qualification. As officers on various forms of leave return (currently 81 individuals), they are first assigned to the Training Academy for firearms qualification and any other training updates as required.

APD Firearms Staff has completed a great deal of work to address all the monitor's prior recommendations regarding CASA Firearm requirements, problems, issues, and

solutions. Policy revisions, training revisions, additional training, and certifications for range staff and line supervisors have all been documented.

The APD Training Academy has modified the Enterprise Learning Management (ELM) to capture data regarding remedial firearm qualifications. Academy personnel will analyze and summarize data to make policy and training decisions based on data captured. They plan to establish a process to document practice sessions, track employees and their improvement plans. Beginning in 2021, if an officer fails a rifle qualification two years in a row, the rifle will be taken from them and returned to the property unit until they attend another entire rifle school. Enhanced rules will also apply to handguns and other weapons. A summary of firearm failures during 2021 are as follows:

- a. Forty-three handgun failures, with six officers who failed second attempts placed on Administrative assignment at the range, and their handgun and vehicle were taken from them on site;
- b. Forty-seven Rifle failures, with 13 officers who had their rifles taken from them until they returned for additional training. Three opted to relinquish their rifles back to the property unit; and
- c. Four Beanbag shotgun failures.

Each of those failure categories is trending downward from both 2020 and 2019 rates. Additionally, an unauthorized modification to a firearm was discovered by range staff. The department armorer removed the modifications, and the officer was referred to Internal Affairs for policy violations. The disposition is in the final stages with a recommendation for suspension. These corrective actions show an increased focus on policy assessments by APD supervisory personnel, a basic requirement of compliance with CASA mandates.

During the June 2021 site visit, members of the monitoring team visited all Area Commands and spoke with supervisors at each location. All supervisors conduct monthly inspections, physically checking every officer's weapon for make, model, serial numbers, modifications, accessories, or ammunition. Policy, Special Orders, database revisions, and firearms training have provided the tools necessary for field supervisors to complete this task. In response to a recommendation from the monitoring team, APD has made numerous updates to the monthly line inspection process. An audit process has been established, and documentation was presented to the monitoring team. Errors or omissions have been discovered, corrected, and resulted in revisions to the process. This is another example of APD self-correcting problems rather than the monitoring team making the discovery.

APD has initiated a process in which the area command lieutenants will conduct random monthly personnel inspections, serving as a second-level review verifying an officer's weapons and ammunition are authorized department issues. During this monitoring period, a pilot phase began in the Valley Area Command, continuing through the end of March 2021. The monitoring team has been provided with the draft special

order and notice of the pilot program. Only two of the area command sergeants were aware of this newly piloted process.

Operational compliance, based on observing line supervisors making formal weapons inspections monthly and backed by additional screening by higher-level supervisors—has been reached. With the processes initiated and plans for full implementation to assess line supervisors' compliance practices related to the requirements of these paragraphs, the monitor sees this as eventually becoming acceptable course-of-business documentation of an enhanced and effective "inspections and audit" process.

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: **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: **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: **In Compliance**

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**

APD is reviewing their use of force suite of policies, which were approved by the Monitor in 2019 and went live within the department on January 11, 2020. APD received extensive feedback on training programs related to their use of force policies, and as reported in past Monitor reports (and reiterated in Paragraphs 86-88 of this report), APD has begun the process of remediating training required to reach Operational Compliance with Paragraph 21. The factors that led to APD losing Operational Compliance are discussed extensively in IMR-13, so they will not be repeated here.

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

The significance of Paragraph 21 has been demonstrated on many occasions in the past, as reviews of use of force cases related to the techniques used with displaying a firearm have shown deficiencies in the oversight and accountability process, and policy application has been inconsistent at times. This reporting period has been no different. Our case reviews (documented in Paragraphs 41-59 and 60-77) revealed there are still areas of improvement to be considered when developing training relevant to this paragraph (i.e., remediating “acquired a sight picture” language from officer justifications for a show of force; addressing unholstering both an ECW and sidearm simultaneously; or the use of weapon-mounted lights as flashlights when an immediate or imminent threat does not exist, which causes unintended shows of force). We strongly recommend that APD consider these areas when finalizing training throughout the remainder of 2021 since we believe these items are important to attaining Operational Compliance elsewhere in the CASA.

Results

During the IMR-14 reporting period, APD began delivering Tier 4 training and developing a curriculum to address 2021 Annual Use of Force training requirements. The combined completion of these two tasks will contribute heavily to regaining higher compliance standing with this paragraph. APD completed its 2021 Firearms Qualification training and prepared a Close Out Memo reviewed by the monitoring team, along with ninety-three (93) remedial training forms.¹⁴ The Close Out memo documented that 98.42% of active and available APD personnel attended the firearms qualification for 2021.

Parenthetically, the monitoring team has discussed workable processes with the new Academy Commander, who assumed command of the APD Training Academy at the end of the IMR-14 monitoring period, to assist APD in regaining Operational Compliance. As of the writing of this report, we have agreed to hold regular meetings with the Academy to refocus them on refining processes that have languished over the past year and working with Academy staff to reestablish Operational Compliance. We continue to believe achieving previous levels of compliance should not be difficult if APD re-establishes a sense of urgency regarding training requirements.

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

¹⁴ The remedial training sessions related to failing scores at the shooting range. We noted that instructors documented the Harries Technique (with a handheld flashlight) as possibly being a contributing factor with some night qualification failures. Our feedback to APD regarding officers using weapon mounted lights as flashlights, instead of their hand-held lights, is designed to cast attention on the risk of potential unintended discharges of weapons.

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

Although use of force incidents related to Paragraph 22 are rare, we highly encourage APD to regularly assess its policies and training to ensure they keep up to date with legal standards and best practices. That said, APD did experience an event in which the requirements of Paragraph 22 were implicated during this reporting period. When the monitoring team reviewed updated Tier 4 Reality-Based Training (RBT) in June 2021 (which began in August 2021), we noted a high-risk motor vehicle stop scenario. We commented that with the recent shooting event (involving a moving vehicle), the updated Tier 4 training was a good place to revisit the use of force policy provisions associated with this paragraph. APD disagreed with our recommendation.¹⁵

The monitoring team asked APD to provide the reports and administrative findings of the shooting event that occurred during this reporting period, but the case was not yet completed. We intend to allow APD to complete those investigations before reviewing the cases.

Once APD delivers its Tier 4 and 2021 Annual Use of Force training, Secondary Compliance will be reassessed

We have determined that Paragraph 22 is in Primary Compliance for this reporting period.

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

¹⁵ The Academy response stated, “That single incident is already against policy and does not require Department Wide training.” The monitoring team looks differently at the situation and believes that such scenarios were a perfect opportunity to revisit and reiterate policy provisions that are rarely encountered, and to use the recent APD event as a training illustration. We have long recommended to APD that a continuous-improvement cycle be applied to high-risk, critical tasks, as rare incidents of non-compliance for infrequently occurring events are too easily able to cause non-compliance findings, as it did this reporting period. As always, departmental response is left to APD, not the monitor. The monitoring team will adhere to its articulated assessment practices, requiring at least 95 percent compliance.

Operational: **Not 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

During IMR-14, APD published its Preliminary 2020 Annual Use of Force Report, using data for 2016-2020. As we noted previously, APD decided to organize the use of force data from multiple years, believing the aggregation of year-over-year data gave the department better context to the information they were assembling. This also provides readers of the report with more information on which to judge APD’s progress, so the monitoring team found this approach to be appropriate under the circumstances. We encourage APD to keep pace with the Annual Use of Force Report by pulling forward the 2020 data in a timely manner. We were told that the 2020 report would become final after all backlogged use of force investigations are completed through the chain of command to ensure the data is more reliable. Lack of diligence in past years left APD with a great deal of playing “catch up,” and since the Annual Report is a requirement in other CASA paragraphs, APD risks the loss of compliance standing. The fact that APD is again addressing a backlog of use of force cases will likely take several reporting periods to reconcile before any degree of confidence can be achieved with the presented data.

With APD publishing their Preliminary 2020 Annual Use of Force Report during the IMR-14 reporting period, they have sustained Secondary Compliance with Paragraph 23. When APD implements its Early Intervention System and continues with timely Annual Use of Force Reports, the monitor will assess whether Operational Compliance has been achieved. We caution APD that while the monitoring team recognized the purpose of disseminating a “preliminary” report, the organization must marshal resources to address this latest use of force investigation backlog as quickly as possible to finalize the report. If history is any guide to APD, they should be highly concerned that they will likely have multiple “preliminary” reports pending simultaneously without a timely resolution to backlogged use of force cases. If that occurs, the agency will be in jeopardy of losing Secondary Compliance for this Paragraph, barring any production of meaningful plans to address the second use of force investigation backlog.

Results

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

Operational: **Not In Compliance**

Recommendations for Paragraph 23:

4.7.10a: Cycle forward the known 2020 data related to Paragraph 23 to ensure the Annual Use of Force Report remains up to date and accurate.

4.7.10b: Complete all backlogged use of force cases and finalize the 2020 Annual Use of Force Report to avoid having multiple “preliminary” reports disseminated simultaneously.

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 the monitoring period for IMR-14, issues related to the transition from the X26 Taser to the Taser 7 have been dramatically reduced. During the first quarterly review of 2021, only eight undetermined discharges occurred (compared with 26 from the prior year). In the second quarter, there were only 3, two of which were function checks, and one was a malfunction resulting in the ECW being sent to Taser for evaluation. 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. In speaking with the area command sergeants—all meet or exceed this requirement, some requiring uploads and battery replacements as often as weekly. This exceeds the CASA requirement of quarterly uploads. The 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. Additionally, no sergeants have reported that any sworn officers have worn their ECW anywhere, but the required weak side carry. No

member of the monitoring team has ever observed a violation of this requirement during their on-site visits with APD.

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.

In IMR-9, APD compliance with five 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 perspective¹⁶ on how to assess ECW cases. A review of ECW cases during IMR-10 revealed several deficiencies, from ECW deployment problems by officers to supervisory review and oversight errors. The cases the monitoring team reviewed during IMR-11 represented a markedly better result than the sample of cases reviewed during IMR-9 and IMR-10. During IMR-11, 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, with many nuances identified and addressed by either first-line supervisors or chain of command reviews. This was also largely the case for our review of ECWs during IMR-12. However, some compliance issues returned during IMR-13 when the monitoring team reviewed two ECW cases that were determined to be out of compliance. No ECW cases reviewed during IMR-14 were determined to be out of compliance.

During this monitoring period, APD case ledgers revealed 40 distinct cases in which an ECW was utilized (including 29 individual ECW Shows of Force). Nineteen of the 40 ECW cases (48%) included only ECW Shows of Force (cases in which an actual ECW application did not occur).¹⁷ These numbers represent a significant decrease in ECW cases over the previous monitoring periods.¹⁸ As of mid-August 2021, APD had completed assessments of only 11 of the 40 ECW use of force incidents that occurred during the IMR-14 reporting period. The area commands closed nine of their supervisory reviews of ECW use, and IAFD closed two ECW investigations. During IMR-13, APD completed reviews of only three of the 67 ECW cases opened during the monitoring period as opposed to the 33 cases completed during IMR-12 and the 30 cases completed during IMR-11. These data are set forth below in Table 4.7.11.

¹⁶ We provided technical assistance to APD since the IAFD personnel were conducting thorough reviews and had identified numerous policy violations. Where there was an issue related to the force used in an event, we recommended that IAFD examine the use of force case, since it is clear that the diligence of IAFD use of force case reviews was not being replicated in the field by front-line supervisors.

¹⁷ In IMR-13, 29 of the 67 ECW cases (43%) included only ECW Show of Forces (cases in which an actual ECW application did not occur). In IMR-12, sixty-four of the 99 ECW cases (65%) included only ECW Show of Forces. In IMR-11, 10 of the 53 ECW cases (19%) included only ECW Show of Forces.

¹⁸ IMR-13 had 67 ECW cases inclusive of 44 ECW Shows of Force. IMR-12 had 99 ECW cases inclusive of 73 ECW Shows of Force. IMR-11 had 53 ECW cases inclusive of 21 ECW Shows of Force.

Table 4.7.11

Monitoring Period (MP)	ECW Cases Opened during the Monitoring Period	ECW Cases Opened <u>AND</u> Completed During the Same Monitoring Period	% of ECW Cases Opened and Completed During the Same Monitoring Period
IMR-11	53	33	62%
IMR-12	99	30	30%
IMR-13	67	3	4%
IMR-14	40	11	28%

A short synopsis of each case reviewed by the monitoring team is shown below. It is important to note that any problems with the supervisory review or IAFD investigation of ECW deployments will not be discussed in this section of the report, but instead will be reviewed within the relevant forthcoming paragraphs of this report (Paragraphs 41-59 for Supervisory Review of Use of Force Reporting and Paragraphs 60-77 that address Force Investigations by the Internal Affairs Division [IAFD]).

Case #1 IMR-14-01 (Level 1 Use of Force – ECW SoF)

APD officers responded during daylight hours to a March 2021 call from a private security officer at a commercial establishment indicating a person had threatened him with possibly a knife. Officers responded to the scene and parked approximately 100 yards from the complainant and suspect to provide them with sufficient distance. They set up a force array, and then the three officers walked through the parking lot toward the scene. Upon initially speaking with the victim, the subject began walking towards officers, who immediately began giving commands not to come so close to the victim and officers. One officer armed with a rifle began backing up to maintain sufficient distance from the approaching subject. As the subject came closer to the officers, one officer transitioned from his handgun to his ECW (after noting the subject's hands were empty) while giving commands that the subject would be tased if he came any closer. The officer painted the individual with his ECW, at which point the subject stopped and began turning in circles, dancing, and jumping up and down, and raised his empty hands above his head. That officer then holstered his ECW, approached the subject, and quickly handcuffed the subject with the assistance of another officer. The subject offered no resistance to the handcuffing as the officers continued to give the subject clear commands.

The monitoring team determined that the officer's actions displaying his ECW were objectively reasonable and proportionate based on the individual's quick approach to the officers and failure to be responsive to their commands. Thus, this ECW Show of Force was within policy and compliant with relevant CASA paragraphs.

Case #2 (IMR-14-02 (Level 1 & 2 Use of Force – ECW Standoff and ECW Show of Force))

APD officers responded to a residence one morning in January 2021 to a complaint that a minor threatened the homeowner with a handgun. A subsequent search of a nearby area revealed an individual who fit the description of the minor. Several officers converged on the area of an apartment complex and got in positions as best they could to contain the suspect's movements. The suspect did not follow the clear commands officers delivered in their efforts to detain him. The suspect continued walking at a hurried pace. As he was beginning to breach the officers' containment efforts, a sergeant quickly approached the subject from behind his cover and discharged his ECW in standoff mode, delivering a five-second cycle from the ECW. One of the probes hit the suspect in the jaw area, and the other probe possibly hit the suspect near the waist. Officers then handcuffed the individual without further resistance. While being searched at the scene, a loaded handgun was found in the rear pants/waistband of the suspect.

Other officers at the scene had used Shows of Force with an ECW as well as a handgun.

The sergeant deploying his ECW gave the "Taser-Taser-Taser" warning one second after deploying his ECW and noted this in his report. The monitoring team noted that the supervisor told the suspect on three prior occasions that he would be tased if he did not stop. In the seconds before the tasing, the supervisor was moving from behind cover when he deployed his ECW on the person who had just pointed a firearm at a civilian and threatened the person.

Based on the threat level posed by the subject, his lack of adherence to the officers' clear commands, and his attempted flight from the officers, the monitoring team determined that the actions of the officer deploying his ECW in standoff mode (as well as the other ECW Show of Force) were objectively reasonable and proportionate. Thus, this ECW deployment and ECW Show of Force were within policy and compliant with relevant CASA paragraphs.

Observations and Comments

Supervisory oversight of ECW deployments continues to improve. The use of boilerplate language continues to be found in reports, but with less frequency during this monitoring period. Previously, the monitoring team noted that officers who contemplate using force or utilize force frequently seem to take liberties with overstating perceived threats against them or others. During this monitoring period, the review of ECW cases did not show continued evidence of this trend. We consider this a marked improvement.

The activation of OBRDs continues to show improvement. No pattern of non-compliance with OBRD policies was observed in the two ECW cases reviewed during this reporting period. In 2020, the monitoring team called APD's attention to the potentially problematic APD policy that allows personnel to not upload their OBRDs until after the subsequent shift after a force event. APD personnel generally agreed with the concern of the monitoring team on this matter and offered no specific historical perspective as to

how or why this genuinely problematic policy came into fruition (as opposed to uploading OBRDs after the shift in which the force was actually used). Since field supervisors conducting reviews of Level 1 uses of force have a very short window for reviewing evidence, there is no justifiable reason as to why this policy deficiency has not been rectified to date. Best practices in law enforcement generally recognize that OBRD video footage constitutes evidence. Consistent with those best practices for evidence handling, securing video evidence from an OBRD must be prioritized, not delayed. Again, we recommend APD take specific steps to rectify these issues, i.e., policy, training, supervision, and where necessary, corrective discipline.

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

See table below.

ECW Usage As Compliance Techniques

	In Compliance
IMR-14-01	Y
IMR-14-02	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

Verbal Commands Prior to Deployment of Tasers

	In Compliance
IMR-14-01	Y
IMR-14-02	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

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

	In Compliance
IMR-14-01	Y
IMR-14-02	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-14-01	N/A
IMR-14-02	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-14-01	N/A
IMR-14-02	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-14-01	Y
IMR-14-02	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

One of the ECW cases reviewed this reporting period revealed that one of the probes deployed via a supervisor's ECW struck a subject in the jaw area. The other probe possibly hit the subject near the waist. Due to the volatility of the situation, the fact that both the subject and the supervisor were moving, and that only one of the probes struck the jaw area, the preponderance of the evidence does not support the contention that the supervisor intentionally targeted the head or neck of the subject. The IAFD investigation and reviewing commanders also came to the same conclusion as the monitoring team.

Targeting Subject's Head, Neck, or Genitalia

	In Compliance
IMR-14-01	Y
IMR-14-02	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-14-01	Y
IMR-14-02	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

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. Taser 7 recertification was conducted and completed during the monitoring period for IMR-14. 865 of 865 active sworn attended the training (100%). Any sworn personnel out on various types of leave are required to complete the recertification training prior to being cleared to return to full duty status.

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

4.7.21 Assessing Compliance with Paragraph 34: ECW Annual Certification

Paragraph 34 stipulates:

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

- a) removing ECW probes, including the requirements described in Paragraph 35;**
- b) understanding risks of positional asphyxia, and training officers to use restraint techniques that do not impair the subject’s respiration following an ECW application;**
- c) monitoring all subjects of force who have received an ECW application while in police custody; and**

d) informing medical personnel of all subjects who: have been subjected to ECW applications, including prolonged applications (more than 15 seconds); are under the influence of drugs and/or exhibiting symptoms associated with excited delirium; or were kept in prone restraints after ECW use.”

Results

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

4.7.22 Assessing Compliance with Paragraph 35

Paragraph 35 stipulates:

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

Results

Provision of Medical Attention

	In Compliance
IMR-14-01	N/A
IMR-14-02	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

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

4.7.24 & 4.7.25 Assessing Compliance with Paragraphs 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 June 2021 site visit, members of the monitoring team met with personnel responsible for the tasks delineated in Paragraphs 37 and 38. The Performance Metrics Unit (PMU) has maintained momentum and expanded its scope of business throughout the IMR-14 reporting period.¹⁹ We have seen no evidence that PMU's efforts to self-evaluate APD operations are being impeded in any way. In fact, based on our personal observations and information provided by the PMU Manager, we remain confident that internal audits are being supported by the APD executive-level personnel. This is significant and encouraging to the monitoring team. Allocating personnel to units with CASA-related responsibilities can be challenging when balancing priorities. In the past, we have encouraged APD to continue providing resources to PMU, as it will likely reduce burdens elsewhere. We are more confident now than ever that PMU can add substantial value across the organization if leveraged correctly. Considering our review of data and observations during the reporting period, APD has maintained its Operational Compliance with Paragraph 37. With APD publishing the draft 2020 Annual Use of Force Report, it has retained its standing of Secondary Compliance with Paragraph 38.

As in the past, in preparation of this report, the monitoring team requested course of business documentation that reflected the level to which APD organizes its effort to sustain its adherence to the requirements of Paragraph 37. As part of our review, we requested the following information for this reporting period: Any course of business documentation that demonstrates whether or not: 1) APD conducted quarterly downloads and audits of all ECWs; 2) APD conducted random audits of ECW deployments; 3) APD conducted directed audits of ECW deployments; and Area Command Inspection Reports and scorecards prepared by PMU and rebuttals submitted by Area Commanders.

In the past, we have discussed with PMU and command staff that deficiencies with use of force reporting and investigations will impact the integrity of data reported by the organization. Historically, reporting discrepancies are at the initial, field level processes related to categorization of uses of force and during investigations related to that force. While we have concentrated great energy during our conversations with APD on use of force events that were reported, and issues within those events, we provided recommendations for PMU to be proactive in their oversight of areas of potential risk. Specifically, we recommended PMU explore whether data exist for arrests of assault on police officers, resisting arrest, or other such offenses, where there isn't an

¹⁹ PMU self-initiates reasonable areas for expansion to increase the influence they are having over APD operations.

accompanying use of force report.²⁰ We felt this is the type of proactive query PMU can conduct to self-identify before the monitoring team does. In April 2021 PMU acted and took the initial steps toward conducting audits for reporting discrepancies in keeping with our recommendation. PMU methodically approaches the task by ensuring auditors have the baseline skills and knowledge to conduct these types of use of force audits, and ensuring they explore proofs of concept and conduct pilot audits before “going live” with scorecards for this new area. PMU contemplates how to take a policy concept and measure it in practice, and how to consider the “human element” when publishing results of their reviews. PMU holds round table discussions and tests the skills of auditors while discussing actual APD cases. Like other initiatives by PMU, we feel that this could be a risk mitigation best practice if implemented well, and one to be emulated by other law enforcement agencies. We will follow up on the progress of this initiative during the IMR-15 reporting period.

PMU field inspections of Area Commands, as well as investigative and Special Operations units, continued throughout the IMR-14 reporting period. Data we reviewed demonstrated that audits continue to be a routine part of PMU’s business process. For this reporting period, we reviewed 24 Inspection Summary and Scorecards for FSB, an additional 24 Inspection Summary and Scorecards for SOD and investigative units, as well as command rebuttals for the months of February 2021 through June 2021. These inspections allow PMU to measure compliance with CASA paragraphs principally focused on ECW, OBRD, APD firearms requirements, supervision, IA complaint forms, and requirements related to 72-hour extension requests during use of force investigations.²¹ PMU directly correlates data to specific CASA related policy provisions and provides relevant observations analysts make during assessments that will be helpful to APD supervisors.²²

PMU collects pre-determined sets of data that measure compliance efforts across the different commands and generates “Scorecards” that are shared back to those commands. The broad areas being assessed receive percentage scores of “compliance” levels that are then color coded. That makes the reports quickly digestible, which is an important quality for a field supervisor. During the IMR-14 reporting period, we continued to see strong exchanges between Commanders and PMU when an

²⁰ We recognize circumstances can exist in which an accompanying use of force may not be warranted; however, when these types of charges are brought against an officer, it is reasonable to believe that a use of force, in some measure, could exist. It is in these areas that APD could be impacted during Operational Compliance determinations in the future, so we broached this idea for APD to consider in order to avoid issues later. A particular area to concentrate effort will be on events during which officers report using low level control tactics during arrests for resisting arrest or assault on police officers and other similar charges.

²¹ The current paragraphs noted in PMU’s “Inspection Summary” Report included ECW paragraph 37; OBRD paragraphs 224, 230; Firearms paragraph 18 & 20; Supervision Paragraphs 32, 207 and 225; and 72-hour extension paragraph 53.

²² We have commented that the data being collected by PMU, if shared and analyzed from an IA and training perspective will 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.

Inspection Report notes gaps in information or potential policy violations. As previously reported, Area Commanders have an opportunity to review and refute PMU findings and, as in the past, we saw instances where: 1) PMU agreed with a Commander's perspective and evidence that was presented, and then changed a report's finding; and 2) PMU disagreed with the perspective and evidence provided by a Commander and did not change the finding in the Inspection Report. We previously confirmed that in instances where PMU does not change its finding that a policy violation occurred, that the violation is referred to Internal Affairs for intake and investigation, if appropriate. Finally, another noteworthy advancement by PMU is that they now publish their monthly inspection reports on the APD public web page. This provides the public with an opportunity to view the internal auditing capabilities and results published by PMU from month to month.

With respect to Paragraph 38, the monitoring team requested course of business documentation that demonstrated provisions had been met. During IMR-13, APD published its final Annual Use of Force Report inclusive of the years 2016-2019. As noted previously, APD organized use of force data from multiple years, believing the aggregation of year-over-year data gave the department better context to the information they were assembling. This also provided readers of the report more information upon which to make judgments of APD's progress, so the monitoring team found this approach to be appropriate under the circumstances. During the IMR-14 reporting period APD published a Preliminary Annual Use of Force Report inclusive of 2016-2020 data. In the report, APD calls out the fact that there are more than 300 use of force investigations pending from 2020. Therefore, data may change as those cases are subjected to investigation and chain of command oversight. Once all the pending cases are completed, APD will reassess the report for final status.

With APD publishing their Preliminary 2020 Annual Use of Force Report during the IMR-14 reporting period, they have retained Secondary Compliance with Paragraph 38. When APD implements its Early Intervention System and continues with timely Annual Use of Force Reports, the Monitor will assess whether Operational Compliance has been achieved.

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:	In Compliance
Operational:	Not In Compliance

Recommendation for Paragraph 38:

4.7.25a: Operationalize the EIS process as soon as practicable following training of those who will be using the system. We recommend that the training plan be proffered to the monitor for review and assessment prior to implementation.

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. We have outlined extensively over the past few years the lack of progress APD has demonstrated in achieving compliance with these paragraphs and the collateral impact on Academy-centric training requirements found in Paragraph 87. In IMR-13, we noted the following: “There is little more that can be said regarding the lack of progress, other than to point again to the top echelon of the organization for failing to ensure that the requirements of these paragraphs were completed. Frankly, these two paragraphs are easy opportunities to demonstrate progress in light of other organizational

shortcomings. It is the monitor's opinion that failure to do so, at this point constitutes deliberate indifference to the requirements of the CASA."

While the Emergency Response Team (ERT) policies apply to all APD officers, the tasks associated with Paragraphs 39 and 40 are overseen by members of the ERT, which resides within the Field Services Bureau. Members of the monitoring team met with ERT command personnel during our June 2021 site visit to discuss any progress APD has made to close the gap on previously identified shortcomings. In addition, data requests were made to obtain training materials, ERT policy, and Event/Incident Action Plans (EIP/IAP) and After-Action Reports (AAR) that have been completed during the IMR-14 reporting period. We also reviewed Academy files to determine training statuses for ERT training.

APD's ERT SOP 2-35 was approved by the monitor, became effective August 18, 2020, and is now due for review. The monitoring team will review any ERT training to ensure that it supports the transmittal of any new policy provisions to APD officers. In response to past recommendations, we were told that during the annual review, a provision would be included in the SOP concerning IAFD and their response to ERT deployments. The current practice is that an IAFD detective responds for each ERT team that is deployed and investigates uses of force related to that team if they occur.²³

The ERT commander now in charge came prepared to our June 2020 meeting and provided the most cogent update the monitoring team has received since the inception of the CASA. Their presentation²⁴ was the first we can recall where ERT demonstrated a deeper understanding of the CASA and the gaps we have noted. The commander provided coherent responses to recommendations made in the previous Monitor report.²⁵ Likewise, there was a noticeable increase in quality during our review of EAP/IAPs and AARs during this reporting period.

The following represents our findings related to Paragraphs 39-40.

²³ We saw evidence of this noted in ERT EAPs/IAPs and AARs during this reporting period. We recommended that with the practice of IAFD being assigned for such details, that should be communicated to and coordinated with the EFIT Administrator since their staff will be affected.

²⁴ The ERT Commander delivered a PowerPoint presentation. The monitoring team does not value form over substance, but we have found that APD units that organize their meetings with us using PowerPoint are typically those units with better progress overall.

²⁵ In his presentation the ERT commander provided a response to a Monitoring Team recommendation we had made to ERT and other APD units for the past few years regarding the inclusion of standard reports into SOPs they support. The Commander communicated that the Policy Unit researched best practices and stated that "forms do not go into SOPs". The monitoring team will revisit this with ERT, since there are multiple reasons this has been recommended in the past. First, forms would be an addendum to an SOP, so we agree in part. Our past observations have included APD units devising and adjusting forms that may not have gone through an approval process, or people within the same unit using different forms. Codifying forms provides a layer of protection that a procedure is inculcated into the business process and is not subject to an individual officer's perspective at a given point in time. Sustainability of processes will be key to APD's long term success. This recommendation is a matter of technical assistance based on our observations of APD gaps in the past, and best practices.

Since the beginning of IMR-9, we have documented ERT's effort to develop training and how that training is intended to address CASA requirements through a 3-Stage training process as follows:

Stage 1 – Updated memos, dated June 13 & 14, 2021, indicated that the chain of command was reviewing the lesson plan for Stage 1 before being submitted to the Academy “for the needs assessment step of the 7-Step (Training Cycle) process.” We note that the needs assessment should be completed before the lesson plan, as the needs assessment informs the curriculum, not the other way around. This may be a misstatement, but we have encountered this reversed manner of curriculum development in the past in other areas of APD.

Stage 2 – All ERT supervisors will receive an in-person “train the trainer” course on the new ERT SOP. This training has been submitted to the Academy for review and approval through the 7-Step Training Cycle and review by the Training Committee Review Board.

Stage 3 – All other ERT personnel will receive in-person training on the ERT SOP, and squad formations and movements utilizing ERT supervisors as trainers.²⁶ This training is still working through the 7-Step Training Cycle, including the Academy and City legal approval.

The delay of the three stages of training has thwarted ERT's compliance efforts for the past few years and can be easily remedied with a reasonable amount of coordinated effort between ERT and the Academy. We stressed with the ERT commander that our belief is that there is little reason ERT should not be completed with its training requirements by the close of 2021, which would arguably allow higher compliance determinations because of the increased quality of event documentation.

In April 2021, ERT experienced significant number of transfer requests by officers, like the type of requests we have seen in other units within IAFD. Collective Bargaining Agreements (CBA) require APD to honor these requests within set periods of time. APD has not demonstrated a willingness to permanently transfer officers to particular assignments, even when operational needs require it, unless an officer requests the move.²⁷ The convergence of these factors has impacted APD's CASA compliance standings, continuity of business practices, and has contributed to a loss of valuable experience in multiple units. Transfer requests at ERT are a new phenomenon and is a trend worth tracking. In response, APD decided to provide ERT-centric training to Police Officers 2nd Class during their recruit training, since upon graduation, their transferability is left more to the discretion of the organization. This provides APD the opportunity to

²⁶ Supervisors who attended the “train the trainer” course will be used as trainers.

²⁷ Temporary duty assignments are common, but APD has called out CBA restrictions impeding forced movement of officers as a reason for staffing issues in some units on several occasions. A legal analysis of the CBA restrictions is warranted to ensure this is not a “crutch” creating a lack of perceived need to do what best benefits the organization.

sustain ERT staffing levels in the short-term but may stress supervisory responsibilities as less experienced officers will be taking part in events. Likewise, since these officers will eventually be capable of requesting transfers, the larger issue of long-term continuity of experience at ERT is not solved.

ERT has initiated monthly Newsletters to communicate information to its members. The Newsletters contain general information relevant to routine operations, encourage ERT members to recruit officers to the team, and are used to more rapidly disseminate lessons learned from deployments. We had an opportunity to review four (4) Newsletters and found them to be a very positive initiative. In our experience, these types of Newsletters can become burdensome to maintain, so to keep staff who are responsible for assembling them enthusiastic, it may be a consideration to deliver bi-monthly iterations.²⁸ We expect they will evolve over time and be used for a multitude of purposes.

During our site visit, ERT discussed their administration of routine training. We see evidence of ERT submitting training documentation to the Academy for larger programs, so they are processed through the 7-Step Training Cycle. We reviewed the ERT Quarterly Training (#3) documentation provided in response to our data request. We have previously commented that routine training may be too cumbersome to run through the 7-Step Training Cycle since units like ERT need more nimble environments to get training to its members. That said, the basic tenets of training development are still valuable when tracking performance in the field for individuals or entire units. As we noted in IMR-13, the quality of routine training documentation has improved. That said, ERT would still benefit from continuing to meet with the Academy to further improve their routine and organization-wide training materials. ERT being able to demonstrate a transfer of learning for these regular training sessions would greatly benefit their long-term success.

The monitoring team requested APD provide documentation for any mobilizations to mass gatherings that occurred during the first half of the IMR-14 reporting period. APD provided the monitoring team with four (4) Event/Incident Action Plans and After-Action Reports. In response to events that took place between February 1 and June 1, 2021. The documents are adjusted for each event but contain standard language regarding Operational Orders and Rules of Engagement. We offer the following brief observations to consider that we believe will benefit ERT:

1. In the past, we have noted that introductory comments include standard language suggesting that the After-Action Report is not meant to second guess the actions of officers and supervisors made during the event. We noted that for an After-Action Report to be valuable to the department, the department's command levels would expect a critique of actions taken and decisions made. Calling this language out is not meant to be overly critical

²⁸ This is only meant as technical assistance and we entirely support monthly Newsletters to the extent ERT is capable of maintaining them.

of a benign statement. Instead, APD's general approach to oversight, supervision, and accountability has historically tilted away from what could be considered "second-guessing," which may misalign their actions with the accountability of conduct. We again suggest the language be removed. Open, honest, and critical assessments of high-risk, critical tasks is the avenue to continuous quality improvement.

2. We reiterate that there was a noteworthy increase in the quality of EAPs, IAPs, and AAR's during this reporting period. Documented actions, follow-ups, and lessons learned are being documented in a more comprehensive manner. We are encouraged and look forward to the trend continuing.

In IMR-12, the monitoring team called out coordination issues between SOD and ERT during events. APD is in the early stages of the 7-Step Training Cycle while attempting to create cross-training between the two units and opines that the training will be developed and delivered by the close of 2021. The issues we previously documented were initially called out internally by SOD. We discussed that this training should be viewed similarly to other routine training in the short term, so that ERT and SOD have a solid foundation to work together during events. We saw evidence of initial orientation of roles and responsibilities of the third Quarterly Training materials.²⁹

Based on our review, we have determined Primary Compliance should be continued for Paragraphs 39 through 40. Secondary and Operational Compliance will be assessed once APD has addressed Stages 1-3 of their training. We again recommend that ERT develop and deliver that training in conjunction with the Academy, since the coordination of the ERT training will benefit Academy-centric responsibilities in Paragraphs 86-88 as well.

4.7.26 Assessing Compliance with Paragraph 39: Crowd Control Policies

Paragraph 39 stipulates:

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

- a) define APD's mission during mass demonstrations, civil disturbances, or other crowded (sic) situations;**
- b) encourage the peaceful and lawful gathering of individuals and include strategies for crowd containment, crowd redirecting, and planned responses;**

²⁹ ERT documented broad areas of discussion (i.e., "ERT personnel will be instructed on the capabilities and benefits of the armored vehicle during civil disturbances") but details of what was communicated are absent from the materials. In the future, source documents should be absorbed into the ERT training materials or provided as addendums for archiving purposes.

- 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: APD must develop and deliver a meaningful training program to its ERT and Field Services members. That training should be centered on crowd control policies. Further, the 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. Training should incorporate lessons learned from recent ERT activations and contemplate best practices developed by other police agencies facing similar social unrest across the country.

4.7.26-27b: APD must continue to ensure its After-Action Reports follow a standard structure and include mechanisms for communicating needed revisions to policy, training, or operational rubric within the agency.

4.7.26-27c: Continue to take recommendations made from After-Action reporting and follow a logical and repetitive cycle wherein APD can demonstrate it adequately “closes the loop” on lessons learned.

4.7.26-27d: APD should continue its effort to coordinate with IAFD to implement workable solutions to ensure reasonable and timely use of force reporting, and

that investigations occur in circumstances where multiple planned and unplanned protests are being addressed. Solutions should be advanced to the monitoring team in the form of SOP revisions related to the proper investigation of uses of force during mass gatherings.

4.7.26-27e: ERT should continue to work with SOD to create routine multi-disciplinary training.

**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, investigating, and reviewing 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 Reviews and Investigations – Paragraphs 46-49; and Supervisory Force Reviews – Paragraphs 50-59. The following represents our findings relative to this series of paragraphs.

The CASA requirements stipulate that the use of force and reviews/investigations of force shall comply with applicable laws and comport to best practices. Central to these reviews and investigations shall be an assessment and 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-14 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 these issues could best be addressed moving forward. During the 14th reporting period, we have seen examples of our technical assistance being implemented in certain areas and an improvement with the overall handling of use of force incidents at APD.

Case reviews and cursory checks of use of force reviews and investigations by the monitoring team continue to reflect numerous examples of personnel requesting IA investigations on policy violations. These requests are referred to as an Internal Affairs Request (IAR). A number of use of force cases (Levels 1, 2, and 3) reviewed during this reporting period contained requests for IA reviews (IARs) for alleged policy violations. These IARs continue to be examined by the monitoring team to the point of their logical conclusions in order to determine if APD is properly administering its IA oversight functions. During IMR-14, APD's tracking data indicates 199 requests for IA review of alleged policy violations associated with use of force reviews and investigations. The table below illustrates the trend of IARs originating from use of force cases.

Table 4.7.28a

Comparison of Uses of Force with Internal Affairs Requests (IARs)

Reporting Period (RP)	Level 1 UoF	Level 2 UoF	Level 3 UoF	Total UoF	Internal Affairs Requests (IARs)
IMR-10	241*	**	54**	295	263
IMR-11	241*	**	40**	281	404
IMR-12	173	232	79	484	534
IMR-13	111	244	54	409	424
IMR-14	116	216	91	423	199

* Level 1 use of force cases were referred to as Supervisory Use of Force Investigations prior to IMR-12.

** After January 10, 2020, Serious Use of Force Investigations were split into Level 2 and Level 3 Use of Force Investigations. Since Level 2 and Level 3 data were not available for IMR-10 and IMR-11, use of force incidents that were classified as Serious Uses of Force in IMR-10 and IMR-11 are represented in the “Level 3 UoF” column in this table. Thus, the “Level 2 UoF” column has no data in it for IMR-10 and IMR11.

Since all potential policy violations observed during use of force incidents are reported now to IAPS via IARs, this aggregate data provides a rich resource for APD to analyze in order to determine misconduct trends. Any training conducted by the Academy or other entity within APD should, as contextually appropriate for the course being designed, examine these data as part of its needs assessment phase of curriculum development.

During this reporting period (IMR-14), APD opened 116 Level 1 use of force cases for supervisory review. In contrast, APD opened 111 Level 1 use of force cases for supervisory review during IMR-13, 173 new cases during IMR-12 and 241 supervisory use of force reviews during IMR-11.³⁰ We note the continuing drop in the percentage of IARs since IMR 12. APD should assess the reasons for this drop from more than 100 percent in IMR 12 and 13, to less than 50 percent in IMR-14. Until APD knows why these numbers have dropped, e.g., fewer IARs due to fewer problematic cases, or fewer IARs due to reduced screening, there is concern that screening rates may have dropped due to lessened oversight, as opposed to better performance in the field.

³⁰ The 111 Level 1 cases opened in IMR-13 represents a decline of 36% from the Level 1 cases opened during the period of February 1 – July 31, 2020 (IMR-12) and a 54% decrease from the supervisory use of force investigations opened during the period of August 1, 2019 – January 31, 2020 (IMR-11).

The monitoring team continues to provide exhaustive technical assistance and feedback to APD concerning the problems associated with their IA processes. This technical assistance, continuously provided since the onset of monitoring, increased in January 2020 and the level of technical assistance has continued to increase throughout the writing of this report. This feedback provided by the monitoring team encompassed briefings on best practices in internal affairs operations and provided recommendations for improving existing internal processes to improve the lack of timeliness of APD's use of force investigations, and to address the disparity in discipline that exists by deferring disciplinary decisions to area commands. In this reporting period, evidence reveals that APD continues to struggle with completing supervisory force investigations within 72 hours. Additionally, APD supervisory and command personnel still struggle to complete their reviews of Level 1 use of force investigations within the allotted 30-day time period.³¹ Frequent readers of the monitor's reports are aware of the monitor's opinion that these delayed timelines are intentional in order to avoid implementing discipline due to the union's contract requirements relating to timelines for discipline based on violations of APD policies. We have counseled APD *ad nauseum* regarding "time-barred" discipline and do so again this reporting period.

In IMR-12 and IMR-13, there were several cases in each reporting period that were completed beyond 60 days. This is still true for IMR-14. In fact, ten cases exceed 100 days (six of which exceed 150 days). Timeliness continues to plague APD on a number of fronts beyond just the deadline to complete supervisory use of force investigations. As has been discussed exhaustively in previous reports, the genesis of this problem is now immaterial to the outcomes of such demonstrated inability (or unwillingness) to complete the reviews: corrective measures are not implemented (or are not effective), and problematic behavior is not identified and remediated in a timely manner. Thus, the City cannot reduce its risk for individual officers, the police department as a whole, the City government, or the individuals encountered by its officers. This is an on-going issue that the City has not remediated. Ample recommendations made by the monitoring team over the last several monitor's reports have focused on this issue, but the issue still persists.

In IMR-12, the monitoring team recommended that APD analyze causal factors leading to their failure to achieve better efficiency in completing the investigations. The bases of this recommendation were twofold:

- 1) Such analysis would be beneficial to APD's examination of the factors that led them to present to the Court a description of how this new use of force system

³¹ Pursuant to SOP 2-57, supervisors must complete and document a supervisory use of force review of a Level 1 use of force within 72 hours after the supervisor leaves the scene of the use of force incident (and upon a commander's approval, supervisors may receive a seven-day extension). The lieutenant in the involved officer's chain of command has ten calendar days from receiving the supervisor's review to complete a review of a Level 1 use of force. The commander in the involved officer's chain of command has ten calendar days from receiving the lieutenant's review to complete the review of the Level 1 use of force. Thus, the maximum amount of time a Command has to complete a supervisory review is 30 days (assuming a seven-day extension was granted to the supervisor conducting the initial review).

would facilitate compliance, and then determine what may be impeding their progress to achieve compliance under their new system; and

- 2) Based upon the theory, research, and practice of utilizing continuous improvement cycles, information gleaned from the analysis of past failures should be utilized to positively impact the effectiveness and efficiency of use of force incidents moving forward.

During IMR-14, only 66 of the 116 Level 1 use of force cases (57%) opened during the reporting period were completed within the allotted 30-day period. By contrast, in IMR-13, 60 percent of Level 1 cases opened during the reporting period were completed within the allotted 30-day period. In IMR-12, 68 percent of Level 1 cases were completed within the allotted 30-day period. To put this into perspective, APD handled only five more Level 1 cases this reporting period than in IMR-13, but its compliance rate with the 30-day requirement suffered a percentage decline of five percent. When the significant decline in the opening of Level 1 cases from IMR-12 (173 cases) to IMR-13 (111 cases) is considered, one would deem this a considerable reduction in workload that should enable supervisors to have more capacity to complete the case reviews. However, this 36% workload reduction yielded a percentage difference decline of 12.5 percent in case completion from IMR-12 to IMR-13. These data are significant because it is plainly evident that over the last 18 months, whether the number of Level 1 cases increase marginally or decrease substantially, the efficiency of APD area commands decline. We know of no external factors that would cause this decrease in "efficiency," and attribute it to a significant lack of will to address officer misconduct.

As the table below indicates, during the first three months (February/March/April) of the reporting period, 49 supervisory reviews were initiated and 69% of them (34 cases) were completed within 30 days. In contrast, 52 cases were initiated during the first three months of IMR-13 and 41 cases (79%) were completed within 30 days. Here, even when the number of cases decrease slightly from IMR-13 to IMR-14, the efficiency rate for completing the cases within 30 days suffers a percentage decline of 13.5 percent. Again, we assert this is a matter of will, not ability.

This analysis provides a snapshot of how APD continues to struggle to complete these investigations in a timely manner, whether the number of cases they initiate increases or decreases. See Table 4.7.28b below.

Table 4.7.28b Timely Investigations of Supervisory

Use of Force (Level 1) Investigations

Reporting Period	# of Sup. UOF Cases Initiated (Months 1-3) of the Rep. Period	# of Sup. UOF Cases (Months 1-3) Completed within 30 days	Total # of Sup. UOF Cases Initiated during the Rep. Period	Total # of Sup. UOF Cases Completed within 30 days
IMR-14	49	34 (69%)	116	66 (57%)
IMR-13	52	41 (79%)	111	67 (60%)
IMR-12	99	76 (77%)	173	117 (68%)

The data provided in the immediately preceding paragraphs of this section of the report reflect Level 1 cases opened during IMR-14. During IMR-14, APD completed supervisory reviews of Level 1 cases that were opened in IMR-14 as well as cases that were opened in IMR-13. When accounting for all Level 1 cases completed in IMR-14 (regardless of when they were opened), APD completed 116 cases, 73 of these cases were completed within 30 days, equating to 63 percent of the cases being completed within the 30-day time limit. During IMR-13, APD area commands completed 70% of the cases (regardless of when they were opened). These numbers are well below the 95 percent compliance threshold. Based on this trending data, gaining operational compliance for Paragraphs 41-59 will continue to be elusive for APD.

A number of APD functions are implicated in various aspects of Paragraphs 48-52. For example, during our June 2021 on-site visit, the monitoring team met with APD representatives 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 as set forth in Paragraphs 81-85.

The monitoring team conducted a review of Level 1 use of forces drawn from samples taken throughout the reporting period. Level 1 uses of force often occur in companion with Level 2 and Level 3 uses of force. Therefore, some Level 1 uses of force are also discussed in the next section of this report that focuses on Level 2 and Level 3 uses of force. For Level 1 use of force cases involving an ECW, those case facts are more fully described in Paragraphs 24-36 of this report.

Case #1 IMR-14-01 (Level 1 Use of Force – ECW SoF)

The case facts for this case were more fully described in Paragraphs 24-36 of this report.

This case involved APD officers responding to a March 2021 call during daylight hours from a private security officer at a commercial establishment indicating he had been threatened by a person with possibly a knife. Officers responded to the scene, set up a

force array, and made contact with the victim, at which time the suspect quickly began approaching the officers and the victim. One officer pointed the individual with his ECW as clear commands were given to the subject. That officer holstered his ECW, approached the subject, and quickly handcuffed the subject, who offered no further resistance.

The investigation continued into the alleged threat with the knife once the subject was in custody. Supervisors were notified of the ECW show of force, and a sergeant and acting sergeant responded to the scene. Proper interviews were conducted, and necessary facts were gathered. The supervisory review correctly determined that the use of force was proportional and reasonable based on the individual's quick approach to the officers and not being responsive to their commands. The acting sergeant conducted a good canvass of the areas and also viewed surveillance camera video footage from a nearby commercial establishment to see if it had any relevant evidence of the subject's or officers' actions.

No material discrepancies were noted. Thus, the monitoring team determined that the actions of the officer displaying his ECW were objectively reasonable and proportionate based on the individual's quick approach to the officers and not being responsive to their commands. Thus, this ECW Show of Force was within policy and compliant with relevant CASA paragraphs.

Case #2 IMR-14-03 (Level 1 Use of Force – Rifle SoF)

APD officers responded to multiple calls during an overnight shift in May 2021 about gunshots being fired in a commercial parking lot. Numerous officers staged approximately 100 yards from the reported location and approached the area. Three of the officers were armed with rifles due to the multiple calls affirming the gunshots. While officers were cautiously approaching the area of the subject in darkness, the subject fired the weapon again. Officers immediately turned on their flashlights and began taking cover and giving commands to the subject. The subject put down his weapon and followed the officers' commands to raise his hands. The subject then lowered his hands, and officers gave more commands and had him crawl forward away from the weapon that he had placed on the ground. Once the individual got far enough away from his weapon, officers quickly approached him and handcuffed him with no resistance. The individual had a physical disability, and officers accommodated the disability even though the individual was now under arrest. The operator of a vehicle the subject had been in prior to firing the weapon was found to be a victim of domestic violence but was not injured. She provided a written statement and was also presented with the appropriate resources for her follow-up. The subject was transported from the scene by ambulance to the hospital because the correctional facility refused to accept the individual.

The officers' pointing of rifles (shows of force) were proportional and reasonable based on the multiple calls reporting gunshots and while facing gunfire on their approach to the subject's location. The officers lowered their rifles once the subject dropped his weapon and moved away from it, and they were able to determine that his hands were clear. Since a lieutenant was involved in the show of force, a different supervisor arrived on

scene to complete the supervisory investigation. The subsequent supervisory investigation was sufficient and addressed all of the required criteria. Thus, these shows of force were within policy and compliant with relevant CASA paragraphs.

Case #3 IMR-14-04 (Level 1 Use of Force)

APD officers conducting a proactive patrol during dusk hours in February 2021 approached two homeless persons (one male / one female), one of whom (male) had fled from officers on the previous day and was subsequently warned to not trespass on private property. Officers found this individual back on the same property that he was previously warned not to trespass on again. Upon approaching the two subjects, the male subject made fists, was argumentative and not cooperative, and appeared ready to fight or flee. The female was released after a records check was negative. Officers were on scene approximately 24 minutes talking with the male subject and attempting to verify his identity and any active warrants. Upon talking with New Mexico Probation and Parole, officers verified a warrant for his arrest, in addition to the trespassing and other charges. At this point, three officers advised the subject he was under arrest and not to resist (because of his demeanor). The subject resisted arrest. Due to the subject's continued resistance, it took three officers more than two minutes to handcuff the individual behind his back with two pairs of handcuffs. The individual continued to resist by becoming deadweight and stiffening up so that officers could not walk him³² to a vehicle. Once searched at the side of an APD vehicle, he was moved to another APD vehicle to secure him. The subject braced with his feet, making it very difficult for officers to get him in the vehicle. One officer was kicked/struck on two occasions, and another officer complained about a minor hand injury. Once medical personnel arrived on the scene to ensure the subject was not injured or ill (because he stated he could not breathe and suffered from seizures), the subject exited the vehicle but did not cooperate with the medical exam. The subject then resisted being placed in the vehicle again, and it took a number of officers to guide his feet and head into the vehicle so he could be safely seated, and seat belted.

The subject was transported to the MDC for detention. The subject continued to be uncooperative and threatening towards officers while in the intake area of the MDC.

The force utilized by the officers at the scene was both proportional and reasonable based on the subject's passive and active resistance. Several officers had to participate in moving the subject from one vehicle to another, as well as placing him into a vehicle on two separate occasions. Officers used restraint and remained calm while securing and moving this uncooperative subject.

In their use of force reports, officers reported that they used CIT and verbal de-escalation skills. However, the monitoring team's review of this matter reflects that the use of CIT and verbal de-escalation skills were not as apparent as portrayed by officers. When initially confronting the two individuals and the second subject finally sat down, one officer told the person twice not to fight the officers, and if they did, force would be used.

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This same officer additionally told the person, without provocation, that they would be tased. When the male subject was answering another officer's question, the officer who threatened him with being tased told him to stop talking. Questions posed by officers to the male subject about potential mental health issues were random and did not always seem genuine. Additionally, within the first four minutes of making contact with the two individuals and attempting to gain their cooperation and identifying information, an officer (within full view of the two subjects) took a knife and began cutting down the tent/tarps the subjects used for shelter. To the monitoring team, this seems like the antithesis of de-escalation.

During the early part of this encounter, the male subject told the officer that previously threatened him with taser use that he did not have any active warrants. The officer advised the subject that if their first computer check did not prove his identity, he would be arrested for concealing his identity. As it turned out, the computer checks to verify his identity took approximately 15-20 minutes. Ultimately, it was revealed that there was not a current active warrant for him, but telephonic contact from the scene with New Mexico Probation and Parole (NMP&P) revealed that the subject was supposed to be in State custody and that he was released in error. It was represented that NMP&P personnel assured the APD officer that a warrant would be issued. Reports completed by officers indicated that NMP&P was told the subject was trespassing and had drug paraphernalia in his possession, leading the NMP&P to issue a warrant "revoking his probation for trespassing, and possession of a controlled substance." It should be noted, however, that officer reports do not indicate any CDS possession charges. It should be further noted that officer reports indicate that the drug paraphernalia (glass pipe) was found in the search of the subject incidental to his arrest.³³ This is problematic for three reasons: 1) the officer who wrote this does not appear (based upon available OBRD evidence) to find a glass pipe during the search incidental to arrest. However, another officer finds what appears to be two small plastic bags during this search of the subject's pockets and they are described as "57" (narcotics); 2) the search incidental to the arrest occurred after the telephonic communication with NMP&P indicating officers had the subject possessing drug paraphernalia prior to the reported (in the officers' reports) search incidental to arrest; and 3) OBRD video footage provides evidence of an officer stating, "A pipe just came out of his sock" when the subject was being placed in a police vehicle approximately 10 minutes after the subject was handcuffed (and approximately 25 minutes after telephonic communication with NMP&P). This OBRD evidence seems to indicate that the paraphernalia (glass pipe that is noted as "tagged for evidence" in a police report) fell out of the subject's sock on one of the occasions when officers were struggling to get the subject seated in the vehicle, not during the search incidental to arrest as indicated in APD reports. More problematic is that the suspected CDS removed from the subject's pants pocket by an officer during the search incidental to arrest (as noted in OBRD evidence) does not appear in any of the officers' reports. In fact, the

³³ Another officer stated in his report, "I walked over to where [the subject] was concealing his hands and located a syringe that through my training and experienced (sic) knew it to be used for consuming narcotics." However, OBRD evidence revealed this syringe was laying in the dirt before the officer walked up to it and before the subject was ordered to move and sit in the area near the syringe. It should be noted the syringe was not "tagged for evidence," therefore by inference this is not the drug paraphernalia that was referred to in the telephonic discussion with NMP&P personnel.

Supplemental Report of the officer who found the suspected CDS is completely devoid of noting any participation in the search incidental to arrest, let alone reporting the finding of suspected CDS during that search. Coincidentally, this is the same officer that is recorded saying, "A pipe just came out of his sock" when the subject was being placed in a police vehicle. The finding of this pipe is also not addressed in this officer's Supplemental Report. An experienced and trained supervisory cadre would note such issues, and also note that the discrepancies in the officer's reports and timelines. Again, it was the monitoring team and only the monitoring team who took notice of potentially serious evidentiary and arrest issues.

The acting sergeant who conducted the on-scene use of force review omitted required steps from the responsibilities of on-scene supervisors who review use of force events. This included asking the subject if he was injured prior to administering his Miranda rights as well as failing to review all of the OBRD videos of the officers on scene, as well as the officers who used force. As a result of not reviewing all of the involved officers' OBRDs, the acting sergeant failed to identify an officer who was wielding an unholstered ECW. Fortunately, supervisors who reviewed this acting sergeant's use of force review identified the omissions and made an internal affairs request for the matter. However, reviewing supervisors failed to notice the officer brandishing the ECW.³⁴ Thus, this was not part of the internal affairs request. No evidence was produced that indicated IAPS (internal affairs) did anything other than perform a perfunctory review of the internal affairs request and followed the area commander's request for no discipline, as the area commander deemed the acting sergeant's omissions would be best handled through training and mentoring. Additionally, internal affairs requests were made for other officers for issues pertaining to non-CASA policy violations not discussed in this case summary.

Case #4 IMR-14-05 (Level 1 Use of Force)

APD officers responded to a residential area during daytime hours to address known issues with people criminally trespassing in abandoned residences. Upon arrival, the officers encountered multiple people inside a particular residence and began the process of removing them since they were not authorized to occupy the dwelling. At least three people exited the dwelling without being detained. The officers encountered a male subject who reportedly picked up a syringe and put it into his pocket, then laid motionless in the center of a living room acting as though he was sleeping. One officer stood with that male subject while two others moved through the dwelling to clear it of additional trespassers. Several announcements had been made to alert anyone that was inside the dwelling that the police were present and to come out. Both officers unholstered their weapons into a low-ready position. One officer, while clearing the bathroom area, began to use his weapon-mounted light to illuminate the bathroom and when doing so brought the weapon up into a pointing position to take advantage of the light. As he turned a corner to where the shower was located, he illuminated the shower and was

³⁴ The officer did not state in the on-scene interview or in his two written reports that he had unholstered his ECW or what position he maintained the ECW in when it was unholstered and contacting the two subjects.

startled when a female who was hiding, emerged. Since his weapon was no longer in the low-ready position and was pointed outward (using the light), his actions were identified during the chain of command review as a show of force.³⁵

Several issues were identified with this case:

1. The responding supervisor conducted a sub-par field investigation and failed to identify a show of force. This was identified in the chain of command review which noted that this supervisor has a pattern of poor force investigations. As a consequence of the supervisor's failures, several required steps were not taken at the scene, including the proper collection of statements. A request for an IAR and training referral were submitted for the supervisor.
2. The officer noted that his use of the weapon-mounted light was done in accordance with his training. Despite the officer documenting in his report that the subject was not a threat to police or others, the show of force was deemed to be in policy. The chain of command reviews, despite uncovering the show of force, also improperly found the show of force to be within policy. In past monitoring reports, the monitoring team called out the use of weapon-mounted lights of a flashlight (as a tactic) even when a threat is not present or articulated. The officer did document that he was going into an unknown building, did not know if anyone was present, and (if a person was present) whether they had a weapon. Because he was using his weapon-mounted light, the resultant show of force occurred to be not due to an objectively reasonable and articulatable threat, but because of a trained tactic.³⁶ This raises a number of policy, safety, and training issues. In this instance, the officer was obviously startled when he saw the female subject hiding in the shower, despite his acknowledgement that she was not posing a threat or armed with a weapon. The officer also documented nothing to suggest that they had information to believe that a weapon was at the dwelling, just the fact that they did not know one way or the other. The monitoring team will follow up with APD during the IMR-15 reporting period on this tactic. The monitoring team wants to ensure that inadvertent and/or unjustified shows of force are not occurring or being improperly reported (as occurred in this case). Also, potential safety hazards may be created by officers using a weapon-mounted light out of convenience and not need. APD officers have the option of using a handheld flashlight while holding a weapon in a low-ready position, so the monitoring team once again notes our concern that a trained tactic could result in unjustified or accidental discharges of weapons, potentially resulting in injury or death.
3. The monitoring team's review of this investigation once again revealed an officer making note in his report that he "...never gained a sight picture" when pointing

³⁵ There were three separate reportable level 1 uses of force when officers attempted to take the male subject (laying on the floor) into custody. Because the responding supervisor conducted an inefficient scene investigation, the show of force was not identified until days later and received a separate case number.

³⁶ The monitoring team discussed this with a member of the Academy, who confirmed that this tactic is trained for instances where announcements are made and a building is being cleared.

his weapon...describing it as unintentional. The language surrounding obtaining a sight picture is old policy language and was determined to be problematic by the monitoring team and APD. The monitoring team strongly recommends APD revisit this language from a training perspective to ensure officers and investigating supervisors are not under the impression that obtaining a sight picture of a subject is a prerequisite for an event to be considered a show of force.

Case #5 IMR-14-06 (Level 1 Use of Force)

APD officers, including one sergeant, responded to a hotel where there was a report of an agitated and unruly male inside the lobby. Employees of the facility reported the subject damaged property and at one point took possession of a knife from an eating area. When the subject saw one of the employees calling the police, he became agitated and rushed toward the employee, causing that employee to retreat into another room. By the time officers arrived at the scene, the subject had walked outside the building and to the perimeter of an adjacent parking lot. The officers first gathered information from the employees to ascertain what crime/misdemeanor offenses occurred and whether anyone wanted to sign complaints. The officers located the subject a short distance from the main entrance of the hotel.

The officers engaged in a conversation with the subject, who was agitated and making comments that suggested he was in some form of mental health distress. The officers stood at a reasonable distance, remained calm, and made numerous attempts to calm the subject. They could see the subject had picked up a bottle and a rock and called out to him to drop the items. The on-scene sergeant instructed one of the officers to deploy his 40mm beanbag shotgun as a less lethal option, if needed. The subject began walking down an adjacent highway toward a traffic light. Along the pathway, the subject picked up some large landscape-style rocks and continued walking away from the officers. For a period, the officers engaged in conversation with the subject from across an intersection, continuing attempts to calm the subject. The subject walked toward the officers and into the middle of the intersection and at one point threw rocks at the officers. There was little cover for the officers to seek refuge, so the officers moved and were not struck. The officers approached the intersection and gave commands for the subject to drop what was in his hands and to "get on the ground." The officer who was in possession of the 40mm weapon told the subject he would be "40'd" or "bean bagged" if he did not comply. During this exchange, the officer drew his 40mm beanbag shotgun up as a show of force. Not long after this verbal exchange, the subject dropped to his knees in the middle of the intersection, was handcuffed, and taken into custody by the officers without additional force. The officer notified his sergeant of the show of force, and a lieutenant was properly called to the scene to investigate because of the sergeant's involvement in the incident. After the subject was in custody and placed in the back of an officer's patrol car, he requested water from the officer. When the officer was non-responsive to the request, the subject became increasingly agitated and began striking his head multiple times against the in-car divider, causing a cut to his forehead.

The following are observations of the incident and ensuing investigation and chain of command reviews:

1. The officers' actions leading up to the arrest of the subject were appropriate, and reasonable efforts were made to collect relevant information from the victims before engaging the subject. Once locating the subject, the officers maintained good distance and attempted to de-escalate an obviously agitated and disoriented person.
2. In the opinion of the monitoring team, the show of force in this case was appropriate and objectively reasonable under the circumstances.
3. After the subject was in custody and in the rear of a patrol vehicle, he remained calm until he asked an officer for water. By that time, the subject had been in custody, handcuffed, and seated in the back of the car for an extended period as the use of force and other administrative responsibilities were being addressed. In the opinion of the monitoring team, there was a strong chance the subject's demeanor would have remained calm had the arresting officer simply gotten the subject some water.³⁷ Failing to do so agitated the subject's demeanor to the point where he began striking his head, causing an injury. This was not identified as an area of concern by the lieutenant and sergeant on the scene or through the chain of command. We call this out because this is an example of how a lack of effort by the officers at the scene could have resulted in additional and unnecessary uses of force. For instance, when the officer went to place protective headgear on the subject, he began to flail around to avoid having it applied. These types of encounters create situations in which a use of force becomes more likely. While earlier in the event good de-escalation occurred by the officers, the failure here should have been addressed by the supervisors of the officer in question. In the end, nothing untoward occurred, but could have because of a lack of attention by the officer.
4. The chain of command review of the use of force investigation identified two issues and requested IARs be generated for both. The two issues are as follows: (1) An FTO and recruit were among the officers at the scene. A lieutenant noticed an extreme similarity between their reports and was able to ascertain that the FTO told the recruit to use his report as a direct reference. The reviewing lieutenant estimated the reports were approximately 75% verbatim and recommended that a policy violation be sustained with non-disciplinary corrective action for the FTO. (2) The reviewing lieutenant noticed that officers at the scene had turned their OBRDs off at the scene.
5. During the chain of command review, a lieutenant documented officers on the scene turning their OBRD's on and off and not following OBRD policy. He cited, and accepted as an excuse, a policy provision given as justification from two of the officers (including the supervisor), specifically SOP 2-8 "Use of On-Body Recording Devices" that states, "For mandatory recording incidents, personnel shall record the entire law enforcement-related encounter. The law enforcement-related encounter ends when contact with the individual(s) is terminated." The reviewing lieutenant absolved the

³⁷ The officer told the subject he didn't have water and checked with another officer. There were multiple other first responders on the scene, and they were still in the parking lot of the hotel that would have likely had water to provide the subject.

officers, recommending findings of “Not Sustained” because they had been erroneously given permission by their supervisor to turn off their OBRD. The supervisor’s violation was “sustained” with a recommendation of non-disciplinary corrective action. The reviewing lieutenant documented that “(The sergeant) and all of the officers did record all parts of their interaction with the individual and other members of the public. This shows they fully intended to meet the requirements of the SOP as (the sergeant) explained it.” In the opinion of the monitoring team, the circumstances reported in the officers’ reports are captured on OBRD and without cross referencing times between all the available OBRD’s it’s impossible to determine what, if anything, went unrecorded at the scene.

6. It is important to acknowledge the quality of the chain of command lieutenant’s review of this incident and his uncovering of several important policy violations. However, accepting the policy provision cited is a liberal interpretation of the policy and doing so reinforces an approach to accountability that has plagued APD’s compliance efforts from the beginning of the CASA. For instance, if this is a legitimate “excuse,” there is no indication in the records we received that the commander distributed a full distribution memo to his area command personnel to ensure this flawed interpretation was not wide-spread, or that that notification was made to the organization-level executives to reinforce the proper interpretation across all of the area commands, or that a recommendation was made to the Academy for organization-wide training. Any or all these approaches would be convincing evidence that APD understands ways to properly remediate legitimate policy issues.
7. In this case, when the officer used a show of force, he gave commands to the subject that he would be “40’d” and “bean bagged.” The use of such law enforcement vocabulary easily could be misunderstood by many persons and not have the intended influence on a subject’s behavior. Additionally, in this case, the subject was in a state of mental health crisis, and his ability to understand this communication (police jargon) was probably even more compromised. The monitoring team has seen this before and recommends that APD revisit this with briefings and training.

Case #6 IMR-14-07 (Level 1 Use of Force)

APD officers were called to a domestic dispute that occurred in a residential neighborhood. A female subject was ultimately arrested for assault against her boyfriend. After she was placed in handcuffs, the female’s boyfriend (victim of the assault) attempted to intercede and became aggressive with the officers. As a result of his actions, officers arrested the male subject. He continued to increase aggression, struggled with officers, spit at the officers, and kicked (causing damage to) an APD patrol vehicle. During the arrest, a Level 3 use of force occurred, which was separately investigated by IAFD. At the scene, the subject admitted to the officers he took a high number of over-the-counter pain pills, so the subject was transported by ambulance to an area hospital. While on the way to the hospital, the subject spit at a member of the first aid squad in the presence of an officer, who also traveled with the subject in the ambulance for security purposes.

The subject vacillated between calm, incoherent, aggressive, and abusive with the officers at the hospital.³⁸ Two APD officers stood security³⁹ and maintained a calm demeanor despite the uncooperativeness of the subject. Since the subject was under arrest, as a precaution he was handcuffed by one wrist to a hospital gurney. Some actions by the subject included attempting to get up with the gurney, cursing at and threatening officers, throwing items at officers and hospital staff, spitting at hospital staff, as well as producing a disposable lighter and attempting to burn his handcuffs. In response to the subject's actions, a male nurse approached and entered the subject's room. The nurse was loud and walked aggressively into the room while holding a restraint system. He was clearly agitated and began to hold the subject down while attempting to administer the restraint system. The two officers assisted the nurses by holding the subject's arms and legs (at different times) as the subject was secured to the gurney and a spit sock was placed over his head. The officers' demeanor and tone were professional the entire time, and throughout their interactions with the subject, they attempted to de-escalate the subject's aggressive attitude. The officers reported their actions as a Level 1 use of force, and nearly two hours later, a field sergeant arrived at the hospital to investigate.⁴⁰

The supervisor who responded to the scene properly classified and followed up with his investigation of the events at the hospital. The chain of command reviews properly oversaw the field supervisor's investigation and documented this event as two objectively reasonable and in-policy Level 1 uses of force. In the opinion of the monitoring team, the actions by the officers were professional, and the force used was objectively reasonable, appropriate to the circumstances, and in compliance with the CASA. Due to the delay getting to the hospital, the supervisor was unable to speak with the hospital staff who were present and witnessed the officers' uses of force. However, he followed up and obtained statements the following day. In the past, the monitoring team saw many instances where that type of follow up did not occur, so the team was pleased to see the initiative in this case.

A number of problematic behaviors and processes observed by the monitoring team should give rise for concern for APD. Many of the following issues have been addressed in previous monitoring reports. However, they are restated here because they were explicitly noted in case reviews or believed to be at the root of some of the observed actions.

1. APD supervisors need to be cognizant of collateral misconduct not directly attributed to the actual use of force incident they are reviewing. Historically this has been an area of weakness for supervisors. This reporting period, we continue to notice

³⁸ The subject told officers that he and his girlfriend lost a pregnancy a couple of weeks earlier, which may have contributed to his actions.

³⁹ One of the two APD officers was not party to the initial use of force at the scene. He was at the hospital standing security with an entirely unrelated matter. When he heard a commotion, he responded to assist the officer dealing with the subject in this case.

⁴⁰ The originating officer's field supervisor was still at the scene of the original domestic violence call, so APD dispatch had to identify another supervisor to respond to the hospital to take over the use of force investigation.

Internal Affairs Requests (IAR) for collateral misconduct. This awareness of policy violations in uses of force, as well as collateral misconduct associated with use of force incidents, is important. However, many IARs appear to be for non-CASA centric policy violations;

2. Extensions to complete supervisory reviews continue to be a problem for timeliness, making compliance goals elusive. This partially may account for the decline in case completion efficiency for the second straight reporting period.
3. Supervisors often fail to reconcile differences in what occurs at an incident (especially as represented on OBRD recordings, and what is said or explained to the supervisor at the scene, and what is written (or not written) in official reports;
4. Overstating of charges and risk factors as a basis for justifying tactics and force continues to be a concern;
5. The monitoring team has seen a reduction in officers walking arrested persons long distances. Instead, officers have been calling for a vehicle to reduce the exposure of officers and arrestees to increased risks;
6. The avoidance of boilerplate language continues to be a challenge for officers;
7. Witnesses are not always accounted for and encouraged to provide statements or providing their identifying information. Even when there is identifying information, witnesses may not be encouraged to stay on scene or to provide a written statement;
8. The training authorized by APD to point loaded firearms at persons merely to illuminate them with lights mounted on the firearms is problematic and a risk that is difficult to justify;
9. Allowing supervisors to arbitrarily authorize subordinates to not adhere to CASA-centric policies (e.g., intermittent activation/deactivation of OBRDs, not completing a written use of force narrative, not watch OBRDs of involved officers at the scene, etc.) constitutes deliberate non-compliance to CASA requirements, and continues to make overall CASA compliance an elusive goal.
10. APD needs to continually reassess the way they interact with people experiencing mental or emotional crises. When necessary, changes to existing policies and training, based on these assessments should be made.

During the IMR-13 reporting period, APD continued to struggle to implement a system of training capable of sustaining itself and had failed to sustain its Secondary Compliance with Paragraphs 86-88. That failure had a cascading effect on numerous other CASA paragraphs including Paragraphs 41-59, which are centered on the use, reporting, supervision, and investigation of force events. During this reporting period, the monitoring team has recognized APD's prioritization of its training responsibilities in a

reasonable and meaningful way. This is discussed in more detail in Paragraphs 86-88 of this report.

APD's compliance standing for Paragraphs 41-59 has reverted to Primary Compliance until such time as the department adequately completes the delivery of an up-to-date Tier 4 training process and its 2021 annual use of force requirements for officers and supervisors. The monitoring team remains committed to continuing its technical assistance to help guide APD toward success, but that guidance is without meaning if APD does not own the responsibilities themselves. With a coordinated and concerted effort across APD commands and the leadership and support by APD executives, regaining Secondary Compliance is an achievable goal in the near term, assuming diligent efforts and a re-focusing on CASA requirements.

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: **Not 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 conducting the investigation. The written or recorded narrative will include: (a) a detailed account of the incident from the officer's perspective; (b) the reason for the initial police presence; (c) a specific description of the acts that led to the use of force, including the

subject's behavior; (d) the level of resistance encountered; and (e) a description of each type of force used and justification for each use of force. Officers shall not merely use boilerplate or conclusory language but must include specific facts and circumstances that led to the use of force."

Results

Primary: **In Compliance**
Secondary: **Not 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: **Not 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: **Not 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. Generally, we are still concerned that of the 113 cases referred for investigation (97 closed), only 56% were sustained, and only nine incidents resulted in a recommendation of a suspension. We note that in most police departments with which we are familiar these internally referred cases often have high sustained rates since it is supervisory or command staff who bring the “complaint.” It is clear APD fails to apply appropriate and consistent measures, either reformative (counseling, coaching, retraining, enhanced supervision, transfer, etc.) or actual discipline such as suspensions or terminations. Until this aversion to discipline is addressed seriously at APD, the CASA paragraphs remaining out of compliance will show little progress.

As noted in Paragraphs 24 – 36, activation of OBRDs continues to show improvement. No pattern of non-compliance with OBRD policies was noted in the two ECW cases reviewed this reporting period.⁴¹

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**

⁴¹ We note that the sample size on this criterion is exceptionally small due to the low number of cases completed

Secondary: **Not 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 investigations shall be taken into account in the performance evaluations of the officers performing such reviews and investigations.”

Results

APD has created the PRU Compliance Review for Level 1 Use of Force investigations by supervisors. This is a 5-page comprehensive review of all aspects of the supervisory requirements for use of force investigations. Should the review highlight any inconsistencies in the investigation, the Commander of the supervisor will be notified.

The Acting Lieutenant responsible for compliance with these requirements has been working diligently on revising SOP 3-32 Employee Work Plan/Performance Evaluations, and through consultation with the Performance Metrics Unit has implemented a pilot program regarding the requirement to hold supervisors accountable within their performance evaluations for Use of Force Investigations. Policy 3-32 remained in the approval process during the IMR-14 period. Plans include supervisory training to ensure all requirements are met. The supervisory review for Use of Force investigations was missing from the current Talent Management System and required by the CASA. Once this becomes a routine/automated process with appropriate responses by supervisory and command responses to performance issues, the monitoring team will reassess compliance for Paragraph 47.

Primary: **In Compliance**
Secondary: **Not 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 or 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 burdens 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 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 to 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.
- d. 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: **Not 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: **Not 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: **Not 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: **Not 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

i) 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: **Not 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 Report shall include:

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

Results

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

4.7.42 Assessing Compliance with Paragraph 55: Force Review Evidence Standard

Paragraph 55 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. 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: **Not 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: **Not In Compliance**
Operational: **Not In Compliance**

4.7.44 Assessing Compliance with Paragraph 57

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.

Results

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

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

Recommendations for Paragraphs 41-58:

4.7.45a: APD should conduct a comprehensive review of extant processes designed to meet the requirements of the CASA regarding paragraphs 41-58 and ensure that operations personnel are processing force-review functions in an accurate, meaningful and forthright manner.

4.7.45b: Ensure that sub-standard command-level reviews that fail to adhere to extant policy standards are met with counseling, retraining, or disciplinary actions, up to and including demotion if necessary, in order to strengthen the command review process.

4.7.45c: Timelines must be established for effective investigations that will meet the requirements for efficient discipline viz a viz the APOA contract.

4.7.45d: Complete the delivery of training related to the use of the PEMS 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.

4.7.45e: Integrate the new capacities provided by the Performance Evaluation and Management System (PEMS) into processes designed to identify officers “at risk” of repeated improper uses of force, and to identify supervisory and management personnel who fail to identify these officers and/or fail to take steps to ameliorate repeated improper uses of force.

4.7.45f: Routinely monitor the actual intervention processes for compliance with the proffered plans.

4.7.45g: Begin a process of identifying and “calling out” improper or insignificant corrective measures for behaviors found to be in violation of the CASA and ensure that progressive discipline is implemented for multiple violations committed over time.

4.7.45h: Begin a process of cross-referencing out-of-policy behaviors identified by the monitoring team with supervisory and command reviews of those incidents, identifying supervisory and command responses to those behaviors (where appropriate), and implement steps to require appropriate attention to and reporting of policy violations by supervisory and command personnel.

4.7.45i: Ensure that issues noted by supervisory, management, and systems review (PEMS, etc.) are dealt with using appropriate processes, such as documented verbal warnings, retraining, or discipline.

4.7.45j: Charge PMU personnel with the conduct of a valid assessment of the efficacy of command level reviews of use of force, and with broad-sample-based identifications of weak points in supervisory and command oversight of use of force.

4.7.45k: Ensure the PMU review is assessed by Compliance Bureau personnel, and provide a detailed, focused classifications of strengths, weaknesses, opportunities, and threats to effective oversight of use of force incidents by area command personnel.

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

Recommendations for Paragraph 59:

4.4.46a: Clarify with the involved employee(s) all operational process requirements of the violated policy in each and every incident of a known violation;

4.4.46b: Insist on consistent disciplinary decisions based on employee acts or omissions, including a table of infractions with disciplinary ranges for each potential level of infractions;

4.4.46c: Insist on consistency, and ensure the consistency is calibrated to the level of infractions;

4.4.46d: Require appropriate escalation if given classes of infractions are repeated;

4.4.46e: Document all disciplinary interventions;

4.4.46f: Ensure that all disciplinary findings and comments fit established departmental documentation protocols.

4.4.46g: Include “fact statements” based on the department’s investigative findings, ensuring that all infractions are clearly explained;

4.4.46h: Progressively increase the corrective measures as violations continue or are more serious;

4.4.46i: Follow through on consequences, e.g., establish progressive disciplinary standards, and ensure that requirements are enforced and followed up;

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

Since January 11, 2020, when APD enacted a new stratified system for categorizing and investigating use of force incidents,⁴² supervisors and investigators received training on this new system that represented some of the best training the monitoring team had seen up to that point in time at APD. Unfortunately, APD has not been able to fully operationalize this training to the point that it has had a meaningful impact on its operations. This is important because the need for APD to develop its ability to “police” itself is the centerpiece of its organizational reform efforts, and it is the linchpin for achieving the long-term sustainability of those reforms. The failure of APD to exert its command and control over its ability to identify, investigate, and apply appropriate interventions (its 3-I domain) during IMR-12 continued to plague its operations in IMR-13 and is still accelerating its productivity on use of force investigations in a downward spiral. During IMR-13, the Force Review Board (FRB) helped identify weaknesses in APD’s operations, including the quality of IAFD’s work product. This critical oversight of the quality of IAFD’s investigations continued during this reporting period. While the FRB can scrutinize the quality of IAFD’s work product, the responsibility for IAFD’s productivity (successfully completing cases in a timely manner) falls to those charged with its supervision, command, and oversight.

⁴² The new stratified system for categorizing and investigating use of force incidents was an APD-initiated endeavor.

An examination of the overall use of force data and IAFD productivity data compiled by APD and provided to the monitoring team makes one thing abundantly clear: APD executives either do not monitor the productivity of IAFD (the completion of cases), or if they do monitor these productivity levels, they do nothing to intervene and change behavior to improve case completion rates. The failure of senior command officials to ensure that such a critical function as IAFD can be effective is a serious and critical failure.

During IMR-14 (data current through August 2021), APD recorded a combined 307 Level 2 and Level 3 use of force cases (compared to 298 Level 2 and Level 3 use of force cases during IMR-13, and 311 Level 2 and Level 3 cases during IMR-12). Of these 307 cases, APD recorded 216 Level 2 cases and 91 Level 3 cases. For comparison purposes, the 298 cases APD recorded during IMR-13 were comprised of 244 Level 2 cases and 54 Level 3 cases. The 311 cases APD recorded during IMR-12 were comprised of 232 Level 2 cases and 79 Level 3 cases.

One of the CASA implementation requirements to reach an Operational Compliance consideration is that 95% of the use of force cases must be completed within 90 days. This reporting period, IAFD completed only seven of the 216 Level 2 cases that were opened during the monitoring period (representing a 3.2% completion rate). Only one of these seven Level 2 cases was completed within 90 days (representing a completion rate below 1%). During IMR-13, three contemporary Level 2 cases were completed within 90 days (yielding a 1% completion rate for Level 2 cases).

When examining the Level 3 use of force cases, data provided to the monitoring team revealed IAFD investigators completed only two of the 91 Level 3 cases that were opened during this monitoring period (representing a 2.2% completion rate). Neither of these two cases were completed within 90 days. During IMR-13, IAFD investigators completed two Level 3 cases within 90 days.

In the first weeks of this reporting period, APD leadership characterized the *de facto* work stoppage of IAFD investigations on contemporary cases during the thirteenth reporting period as a one-time occurrence primarily driven by leadership changes within IAFD. Although IAFD was aware of the pending retirements of some IAFD personnel for several months prior to the changes occurring, appropriate measures had not been taken to ensure the continuity of the mission. This was very clear to the monitoring team and constitutes significant malfeasance on the part of APD leadership.

At the beginning of this reporting period, the City of Albuquerque hired a Superintendent of Reform for APD. This position was to have oversight of IAFD and to ensure productivity would improve. Unfortunately, this improvement has yet to occur. Based upon the data presented, what was described as a one-time work stoppage has become the routine and desired outcomes (cases being completed within 90 days) have declined to less than single digit completion rates. These data and their related outcomes, when compared to the first three months of IMR-12, simply show an operation moving in the wrong direction. During the first three months of IMR-12, APD opened 108 Level 2

cases, and 97 of these cases were completed within three months. This yielded a 90% completion rate of cases closed within the 90-day threshold. During this same time period, APD opened 25 Level 3 cases, and 21 of these cases were completed within three months, yielding an 84% completion rate of cases closed within the 90-day threshold. These data are presented in the two tables below. These tables also depict current data that reflect case completion rates for IAFD investigators completing Level 2 and Level 3 cases (recorded within the first three months of IMR-14) within the 90-day threshold. These completion rates for both Level 2 and Level 3 cases range between zero and 0.9 percent.

Despite the completion rates, the monitoring team does note that current IAFD investigations do at times show improvement in quality.

Table 4.7.47a Timely Investigations of
Level 2 Use of Force Investigations: IMR-12 & IMR-13 & IMR-14

Reporting period	# of Level 2 UOF Cases Initiated (Months 1-3) of the Rep. Period	# of Level 2 UOF Cases (Months 1-3) Completed within 90 days	Total # of Level 2 UOF Cases Initiated during the Rep. Period	Total # of Level 2 UOF Cases Completed within 90 days
IMR-14	117	1 (0.9%)	216	1 (0.5%)
IMR-13	126	3 (2%)	244	3 (1%)
IMR-12	108	97 (90%)	232	106 (46%)

Table 4.7.47b Timely Investigations of
Level 3 Use of Force Investigations: IMR-12 & IMR-13 & IMR-14

Reporting period	# of Level 3 UOF Cases Initiated (Months 1-3) of the Rep. Period	# of Level 3 UOF Cases (Months 1-3) Completed within 90 days	Total # of Level 3 UOF Cases Initiated during the Rep. Period	Total # of Level 3 UOF Cases Completed within 90 days
IMR-14	42	0 (0%)	91	0 (0%)
IMR-13	37	2 (5%)	54	2 (4%)
IMR-12	25	21 (84%)	79	24 (30%)

Consider the data in the two tables above within this context:

- On January 11, 2020, when APD operationalized its new stratified system for categorizing and investigating use of force incidents, IAFD had no case backlog. Thus, in the first three months of IMR-12 (February, March, and April of 2020),

IAFD detectives completed 90% of Level 2 use of force incidents.⁴³ Although the cases were fraught with problems, the monitoring team estimates that optimal case outcomes could have been achieved with few deviations from the amount of time expended to achieve that 90% completion rate.

- At the end of IMR-12 (July 31, 2020), the completion rate for Level 2 use of force incidents fell to 46%.
- After the first three months of IMR-13 (October 31, 2020), the completion rates for Level 2 cases opened during the first three months of IMR-13 (August, September, and October of 2020) sunk to 2%.
- At the end of IMR-13 (January 31, 2021), the Level 2 completion rate was 1%.
- At the end of IMR-14 (July 31, 2021), the Level 2 completion rate was .5%.

These data validate the assertion of the monitoring team that APD's IAFD operation is headed in the wrong direction in terms of productivity.

Despite these bleak numbers reflecting poor case management and oversight of contemporary cases,⁴⁴ IAFD investigators typically work on older cases (cases initiated before the start of IMR-14) during a reporting period. To present a more accurate picture of the total cases completed by IAFD investigators during IMR-14 (regardless of when the cases were initiated and regardless of if the cases were completed within 90 days), an analysis of case data reveals IAFD investigators completed a total of 22 Level 2 and Level 3 cases. These 22 cases consisted of 17 Level 2 cases and 5 Level 3 cases.⁴⁵ During the prior reporting period (IMR-13), IAFD investigators completed 111 Level 2 and Level 3 cases. These 111 cases consisted of 83 Level 2 cases and 28 Level 3 cases.

This 80% decline in the overall completion of use of force cases (regardless of when the cases were initiated and regardless of if the cases were completed within 90 days) provides more validation that the investigation of uses of force by IAFD is headed in the wrong direction in terms of productivity. It should be noted that sometime in mid-February 2021 (approximately two weeks into the start of the fourteenth reporting period), APD executive staff made the decision to no longer work on backlogged cases (determined to be cases that occurred in prior reporting periods). Once this determination was made, IAFD investigative and supervisory staff were not dealing with older cases. With this burden completely off the backs of investigative and supervisory staff alike,⁴⁶ investigative staff did not complete their first case during IMR-14 until April 15 (11 weeks into the monitoring period). It should be noted that during February and March 2021, the average complement of IAFD personnel (inclusive of investigative, supervisory, and command staff) remained at approximately 25 APD members. During

⁴³ Level 2 use of force cases were chosen for this analysis because they present the largest data set to analyze, and they constitute the bulk of the cases investigated by IAFD detectives.

⁴⁴ The term "contemporary cases" here refers to use of force incidents occurring during the current reporting period.

⁴⁵ The number of Level 2 and Level 3 cases completed within 90 days (as depicted in the preceding paragraphs and Tables 4.7.47a and 4.7.47b) are nested within these 22 Level 2 and Level 3 cases.

⁴⁶ Anecdotally, APD often represents that investigating older cases (backlogged cases) diminishes their ability to complete contemporary cases within the 90-day timeline.

the last week of the reporting period, the complement of IAFD personnel numbered 27. The monitoring team fully comprehends that not every person assigned to IAFD is investigating cases. However, the monitoring team also realizes that in a six-month period, the 25-27 persons assigned to IAFD completed only 22 cases. The fact that APD even tolerates this lack of productivity leaves the monitoring team speechless. Again, we note that it was the monitoring team who noted this issue, not APD command personnel.

At the time this report was being drafted, after the close of the reporting period, APD revealed to the monitoring team that it estimates its current IAFD backlog consists of 660 cases. A cursory review of the cases reveals that approximately 93% of the cases are beyond 90-days old, and approximately 83% of the 660 cases are beyond the deadline allowing APD to impose discipline if misconduct was found.

The monitoring team finds that the lack of productivity and lack of supervision and oversight in IAFD significantly contributes to this backlog of IAFD cases. Simply adding more personnel to this operation will not be successful if the current mindset continues to exist. We view these issues as direct and credible threats to compliance for multiple paragraphs of the CASA.

During IMR-14, APD has been working with an external vendor who will temporarily supervise an external force investigation team (EFIT) to assist APD in conducting Level 2 and Level 3 force investigations involving APD sworn personnel. EFIT will also assist APD with improving the quality of its force investigations. Under the Stipulated Order approved by the Court, EFIT may conduct these force investigations along with or independent of APD personnel. EFIT began responding to Level 2 and Level 3 force investigations on July 16, 2021. Since this initiative commenced two weeks prior to the end of this reporting period, the monitoring team has not yet reviewed any of the investigative files completed by EFIT members. However, the monitoring team met with members of EFIT in person and virtually during our June 2021 site visit (and thereafter). The monitoring team has taken note of the level of preparation on the part of EFIT.

In IMR-12, the monitoring team noted that IAFD had significantly improved the completion rate of use of force investigations within the first three months of that reporting period (February / March / April 2020). From the preceding section of this report, it should be abundantly clear to the reader that the completion rates in the last 15 months declined precipitously. In fact, in the monitor's nearly three decades of experience, we have never encountered such a precipitous drop in a key indicator of effectiveness.

For IMR-14, the monitoring team conducted a review of Level 2 and Level 3 use of force cases drawn from samples taken throughout the reporting period. The cases reviewed and a synopsis of each case are listed below. It is important to consider that most of these cases also contained Level 1 uses of force that were investigated by IAFD instead of field supervisors. In the cases reviewed for this section of the report, the field supervisors correctly identified the level of force utilized and appropriately contacted IAFD. For use of force cases involving an ECW, those case facts have been fully

described in Paragraphs 24-36 of this report. Problems, if any, with those cases as they relate to the investigative practices of IAFD's use of force investigations are cited here for clarity purposes.

Case #1 IMR-14-08 (Level 1 & 2 Use of Force)

During the early morning hours of January 2021, APD officers stopped the operator of a motor vehicle suspected of DWI. The vehicle initially stopped but then fled and nearly struck the APD vehicle. After the vehicle's operator dropped off two passengers (both who were subsequently interdicted by APD officers), the operator continued to flee in the vehicle without APD in pursuit. The fleeing vehicle subsequently struck a parked vehicle. The subject then fled the vehicle on foot and was pursued by officers through neighborhoods before being contained inside the walls and fences of several residences. The subject continued to actively disobey officer commands and continued his flight in the darkness. As officers closed in on him from behind on foot, one officer tackled the subject to the ground, and other officers quickly helped him handcuff the subject with minimal effort. Subsequent to the arrest, the subject initially refused medical treatment that had arrived on-scene. However, after the subject's true identity was established, and it learned and that he was a minor, his guardian was contacted, and he was transported to the hospital for medical evaluation and treatment. It should be noted that while officers were escorting the subject (who was handcuffed) out of the hospital hours later, the subject broke free from the grasp of officers and once again fled on foot. The subject's flight was very short as he fell down a short distance from the officers, and he was quickly taken back into custody without any use of force.

The tackling, or takedown, of the subject was proportional and reasonable based on the individual's continued flight and active resistance to officer commands. The minimal force (Level 1) used to handcuff the subject was appropriate. The on-scene supervisor appropriately identified the takedown as a Level 2 use of force, and IAFD appropriately conducted its investigation of the use of force. IAFD supervisors noted some investigative deficiencies that were corrected before the investigation was completed for review. Several policy violations not related to the actual use of force (including the non-activation of OBRDs) were identified during the investigation. Appropriate referrals were made to internal affairs for investigation.

Case #2 IMR-14-02 (Level 1 & 2 Use of Force)

The case facts for this case were more fully described in Paragraphs 24-36 of this report.

APD officers responded to a residence one morning in January 2021 to a complaint that a minor threatened the homeowner with a handgun. A subsequent search of a nearby area revealed an individual who fit the description of the minor. Several officers converged on the area of an apartment complex and got in positions to contain the movements of the suspect. The suspect did not follow the clear commands made by the officers, in order to detain the suspect. The suspect continued walking at a hurried pace, and as he was beginning to breach the officers' containment efforts, a sergeant

discharged his ECW in standoff mode and delivered a five-second cycle from the ECW. One of the probes hit the subject in the jaw area, and the other probe possibly hit the suspect near the waist. Officers then handcuffed the individual without further resistance. While being searched at the scene, a loaded handgun was found in the rear pants/waistband of the suspect. Other officers at the scene had used shows of force with an ECW as well as a handgun. The ECW deployment was proportional and reasonable based on the individual's continued flight and active resistance to officer commands. The ECW and handgun shows of force were also appropriate

The sergeant who utilized the ECW had both his firearm and ECW unholstered at the same time for a short period of time (both were not simultaneously pointed at the suspect) before transitioning the handgun back to the holster. The investigator followed up with the Academy to verify the finer points of the training and policy on having both weapons unholstered at the same time. Based upon the case facts and the fact that the two weapons were never both pointed at the subject at the same time, we conclude that there was no policy violation.

The investigator in this case noted in his investigation that the sergeant gave the "Taser-Taser-Taser" warning prior to deploying his ECW. However, OBRD evidence revealed the sergeant actually gave this warning one second after deploying the ECW. In fact, the sergeant also noted this in his report. The IAFD Commander's review of the investigation appropriately noted this discrepancy. It should also be noted that the sergeant did tell the suspect on three prior occasions that if he did not stop, he would be tased. This fact and other case facts are what led the monitoring team (as well as the IAFD Commander) to determine that this ECW deployment was in compliance with CASA requirements. The IAFD investigator and supervisors noted some policy violations not related to the actual use of force during the investigation (including the use of boilerplate language), and appropriate training and misconduct referrals were made to the Academy and IAPS.

Case #3 IMR-14-09 (Level 1 & 2 Use of Force)

APD officers responded to a February 2021 call from a parent who stated that their son, was acting irrationally. The parents informed officers that their son frequently exhibited problems with substance abuse and mental health issues. The parent also advised officers that their son also had active warrants. Officers eventually attempted to approach the son near a park, and he walked across the street and began running down the sidewalk. Additional officers arriving in the area engaged the subject in a foot pursuit. One officer caught up to the subject and pushed him from behind, and the subject lost his balance and fell. The officer immediately held the subject on the ground, and other officers quickly arrived and assisted in handcuffing the subject, who did not resist being handcuffed.

The use of force was proportional and reasonable based on the individual's active resistance, flight, and felony warrant status. The officer who used force stated in his use of force report that the suspect "looked back at me and began to yell. I couldn't see his hands. It appeared his hands were going into his backpack. Due to recent events

involving police, I was scared he was reaching for a weapon inside his backpack.” The officer also indicated the suspect was holding the backpack on the front part of his body. The monitoring team’s review of OBRD evidence revealed that the suspect did not look back and begin yelling at the officer. The suspect was carrying the backpack like a football in his right arm, and his left arm was in and out of view consistent with someone running, but definitely was not out of view purposely for a prolonged period of time. As to the boilerplate, global justification of “recent events involving police,” no further explanation was provided. The IAFD investigator did not address this matter during the officer’s interview, nor did any IAFD supervisor address this matter during their review of the case.

Case #4 IMR-14-10 (Level 3 Use of Force)

APD officers on patrol were alerted to a shoplifting incident in which two beverages were reportedly stolen from a local convenience store. A short time later, an officer located the male suspect, placed him in custody, and handcuffed him behind his back...all without issues or force being used. The store employee who reported the shoplifting did not want to pursue charges. Still, a felony warrant for a probation violation was found for the subject, so he was transported to the APD PTC for processing. After arriving at the PTC, the subject was seated on a bench and left unattended while still handcuffed behind his back. Shortly after his arrival, the subject stood and exited the main door in an attempt to escape custody. He began to run up a sidewalk and across an intersection a short distance from the PTC entrance. Several officers gave chase, and one caught up to the suspect relatively quickly and tackled him from behind in the intersection. As a result of being tackled...and the fact he was handcuffed behind his back...the suspect struck his face on the ground and sustained several abrasions to his face and knee. The officer immediately called for first aid and a supervisor due to a Level 3 use of force (takedown of a handcuffed person who sustained injuries). Ultimately, the use of force investigation was taken over by IAFD, who found the use of force to be in compliance with policy and procedure.⁴⁷

The monitoring team reviewed the available reports, statements of officers, OBRDs, and IAFD investigation into this use of force. It is our opinion that the force used in this matter was not reasonable or the minimum amount of force necessary to take the subject back into custody, and therefore not compliant with APD policy or the CASA. Several factors were considered when determining the reasonableness of the officer’s actions:

1. The subject, in this case, was handcuffed behind his back and incapable of bracing any fall when he was tackled from behind. Being handcuffed would hinder a person’s speed and mobility to outrun the officers, which was the case in this instance. A football-style tackle rendered the suspect incapable of bracing his fall and exposed him to serious injury, especially with the officer falling on him.

⁴⁷ Coincidentally, during the monitoring team’s June 2021 site visit, the EFIT Administrator and senior team provided their assessment of this case to APD. Their assessment was that the use of force used in this case was not reasonable or in policy.

2. The officer acknowledged he was unaware of why the subject was in custody before his escape. However, the officer recognized the suspect violated criminal statutes for escape when he left the PTC holding area.
3. The officer's description that the intersection was a "busy street" is not compelling, nor was his concern the subject may be struck by vehicles. It is not accurate to describe the roadway or intersection as busy at the time of this event. In fact, there were virtually no vehicles near the intersection that posed a threat to the subject's safety. We considered OBRD footage and saw that the officers left the subject sitting or lying in the intersection for approximately 17 minutes after he was tackled.
4. The officer claimed he could not call out orders or commands for the subject to stop running because he was not within "earshot." The officer's claim is without merit. Even if true initially, which it is not, there came the point in time where the officer closed the distance and still did not issue orders or commands. In fact, none of the officers chasing the subject issued orders or commands for him to stop. The only command heard was (from the officer who used force) after he had already tackled the subject. The officer yelled, "get on the ground," after the subject was already on the ground.
5. The officer characterized the subject as having created "significant space and distance" between himself and the police. This, too, is not accurate. When the officer first exited the PTC entrance, the subject was approximately 30-40 feet away from the door and down a sidewalk running toward an intersection. That placed the subject approximately halfway in the direction of the intersection. The head start the subject had was so insignificant that the officer was able to catch up to the subject at the center of the intersection. In fact, a second officer was immediately behind the first when the use of force was applied.
6. The officer claimed he did not want to grab the subject's handcuffs (to stop him) for fear of causing injury. We found this to be unconvincing as well, since the way he applied force was much more likely to cause injury to the suspect than merely grabbing the subject's handcuffs.
7. It was obvious that the officers were overtaking the subject quickly and had put themselves into position to exercise better options to stop the subject from escaping. There were multiple officers closing on the subject, and he could have unquestionably been taken into custody without tackling him to the ground while handcuffed behind his back.

The monitoring team has identified several of the same deficiencies with the IAFD investigation as in past reviews. Examples include poor questioning during interviews and failure to challenge discrepancies in officers' reports or statements against the available evidence. Overall, the monitoring team found the officer's explanations for his Level 3 use of force to lack credibility and to be inconsistent with the weight of evidence in this investigation.

Case #5 IMR-14-11 (Level 1 & 2 Use of Force)

APD officers were dispatched to a report of a male and female outside a business establishment who were causing a disturbance and becoming aggressive with

passersby. Details obtained by APD dispatch from a caller suggested that alcohol was involved. One series of CAD comments indicated that the two subjects were yelling at each other, and the male was pushing the female onto the ground as she was attempting to get up, the female hit her head on an iron gate, as the male was leaving the scene. An APD officer first went to locate the male subject and encountered him standing at a street corner a short distance away. It was obvious from the OBRD review that the subject was under the influence of alcohol and/or drugs, and in any reasonable view, was disoriented. The APD officer quickly approached the subject, called out to him that he was “detained” and “not free to leave.” Within seven seconds of making the subject aware of her presence, the officer was threatening the use of force and had taken ahold of the subject’s arm within 12 seconds.

The subject was not exhibiting aggressive or threatening signs when the officer arrived, but he attempted to slowly walk (stagger) away once the officer reached his location. The officer almost immediately grabbed his wrist, and a struggle ensued between the two. The subject was asking the officer what he did and was flailing around to get the officer to let go and began cursing at her. The officer stated she perceived the subject was going to strike her when he said, “What’s up” and balled his right hand into a fist.⁴⁸ No reasonable attempts were made to first gather information about the call for service or diffuse the situation prior to going hands on with the subject. The officer’s actions had entirely the opposite effect and instead created a situation in which force was used.⁴⁹

Once officers began gathering information, they learned that the male subject had not pushed the female subject down. He had been trying to pick her up, but because they were both extremely intoxicated, he had fallen on top of her. The officers approached the female, who was still on the ground in front of the business establishment. She exhibited signs of extreme intoxication and had an orthopedic boot on one foot. The woman was so intoxicated she could not get up from the ground, and at one point on the OBRD, she is seen falling and hitting her head on an “iron gate” (fence) erected outside the business, similar to what was called in to APD dispatch.

The use force in this matter was influenced by the original officer’s poor approach and failure to remain calm and defuse the situation. A professional approach would likely have given the officers time to gather information about the actual call for service before resorting to force. This officer’s approach is similar to uses of force we have reviewed in the past. Instead of slowing the investigation and gathering information that may result in probable cause for an arrest, some officers instead rush to engage those who they perceive as a potential subject of an arrest.⁵⁰ Here, the officer approaching and

⁴⁸ The officer was to the side and slightly behind the subject. On OBRD you can hear the subject say, “What’s up,” but cannot make out if the subject’s fist is balled or if it was raised in a threatening manner. Two witnesses standing close told the subject “Hey, don’t hit her” at approximately the same time. The officer’s report stated, “During the incident (the subject) clenched his right fist as if he was going to strike me and stated, “What’s up.” At that point I was in fear of an immediate battery.”

⁴⁹ To its credit, during the investigation and chain of command review, the failure to deescalate the situation was identified by APD and an internal affairs investigation was initiated.

⁵⁰ APD’s SOP 2-55 states the purpose of de-escalation as follows: “The purpose of this policy is to establish guidelines for officers of the Albuquerque Police Department regarding the use of de-escalation

attempting to detain the subject may have been appropriate based on the call details. Still, her actions increased the excitement of the subject (who was clearly intoxicated), and she almost immediately resorted to the use of force.

The officer's poor interpersonal skills did not end with her interactions with the male against whom she used force. She also responded to the female's location and found her still on the ground and obviously under the influence of alcohol or drugs. Her purpose should have been to investigate the possible domestic violence event. However, the officer immediately demonstrated an agitated demeanor. She opened the conversation with the leading question, "So when he pushed you in the face, why did he do that?" The female had made no such allegation to that point, and when asked, she denied it happened. The officer then asked for identification, and the female asked why? The officer responded, "Want to provide me with that ID because I don't want to have to place you under arrest as well." The female asked why she would be placed under arrest, and the officer responded, "I need you to identify who you are." When the female persisted in finding out what she had done to be placed under arrest, the officer responded, "Right now you are concealing your identity." The officer's tone was rude, abrupt, and unprofessional.

The IAFD investigation of the use of force had several issues in process noted below. Many of the same issues the monitoring team has seen in the past were present in this case (i.e., poor interviews, failure to reconcile discrepancies in officers' reports, and finding an out of policy use of force to be "in policy").⁵¹ Of particular concern was the IAFD investigator demonstrating a disinterest in obtaining information related to the initial call for service from the person who called in the event. It's essential for an IAFD investigator to gather information regarding the underlying event that preceded a use of force when making force determinations.

Case #6 IMR-14-12 (Level 1 & 2 Use of Force)

An APD officer assisted a stolen vehicle investigation where two subjects were placed under arrest by another APD officer. He learned that a third person, a female, was believed to have been involved in the initial theft of the vehicle. The officers obtained the name and description of the female, with her possible residence being a nearby motel. One of the officers proceeded to the motel to attempt to locate the female subject. In the interim period, he learned that the female had active felony and misdemeanor warrants

techniques during interactions with individuals in an effort to avoid unnecessarily escalating a situation, to gain voluntary compliance from an uncooperative individual, and to reduce or eliminate the need to use force." The policy further requires officers to slow events down, gather information and take impairment (i.e., intoxication) into consideration when deciding a person's reason for not following instructions.

⁵¹ The interconnection of de-escalation and finding a use of force in or out of policy was evident in this case. SOP 2-52, under General Requirements, states, "Officers shall first use de-escalation techniques when feasible to gain the voluntary compliance of an individual to reduce or eliminate the need to use force. In our opinion, in this case it was feasible for the officer to make reasonable de-escalation attempts before resorting to force. The officer exacerbated a situation with an intoxicated person.

as well.⁵² The officer met with motel employees who were familiar with the subject but indicated that she was not welcome on the premises. The officer circled the motel to locate the subject, during which he came across a group of people, one of whom matched the description of the subject with which he was looking to speak.

The officer engaged the female in conversation and asked if she was the female he was attempting to locate, but she provided a different name. The officer quickly assessed the situation and believed the female was not being truthful. After a brief discussion, the female admitted she lied and confirmed she was the person the officer was attempting to locate. The officer advised her she was under arrest and asked her to stand up to be handcuffed. The female feigned cooperation when she stood up and then suddenly began to run away. In a matter of a couple of steps, the officer gained control of one of her arms, and she was pinned against an exterior wall of the motel. She began to yell and resist significantly. The officer used appropriate Level 1 use of force in his attempts to gain control of the subject while they were standing while maintaining a calm and professional demeanor. The continuous active resisting by the subject required the officer to take the female to the ground with an appropriate Level 2 use of force. While on the ground, the female continued to resist actively, but the officer controlled her actions and attempted to de-escalate her demeanor by maintaining a calm voice when giving her instructions. The officer was eventually able to gain complete control of the subject and apply handcuffs. The officer's actions minimized the amount of force used, and he resolved the active resistance quickly and appropriately.

A field supervisor responded to the scene and properly categorized the force as a Level 1 and a Level 2 and called IAFD to the scene to initiate a force investigation. The investigation was complete and properly analyzed the force used in this encounter. The investigation assembled appropriate information and reached appropriate conclusions that the uses of force in this event were objectively reasonable. The chain of command review properly identified issues with the investigation, which were all addressed.⁵³ During our analysis of this case, we reviewed a formal taped statement the IAFD investigator took of the officer following the event. A member of the APOA took part in the interview. The quality of the detective's questioning was better than most cases the monitoring team has reviewed, and the officer's articulation of his actions leading up to and during the use of force was very good.

⁵² During the chain of command review, the IAFD Commander documented that prior to an eventual arrest, the warrants had not been confirmed. The Commander noted that the officer was justified and lawfully detained the suspect (including handcuffing), but the arrest would have been justified once the warrants were verified. However, when the subject attempted to flee that was an entirely new criminal charge. This fact is relevant to APD operations, the remediation of the officer's conduct and provides additional areas for organization-wide training. That said, based on our review of the event, the difference between detention and arrest in this specific event was ultimately not consequential to the determination of the force justification.

⁵³ Worthy of note is that a review of IA records showed this officer has had 18 reportable uses of force between November 2019 and the date of this event in March 2021. Nothing in the records provided for this investigation indicate a meaningful review of these records has been done to manage organizational risk.

Monitor Observations/Concerns: Escape Risk Evaluation and Response

In IMR-12, the monitoring team was explicit in calling out the failure of APD at all levels to exercise the appropriate levels of care of in-custody individuals. This has been most evident in persons experiencing mental or emotional crises. However, APD's struggles with caring for in-custody individuals is not limited to just those persons experiencing mental or emotional crises. For over the past two years, we note that there has been a constant uptick in the failure of APD to exercise an appropriate standard of care of arrested persons while they are in custody.

As noted during IMR-10, the monitoring team exhaustively detailed the facts (and the absence of facts due to the lack of an investigation) of two officers failing to safeguard and secure a being held on a felony warrant arrest at a hospital. The handcuffed prisoner escaped. A Supervisory Action Report⁵⁴ (SAR) noted how the officers failed to promptly call for assistance and eventually a helicopter was contacted for tracking assistance, but officer's efforts to search the area were fruitless due to the elapsed time from the escape until air units were notified and could respond to the area. During this escape, the prisoner traversed the property of an Albuquerque school and tried to enter the school while young students were in the school yard at recess playing on the playground. The SAR (completed by an APD supervisor almost one month later) indicates doubt about the officers' version of the story and opined that the school should have been put into lock-down. The report noted that a group interview was conducted with the officers in violation of numerous generally accepted police protocols and the lieutenant noted that one of the officers was a respected training officer with no patterns of misconduct or poor decision making. Most problematic though, might be that the lieutenant found that the only policy violated was SOP 2-82 (Restraint and Transportation of Prisoners) and a verbal warning was delivered to the two officers for their gross misconduct in jeopardizing numerous civilians, to include school children, and a significant expenditure of time on the part of APD employees and air support.

APD constantly comments about the vast resources they must expend in the efforts to come into compliance with the CASA. However, when their own officers negligently or recklessly perform their duties and impose significant expenditures of APD time and other resources to address this misconduct, APD halfheartedly responds with verbal warnings. As the monitoring team has counseled the APD Chiefs (to include the current Chief) as well as all of the command staff, if they rigorously investigate such misconduct and mete out appropriate discipline in such matters, the deterrence factor will have a meaningful impact on their operations and forestall the expenditure of unnecessary resources in responding to similar future events.

⁵⁴ Supervisory Action Reports (SARs) were APD-sanctioned instruments that were used by supervisors to circumvent APD's internal affairs process for addressing policy violations and other forms of misconduct. At the insistence of DOJ, the use of SARs (and Additional Concerns Memos [ACMs]) were subsequently prohibited by APD pursuant to Special Order 19-25.

The eleventh, twelfth, and thirteenth monitoring periods all contained examples of APD exercising poor care when handling persons in custody,⁵⁵ in IMR-14, there are three separate and distinct examples of APD exercising a poor standard of care when handling arrested persons while they are in custody. Two of these cases, [IMR-14-08 and IMR-14-10], have already been outlined in the preceding paragraphs of this section of this report. A third case will be introduced in the following paragraphs.

In [IMR-14-08], a subject under arrest for fleeing officers in a motor vehicle as well as on foot subsequently escaped from the custody of two officers. OBRD evidence appears to indicate as the two officers were walking a prisoner out of the hospital, one officer may have just been releasing his grasp of the prisoner as he approached his police vehicle to open it for the prisoner when the prisoner ran from the officers. The subject's flight was very short as he fell down a short distance from the officers in grass and he was quickly taken back into custody without any use of force or any additional injuries.

Unfortunately, in [IMR-14-10], the escape is much more problematic and resulted in an unreasonable use of force (this force also was not the minimal amount of force needed to take the handcuffed prisoner back into custody), as well as injuries to the handcuffed prisoner. The prisoner was initially a suspect in a shoplifting incident where he reportedly stole two beverages from a local convenience store. The store employee who reported the shoplifting did not want to pursue charges, but a felony warrant for a probation violation was found for the subject, so he was transported to a non-City owned facility⁵⁶ for processing. While at this facility, the arrestee (who was handcuffed behind the back) ran out of the unlocked facility a short distance and was tackled in the middle of the street. The officer (Officer 1) who chased him told investigators that he did not want to grab the prisoner from the rear by his handcuffs because he did not want to injure the prisoner but elected instead to tackle him in the street. The officer landed on the prisoner and the prisoner's head struck the street and the prisoner sustained facial injuries (and a leg injury). This resultant Level 3 use of force could have been avoided in multiple ways. However, in this section of the report the monitoring team merely notes that a prisoner escaped the custody of two officers, facilitated in part by the lack of diligence on the part of the officers charged with his physical detainment and security. The prisoner ended up being injured from an out-of-policy Level 3 use of force.

However, a review of the IA retention card and IAPro Concise Report for Officer 1 revealed that this officer had an internal affairs investigation in the last two years centered on misconduct in the handling of an in-custody prisoner. [IMR-14-14] was initiated on June 27, 2019 and adjudicated on February 20, 2020. This case sustained allegations of misconduct regarding the custody of prisoners and security issues resulted.⁵⁷ Officer 1 received 16 hours suspension for this transgression.

⁵⁵ This includes the death of a prisoner in custody that could have been avoided if the arresting officer conducted the required face-to-face checks of the prisoner. This officer had been previously noted in a Special Report by the monitoring team for out-of-policy uses of force.

⁵⁶ The facility is not specifically identified here so as to not further exacerbate security concerns.

⁵⁷ Officer 1 received a Sustained allegation for 2-80-2Q1 that states, "When an individual is taken into custody, the prisoner must be guarded at all times except when placed in an area specifically designed for temporary detention" and 2-80-2Q2dii which states, "In all instances, the OIC will guard against any

In addition to these two escape cases, this reporting period the monitoring team became aware of a third prisoner escape from custody that is very similar to the previously discussed SAR in both the details of the escape and the outcome of discipline. In this particular IAPS case [IMR-14-15] completed during this reporting period, Officer #1 (who has been the subject of two prior monitoring reports) had culpability in a prisoner escape, but once again was the beneficiary of poor IAFD/IAPS oversight in properly intaking a complaint and assessing allegations of policy violations. In an interoffice memorandum (incorrectly dated) from an acting sergeant to the IAPS Commander, the acting sergeant notes that during his inquiry into a prisoner escape from the hospital, he viewed not only OBRD footage of officers, but he also viewed hospital surveillance camera footage as well.

The review of this hospital surveillance camera footage, as documented by the acting sergeant, revealed Officer #1 can be seen escorting the female prisoner (who had an "Escape Risk Alert" attached to her arrest warrant) to the bathroom and the prisoner was not in handcuffs. Officer #1 then escorted the prisoner back to her hospital room and exited the room carrying his handcuffs in his right hand, thus leaving the prisoner unattended and un-handcuffed. A few minutes later, Officer #2 (who had relieved Officer #1 and Officer #1's recruit officer of guarding the prisoner) entered the room and placed his handcuffs on the prisoner. Despite Officer #1 being the senior officer (and training officer for a recruit officer) who created a careless and apathetic environment for an opportunistic prisoner with an "Escape Risk Alert," the entire IAPS investigation focused on the relieving officer (Officer #2) allowing the prisoner to escape after she slipped out of her handcuffs and exited the room without him witnessing the event. Officer #2 eventually caught the subject outside of the hospital and a use of force occurred.

Section C5 of APD's procedures for guarding prisoners at the hospital⁵⁸ is quite clear that, "arrestees will be restrained at all times, including during any medical movements or when the arrestee uses the restroom and shower facilities." The fact that this prisoner had an "Escape Risk Alert" attached to her arrest warrant heightens the lack of responsibility on the part of Officer #1 to escort her to the bathroom and then leave her in her room with no handcuffs. One can only opine that since the escape happened while another officer (Officer #2) was guarding the prisoner, the proper oversight of IAPS/IAFD (as well as the acting sergeant's oversight) to properly identify all allegations on other officers was compromised. This is the same issue that occurred in the SAR mentioned above.

Documents provided to the monitoring team indicate that Officer #2 (who was the guarding officer at the time of escape) was issued a written reprimand for allowing the prisoner to escape, thus leading to the unnecessary use of force. The officer appears to have appealed the written reprimand and APD records appear to indicate that the officer received a reduction in outcome, a verbal reprimand, for the prisoner escape. The monitoring team notes here that in our collective experience investigating and reviewing

circumstance, which may arise that can facilitate an escape of the prisoner. If an escape does occur, the OIC will notify the watch commander and notify APD Communications to dispatch personnel to the area."

⁵⁸ SOP (2-83) entitled, Hospital Procedures and Rules.

misconduct cases wherein arrestees and prisoners escape from officer custody, disciplinary interventions generally range from suspensions in excess of a few months through termination (especially when the escape of the prisoner is attributed to officer inattention or when the officer fails to follow policy).

Over the various reporting periods, the monitoring team has commented on how the disparate imposition of discipline impacts APD personnel, whether they are disciplined (or not) in use of force incidents, failing to safeguard prisoners, or failing to notify the chain of command on significant events. Over the course of reviewing hundreds of cases in the past several years, officers who violated the same policy faced differing disciplinary consequences based upon whether an action or inaction was scrutinized formally at the conclusion of a use of force investigation, the action or inaction was formally referred to internal affairs, or if some level of supervisory personnel deemed an officer as having “a worthy work history” or as having personally worked with an officer and not observing any bad judgment calls by the officer. These similarly “remediating” events are then used to justify mere verbal counseling. In examining these two cases involving escapes from the hospital, the disciplinary outcomes are essentially the same: verbal warnings (though not all of the correct officers have been identified for investigation and discipline). In the professional opinion of the monitoring team, this evidence provides some of the clearest examples of APD’s demonstrated aversion to meting out discipline on cases that disrupt the agency’s ability to be effective and efficient.

When one considers the amount of time and resources (to include field searches, air support, IAFD investigations, IAPS investigations, disciplinary hearings, etc.) expended by APD for such culpably inefficient performance of duty (especially when officers are aware of a prisoner being an “Escape Risk,” it is hard to comprehend the appropriate discipline for these escapes being a mere verbal warning. For comparative purposes to the SAR, the inaction of the two officers in this case was, as in the SAR, called out by an acting sergeant. However, the officers were the beneficiaries of mid-level supervisors inappropriately acting in concert with others to protect a training officer and another officer from internal affairs scrutiny and serious discipline. Unfortunately, APD’s reliance on the memo of this acting sergeant to dissect all of the potential policy violations carried over to IAPS’ inferior assessment of allegations of potential policy violations to drive the IAPS investigation. Thus, this poor intake process resulted in poor outcomes just as in the SAR.

Absent a proper internal affairs investigation (starting with a comprehensive intake and examination of all potential policy violations), the monitoring team can only assume that at least a few SOP provisions were applicable--and violated. For further consideration in the analysis of this investigation, SOP 1-1 (Personnel Code of Conduct) requires personnel “to follow a prescribed code of conduct and to act responsibly....” The uninvestigated actions of the officers detailed in this matter (especially Officer #1) constitute “Conduct Unbecoming,” defined in SOP 1-1 as “conduct on the part of an officer or employee that is contrary to the interests of the public served or the mission of the department.” This relevant SOP indicates:

- Personnel will not commit any act that constitutes a violation of the rules, regulations, directives, or orders of the department...”;
- Both on duty and off duty, personnel will conduct themselves in a manner that reflects favorably on the Department. Conduct unbecoming an officer or employee of APD includes the following:
 - conduct that could bring disrepute, shame, dishonor, disgrace, or embarrassment to the Department;
 - conduct that interferes with or compromises the efficiency of personnel and employees; or
 - conduct that impairs the operation or efficiency of the Department;

As noted by the monitoring team in its assessment of the outcomes associated with the above-mentioned SAR and now in this present IAPS case, it is not difficult to predict with some reasonable degree of certainty that, with the lack of meaningful discipline in these cases, this trend will continue.

Additionally, as previously noted that Officer #1 in this recent IAPS case was the subject of two prior monitoring reports (for out-of-policy uses of force and failure to report his uses of force), he has also been the subject of three IAPS investigations since IMR-12.

One of those cases [IMR-14-16] involved an APD lieutenant filing a complaint against Officer #1 for failing to properly categorize an OBRD video following a call for service that occurred during IMR-13. The IAPS investigation was concluded during this monitoring period and the allegation was determined to be unfounded. In early 2021, Officer #1 became the subject of his second internal complaint [IMR-14-17] since IMR-12 when a lieutenant alleged Officer #1 failed to report a different use of force. This IAPS investigation was completed during this reporting period on March 25, 2021. The discipline matrix range for this matter indicated an 8 to 32-hour suspension. Aggravating and mitigating circumstances indicated Officer #1 had three prior Class 7 violations and one prior Class 6 violation. IA recommended a 16-hour suspension, and the chain of command recommended a 35-hour suspension. The final discipline appropriated was a 35-hour suspension and there was no PDH.

Officer #1 was involved in his third IAPS investigation [IMR-14-18] since IMR-12 as the result of a complaint filed by a different APD lieutenant. IAPS data tracking reveals that this lieutenant alleged Officer #1 engaged in “conduct” violations without a listed date of the conduct. The summary of the complaint indicates Officer #1 made disparaging remarks about the department and failed to show up to work in uniform. The IAPS investigation was completed in May 2021. The discipline matrix range for this matter indicated termination. Aggravating and mitigating circumstances indicated Officer #1 had two prior Class 7 violations and one prior Class 6 violation. IAPS recommended termination and after the close of this monitoring period, the chain of command recommendation is still listed on summary sheets as “pending” despite the fact that Officer #1 resigned from APD five months earlier.⁵⁹

⁵⁹ It should be noted that the monitoring team is relying upon summary data provided by APD and has not reviewed all of the reports involved in each of these IAPS investigations.

The monitoring team observes that this officer twice failed to report a use of force and used force in an out-of-policy manner during one of these previous incidents yet remained on the job as a field training officer.

NOTE: The IAPS discipline tracking spreadsheet contains a disparity in data regarding aggravating/mitigating circumstances. Case [IMR-14-17] was initiated on January 6, 2021, for a September 14, 2020, incident. The IA investigation was completed on March 25, 2021. The aggravating and mitigating circumstances for this case indicate Officer #1 had three prior Class 7 violations and one prior Class 6 violation. Case [IMR-14-18] was initiated a month later (February 9, 2021) for “conduct” violations without a listed date of the conduct. The IA investigation was completed on May 7, 2021. This completion date is six weeks after the IA investigation was completed for [IMR-14-17] (failing to report a use of force incident back in September 2020). The aggravating and mitigating circumstances in this later case indicate Officer #1 had only two prior Class 7 violations (as opposed to the three prior Class 7 violations and one prior Class 6 violation noted for the IAPS case completed six weeks earlier). Officer #1 submitted his resignation letter on April 1, 2021, listing an effective date of April 9, 2021. Thus, Officer #1 was already separated from APD when the IA investigation was completed on May 7, 2021 (for conduct violations pursuant to [IMR-14-18]).

At the time of his resignation and with the full knowledge of the numerous instances of unethical conduct sustained and visible in evidence within its possession, APD still had Officer #1 working and receiving additional compensation as a field training officer training new recruit police officers.

IAPS Case #	Date of Incident	Date of Complaint	Completion of IAPS Case	Aggravating & Mitigating Factors
<u>IMR-14-17</u>	09/14/20	01/06/21	03/25/21	3 prior Class 7 violations 1 prior Class 6 violation
<u>IMR-14-18</u>	02/09/21 ⁶⁰	02/09/21	05/07/21	2 prior Class 7 violations 1 prior Class 6 violation

We note that the officer referred to in these last few paragraphs has figured prominently in other monitor’s reports. As a result, APD has invested significant time and effort “investigating,” finding excuses for, and overtly justifying out-of-policy conduct for this officer.

Compliance Findings

Based on our review, we have determined at least Primary Compliance is continued for Paragraphs 60 through 77—approved policies are in place. Until substantial revisions are made to the internal functioning of IAFD, and those changes are trained, secondary and operational compliance will remain elusive. Based on the monitor’s repeated

recommendations, APD has implemented in motions processes to obtain industry standard training practices in IAFD processes.

It is essential that APD train its IAFD and IAPS personnel in the correct way to meet their functional responsibilities. During this reporting period, APD has begun contracting with external entities for training, along with conducting its own investigative training, as a means of adhering to the monitoring team's persistent recommendations and improving its overall investigative function. The initial internal training IAFD conducted was generally good training content tailored to address the gaps in investigator capabilities observed by IAFD command staff. The monitoring team viewed a recording of a portion of this training and found it to be reasonably well-done.⁶¹

4.7.47 Assessing Compliance with Paragraph 60: IAD 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**

⁶¹ It should be noted that the first half of the training session was not viewed by the monitoring team because IAFD personnel failed to activate the recording equipment during the first 4-5 hours of the training session. As a result, we were unable to "review" the training as planned. We will monitor the training over the coming months by continuing to assess APD IAFD operations to determine if they adhere to the goals and objectives

Recommendations for Paragraph 60:

4.7.47a: Conduct a complete review of recent IA case investigations and identify all similar or related violations of the CASA. Where appropriate, re-open and re-investigate those cases;

4.7.47b: Organize from that review, a list of behaviors that are counter-CASA and ensure that those behaviors are restricted by a revised IA policy, detailed re-training, supervision, and discipline.

4.7.48 Assessing Compliance with Paragraph 61

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 self-monitor 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 (timelines are met and quality standards are acceptable) 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

- e) compelled subject officer statements;
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, 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 IAD

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 IAD, 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: **Not In Compliance**

Recommendation for Paragraph 64:

4.7.51a: Modify the 40-hour training program for IAFD investigators and supervisors based upon the monitor's critical assessment of IAFD investigations and supervisory reviews provided in this report.

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 IAD

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 IAD

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: **In Compliance**

4.7.56 Assessing Compliance with Paragraph 69: IAD 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

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

Recommendations for Paragraphs 69:

4.7.56a: Conduct detailed failure analyses for all IAFD investigations deemed improperly completed or delayed. This report provides a workable starting point for that analysis.

4.7.56b: Using these failure analyses, routinely modify training, procedures, practice, and supervision/oversight until IAFD 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 practicable 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 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.

4.7.58 Assessing Compliance with Paragraph 71: IAPS 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 random sample of cases completed by IAFD in the past 3-6 months that failed to meet established timelines by reviewing the key failure points causing the delay. The review should:

- a. Identify key causes of failure resulting in time-barred discipline;***
- b. Identify where the failure points were in the IAFD process related to Paragraph 71;***
- c. Identify the cause of the failures;***
- d. Identify who is responsible for the cause of the delays;***
- e. Recommend actions to remedy the top five causes of failure to meet the established timelines; and***
- 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 regarding supervisory reviews and IAFD failures contained in paragraphs 24-36, 41-59, and 60-77.

4.7.58d: Repeat until >94% of cases completed meet established requirements for quality of IA investigations.

4.7.59 Assessing Compliance with Paragraph 72: IAFS 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 72a:

Repeat the processes identified in Paragraph 4.7.58, above.

4.7.60 Compliance with Paragraph 73: IAFD and IAPS 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: Repeat the processes identified in Paragraph 4.7.58, above.

4.7.61 Assessing Compliance with Paragraph 74: FIS 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:

Repeat the processes identified in Paragraph 4.7.58, above.

4.7.62 Assessing Compliance with Paragraph 75: IAD 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:

Repeat the processes identified in Paragraph 4.7.58, above.

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.”

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.”

Please refer to the discussion on discipline found in paragraphs 201-202.

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

Recommendation for Paragraph 77

4.7.64a: Follow recommendations made for Paragraphs 201-202.

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

The monitoring team continued to see strong attendance and engagement by the Force Review Board (FRB) members during this reporting period. The increased quality of discussion in FRB meetings remained stable during the reporting period. We continue to see referrals generated to address policy, supervision, tactic, equipment, and training deficiencies. In some cases, FRB also requests internal affairs investigations for misconduct they identify during their deliberations. The increase in quality oversight by executive-level members of the FRB is likely to have a meaningful impact, particularly with IAFD presenters. However, Operational Compliance with Paragraph 78 will take time to accomplish. While the FRB has shown consistency over the past two reporting periods, the true test will be its ability to influence field performance and the attitudes that first-line supervisors have toward accountability. Achieving quality supervision at the front-line level is the key to CASA compliance. If APD systems can perform optimally elsewhere in the organization, they will be better positioned to leverage the positive strides made by the FRB. Of particular concern to the monitoring team is (another) ever-growing backlog of IAFD investigations into Level 2 and Level 3 uses of force. In IMR-13, we wrote as follows:

"APD has to immediately provision for the easily predictable swell of cases they will be required to hear because of investigative backlogs in IAFD. To mitigate the problem, we believe APD should immediately increase the number of meetings and the number of cases that are heard in each meeting so they do not create an obstacle to compliance that will undermine the positive observations that occurred during IMR-13."⁶²

In past Monitor reports, we have provided perspective and technical assistance to help APD deal with this growing risk.⁶³ We reiterate here that in our opinion, without an immediate course correction to address its use of force case backlog, the agency will

⁶² In May 2020, following several conversations with members of the monitoring team, APD prepared a PINS (Problems-Issues-Needs-Solutions) memo outlining how they intended to address the (then) backlog of cases required to be reviewed by the FRB. In the March 1, 2021, internal memorandum APD documented that by that time the FRB had only reviewed 36 (42 percent) of the cases listed in that May 2020 PINS memo. As of the writing of this report, APD we learned there are more than 660 use of force cases backlogged and incomplete in IAFD (more than twice the backlog in 2018-20), and when coupled with contemporary cases that must be reviewed the ability for the FRB to come into Operational Compliance will likely be compromised long-term.

⁶³ The monitoring team has met with APD representatives during site visits. We have been calling out this emerging threat that will impede Operational Compliance for the past several reporting periods.

severely injure its CASA compliance efforts related this paragraph.⁶⁴ As has become somewhat customary, issues the monitoring team identifies early become problems, and when not addressed, those problems become threats which quickly turn into an administrative crisis for APD. With the positive momentum the FRB is showing recently, it will be highly unfortunate if that good work is undermined in any way.

To be clear, we continue to be highly encouraged with the performance of several high-ranking executives during FRB meetings we attended.⁶⁵ The influence the FRB can have over agency-wide operations and long-term cultural change, if sustained, cannot be overstated. The issue facing the FRB is the sheer volume of cases and the allocation of time and effort that is needed to effectively review those cases within the framework of this paragraph. Many of the provisions outlined in Paragraph 78 are now being met for cases the FRB reviews, and there are strategies that can be implemented to address the FRB CASA responsibilities. However, FRB's success is not going to occur in a vacuum. The interlocking components of APD's accountability system that oversees officer uses of force must be strong throughout the chain to lessen the burden currently being placed on the FRB. APD executives on the FRB continue to challenge the justifications of uses of force and the underlying investigations into that force. However, the extent to which the FRB continues identifying issues missed by IAFD investigators, and the fact that FRB must be the primary driver of accountability, indicates a lack of performance at lower levels. In IMR-14, we continued to see FRB members' willingness to challenge case presenters from both SOD and IAFD, often questioning legal and policy determinations. FRB was designed as an early warning system. If other members of the organization are unwilling to respond to FRB's "alarms," unable to consider carefully and clearly the oversight of those lapses and the issues creating those lapses, APD will continue to be an agency that reacts to the monitor's findings, and never "gets out in front" of developing issues related to failures to performance. This is the very definition of non-compliance.

In IMR-13, we documented, "If sustained, the FRB will influence the organization in a way we have encouraged from the beginning of the CASA compliance effort. Now it is incumbent upon the Chief of Police to recognize the significance of this progress and fully enable these command staff members to affect change at APD." We cannot stress enough the importance of the top executives of APD taking advantage of this moment and taking purposeful steps to provide for an easily predictable increase in the number of required case reviews. APD should be forward thinking and should build management and executive systems that routinely assessing how to best position itself for Operational Compliance determinations across many CASA paragraphs. In simplest terms, APD should be marshaling as many resources as available to (1) complete and sustain CASA centric use of force training, (2) ensure IAFD and IAPS continue to be properly staffed,

⁶⁴ Prior to the close of this reporting period, we learned that the APD was preparing another PINS memo for the parties to consider that will address the expanding list of cases that the FRB is responsible to review. We believe APD will propose again a means of addressing the growing list of cases the FRB will have to review.

⁶⁵ Beginning in 2020 APD began holding FRB meetings remotely which allowed participants to attend even during COVID. While most on-site members are now attending in person, APD continues the practice of remote attendance.

trained, and supervised to complete reliable use of force investigations in a timely manner and (3) the FRB case review list must be reduced to a level that ensures APD is capable of hearing cases in a timely manner⁶⁶. The better APD does to synchronize these three overarching goals, the quicker the project will be positioned for Operational Compliance determinations for the most critical elements of the CASA. Any lack of planning on APD's part in these three key areas will prolong this project even further. This is an unacceptable outcome.

The following paragraphs represent additional findings related to Paragraph 78:

As with other reporting periods, the monitoring team provided perspective, feedback, and technical assistance to APD personnel responsible for the tasks associated with the FRB. During our June 2021 site visit and throughout the reporting period, monitoring team members attended FRB meetings to assess the quality of case reviews. We also reviewed files of cases heard by the FRB, ledgers, and other documents related to the FRB. Paragraph 78 states, "The Force Review Board shall conduct timely, comprehensive and reliable reviews of Level 2 and Level 3 use of force investigations."⁶⁷ As we have noted in the past, timely feedback is key to remediating performance and misconduct, and legitimate supervision and accountability will slowly influence the organizational culture.

During the IMR-14 reporting period, the FRB held 31 separate and distinct weekly meetings, constituting a 29% increase in meetings over the prior (IMR-13) reporting period. The meetings generally last 2-3 hours, during which 1-4 cases are heard.⁶⁸ From those meetings, 52 separate referrals were made and sent out for follow-up by the relevant organizational units.⁶⁹ The meetings continue to be very well attended by top executives of the department, representatives of City Legal, the CPOA, DOJ, and relevant subject matter experts and case presenters from different areas of the organization. The FRB is required to conduct timely, comprehensive, and reliable reviews of all tactical deployments, a 10% sample of supervisory force investigations, all Level 2 uses of force, and all Level 3 uses of force. The FRB administrator documents referrals during meetings, assigns deadlines for their completion, and tracks them until they are considered closed by the FRB. Meetings open with discussion over past referrals, and, when necessary, new due dates are assigned for referrals that are still pending.

⁶⁶ The percentage of cases FRB must review is fixed by the CASA. Absent a Court-approved amendment of the CASA, the only way for APD to reduce the number of required case reviews is to reduce overall levels of force. In the monitor's experience, this can only be done through improved policy, training, supervision, and discipline. We continually find APD to be weak in the last two of these essential practices—supervision and discipline.

⁶⁷ The FRB also reviews all tactical specialized unit deployments as per Paragraph 99.

⁶⁸ Understandably, more complex cases like Level 3 uses of force can take an entire meeting to be heard, especially when those cases have multiple officers and/or issues of misconduct that are discussed during deliberations. Generally, tactical activation cases take the least amount of time for the FRB to hear.

⁶⁹ The FRB administrator documents referrals during meetings, assigns deadlines for their completion, and tracks them until they are considered closed by the FRB. Meetings open with discussion over past referrals and, when necessary, new due dates are assigned for referrals that are still pending.

In IMR-13, we noted our belief that the frequency of meetings and the number of cases heard during each meeting are insufficient to avoid a significant (and new) backlog of FRB cases in the coming months and year(s). Our opinion has not changed. There are different strategies APD could consider, which we have shared with the department on more than one occasion. As we noted earlier in Paragraphs 41-77, APD's use of force investigations have built into an even worse backlog than APD has encountered in the past. To put into context, there are still 45 cases yet to be reviewed from APD's May 2020 PINS (Problems-Issues-Needs-Solutions) memo alone. Based on an average of three cases heard per meeting, and the FRB holding the same number of meetings for the IMR-15 reporting period, they would have to dedicate essentially half the number of scheduled FRB meetings just to address the cases APD identified in the PINS memo.

As a further illustration, during this reporting period (data current through August 2021), APD recorded a combined 307 Level 2 and Level 3 use of force cases (compared to 298 Level 2 and Level 3 use of force cases during IMR-13. Of these 307 cases, APD recorded 216 Level 2 cases and 91 Level 3 cases. For comparison purposes, the 298 cases APD recorded during IMR-13 were comprised of 244 Level 2 cases and 54 Level 3 cases. Calculating these data and using the required review schedule the FRB follows for Level 2 and 3 cases, the total number of cases required to be reviewed from just the last two reporting periods equals 189.⁷⁰ Without accounting for new use of force cases generated in the next reporting period, to address this number of cases the FRB would have to hold uninterrupted meetings for approximately 14 months (reviewing, at a minimum three cases per meeting). These numbers indicate the next great crisis confronting APD: Use of force rates by APD personnel are so high that existing oversight systems will be unable to keep up with required oversight.

Simply put, the current methods and pace of meetings will render the FRB incapable of accomplishing the responsibilities of this paragraph. Since the FRB continues to identify out-of-policy uses of force and other potential misconduct, the agency must consider the ramifications to its effectiveness as these cases are finally completed and become available for review by the FRB. Finally, the lack of timeliness in the FRB receipt of cases for review negatively impacts APD's ability to assess trend data and quickly address potentially problematic behaviors in the field.

On a more positive note, the FRB has reached a point of effective timeliness when reviewing tactical activations. As of the writing of this report, there remains only one tactical case from the May 2020 PINS memo, and contemporary tactical activations cases are being heard (approximately) 30-60 days after an event. To maintain that timeliness at the FRB, especially in light of the extensive backlog of use of force investigations, the Board has reverted back to not hearing tactical activation cases at the same time as any accompanying use of force (since they are not completed).⁷¹ A cover

⁷⁰ This number does not include tactical activation cases or the 45 cases remaining from the May 2020 PINS memo.

⁷¹ Parenthetically, we learned that a tactical activation that occurred on February 13, 2021, was heard by the FRB on June 17, 2021. The accompanying Level 2 use of force was heard on September 16, 2021.

memo from the SOD Commander now accompanies tactical activation cases. In this cover memo, the SOD Commander provides her perspective on a given case. Should a case reveal any issues of concern, she will pull the case for further review before sending the case to the FRB.

As we previously commented, conceptually, the FRB should rarely be encountering situations where serious misconduct is missed or uses of force are inadequately investigated. Still, subordinate units' performance quality has historically been deficient and precluded streamlined reviews of those same cases. With increased staffing and better supervision of IAFD operations, and the use of EFIT to enhance IAFD capabilities, the quality of use of force investigations is anticipated to continue increasing. When those factors are present, the FRB's ability to rely on the findings presented to them by case presenters will also increase and thus allow them to move more swiftly through case logs.

Additional Observations of the FRB:

1. FRB members were consistently arriving prepared for meetings, offering meaningful input, and engaging case presenters with questions that matter. We saw several instances in which FRB members challenged justifications for force and made appropriate referrals.
2. During IMR-13, we initially saw the most meaningful FRB discussions being dominated by one or two deputy chiefs. However, as the reporting period carried on, others began to settle into their role as well. During this reporting period, we saw a much more consistent contribution by other FRB members, including members of the Field Services Bureau. This is a very positive sign, and we look forward to this trend continuing since this will contribute to a more sustainable culture at the FRB.
3. The CPOA representative is provided ample opportunity to provide their perspective during FRB meetings. We commonly find that perspective to be well measured and insightful; with clear demonstrations, they are fully briefed on the case information. The perspective provided by the CPOA is now being captured in FRB Meeting Minutes.
4. FRB Meeting Minutes have evolved and are now offering more robust documentation of deliberative discussions. This provides better context to understand referrals that are made and the findings for use of force cases.
5. We previously learned that the FRB voting members are gathering to discuss cases before the actual FRB meeting.⁷² These pre-meetings were not previously discussed with the monitoring team, so we explored

⁷² While reviewing IAPS internal affairs investigation IMR-13-11 these meetings came to light.

these meetings with FRB leadership and a City Legal representative during our June 2021 site visit. We were told the pre-meetings began at the latter part of the summer of 2020 to allow the FRB voting members an opportunity to discuss any Executive Session-type issues with City Legal to avoid occupying more time during the FRB meetings. We will explore this more during the IMR-15 reporting period.

6. The FRB is continuing to make legitimate efforts to make and track referrals that come from case reviews. We reviewed the FRB Referral Tracker that captured good details regarding each case, including who on the Board made a referral, the relevant APD unit responsible for following up, and the date the response is due back to the FRB. The Referral process has become a meaningful mechanism for remediating issues and ensuring executive-level expectations are pushed out to the organization. We reviewed numerous examples of referrals being made and tangible responses to the Board, thus allowing the FRB to close out the issue in question.
7. The Chairperson of the FRB continues to ensure that each Board member was provided case materials and have each member overtly state they have reviewed the materials. The FRB moderator opens meetings by having each voting member of the FRB affirmatively state they have received and reviewed the files for the cases under review.
8. We again recommend that the FRB review their reporting documents to ensure they provide the appropriate level of specificity needed for making determinations. Cases the FRB reviews can have several complicated factors to organize and assess (i.e., multiple officers using multiple force options on more than one person) and report their findings for during each case.
9. In IMR-13, we documented concerns over three FRB members' conduct during a September 2020 meeting. We reviewed the final disciplinary findings for these three voting members and considered the issue resolved by APD.
10. IAFD presenters commonly open their presentations with a preamble that effectively preempts the original findings of some cases. Essentially, an IAFD investigator acknowledges they had moved on from investigative thought processes that may have existed when a particular case was initially investigated. Usually, these cases are followed by tenacious questioning by FRB voting members and referrals to various organizational units for follow-up. The monitoring team communicated with APD about this practice of presenting cases with known issues with the use of force. We were provided with the guidance given to IAFD case presenters, wherein they were directed that each case will be reviewed for material discrepancies during the

preparation for an FRB meeting. If they exist, the case will be pulled, and the IAFD Commander will determine the next steps that will occur.

11. In a meeting attended by the monitoring team, we observed potentially sensitive personnel information being discussed openly during deliberations. We recommended to the Chair of the FRB that when these issues are encountered, the FRB should consider discussing them in executive sessions.

Results

We continue to believe the FRB is a key organizational feature for influencing reform. Our observations during IMR-14 are meant to highlight the sustained performance within the meetings while casting light on potential threats to CASA compliance with Paragraph 78. As we noted in the past, if APD is ever to achieve Operational Compliance in its use of force requirements beyond only Paragraph 78, having a fully functional, engaged, and well-documented FRB will be essential.

Based on our review, we have determined Secondary Compliance is continued for Paragraph 78. The FRB shows signs that it can achieve Operational Compliance with Paragraph 78 in terms of comprehensive and reliable reviews of Level 2 and Level 3 uses of force investigations. The lack of timeliness is a threat and impacts APD's ability to meet certain provisions of this paragraph. We remain encouraged with the FRB performance and will continue to provide technical assistance in an effort to help them achieve Operational Compliance as quickly as possible.

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

Recommendations for Paragraph 78:

4.7.44a: APD should immediately prepare and submit a plan for the parties to consider regarding the current backlog of cases required to be reviewed by the FRB. The plan should provide reasonable options that can be considered that support the goals established by Paragraph 78.

4.7.44b: Report regularly to the Chief of Police on progress toward the established goals and objectives related to the FRB process. The report should include statuses on the FRB's progress in catching up on backlogged cases required to be reviewed.

4.7.44c: Immediately increase the number of FRB meetings and the number of cases reviewed during those meetings to address APD's May 2020 PINS memo, the current backlog and any new use of force cases.

4.7.44d: FRB should focus attention on uses of force trend data to ensure policy and training are properly addressing performance in the field.

4.7.44e: Review FRB documents to ensure they are capable of capturing data related to each use of force by each officer in a particular case. The current "yes" "no" structure is inadequate for multi-factor investigations.

4.7.44f: APD should ensure a sufficient number of trained personnel exist, at the correct level and positions, to serve on the FRB. The number of trained personnel should be sufficient to increase the number of FRB meetings.

4.7.44g: APD should identify the most experienced and effective FRB voting members and leverage their quality of oversight to increase the number of FRB meetings. Train additional APD command personnel capable of sitting as voting members and prepare a PINS memo for the parties to consider.

4.7.66 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.

During IMR-13, APD published its final Annual Use of Force Report inclusive of the years 2016-2019. As noted previously, APD organized use of force data from multiple years, believing the aggregation of year-over-year data gave the department better context to the information they were assembling. This also provided readers of the report with more information on which to judge APD's progress, so the monitoring team found this approach to be appropriate under the circumstances. During the IMR-14 reporting period, APD published a Preliminary Annual Use of Force Report inclusive of 2016-2020 data. In the report, APD calls out the fact that there are more than 300 use of force investigations pending from 2020. Therefore, data may change as those cases are subjected to investigation and chain of command oversight. Once all the pending cases are completed, APD will reassess the report for final status. With APD publishing their Preliminary 2020 Annual Use of Force Report during the IMR-14 reporting period, they have retained Secondary Compliance with Paragraph 79.

As evidenced in each monitor's report to date, there have been instances in which APD personnel failed to properly report or investigate uses of force, which obviously impacted data integrity in the Use of Force Annual Reports. In fact, there are still instances where APD's own FRB is identifying out of policy uses of force not properly characterized in IAFD investigations. Since APD's use of force investigations are caught in an extensive backlog dating back to early 2020, the validity of data in the Preliminary Use of Force Report remains in question. The extent of the investigative backlog is discussed in greater detail earlier in this report. We encourage those responsible for collecting, aggregating, and analyzing data for the Annual Use of Force Report to continue working with the PMU supervisor to devise strategies for increasing the integrity and reliability of those data.

We have determined that APD sustained Secondary Compliance status for Paragraph 79 but finalizing reports will be a prerequisite for assessing Operational Compliance. That will require the department to address the rapidly increasing backlog of use of force cases.

Results

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

Recommendations for Paragraph 79:

Recommendation 4.7.66a: APD's must ensure the use of force investigation backlog is reconciled, and the complete data required by Paragraph 79 should be incorporated into a final Annual Use of Force Report.

Recommendation 4.7.66b: 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 its Annual Use of Force Reports are accurate.

Recommendation 4.7.66c: Now that APD transitioned 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.

Recommendation 4.7.66d: APD should devise ways to scrutinize data presented by the individual department units and continue to coordinate with PMU to ensure that there are common methods to handle, analyze and present data.

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

As of the draft of this report, APD's IAFD reported a backlog of 660 cases. These 660 cases do not include the contemporary cases IAFD is currently investigating (as discussed in detail in Paragraphs 60 – 77, above). Until APD can complete, in a timely manner, all use of force investigations, "a reliable and accurate tracking system on all officer's use of force; all force reviews carried out by supervisors; "... etc., cannot be accomplished.

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

Recommendation for Paragraph 80:

4.7.67a: Investigate and properly track all use of force cases as outlined in this paragraph, including the recently reported second backlog.

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 the 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 from the Violent Crimes Division are assigned to the MATF to investigate officer-involved shootings, in-custody deaths (including deaths at the Bernalillo County Jail), felonious force against officers, and criminal conduct cases resulting from a use of force by officers. This is reflected in a review of documentation provided to members of the monitoring team. 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 (absent extenuating operational constraints), addresses perceived deficiencies in MATF investigations, and maintains the confidentiality of MATF investigations.

During our June 2021 site visit, the monitoring team met with the new deputy commander of APD's Criminal Investigative Division, who is responsible for overseeing APD's involvement (four detectives and one supervisor) in the MATF. Subsequent to that visit, the monitoring team reviewed the sign-in sheets of eight MATF activations (four officer-involved shootings and four in-custody deaths). This review continues to confirm a robust response to MATF callouts, especially officer-involved shootings that often have multiple crime scenes necessitating numerous investigative resources.

The monitoring team reviewed MATF briefings of an officer-involved shooting and an in-custody death. These briefings provide an important opportunity for the MATF to release evidence (inclusive of video recordings of uses of force) involving APD members. The briefings also help preserve the integrity of ongoing criminal investigations involving APD members by disseminating critical information.

Finally, the MATF Memorandum of Agreement (MOA) is being amended to accommodate the Rio Rancho Police Department back onto the MATF. As previously noted a few years ago, Rio Rancho withdrew from the MATF due to staffing constraints. The Deputy Commander overseeing APD's commitment to the MATF will continue to

document briefings and training provided to MATF members external to APD to ensure they understand the requirements of the CASA when investigating force and potentially criminal conduct by APD members.

Based on our review, we have determined operational compliance is 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 CASA.”

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.

During this reporting period, the monitoring team corresponded with APD personnel responsible for the tasks associated with Paragraphs 86-88 and met with them during our June 2021 site visit. As in the past, we provided feedback and perspective that we believed would benefit their efforts toward meeting CASA training requirements. In IMR-13 and prior monitor's reports, we documented extensively the circumstances that led to APD's compliance standing with this series of paragraphs, so we will not repeat that information here. We shared our belief with the Academy that the steps necessary to achieve Secondary Compliance are straightforward, and with effective leadership and a reasonable allocation of resources, APD should be positioned to return to Secondary Compliance by the close of IMR-15. Reaching that goal is attainable. During this reporting period, APD and the Academy made positive strides toward that end. Specifically, APD has delivered one of two days of Tier 4 training previously reported on by the monitoring team. This training was no small undertaking, so the efforts put toward completing this training are noteworthy.

As with past reporting periods, APD's Academy staff was receptive to feedback and professional during each of our interactions. Technical assistance we share is intended to provide APD with foundational information we believe will make them more effective. Our goal is to help organize their efforts so they are conditioned to provide officers and supervisors with training that will build skills and abilities that support Constitutional policing and meet the terms of the CASA. Providing training and *effective* training are not necessarily synonymous. The latter requires proper staffing, especially when the training is delivered in a reality-based, scenario-driven format. We believe that subject matter expertise has existed at the Academy, and we've commented on how well instructors tend to present themselves. Still, APD's ability to develop training materials based on contemporary needs has proven problematic. That ability is a cornerstone to the Academy's contribution to CASA compliance. During this reporting period, APD sought out and hired a Curriculum Development Manager to supervise this area of the Academy.⁷³ Our initial impressions are positive, and we believe this manager possesses the requisite background and experience to be effective while providing guidance to Academy instructors.

The following represents our interactions with the APD Academy during this reporting period.

At the close of IMR-11, we were encouraged with the direction of APD's 4-Tiered use of force training, and at that point, the only tier yet to be delivered was the Tier 4, Reality-

⁷³ APD also hired a new Academy Commander who started immediately following the close of this reporting period. Like the Curriculum Development Manager, the new commander brings the type of significant experience and a background likely to compliment the needs of the Academy.

Based Training (RBT) and Defensive Tactics (DT) portion of the program.⁷⁴ We viewed Tier 4 as critical since APD would have the opportunity to collect data to determine if and how training from Tiers 1-3 was being applied in the field. Since we continued to see failures in the field related to the use and investigation of force throughout 2020 and into 2021, that information collection would be key to quickly remediating specific issues that are being encountered.

To properly execute Tier 4 training, APD would need to commit resources from several organizational commands, as it includes three skill stations and two practical scenarios. As documented in IMR-12 and IMR-13, our distinct impression was that tension existed regarding allocating staff to deliver Tier 4. In this reporting period, concerns lingered that the Academy may not meet proper instructor/student ratios. In mid-May 2021, the monitoring team proactively reached out to APD to call attention to the fact we had still not received updated Tier 4 RBT training materials and that we believed APD intended to allocate a smaller staff, resulting in fewer scenarios in the RBT. We pointed out that APD conceived the 4 Tiers of training and that monitor approval was based on the methodology presented at the time.⁷⁵ That email was followed up by the monitoring team approximately two weeks later after receiving no response from APD training cadres. We were ultimately able to discuss the concerns with APD and learned that they were in the final revisions stage for Tier 4 RBT and that those materials would be provided to the monitoring team upon their completion. We learned that the basic themes of the training had not changed, but one scenario would likely be dropped due to staffing levels. We received the training materials in June 2021.

During our June 2021 site visit, the concern of Tier 4 staffing revealed itself again. Academy representatives indicated they were not certain they would receive agency approval to draw instructors to the Academy to support each of the scenarios in Tier 4 RBT.⁷⁶ The monitoring team commented that it would be difficult to review and approve training materials without knowing that APD was properly committing staff for the training. We shared our concern with the APD's Superintendent of Reform, who sat in on the meeting with us. It seemed clear that he understood the issue and reiterated his commitment to ensuring the Academy had the proper resources to succeed.⁷⁷

⁷⁴ Tier 4 consisted of two separate days of training, each day dedicated to either RBT or Defensive Tactics. At the close of IMR-11, the training materials for both parts of Tier 4 received approval, and provisional Secondary Compliance was given for Paragraphs 86-88. As discussed later, APD spent the first half of the reporting period delivering the Tier 4 DT training.

⁷⁵ This communication with APD was meant to prompt movement by APD so they could avoid further delays in attaining approval for updated training materials and support their effort to complete Tier 4 before the end of 2021.

⁷⁶ The monitoring team was provided with comprehensive internal memos (One dated, March 14, 2021) prepared by Academy staff specifically outlining staffing needs within the Advanced Training and Reality Based Training Units. We appreciate these attempts by Academy staff to highlight their staffing shortages and hope Executive level staff take cognizance of these justifications considering the Academy's ongoing yearly CASA requirements.

⁷⁷ During this same meeting we reiterated our long-standing belief that the incoming Academy commander needed support and that the Academy commander position should be held in high regard relative to other agency commanders.

On July 12, 2021, we reached out to the Academy and suggested that they communicate with their upper command and alert them that we were reviewing the Tier 4 RBT materials expecting that all the scenarios and skills stations would be fully staffed.⁷⁸ If ultimately approved, and APD provided anything less than a fully staffed training (completing all the items within the curriculum), that could possibly result in a detrimental compliance determination later and again waste valuable Academy time. We later learned that the Academy was permitted to draw personnel from the field to support each training element.

The monitoring team provided feedback and provisional approval to the Academy for Tier 4 RBT. The following is a synopsis of partial feedback that was communicated to APD in July 2021:

A difficult aspect of the review of Tier 4 RBT was the lack of timeliness of the delivery relative to when Tiers 1-3 were provided and how that lack of timeliness impacted the original concept APD advanced (and received approval for) in 2019. Specifically, that Tier 4 would reinforce the first three tiers and incorporate lessons learned from the field following the launch of the new use of force policies on January 11, 2020. That concept was predicated on Tier 4 happening contemporaneously to the other tiers, which did not occur. Many experiences have occurred that would support APD providing more in-class reinforcement of key policy provisions before and in conjunction with RBT scenarios. Since January 2020, APD's own FRB has raised issues that could have been incorporated into the updated Tier 4 RBT.

Following a call with Academy staff, the monitoring team understood that APD was actively developing other use of force training that would be submitted in the coming weeks and months that would supplement Tier 4 RBT. That representation by the Academy factored into our assessment of Tier 4 RBT, and its ultimate approval. We reiterated the need for sufficient staffing and believed that APD would be wise to allocate even more resources to Tier 4 RBT and expand the number and type(s) of scenarios and in-class lessons. We acknowledged the organization was balancing other priorities but pointed out that slower mitigation (of field issues) through training will result in slower implementation in the field, which will, in turn, slow compliance efforts.⁷⁹

In our opinion, Tier 4 RBT materials met a minimum standard for approval, and APD was told that approval was reliant upon the following:

⁷⁸ Later, we collected feedback from DOJ regarding Tier 4 RBT, which was consistent with the monitoring team's perspective.

⁷⁹ The monitoring team alerted APD explicitly that we will return to this guidance in the future if the quality of field performance does not increase and CASA compliance is not timely.

1. APD commits to and provides full staffing to the Tier 4 RBT for every session delivered.
2. APD provides additional and required 2021 Use of Force training, including RBT scenarios, that address other identified needs in the field.⁸⁰

We reiterated that recent compliance determinations were linked to the failure to complete Tier 4 training (Defensive Tactics and Reality Based Training) and annual use of force requirements for P86-88. To regain Secondary Compliance, APD will have to complete both.⁸¹

The following observations were made of Tier 4 RBT course materials, which we believed APD should consider:

1. APD's Step 1 Needs Assessments for training have often failed to clearly link needs (quantifiably) in the field to learning objectives, then to the training materials, then to testing instruments. Doing so would allow the organization to assess better the training effectiveness and ways it could/should be adjusted as the Training Cycle moves along. For instance, events that may result in uses of force against people experiencing a mental health crisis have been identified by the FRB, DOJ, and IMT. A CIT/ECIT scenario that incorporated elements that would initially (perhaps through the type of call for service) elevate an officer's sense of danger but could be resolved without the use of force would be beneficial.
2. Provide more staffing and include more scenarios in the Tier 4 RBT. There are only two scenarios and three skills stations. Scenarios should deal with situations involving actual issues with uses of force identified by the monitoring team over the past 18 months.
3. Tier 4 RBT could have provided an opportunity to not only run scenarios but also to lead the training day with more in-class repetitions of and referrals to SOP provisions that are revealing themselves as problems in the field.
4. APD included two scenarios involving high-risk events (i.e., domestic violence and high-risk stops). While not incorrect to include high-risk events, it seems most officers' issues with uses of force involve less-serious encounters with subjects.

⁸⁰ This was discussed during our July 1, 2021, meeting with Academy staff. APD should be considering each provision within Paragraphs 87 and 88 to ensure that each required topic is being addressed with appropriate training.

⁸¹ We intend to discuss APD's efforts to complete their required trainings during the next reporting period. APD can complete the Tier training and also get credit for the 2021 Annual Use of Force training provided quality, time and topic provisions of the CASA are met.

5. While there is an emphasis on de-escalation, the Tier 4 RBT training did not explicitly reinforce APD's Special Order regarding orders and commands not constituting de-escalation.
6. The Academy took guidance from course critiques from day one of Tier 4 DT for more "time on the mat" as opposed to adding more classroom training or scenarios. From a course evaluation perspective, course critiques should be at the low end of influence for a trainer. Critical emphasis should be made regarding lessons learned from "on-street" incidents and issue analysis based on real situations that have proved problematic for APD in the past.
7. Training scenarios that always end in a use of force can produce training scars, and this was discussed with the Academy staff. The rationale, as we understand it, was to allow the Academy to measure performance consistently with each officer based on a set of consistent circumstances and criteria. We appreciate that rationale, and this is another reason more scenarios would be beneficial. That way, there could be alternative outcomes.

Following our Tier 4 RBT feedback, the Academy provided specific responses using a newly devised Training Revision Form. We will discuss their responses to Tier 4 RBT feedback in newly established meetings with the Academy Director. Still noteworthy is the initiative that was taken to organize feedback in this manner. This form provides a good resource for the Academy to ensure that monitoring team and DOJ feedback are addressed, or a response is provided.⁸²

On February 22, 2021, APD promulgated Special Order 21-26, making it mandatory that APD sworn personnel attend the Tier 4 DT (or MARC) training. As noted in prior reporting periods, this training received monitor approval and comprised the use of force Mechanics of Arrest, Restraint, and Control (MARC) components of Tier 4. This hands-on training provided officers with opportunities to apply force properly, while in a controlled setting. Also, officers were required to document their rationale for using force, and those reports were reviewed and critiqued by members of IAFD. The Academy first "beta tested" the training on Academy and IAFD personnel before general sessions began on March 9, 2021. After the "beta test," the Academy slightly adjusted the itinerary to allow IAFD more time to review officer reports before the close of each day. Those training sessions ran through May 2021, with makeup dates scheduled for June 2021.⁸³ Data we reviewed indicated that throughout the training, the Academy conducted 688 remedial sessions with personnel who failed any single objective of the training. Each officer's performance was remediated, and they passed upon subsequent attempts. In an August 9, 2021, Close Out Memo⁸⁴ we reviewed, APD reported that as

⁸² In this instance, commenting on APD's response to the monitoring team is better suited to regular meetings in which we provide technical assistance.

⁸³ Personnel on extended authorized duty leave will receive the training upon their return to work.

⁸⁴ During this reporting period Close Out Memos were provided for several training programs. We commented previously that when these memos become routine, they can be relied on as course of business documentation.

of July 29, 2021, of the 920 APD officers available to attend Tier 4 DT, 909 successfully completed the training, a 98.8% attendance record.

Completing the first Tier 4 training day required a great deal of organizational resources, and the course critique feedback reported by APD was overwhelmingly positive. APD is commended for completing this training, and with the launch of the Tier 4 RBT training day (which began following the close of this reporting period), the Tier 4 training should be completed before the end of 2021. The monitoring team has already communicated with APD and intends to attend the Tier 4 RBT training during our November 2021 site visit. Completing the two sessions of Tier 4 training will be a vital step toward regaining Secondary Compliance.

The monitoring team was provided Close Out memos for Tiers 1-3 as well, which provided data regarding current organizational attendance rates for those three sessions. These results are reported as follows: 1) Tier 1 – Of 964 current personnel required to attend the training, 962 have received this training representing a 99.79% successful completion rate;⁸⁵ 2) Tier 2 - Of 962 current personnel required to attend the training, 958 have received this training representing a 99.58% successful completion rate; 3) Tier 3 – Of 338 active sworn supervisors available to attend the training, 331 have successfully completed the training for a 97.92% completion rate. We highly encourage APD to remain diligent by maintaining these completion rates as other training responsibilities are addressed.

In January 2021, the monitoring team received another training program to review entitled “Foot Pursuit.” We followed up with the Training Academy since we had not heard back from this training session since early in the reporting period. Our understanding is that the training is still under revision and will be assessed in IMR-15 for CASA Paragraph 87.⁸⁶

In July 2021, the monitoring team reviewed and approved the use of a *Terry Frisk* briefing video. We provided feedback to the Academy staff and discussed the use of “briefing” videos in the same time frame. We feel the use of briefing materials are a tool to disseminate information quickly but caution the Academy to also be circumspect in their use. Balancing the need to inform officers of information that is immediately relevant to their duties against the need to ensure the proper application of a concept can be challenging. Depending on the topic, providing information to officers in the field

⁸⁵ We noted that a percentage of officers received their training while completing their Academy training as opposed to post Academy LMS sessions.

⁸⁶ In our discussion with an Academy representative, we called out the fact that there were two (that we are aware of) use of force cases that resulted from foot chases. One of the two, which occurred after the close of this reporting period, resulted in a referral to the MAFT for a review for potential criminal conduct, and the other involved a handcuffed person (documented in the Paragraphs 60-77 series of this report). We suggested each of these cases likely provide valuable lessons that could enhance the Foot Pursuit training and draw in contemporary issues being encountered in the field. We brought this to the Academy’s attention before it was resubmitted for approval. The creation of meaningful pathways of information the Academy can exploit would help the Academy self-identify training needs (such as this) that would benefit all field officers.

without the proper context or allowing them to ask clarifying questions (as in a training session) can create a disparate implementation in the field. In a follow-up call with an Academy staff member, we recommended that topics contained in these types of videos be combined with formal training programs and prioritized appropriately.

As we noted in IMR-13, since the beginning of this project APD has had unreasonable turnover in its leadership at the Academy. We often call out the importance of the position of Academy Director in the reform process, but time and again, APD chose people to lead the Academy who did not possess the requisite skill set to succeed, especially in a CASA compliance environment. During this reporting period, APD conducted a national search for a new Academy Commander and has hired someone who, in our early assessment who possesses the leadership background necessary to affect change in a positive way. As always, we will draw conclusions based on facts on the ground and look forward to working the new Academy Commander.

Parenthetically, the monitoring team has already begun regular meetings with the Academy Director (and Curriculum Development Manager) with the intent of providing our perspective and technical assistance and to help identify issues early so they can correct direction before there is a problem. We have called out on numerous occasions in the past that developing training under the circumstances of the CASA requires true leadership and department-level support, unlike traditional training approaches. During our June 2021 site visit, we reiterated to the Superintendent of Reform something we have repeated many times since the inception of this project. Specifically, the Academy Director position needs the support and full weight of the Office of the Chief of Police and the Superintendent of Police Reform. The responsibilities of this position, like IAPS and IAFD, carry enormous importance to APD's compliance efforts. Frankly speaking, their opinions expressed during organization-level meetings should carry significant weight, and Executive level respect for the positions they hold should carry weight commensurate with that importance.

APD's most significant struggle seems to reside in their comprehension of the basic principles of the 7-Step Training Cycle, in particular their ability to collect baseline data throughout the organization that identifies performance deficiencies and successes and other specific needs that training should be addressed. Developing the training to address those needs and then collecting field implementation data that can inform future training programs, are base competencies the new Curriculum Development Manager will need to help put into place. We believe the manager will help the Academy create its own pathways of collecting and collating information and translating identified needs into specific training objectives.⁸⁷ To that end, we have extensively discussed with APD the creation a robust "training committee" with liaisons from across the organization who can provide their perspective from individual commands.

⁸⁷ The monitoring team has provided exhaustive guidance on curriculum development. Basic tenets of training lesson plans should no longer exist, yet we continue to see issues. We've commented in the past that properly constructed lesson plans and testing instruments are not simply administrative exercises and instead provide the framework to build officer competencies.

During our June 2021 site visit, an Academy supervisor voiced concern that in IMR-13, the monitoring team failed to recognize that the Academy had prepared a plan to address Paragraph 86-88 CASA-related topics. We were provided a series of memos outlining tentative training schedules for 2021. We recognize this combination of memos as the foundation of a plan⁸⁸. We will discuss with the new Academy Commander the development of a comprehensive and approved 2022 training plan that includes specifics, including approved allocation of resources and contingency plans.

APD's compliance standing for Paragraphs 86-88 remains in Primary Compliance for this reporting period, and until such time as the department delivers Tier 4 RBT training and completes its 2021 annual use of force requirements for officers and supervisors. We have been told that several training programs are in development that will fill pending training requirements in this series of paragraphs. We are also aware that APD is reviewing its use of force suite of policies for potential revisions, which will have to be contemplated as we enter the new year.⁸⁹ We encourage APD's new Academy Commander to review past monitor reports, which will offer perspective and context to the feedback the monitoring team provides. The monitoring team remains committed to continuing its technical assistance to help guide APD toward success. With a coordinated effort across APD commands, we believe regaining Secondary Compliance is achievable. IMR-13 noted that APD's compliance regressions at the Academy were extensive and costly. The monitoring team recognizes some Academy staff have persevered and remained committed to achieving CASA compliance through the tenures of multiple Academy Directors and have endured internal and external obstacles. This year, a great deal of coordination of resources, advocacy, and effort by the Academy has put APD on the right track to retrieving Secondary Compliance. It is still essential for the Academy to "walk that track" in a clear, insightful, and coherent way.

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."

⁸⁸ We have worked with APD on innumerable occasions during this project, advising them that a good plan requires goals, objectives, measures, timelines, and clearly articulated process, and congruent product.

⁸⁹ The Academy must also collect updates to policies that have direct relevance to uses of force. (i.e. The updates on the APD Pursuit SOP and PIT Maneuvers, and Special Orders that impact use of force policies.

Results

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

Recommendations for Paragraphs 86-88

4.7.73-75a: APD should devise and implement a cogent plan to address use of force training requirements remaining for 2021 and the next reporting period with the goal of achieving Secondary Compliance by the close of IMR-15. Curriculum developed for annual use of force training should incorporate specific needs of officers and supervisors in the field, and address each component of Paragraphs 86-88.

4.7.73-75b: 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.

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

4.7.73-75d: APD should convene a Training Committee, Chaired by the Academy Commander, which requires agency-wide liaisons to actively participate with academy personnel, share training needs and provide perspective that can enhance and be incorporated into annual use of force in service training programs.

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

4.7.73-75f: APD must properly supervise the delivery of training that is developed from outside sources before it is delivered to the department, regardless of its origin. Training programs should be developed based on best practices, APD policy and must adhere to the requirements of the CASA.

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 17-20 serves as the baseline for compliance determinations for paragraph 89.

The 2021 Firearms Training cycle was completed during this monitoring period, with 99.42% active sworn personnel attending. It is standard operating procedure that as officers return to duty after an absence due to disability, military duty, FMLA, etc., they are immediately assigned to the Training Academy for Firearms Qualification and any other updates necessary for their return to duty.

APD is required to provide sufficient training to allow officers to gain proficiency and meet firearms qualification requirements. During past site visits, members of the

monitoring team attended firearms training. APD Range Staff have added range hours to enable officers to practice firearms in daylight and low-light environments. In reviewing data related to failures to qualify, firearms staff continues to document the referral to additional training for poorly performing shooters and has taken significant steps in automating the process with the modified Enterprise Learning Management database to capture data related to remedial qualifications. All the failure to qualify numbers in all categories are trending down from both 2020 and 2019, reflecting the additional enhanced training.

With the completion of the required Firearms training cycle for 2021, we commend APD for overcoming the delays and obstructions to completing the task during a time of severe restrictions due to a global pandemic.

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 follows:

- 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; and
- Paragraph 105: Analyzing Tactical Deployments.

As with other reporting periods, the monitoring team provided perspective and feedback to APD's Special Operations Division (SOD) personnel and met with personnel responsible for the tasks associated with these paragraphs during our June 2021 site

visit. In the past, we commented on the importance of choosing Commanders for SOD who bring greater organizational maturity and an appreciation for the reforms sought by the CASA. In IMR-13, we noted that a deputy chief closely oversees SOD, and the current commander was assigned to the Division during the second half of that monitoring period. The trend of professionalism by these two supervisors is supported by a lieutenant for SOD, whose oversight of SOD tactical deployments was obvious in our review of data submitted during this reporting period.⁹⁰ Based on our observations this reporting period, the command team now overseeing SOD has stabilized the unit and is making legitimate efforts to institute administrative and operational processes to sustain CASA compliance. While issues were identified within SOD when the change of command occurred (at the latter part of the IMR-13), the current lieutenant has been quick to alert the monitoring team and seek technical assistance. We sensed that Division morale continued to be an issue, and something regularly encountered by the lieutenant. This is partially due to shortcomings of past commanders and disciplinary matters that resulted from the FRB identifying “layered responses” as a problematic practice. As committed and competent as the SOD commander and lieutenant are, we believe strongly that an integral factor to their immediate and long-term success will be continued involvement, oversight and support from the deputy chief overseeing their division.

During our June 2021 site visit, we followed up on meetings we held during the IMR-13 reporting period that centered on the interrelation of SID and SOD. We met with the SID commander to discuss his perspective on the progress that resulted from those meetings.⁹¹ The issue presented to the monitoring team during our meeting centered on situations in which a RAM score may not meet the 25-point threshold for an SOD call out. Still, the unique circumstances of a particular case may be better addressed by SOD involvement. Since our last visit, the SID commander has instituted a mandate that certain scoring criteria within a RAM, if applicable, carry enough risk that they require an automatic consultation with SOD without reaching the 25-point threshold. We appreciated the SID commander’s proactive approach to risk mitigation and its relationship to reducing more volatile use of force events. We received similar positive feedback during our meeting with the SOD commander. We see the concern as resolved but encourage continued proactive communication between the two units to ensure a mutual understanding exists and, where possible, issues are not required to be resolved during active operational deployments.

⁹⁰ After Action Reports prepared by the SOD lieutenant were of very high quality. Likewise, the SOD commander instituted a cover sheet that serves as a checklist of required items that are to be completed and related to each deployment. The SOD lieutenant also prepares a separate internal memorandum documenting her review of materials, and either disagreement or concurrence with decisions made during a tactical deployment. That memo is typically routed to the Force Review Board.

⁹¹ As we noted in IMR-13, during our December 2020 site visit we attended a meeting between SID and SOD to discuss the interplay between the Divisions with respect to SOD call out protocols. The SID commander wanted the monitoring teams’ perspective on SOD providing services in circumstances that may pose elevated risk but may not specifically fall within the SOD call out protocols. We learned that SOD may have been reluctant to provide their services in certain circumstances.

We saw one such example of an opportunity to collaborate proactively between SOD and SID to mitigate issues during future deployments. In an SID After-Action Report reviewed during this reporting period, an investigative supervisor documented his concern with SOD's response to a suicidal subject who was in possession of a handgun and shot himself while in a vehicle. The investigative supervisor documented his concern that the SOD deputy commander would not authorize the deployment of a K-9 to secure and pull the subject from the vehicle since he was still moving and in possession of the weapon. The SID rationale included the belief that an elongated time securing the subject would not allow them to address injuries the subject had self-inflicted quickly. There was also concern with SOD not initially making a full activation, which would have allowed SOD to use their robot to disarm the subject. It is noteworthy that when this SID After-Action Report was received at the command level, they ensured that each concern was researched and addressed. As for the use of the K-9 to neutralize and extract the suspect, SID contacted the Academy and confirmed that the SOD decision to not use the K-9 in the manner requested was the correct decision.⁹² We considered this event as a positive example of front-line and command-level supervisors demonstrating a willingness to make difficult decisions and document concerns and perspectives. In our opinion, based on the available record, the SOD lieutenant collected relevant information and applied reason to his decision not to deploy a K-9. He did so while at the scene and under stressful circumstances. From the monitoring team's perspective, translating this event into policy revisions or training and briefing materials for both SOD and SID is the next logical step. Finally, based on the information available to the monitoring team, it was obvious the SOD lieutenant's decision not to authorize the use of a K-9 in this event was wise. It also reinforced representations made by SOD during our June 2021 site visit. We were told that they are being more contemplative and thinking more critically before authorizing the use of K-9's.

The monitoring team also followed up on observations we made dating back to IMR-12, in which we called out coordination issues between SOD and ERT during deployments to various types of events. From our meetings with ERT and SOD, we learned that APD is in the early stages of the 7-Step Training Cycle to create cross-training between the two units and ERT and SOD believe that the training will be developed and delivered before the close of 2021. SOD initially identified the coordination issues. We discussed that this training should be viewed similarly to other routine training in the short term so that ERT and SOD have a solid foundation to work together during ERT deployments. In ERT data we reviewed, we saw evidence of initial orientation given to the ERT teams of SOD roles and responsibilities (this evidence was found in ERT Quarterly Training #3 materials).⁹³ The development of more robust training between SOD and ERT would greatly benefit future deployments to planned and spontaneous events, protests, and civil unrest. This can be accomplished in several ways, either through full scale or

⁹² We document this further in Paragraphs 106-109.

⁹³ ERT documented broad areas of discussion (i.e., "ERT personnel will be instructed on the capabilities and benefits of the armored vehicle during civil disturbances") but details of what was communicated are absent from the materials. In the future, source documents should be absorbed into the ERT training materials or made as addendums for archiving purposes.

tabletop exercises. Still, in any event, the training should include clear objectives that are drawn from needs identified in the field. We will continue to provide perspective to APD and follow up during the next reporting period.

Findings related to Paragraphs 90-105 are discussed below.

SOD previously established administrative business processes that helped them obtain Operational Compliance, and we found that continuity of information being collected has been enhanced during this reporting period. We have routinely cautioned SOD not to be complacent in its oversight of administrative and operational requirements due to previous Operational Compliance determinations and to ensure close supervision of SOD deployments. We sensed the new commanders grasped their responsibilities during this reporting period and are setting the right tone for the Division. We noted in After-Action Reports we reviewed a strong presence by SOD commanders in the initial assessment of deployment requests. Two specific observations became obvious: (1) The assessment of initial requests for SOD deployments and the data they consider is not superficial. The commander and lieutenant are looking deeper into the presented representations to ensure their decisions are grounded with facts and experience⁹⁴; (2) The clarity in documenting their initial event assessments (placed appropriately at the beginning of the reports) sets the right context for each deployment decision.

As noted above, the quality of SOD After-Action Reports (AAR) remained acceptable during this reporting period. The monitoring team was provided twenty-four (24) SOD AARs resulting from tactical activations. SOD continues to document (in detail) the thought processes a supervisor goes through when decisions are made and properly attributes decisions to specific people. This is particularly important when authorizations are given to use force. The use of "Tactical Activation Packet" and "Tactical Assist" cover sheets for AARs continued throughout the reporting period⁹⁵, which serve as good checks and balances during command reviews following an event. We want to provide the following feedback for the AARs we reviewed: We noted a marked improvement with the timeliness of After-Action Reports. In the last monitor's report, we commented that with IAFD taking a greater responsibility to investigate uses of force associated with tactical activations,⁹⁶ SOD should ensure that IAFD receives final versions of AARs as a part of their investigation. AARs reviewed showed the majority being submitted through the SOD commander level within approximately two weeks, with all those we reviewed being submitted in approximately 30 days. (P96-97)

The SOD commander created and implemented a Tactical Activation Briefing sheet that is required to be filled out before an event. We were told that this sheet is meant to

⁹⁴ An example is when a justification factor presented to them includes a history of violent or felony arrests of a suspect. IAFD does not accept this on face value and instead collect available reports to make an independent assessment of the information and the true threat that the criminal history represents.

⁹⁵ Similar cover sheets were created for deployments for First Amendment Assemblies and Pre-Planned Activations. The current SOD Commander conducted a briefing with SOD to go over SOD policy and other relevant Division issues, including these cover sheets in January 2021.

⁹⁶ Toward the end of this reporting period EFIT began to engage SOD use of force call outs as well, further amplifying the importance of timely submission of reports.

properly document SOD personnel who attend a preplanned tactical activation briefing and preclude people from participating in the deployment if they are not signed in as having participated in that briefing. Parenthetically, once EFIT came online and began responding to SOD uses of force, they identified an issue at the scene with properly identifying people who took part in an event and needed to be interviewed. They collaborated, and SOD agreed to assign a person at the onset of a tactical deployment, planned or unplanned, to capture the names of people who were on-scene. This will increase the efficiency of the IAFD/EFIT use of force investigations and is a good cross-reference document for SOD post-deployment attendance logs.

In IMR-13, we called out an issue that was identified following protest deployments relating to the timeliness for reporting and documenting uses of force. The police department handled numerous protests in short periods of time, with IAFD responding to investigate accompanying uses of force. We learned there was “substantial disagreement” between IAFD and operational commands as to the proper timelines to apply for use of force reporting during protests. We noted that balancing the need for timely use of force investigations with chaotic emerging events will require the department to consider the relevant issues, devise a proper response to those issues and advance their proposal to the monitor for consideration.⁹⁷ In a January 10, 2021, memorandum entitled, “Emergency Response Team – ERT/SOD/IAFD Coordination,” APD documented its acknowledgment of the issue and the intention to advance recommendations for SOP revisions. In the past, even when APD acknowledged such issues, it took elongated periods of time for them to implement new initiatives that should be simple. APD is reviewing each of their use of force policies, and we encourage them to revisit this issue and contemplate it in any updates that may occur to their policies. To properly address these concerns, SOD and ERT will have to be active participants in the use of force policy discussions.

SOD continues to consult with SID for specific types of search warrants and is required to fill out a Risk Assessment Matrix (RAM)⁹⁸ to determine if they are required to call out SOD. During this reporting period, we reviewed data for two RAM audits prepared by SOD. The auditing of data by SOD continued appropriately, and in one instance, we saw where SOD identified an issue with the RAM scoring criteria previously called out by the SID commander. The issue centered on determining what the proper scoring for a RAM should be when, during an operation, a suspect/target leaves or is removed from a residence. In an April 13, 2021 memorandum, the SOD supervisor noted the following:

⁹⁷ For instance, APD should be considering how IAFD will follow up investigations where an officer uses a type of force, but the person(s) on which the force was used run from the scene or are dispersed through other types of force. The monitoring team has not been provided with a proposal on how that circumstance should be handled, or proposed policy revisions outlining the expectations of IAFD under those circumstances. Having this linger may create burdens on IAFD that may be otherwise resolved among the parties.

⁹⁸ 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).

“I noted an area of improvement of the RAM form. The form needs a check box, and standardization of accounting for individuals who are already in custody at the time of the warrant service. This is not the first time a situation occurred with this need for uniformity in accounting for persons involved. This can also be remedied with changing the Detective Checklist. This will need to be remedied from the Special Operations Division and with Policy Management.”

We will follow up with SOD during the next reporting period regarding this identified issue. Our review of the RAM audit documentation revealed the process put in place to oversee investigative use of the RAM has continued and is a routine part of SOD business processes. We encourage SOD to review the RAM to identify areas of improvement and refinement. The RAM itself was first created 5-6 years ago, and there are likely lessons learned that could influence the content captured by the RAM and how that information is viewed when deciding on SOD deployments.

The monitoring team reviewed SOD records related to the selection of five (5) APD personnel into the unit and found those records to be sufficient. The onboarding of SOD personnel includes on-the-job training and checklists to ensure that new personnel demonstrate specific skills that are assessed by their supervisors. Records reviewed during this reporting period included Department Personnel Circulars with job descriptions, Transfer Orders and Unit Handbooks for SWAT, K9, and the Bomb Unit. SOD continues to maintain records that track the selection process from posting an opening to selecting an officer for assignment to SOD.

We reviewed internal SOD training records for the SWAT, K9, and Bomb Units. In the past, we recommended SOD review its lesson plans and enhance them to reflect Academy standards. We also recognize the need for SOD to be nimble in their training since some proficiencies need to be taught quickly and in response to a need before another deployment occurs. The training that SOD conducts at the Division level includes a standardized form that includes goals, objectives, and measures for training they provide. Still, there is room to enhance these routine trainings to avoid gaps in records and provide a means to measure individual and unit proficiencies across the various topics they cover. Currently, SOD training sessions are not conditioned to accurately measure proficiency against preset criteria collected following each officer's performance in each task. In past site visits, we have observed SOD training sessions and remarked on their professional atmosphere. That said, the development of measurable performance criteria for these sessions would allow SOD to demonstrate preset and expected proficiencies were met by each specific officer, further allowing SOD to capture data that may be relevant to the development of organization-wide training. The latter would be better served in a more comprehensive lesson plan that is channeled through the Academy's 7-Step Training Cycle. We will continue to provide technical assistance to SOD as they refine routine training. (P91-92; 101)

The monitoring team requested training records that demonstrated SOD personnel were updated on legal issues relevant to their duties. We were provided with a sign in sheet, dated January 22, 2021, and a PDF of a PowerPoint presentation with a printed date of

January 27, 2020.⁹⁹ The documentation indicated that the presentation was made by members of Albuquerque City Legal, but nothing in the data indicated who the instructor was on that date or who created the PowerPoint. There was no lesson plan, or associated testing mechanism to document the course learning objectives, curriculum, or scores that verify the transfer of learning to the SOD participants. The content of the presentation materials addressed CASA-related topics that would be expected to be vetted through the APD Training Academy and reviewed by the monitor and DOJ.¹⁰⁰ Issues of concern included such things as the reminder of Graham v. Connor's “objectively reasonable” assessment factors with no reiteration of APD’s stricter standards. Again, there was no reference to APD’s SOP requirements regarding engaging with or shooting at moving vehicles.

Because there were no associated course materials or videotape of the training provided, it is impossible to determine what was actually discussed in the training. These are the type of mistakes we saw in the past with APD training, and the potential ramifications of failing to create full training materials have to be appreciated by APD. Considering past training discrepancies at the agency level, this demonstrated a lack of understanding of how to reinforce agency expectations through its training courses properly and when that reinforcement would be most effective. Important to note is the fact that the monitoring team reviewed the original memo created by City Legal in preparation for the training. Within that memo, City Legal outlined the implications each case had to APD’s SOPs. However, those very important factors were not in the PowerPoint presentation, and we assume they were not presented in the formal training.

APD is not absolved from its responsibilities to oversee and properly administer CASA-related training to officers simply because it originated from “City Legal” or any other entity. The trainer may have been excellent, and the messaging in the room may have been entirely appropriate; however, the underlying documentation and materials seemed to have circumvented APD’s own 7-Step Cycle.¹⁰¹ The consequence of providing training in this manner is that the legitimacy of oversight the APD Academy has or should have over agency training is undermined. In the view of the monitoring team, the City Legal memo was well-structured, and a fully documented course curriculum could have been easily created had the training been channeled through APD’s 7-Step Training Cycle.

Based on our review of the existing SOD policy requirements and other related documentation, we determined that SOD remains in Operational Compliance with

⁹⁹ The monitoring notes that the training occurred immediately before the IMR-14 reporting period, but we are commenting on it here because we want to preemptively avoid future issues.

¹⁰⁰ The case law presented during the training related to use of force scenarios that were relevant to SOD. One case, Serrano v. United States, had case facts that involved shooting into a vehicle occupied by a fugitive. In a slide with a highlighted titled “Implications for SOD” there were four bullet points that included (1) relevant to SOD’s role re high-risk arrests; (2) could be viewed as persuasive – whether shooting into a vehicle *driven* by a fugitive (unlike here, where APD is prohibited from shooting at moving vehicles) is objectively reasonable force.

¹⁰¹ The monitoring team verified with the Academy and SOD Commanders that this training was not vetted through the APD Academy or provided to the Monitor or DOJ for review.

respect to tactical unit missions and policies and annual reviews of policies. (P93–95; 100). Several policies are due for updates and edits at the close of this reporting period. We will look to see what adjustments are made, either directly within SOPs or through Special Orders, that address the issues APD uncovered during the past few reporting periods. The monitoring team also reviewed SOD handbooks prepared during the reporting period, demonstrating that SOD is continuing the routine “onboarding” practice established by previous Commanders.

We reviewed Monthly Inspection Reports that were completed for the months of February 2021 through May 2021 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.

Regular FRB hearings of SOD cases have occurred throughout the IMR-14 reporting period and generally are scheduled within approximately 60 days of an activation.¹⁰² SOD tracks their activations closely to ensure the cases are presented to the FRB more timely than other use of force cases. In the past, we commented that the scope of review by the FRB of SOD tactical activations was too narrow when cases have an accompanying use of force, and a full analysis of protocols and policy, training, equipment, or tactical concerns may not be possible without a comprehensive review that includes the use of force at the same time.¹⁰³ We believed the presentations provided by SOD of tactical activations are comprehensive, but the conversation was impeded in cases where there was an accompanying use of force. During the IMR-13 reporting period, members of the monitoring team sat in on a virtual session of the FRB and a SOD tactical activation presentation that had an accompanying use of force. It was clear during one review that the FRB voting members recognized the gap in information when the tactical activation and accompanying use of force were not heard together. It was our belief that moving forward, the two elements of cases (when there is a use of force) would be heard together. However, APD was concerned the current elongated delays for use of force investigations were impeding SOD's ability to meet its requirements related to FRB reviews of tactical deployments. To bridge the gap, we recommended that cursory reviews be conducted of cases by the SOD commander prior to tactical deployments being presented to the FRB. We saw evidence of this in practice, as now the SOD commander provides a cover memorandum to the FRB with their assessment of each case. This practice provides an opportunity to sift out potentially problematic cases where force is used and, when encountered, that smaller population of tactical deployment cases can be heard together (with the use of force). Records we reviewed during this reporting period showed instances where tactical and

¹⁰² The monitoring team observed that during this reporting period there were still SOD cases from 2020 being heard, but also 2021 cases. The 2021 SOD cases became more frequent as the reporting period carried on.

¹⁰³ Historically, SOD uses of force were not discussed in any detail during the tactical presentations. If there was an accompanying use of force with a case, that element of the activation would only be presented and scrutinized by the FRB if that specific case was picked during a 10% random sample or if it included a serious use of force that would be presented by CIRT, or IAFD. In our opinion, this contributed to SOD's use of a “layered response” to not be identified earlier.

associated use of force cases were being heard together. SOD tracks deployments through their Activation Data Reports, and we reviewed records that captured year 2021 SOD presentations to the FRB, meeting agendas and referrals. We will continue to assess how the FRB is reviewing current SOD tactical activation cases in IMR-14.

For IMR-14, we reviewed Annual Assessment Reports completed for each SOD unit, and examples of Performance Work Plans for officers demonstrated that SOD completed Annual Assessments for its personnel. We continue to encourage APD to look deeper at Division and Unit level policy provisions to ensure their personnel are being assessed by correlating predetermined criteria. (P100)

APD continues to track K9 deployments and bite ratios consistent with monitor approved methodology. The monitoring team reviewed a K-9 Bite Ratio report and tracking ledgers documenting SOD K-9 handlers and K-9 bite ratios for this reporting period. SOD reported one K-9 handler as having a bite ratio that was at 20% (on a six-month rolling average). The deputy commander conducted a meaningful review of that officer's personnel folder and each use of force that correlated to that 20% bite ratio (In this case there was 1 in 5 deployments that resulted in a bite). The SOD deputy commander reviewed materials related to the K-9 team and determined the bite ratios were not problematic and that the K-9 uses were within APD policy. As a cautionary note, the monitoring team reviewed similar meaningful reviews of other K-9 handlers where nothing was identified as problematic; however, the FRB began to identify the "layered responses" trend documented in detail during IMR-13. We are not suggesting that this K-9 handler's performance review was not thorough but encourage SOD to ensure bite ratios reviews are not *pro forma* and trends with any K-9 team are closely monitored and addressed early. The risk that a less than thorough review has on public safety and confidence, officer conduct, the agency, and CASA compliance cannot be overstated. The monitoring team is confident that the current SOD commander and deputy commander are cognizant that less thorough reviews in the past contributed to officer's being disciplined and reduced morale; We are equally confident they are interested in taking active measures to avoid such issues in the future.

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. (P102 - P105)

SOD continues to demonstrate a positive attitude toward CASA compliance and commitment to sustain CASA compliance. In the opinion of the monitoring team, that commitment was sustained for IMR-14. 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.

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.”

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

“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.”

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.”

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.”

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.”

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."

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

Generally, CASA paragraphs centered on SID are designed to help the agency create an administrative foundation that ensures investigative activities are organized and documented to support wider changes in the department. The administrative underpinnings were sustained throughout the IMR-14 reporting period. In the past few monitor reports, we commented that APD would be wise to examine all investigative divisions to ensure they are properly conditioned to support wider reform efforts and not become complacent with SID's compliance standing. APD followed up on this with the monitoring team before the close of the reporting period to get our perspective, presumably as a demonstration of their interest in addressing specific issues we believe exist. In the past, we noted that responsibility for use of force Operational Compliance determinations exist in every corner of the department, and investigative units play an important role in reaching wider organizational compliance. Sharing our perspective regarding investigative units emanates from our past reviews of uses of force by investigative personnel and the professional experience of the monitoring team. Overall, the repetitions of applying the use of force policies will be greater within the Field Services Bureau (FSB). Consequently, supervisors in FSB will have more experience responding to and properly categorizing officer conduct within the range of force levels.¹⁰⁴ In past reports, we profiled SID cases where uses of force were improperly reported and investigated. Our vigilance is meant to keep SID Commanders on alert and not become complacent with the compliance standing of this series of paragraphs. The impact of an improperly reported or investigated use of force within SID would have a

¹⁰⁴ As we have noted extensively in the past, the properly categorizing of detective actions at the lower levels (i.e., Low level control tactics, Level 1 UOF) will be where less experienced detectives and SID supervisors may make mistakes.

cascading impact on the organization's compliance efforts. We made several similar recommendations to SOD in the past, yet in IMR-13, the use of a "layered response" emerged as a potential threat to SOD Operational Compliance. Since we anticipate leadership within SID changing, we recommend any new Commander review past monitor reports regarding SID uses of force and explore the cases themselves for lessons learned that could be used as illustrations during routine training and unit briefings. Likewise, a SID Commander would benefit greatly by reviewing feedback provided throughout each monitor's report and not focusing only on Paragraphs 106-109.

As we noted in IMR-13, as a matter of expanded efforts by the Performance Metrics Unit (PMU), audits of SID, like those conducted of Field Services Bureau Area Commands, were initiated. We reviewed PMU records to confirm that the audits continued during the IMR-14 reporting period. Previously, PMU noted issues with OBRD compliance, and while the 95% threshold was missed in a few units, the score was still above 90%. Also, those instances were seen in February 2021 (early in the reporting period), and as time progressed, we saw increased compliance above the 95% compliance threshold.

During our June 2021 site visit, we met with the SID Commander responsible for the tasks associated with CASA compliance.¹⁰⁵ The Commander came prepared to discuss SID compliance and was conversant with the processes of the CASA and SID responsibilities. This Commander has interacted with the monitoring team since early in the project and engages issues with a more developed understanding of how to sustain reformed processes. As we noted in IMR-13, during our December 2020 site visit, we attended a meeting between SID and SOD to discuss the interplay between the Divisions with respect to SOD call-out protocols. The SID Commander wanted the monitoring teams' perspective on SOD providing services in circumstances that may pose an elevated risk but may not specifically fall within the SOD call-out protocols. We learned that SOD might have been reluctant to provide their services in certain circumstances. We followed up on progress APD has made throughout the IMR-14 reporting period, and during our most recent site visit, the SID Commander confirmed that the issue had been resolved. The issue centered on situations where a RAM score may not meet the 25-point threshold for a SOD call out, but the unique circumstances of a particular case may be better addressed by SOD involvement. Since our last visit, the SID Commander has instituted a mandate that certain scoring criteria within a RAM, if applicable, carry enough risk that they require an automatic consultation with SOD without reaching the 25-point threshold. We appreciated the Commander's proactive approach to risk mitigation and its relationship to reducing more volatile use of force events.

We requested and were provided with data to review that APD believed would demonstrate their continued compliance with Paragraphs 106-109.¹⁰⁶ The monitoring

¹⁰⁵ We learned that the SID Commander was being moved to a new assignment some time following our site visit. He assured us that he would be passing on information regarding processes he implemented, and information previously discussed with the monitoring team.

¹⁰⁶ The monitoring team discussed the data request with the SID Commander and decided that a few items we requested were not necessary to resubmit because nothing had changed since the prior reporting period. As an example, we requested particular unit handbooks. Since the handbooks had not changed,

team considered documentation relative to SID to demonstrate that the business processes that helped establish Operational Compliance continued. Specifically, the following documentation was reviewed:

1. SID SharePoint Records
2. SID Unit Handbooks
3. SID Training Records
4. SID Inspection Forms
5. Operational Plans / After Action Reports
6. Internal Memorandums and Department Circulars for Transfers, and Transfer In and Out Forms
7. Risk Assessment Matrix (RAM) forms and Ledgers, and SOD Audit Memorandums

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

As we have noted in the past, SID consults with SOD for specific types of search warrants and is required to fill out a Risk Assessment Matrix (RAM)¹⁰⁷ to determine if they are required to call out SOD. During the IMR-14 reporting period, we reviewed data for five (5) separate events and two (2) RAM audits prepared by SOD. The auditing of data by SOD continued appropriately and in one instance, we saw where SOD identified an issue with the RAM scoring criteria previously called out by the SID Commander. The issue centered on determining what the proper scoring for a RAM should be when, during an operation, a suspect/target leaves or is removed from a residence. In an April 13, 2021, memorandum the SOD Commander noted the following:

“I noted an area [in need] of improvement of the RAM form. The form needs a check box and standardization of accounting for individuals who are already in custody at the time of the warrant service. This is not the first time a situation occurred with this need for uniformity in accounting for persons involved. This can also be remedied by changing the Detective Checklist. This will need to be remedied from the Special Operations Division and with Policy Management.”

Our review of RAM audit documentation revealed the process put in place to oversee investigative use of the RAM has continued as previously described to the monitoring team.

SID previously developed and implemented unit-level handbooks that set forth the unique standards, mission, and duties for each of its subordinate units, which have been updated and standardized in format across all SID units. The handbooks from each unit

we collected the records for detectives who were provided the handbooks and any relevant course of business documentation. The agreement was memorialized in a June 11, 2021, memo from the SID Commander to the monitoring team.

¹⁰⁷ 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).

serve several purposes, including SID incorporating and reinforcing APD's use of force policies and including the provisions of the CASA. The monitoring team was provided course of business documentation that allowed us to track initial Department Circulars announcing openings in SID, through to an officer's assignment and initial training. We specifically looked at records of four (4) officers who were transferred into SID and six (6) officers who either transferred out, retired, or resigned from SID (and APD) during this reporting period. We reviewed "Transfer In and Out Forms" that were completed and could cross-reference those forms against the same SID personnel who were transferred into or out of the Division during this reporting period. These forms assist in the proper tracking of equipment assigned to detectives.

SID previously implemented a procedure in which they self-audit SharePoint records to ensure that proper information related to CASA compliance is captured. The monitoring team reviewed eleven (11) SharePoint records between February 1, 2021, and June 1, 2021, and found they contained the required information. We also reviewed an April 1, 2021, internal memorandum prepared by SID of a self-audit of SharePoint and RAM reports. The memorandum documented that during the audit, no issues were identified within the records.

During the past several reporting periods, we commented that investigative Operational Plans and After-Action Reports need improvement. When we discussed this with the new SID Commander, he acknowledged the Division could improve in its documentation in these areas. For IMR-14, we reviewed fifty-one (51) Operational Plans and After-Action Reports prepared within the Investigative Services Division. As we've previously noted, Operational Plans contained examples with better documentation. However, the records we reviewed still contained scarce information. The Investigative Services Division (ISD) implemented a standard After-Action Report that consists of a checklist and narrative that resembles APD's use of force reports. The report provides a detective an opportunity to include relevant information related to a particular event and document areas of improvement to policy, training, or operational methods.

In one After-Action Report, an investigative supervisor documented his concern with SOD's response to a suicidal subject who was in possession of a handgun and shot himself. The investigative supervisor documented his concern that the SOD commander would not authorize the deployment of a K-9 to secure and pull the subject from the vehicle since he was still moving and in possession of the weapon. His rationale included the belief that elongated timelines securing the subject would not allow them to quickly address injuries the subject had sustained. He was also concerned with SOD not initially making a full activation, which would have allowed SOD to use their robot to disarm the subject. Finally, he documented concern over an IAFD investigator making inappropriate comments when they first arrived at the scene. As for the latter, the investigative supervisor believed that the IAFD investigator's comments suggested they formed an opinion of the event based on limited information before conducting a full investigation. It's noteworthy that when this After-Action Report was received at the command level of ISD, they ensured that each concern was researched and addressed. As for the use of the K-9 to neutralize and extract the suspect, they contacted the Academy and confirmed that the SOD decision to not use the K-9 in the manner

requested was the correct decision. They also confirmed with internal affairs that the investigation was being transferred to another investigator.

This exchange of information began with a robust After-Action Report. Despite the investigative supervisor's request to use a K-9 in that manner, his report set in motion several internal communications that are healthy examples of how oversight of events should occur. The only feedback the monitoring team believes is important is that we did not see that their conclusions were communicated back to the original investigative supervisor within the follow-up documentation completed at the command level. The tone of the After-Action Report suggested a sense of anger and/or frustration. Doubling back to the supervisor would allow them to close the loop and share perspectives that may inform future decisions, particularly the request to use the K-9. This may have been done, but it was not evident in the documentation we were provided.

The monitoring team was previously provided with the SID 2020 Annual Review, a comprehensive report of relevant information related to SID during the year. We will follow up to obtain the 2021 Annual Report from SID, which will likely be available at the close of the IMR-15 reporting period.

Based on our review of documentation, we determined that Operational Compliance should be 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 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 reviewed and examined the data required for APD to maintain compliance with paragraphs 108 for the reporting period (February 1, 2021, through July 31, 2021.) Monthly Inspection Summary Reports for SID Units to ensure all members met the requirements of the paragraph, indicating compliance. During this reporting period, all vehicles assigned to unit members were accounted for, as well as all vehicles available to the units or vehicles taken out of service. Additional equipment assigned to SID maintained in storage, such as long rifles, shotguns, back-up weapons, and forty (40)mm launchers, were documented on reports submitted to the monitoring team. During the monitoring team's site visit in June 2021, a live inspection was conducted of the equipment maintained in the secured locker room. Additional documentation supports the monitoring team's findings.

The annual report is compiled at the end of the year and submitted with the last month of the second report of the corresponding year. That memorandum, submitted for IMR 13, stated in part that all sworn personnel complied with the requirements of this agreement.

The monitoring of these inspections continues on an annual basis, and as previously stated in this report, monthly.

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**

Monitor’s Note:

Although Paragraphs 106-109 are in operational compliance, the monitor makes the following recommendations as areas that could be improved upon:

- SID should continue to monitor the adoption of use of force policies and ensure that they properly operationalize those policies when a member of their Division uses any type of force.
- APD should conduct independent audits of arrests and Level 1 uses of force reported by members of SID to ensure they are properly classified.
- SID should review the quality of Operational Plans to ensure they are thorough and are used as a tool for safety and compliance.

- SID and SOD should continue to work together to ensure that RAM records are accurate, and that SID properly uses SOD for search warrants.

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 encompasses the entire Crisis Intervention section of the CASA. As such, this paragraph will not be in compliance until such time as other related required paragraphs are found to be fully in compliance, including those addressing APD’s use of force related to individuals experiencing mental health crises.

During prior reporting periods (see IMR-12 and IMR-13), the monitoring to APD’s use of force against people in crisis and people with mental illness. We are concerned about APD’s lack of progress toward the requirements of this paragraph, among others. In the Use of Force section of this report, we provide additional updates on these issues. While we were heartened by APD’s responsiveness to our recommendations in IMR-13, the agency has a great deal to accomplish in order to achieve compliance with Paragraph 110.

The monitoring team also notes the complexities that may arise from the City of Albuquerque’s creation of a separate, non-sworn department to respond to some of the calls for service currently addressed by APD. Separate entities may create confusion, unclear lines of responsibilities, and disparate “systems” for responses to mental health issues in Albuquerque’s various communities. The new Albuquerque Community Safety Department’s (ACS) ¹⁰⁸ development progressed throughout this reporting period,

¹⁰⁸ April 10, 2021. “Mayor Keller hopes to have new community safety department up-and-running by summer 2021” KOB4; may be accessed at <https://www.kob.com/albuquerque-news/mayor-keller-hopes-to-have-new-community-safety-department-up-and-running-by-summer-2021/6070488/>. See also, May 25, 2021. “Albuquerque Community Safety Department plans to adapt to needs of the city,” KOB4; may be

including staffing¹⁰⁹ and training plan development (see Paragraph 111 below). Additional comments appear in paragraphs throughout this section. The monitoring team will continue to closely assess its development and implementation to understand how it may affect APD's responses to crisis calls for service and levels of compliance throughout this section of the CASA, including our reviews of related policies. Once the ACS is operational, the monitoring team will assess the overlapping responsibilities (if any) among the APD's Mobile Crisis Teams (MCT), COAST, and the ACS responders.

We also note that the City's progress to implement a homeless shelter during this reporting period,¹¹⁰ holding community input sessions and interacting with the MHRAC were positive steps. As with the ACS, the monitoring team will continue to assess the Gateway Center's development to understand how it might affect APD's responses to crisis calls for service and follow-up activities.

Results

While many reviews and revisions are underway, some of the policies in this suite are past-due for review and revision. Without appropriately updated policies, proper training is not feasible, and operational compliance is not attainable. In the monitoring team's experience, mental health practices are in a reasonably regular state of flux. New practices are developed, and old practices are revised, updated, and re-crafted – a notion that holds particularly true as the City plans for reform in this area. 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.

However, we note that the policy review processes, as they are currently implemented, allow for comment periods from stakeholders within the Albuquerque community, robust discussion with members of the MHRAC, and opportunities for APD officers to offer comments. SOP 3-52 (formerly SOP 3-29) "Policy Development Process," explains the MHRAC's role in policy review and development. The monitoring team notes that delays in policies generate delays in training, which lead to delays in forming CASA-congruent supervisory processes, which are the very definition of non-compliance. The monitoring team notes new developments in APD's attempts to "implement and support more integrated, specialized responses to individuals in mental health crisis through collaborative partnerships with community stakeholders" as this paragraph requires, in the form of two departmental memos – both of which were shared with the MHRAC and signed by the Chief of Police. The first, issued June 2,

accessed at <https://www.kob.com/albuquerque-news/albuquerque-community-safety-department-plans-to-adapt-to-needs-of-the-city/6121694/>

¹⁰⁹ April 26, 2021. "Mayor Keller Announces Top Leadership Team for Innovative New Albuquerque Community Safety Department," City of Albuquerque; may be accessed at <https://www.cabq.gov/mayor/news/mayor-keller-announces-top-leadership-team-for-innovative-new-albuquerque-community-safety-department>

¹¹⁰ June 10, 2021. "City of Albuquerque to hold two community input meetings on new Gateway Center this week," KOAT; may be accessed at <https://www.koat.com/article/city-of-albuquerque-to-hold-two-community-input-meetings-on-new-gateway-center-this-week/36667945>

2021, aims to clarify the “transfer of custody” for people who will be undergoing psychiatric evaluations under New Mexico statute 43-1-10 and provides guidelines for officers.

The second, issued July 16, 2021, addresses the transportation of people experiencing a behavioral health crisis. This memo allows for transportation to a mental health facility via ambulance, giving responding officers an option for transportation other than their APD squad cars. This option is important, as some people may be more willing to voluntarily comply with transport in an ambulance and feel that it is less intimidating.

For a more detailed assessment of the status of critical policies related to this paragraph, see Table 4.7.97 below.

Table 4.7.97 Policy Renewal Status for Behavioral Health Policies

Policy	Policy name (Relevance to 110)
SOP 1-20	BEHAVIORAL SCIENCES SECTION. This policy was not due for revisions during this reporting period. The version of this policy on the City's website is now up-to-date, showing Effective 11/30/20 and due for Review on 11/30/21.
SOP 1-28	DOWNTOWN UNIT. This policy includes some guidance for APD officers interacting with people experiencing homelessness in the downtown area, instructing them to provide information on available resources and programs and to conduct outreach in coordination with other organizations. The MHRAC reviewed the policy during the last reporting period (see IMR-13) and finalized it late in this reporting period. The version on the City's website is up-to-date, showing Effective 8/23/21 and due for Review on 8/23/22.
SOP 1-37	CRISIS INTERVENTION SECTION AND PROGRAM. The revised version of this policy went into effect during this reporting period, having undergone revisions during the prior reporting period. The version on the City's website is up-to-date, showing Effective 2/23/21 and due for Review 2/23/22.
SOP 2-8	USE OF ON-BODY RECORDING DEVICES. This policy contains reference to "Incidents involving individuals known to have a behavioral health disorder or who are in a behavioral health crisis." The version of this policy on the City's website is up-to-date, showing Effective 2/15/21, and due for Review 2/15/22.
SOP 2-19	RESPONSE TO BEHAVIORAL HEALTH ISSUES. This policy underwent review during the prior reporting period, with the new version becoming effective during this reporting period. The version on the City's website is up-to-date, showing Effective 4/2/21, and due for Review on 4/2/22.
SOP 2-20	HOSTAGE SITUATIONS, BARRICADED INDIVIDUALS, AND TACTICAL THREAT ASSESSMENTS. The most recent version of this policy shows Effective August 5, 2019; was due for Review August 5, 2020. This policy is currently in the review process; it was made available for officer comments at the end of this reporting period, on 7/29/21 for a 15-day comment period. This policy is overdue for update and training.

Results

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

Recommendation for Paragraph 110:

4.7.97a: APD should conduct a complete and thorough review of its policies related to in-field responses to incidents involving individuals in crisis or individuals with mental illness and ensure that the entirety of those policies are

congruent with CASA requirements and have been vetted through the review process by the Amici and other community stakeholders, such as the MHRAC.

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

Paragraphs 111-128 address how APD is required to respond to calls involving mental health. 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.

We note that APD has met, and in many cases far exceeded, the requirements of the CASA as it relates to mental health response planning, crisis intervention, and service delivery. Our review indicates that APD crisis outreach services personnel have worked diligently with the MHRAC to assess, improve, and serve the target communities. However, while we also note that while APD's crisis intervention system has produced work that consistently demonstrates creativity and community responsiveness, the same is not true of the Field Services Bureau (FSB). In short, to be effective, specialized units, and to a lesser extend FSB elements need to take note of the specialized needs of some communities and tailor overall response processes to better protect and serve these communities, as well as the community as a whole. The monitoring team will continue to explore those disconnects in future reports.

In assessing APD's compliance with these paragraphs, 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.

As we mention in Paragraph 110 above, the monitoring team is currently tracking several City developments that may affect APD's responses, including the Albuquerque Community Safety Department (ACS) and the Gateway Center homeless shelter.

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

The community’s Mental Health Response Advisory Committee (MHRAC) continued its success during this reporting period. MHRAC’s meetings often involve highly detailed discussions of problems, issues, needs, and solutions. 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 operational strategies, especially as we continue to face the challenges of the COVID-19 Pandemic.

In assessing compliance with this paragraph, the monitoring team attended online MHRAC meetings via Zoom and reviewed the following documentation:

- MHRAC’s reports, recommendations, communications, and processes during this reporting period;
- Meeting agendas and minutes for MHRAC meetings;¹¹¹
- Meeting agendas, minutes, and recordings for subcommittee meetings;
- The City’s new draft policies regarding encampments and the corresponding listening session on April 20, 2021; and
- Various communications regarding policy and/or training reviews between APD and MHRAC.

The monitor remains encouraged by the robust membership of MHRAC and the substantial number of new participants in MHRAC meetings during this reporting period. There was some confusion, however, about membership status and MHRAC’s bylaws during this period. While there were several discussions about MHRAC’s bylaws throughout the reporting period, those bylaws have not yet been formally updated or amended. This issue requires attention.

Participation has increased substantially since the meetings have been taking place online via Zoom (due to the COVID-19 pandemic). The monitoring team observed the monthly online (via Zoom) MHRAC meetings in February-July of 2021. We believe the MHRAC continues on the right path, which will lead MHRAC to sustainability, stability, and the ability to withstand leadership changes, should they occur. The MHRAC continues to address emerging issues within sub-committees, including the Training Subcommittee and the Information Sharing/Resources Subcommittee. The two MHRAC subcommittees met regularly during this reporting period as well. Tables 4.7.98a and b briefly describe major topics covered during the MHRAC meetings and subcommittee meetings.

¹¹¹ Available at <https://www.cabq.gov/mental-health-response-advisory-committee/mental-health-response-advisory-committee-agendas-minutes>

In addition to the topics discussed during MHRAC meetings, a review of emails and other communications demonstrated that MHRAC members also addressed a variety of other issues during this reporting period--the most important being the MHRAC's role in the City's new Albuquerque Public Safety Department (ACS) and the new Gateway Center homeless shelter. Throughout this reporting period, there was confusion about whether and how the MHRAC would be involved in the development and implementation of ACS and the Gateway Center; that confusion is reflected on the agenda and in the minutes of the April 2021 MHRAC monthly meeting, as well as in many other communications. Toward the end of this reporting period, a member of the MHRAC began participating on the ACS Planning Committee and regularly attended meetings. We also note that members of the APD's CIS have spent considerable time consulting with ACS leadership on the development of policies and training.

Table 4.7.98a Dates and Topics of IMR-13 Reporting Period MHRAC Meetings

Reporting period month	Meeting date	Issues discussed
February 2021	2/16/21	Assisted Outpatient Treatment Program; Non-law enforcement mobile crisis teams through Bernalillo County Fire; Body Camera legislation update; ACS updates; New Gateway Center updates; APD updates on COAST and CIU.
March 2021	3/16/21	Legislation updates; ACS updates; New shelter updates; Encampment policy; CARE Campus Crisis Unit; APD updates on COAST and CIU.
April 2021	4/20/21	Role of MHRAC discussion; ACS updates; New shelter updates; Dispatch Update (AFR); Encampment policy; APD reports on COAST and CIU.
May 2021	5/18/21	ACS updates; New shelter updates; Mobile Crisis Team update; APD Crisis Intervention Data Book Fall 2020; APD reports on COAST and CIU.
June 2021	6/15/21	ACS updates; New shelter updates; ECIT presentation (APD); MHRAC bylaws discussion; IMR-13 overview and discussion; APD reports on COAST and CIU.
July 2021	7/20/21	ACS update; Shelter update; MHRAC bylaws discussion; 2020 CIU Annual Data Report (APD); APD reports on COAST and CIU.

Table 4.7.98b: MHRAC Subcommittee Meeting Dates and Topics

Subcommittee	Issues discussed
Information Sharing & Resources: 2/9/21; 3/9/21; 4/13/21; 5/11/21; 6/8/21. Data for July not provided by APD.	Review of MHRAC bylaws; MHRAC website updates; Responses to encampments; resource card distribution.
Training: 3/22/2021; 5/24/2021	CNT Training Collaboration and Coordination; CIU training; Updates to BSS Handbook; ACS implications for training; ECIT updates; Annual Report; LEAD program training. Development of new train-the-trainer course for HB 93; development of new course for telecommunicators; MCT updates – Fire and Rescue teams.

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 (current as of July 2021), agendas, and meeting minutes (which include attendee names and affiliations) for monthly meetings that occurred during this reporting period. Members of the

monitoring team attended all MHRAC meetings during this reporting period, which took place online via Zoom.

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. In addition, we reviewed MHRAC monthly meeting agendas and minutes, and MHRAC subcommittee meeting minutes, various email communications, and memos. Members of the monitoring team also attended all MHRAC meetings via Zoom during this reporting period.

Results

The MHRAC continued to guide the City and APD regarding developing and expanding the number of CIT-certified responders and response strategies for interacting effectively with homeless individuals and people with mental illness. In particular, during this reporting period, members of the MHRAC continued to discuss the impacts of COVID-19 on people experiencing homelessness, identifying available resources for those individuals. For example, during this reporting period the MHRAC training subcommittee discussed the new Fire Mobile Crisis Team,¹¹² which has been in development with collaboration from the APD. This new response strategy pairs a

¹¹² See “Introduction of the new Fire Mobile Crisis Team,” (April 2021), Bernalillo County Fire Rescue, accessible at <https://www.youtube.com/watch?v=mMyYrWUfqWo>

clinician with an emergency medical technician to respond to some low risk county calls for service; the program is a collaboration among several City and County entities, including APD.

However, the MHRAC struggled to clarify its role with the City in the development of a new homeless shelter and planning processes for a new Albuquerque Community Safety Department throughout this monitoring period. While thoughtful and anchored in principles of collaboration and problem-solving, the conversations around these issues were, at times, confusing. Please see Paragraph 111 above for the monitoring team's additional observations.

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 all of MHRAC's reports, recommendations, communications, and processes during the reporting period, as well as a key APD memo, 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 October 16, 2017). The MOU is in effect until September 30, 2099, according to City Legal.

The monitoring team has tracked the discussions about information sharing between the City/APD and the Bernalillo County Criminal Justice Coordinating Council's Diversion and Re-entry Subcommittee. Those conversations lagged during this reporting period, and an MOU has not yet been signed. The monitoring team notes that it is important that this new level of coordination among City and County leaders gets back on track as soon as practicable. We will continue to observe the development of this partnership.

Results

A review of email communications indicates that the working relationships between UNM hospital staff and CIU staff seem to remain positive and productive. Emails indicate that information sharing occurs regularly, in accordance with the MOU. .

CIU officers also participated in an important meeting with Kaseman Hospital staff to clarify some existing issues, coming to a clear understanding and prompting APD to issue another memo for officers. An APD memo, issued June 2, 2021 and signed by Chief Medina, aims to clarify the “transfer of custody” for people who will be undergoing psychiatric evaluations under NM statute 43-1-10 and provides clear guidelines for officers regarding transfer between APD and the receiving hospital. The memo outlines three conditions: (1) the removal of any officer restraints such as handcuffs, if needed; (2) completion of a written intake report, if applicable; and (3) verbal report explaining the need of the evaluation from the officer to the facility.

We note that APD’s existing mental health training courses continue to contain content regarding the MOU between APD and the University of New Mexico. We note that as Albuquerque’s new Department of Community Safety (ACS) continues to take shape, the monitoring team will determine whether and how that necessitates changes to the MOU(s) or protocols concerning sharing information collaboratively across stakeholders.

In our last two reports, we noted various issues regarding the interactions between APD offices and employees at local hospitals. An APD memo, issued July 16 2021 and signed by the chief, addresses the transportation of people experiencing a behavioral health crisis. This memo allows for the transportation to a mental health facility via ambulance, giving responding officers an option for transportation other than their APD squad cars. This option is an important one, as some people may be more willing to voluntarily comply with transport in an ambulance and feel that it is less intimidating. This new option may also alleviate the wait time issues APD officers had been concerned about. The monitoring team looks forward to assessing how this new protocol is working for officers in the field during the next reporting period.

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

Recommendation for Paragraph 114:

4.7.101a: Complete proposed protocols as soon as practicable and share draft versions with the monitoring team for comment.

4.7.101b: Monitor in-field results of finalized protocols and adjust as needed based on in-field activities.

4.7.102 Assessing Compliance with Paragraph 115

Paragraph 115 stipulates:

“Within nine months of the Operational Date, 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 assessments in the form of PowerPoint slides and updated training curricula. We also reviewed MHRAC and subcommittee meeting agendas and minutes.

Results

APD continues to work to produce meaningful analyses of the data elements specified in paragraphs 129 and 137, to think analytically about what those data reveal about operational decisions (i.e., deployment, staffing, etc.), and to gather input from MHRAC. APD presented these data to the MHRAC during the meeting on July 20, 2021. See Paragraphs 129 and 137 for additional details about data collection and analysis.

APD continues to provide all behavioral health training curricula (including updates and changes) to the MHRAC for review. The feedback processes between the MHRAC and APD have been improving, particularly since the introduction of the MHRAC feedback map. The map assists in the flow of communication and timing of information, feedback, and reviews. For example, during this reporting period, the MHRAC training subcommittee reviewed two courses in development: an updated HB93 train-the-trainer course and an updated crisis intervention for telecommunicators' course.

Further, the MHRAC continues to identify mental health resources within the Albuquerque community and network with colleagues to build more relationships that may be useful to APD, CIU, MCT, and COAST as resources.

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. This review included memos, emails, and MHRAC meeting and subcommittee meeting minutes.

Results

The MHRAC continued its work to enhance coordination of services for chronically homeless individuals and individuals experiencing mental health crises, which continues to be challenging during the COVID-19 Pandemic. 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 resource cards were updated at the end of the IMR-13 reporting period to reflect changes to resources due to the COVID-19 Pandemic. The most recent version is dated January 22, 2021, which is the version that City personnel distributed throughout this reporting period.

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 and tangible results in systems improvement recommendations, such as the City’s new transport order (see paragraph 114 for additional details). Further, during this reporting period, and because of the ease of accessibility of MHRAC meetings online via Zoom, many more community members have continued to attend 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 the previous reporting period, and it is available on the City’s website. The report consists of a letter from the MHRAC Co-

Chairs, the Information Sharing and Resource Subcommittee's annual report, and the Training Subcommittee's annual report. Overall, the reports summarize the MHRAC's activities for 2020, including policy reviews and training curricula recommendations. The report also notes topic areas under discussion during 2020, including Certificates for Evaluation, interactions with local hospitals, the LEAD program, local mental health resources, the future of APD's COAST, the development of the City's ACS, and the impact of COVID-19 on people experiencing homelessness. MHRAC has become a vital resource for APD. We look forward to the MHRAC's next annual report during the IMR-15 reporting period.

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. The 40-hour CIT course was delivered to Academy cadets during February 1-5, 2021.

APD continues to provide the 40-hour basic CIT training to all field officers, delivering the course during February 22-26, 2021, and April 26-30, 2021. The April class included participants from neighboring law enforcement agencies, which sometimes leads to robust and thoughtful conversations about experiences within the region. Through a review of curricula, the monitoring team confirmed that the quality of 40-hour 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. During this reporting period, APD continued to utilize the services of actors to work through scenarios.

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 and crisis intervention. APD continues to provide acceptable 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 and by consulting with the community experts who comprise MHRAC.

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 telecommunicators and noted this training took place in February 2021. During this training, five APD telecommunicators participated, with all five completing the training.

Results

APD’s 20 hours of behavioral health training for telecommunicators includes all topics noted in paragraph 121 and includes role-play scenarios drawn from recent, actual 911 calls fielded by APD telecommunicator personnel. During this reporting period, the course was significantly updated with review and input from the MHRAC. The course is well designed, with clearly articulated learning objectives and materials to achieve those objectives. We also note that CIU regularly provided the Emergency Communications Center with updated lists of ECIT certified responders throughout this reporting period.

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.”

Results

Early in this reporting period, we reviewed and approved the updated curriculum for the 2021 maintenance of effort (MOE) 2-hour course, which appropriately addressed behavioral health, mental health, and crisis intervention for the 2021 MOE. The approved MOE course, however, was not delivered during this reporting period, so the APD did not achieve secondary compliance. In its status report, the City states that the MOE training will occur before the end of the 2021 calendar year.

Also, early in this reporting period (February 2021), telecommunicators were provided with a 2-hour refresher training course on mental health, entitled “Interactions with Persons with Mental Illness Refresher.”

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

Recommendation for Paragraph 122:

4.7.109a: Continue work on the department’s behavior health, mental health, and crisis intervention training, ensuring that the topics covered fit with the requirements of this paragraph and the feedback provided by the monitoring team. Ensure that officers who received training that was not appropriately designed, critiqued, and revised are retrained using the appropriate training processes.

4.7.109b: Ensure that all APD officers assigned to patrol duty, and all supervisors who supervise patrol operations, are given refresher training regarding crisis intervention policies and techniques.

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 crisis intervention certified responder officers and the CIU for the reporting period. With very few exceptions, APD officers who become ECIT trained maintain their certification status by enrolling in recertification courses at appropriate times. Moreover, to recruit and maintain additional ECIT officers to “expand the number of crisis intervention certified responders,” the APD approved “specialty pay” for ECIT officers, making that certification more attractive for officers. The chief signed the memo detailing specialty pay for ECIT on February 16, 2021.

APD maintains a Crisis Intervention Unit staffed with detectives. The number of detectives in the CIU is currently 12, 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 have advised APD that a six-year-old management study cannot possibly be considered up to date and that new data need to be generated and assessed to determine staffing needs of field-based personnel. The City has contracted for an updated and more focused staffing study. We look forward to examining the results once the study is completed.

During the last reporting period, APD continued its work toward compliance with the requirements of this paragraph regarding 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 the 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).

Beginning in March 2021 and in follow up to a request from the McClendon Amici, DOJ requested data that it never received because the City’s data architect was unavailable due to illness. DOJ therefore was unable to have its data consultant assess the data comprehensively to assist APD in determining whether 40% is sufficient. Given the current status of APD responses to individuals in crisis, we find this to be a critical and potentially deadly failure.

APD data indicated that, on average, ECIT trained officers respond to about 65% of calls for service involving behavioral health elements. The percentage of ECIT responses to these calls for service varied across shifts and area commands during this reporting period. The monitoring team does, however, have some concerns about the validity and reliability of the data used to calculate these percentages. We note that APD CIU personnel have diligently explored alternatives to the 40% required by Paragraph 124 and have searched for best practices, considering variables such as the proportion of the N.M. population with mental illness or substance use disorder; the classification of calls

for service as “behavioral health”; the proportion of CIT contact sheets submitted by field officers; and national CIT best practices. We look forward to learning more about APD’s evolution in thinking about their interpretation of what constitutes a “sufficient number.”

While the model is certainly a work in progress and will continue to be refined over time, the CIU revisits and recalculates it monthly. We are encouraged by this work. The CIU noted consistent improvement in response rates of ECIT officers responding to mental health-related calls for service, growing from 60% on average to 65%. 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. The CIU, however, has been communicating its analysis and findings regarding the percentage of officers ECIT trained with field Commanders monthly, which keeps these important issues top of mind for leadership.

However, we remain concerned that a failure to be attentive to actual staffing needs may attenuate CIU’s effectiveness in an area critical to the CASA. We repeat our recommendation from the last report period below. We are advised by APD that detailed staffing recommendations are a work in progress.

Results

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

Recommendation for Paragraph 123:

4.7.110a: APD should 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). APD’s records indicate that about 46 percent of Field Services officers are ECIT trained. Those officers responded to about 65 percent of calls for service that have a behavioral health component during this reporting period.

Results

The current staffing levels of crisis intervention “certified responders” consistently met the 40 percent goal during this reporting period, varying from 41 to 46 percent. However, the numbers were slightly lower than the last reporting period, IMR-13. Table 4.7.111 below notes the percentages by month. Please see the 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 percent requirement. The CIU held both Enhanced CIT courses (February 10, April 14, and May 26) and ECIT Refresher (June 30, July 28) courses during this reporting period.

We note that some of the *amici* contend that, based on current experience, the 40 percent goal is not sufficient to ensure that critical program goals are met. The monitor agrees and suggests that APD re-evaluate that goal, based on a review of the number and severity of negative outcomes per month of crisis intervention events handled by non-CIT trained officers. We continue to see fatal and non-fatal outcomes in cases that had a mental health component but were not handled by ECIT officers. As we noted above in paragraph 123, the CIU has begun to think through variables to help determine whether the 40% goal is the right one; we look forward to reviewing continued conversations among stakeholders on this topic in future reporting periods.

Table 4.7.111 Staffing Level of Enhanced CIT- Certified Responders

Percentage of APD Officers who are Enhanced CIT Certified Responders	
February 2021	45.9%
March 2021	40.8%
April 2021	41.6%
May 2021	46.6%
June 2021	48.5%
July 2021	45.9%

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

Monitor's Note

We continue to be concerned that the number of calls that fit the defined characteristics suitable for an ECIT response appear to be increasing. It appears from recent negative results of behavioral health incidents handled by non-ECIT trained officers would indicate a need to redefine what constitutes a reasonable number of ECIT officers. We note that nothing in the CASA prohibits APD from certifying more officers as ECIT trained than what is required by the CASA.

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 during this reporting period.

Results

The APD CIU instructors routinely identify and recommend field officers who are well suited for the Enhanced CIT (ECIT) course, encouraging them to sign up for the next ECIT course scheduled. Members of the CIU routinely 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, including certificates of completion, 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

As we note in paragraphs 123 and 124 above, during this reporting period, the APD CIU and other stakeholders continued to analyze data designed to determine whether the initial goal of 40 percent is “sufficient coverage” for Albuquerque. 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” has been well received by APD, but not entirely implemented in part due to the lack of qualified data analysts available to the CIU. We will continue to monitor APD’s progress on this paragraph during each monitor’s report.

Results

As noted above, APD’s CIU had previously determined that 40 percent is a proportion they are comfortable with when calculating 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 percent, and the proportion of ECIT certified officers responding to calls classified as “behavioral health” was consistently over 60%. Given the frequency of critical events, it is crucial, in the

monitor's opinion, that APD re-assess the percentage of ECIT officers available in each area command and on each shift to handle "persons in crisis" calls adequately.

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

Recommendation for Paragraph 127:

4.7.114a: APD should re-assess its 40 percent guideline for CIU-trained officers, in light of recent incidents involving individuals in mental health crises and determine if the 40 percent staffing level continues to meet community needs.

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 reviewed documentation of APD's reviews of field interactions between officers and people in crisis, which APD launched in response to our recommendations on this paragraph in IMR-12.¹¹³ To date, APD has addressed our recommendation concerning conducting a thorough review of the officer identified by the monitoring team during the last reporting period and has now undertaken conducting random sample reviews of crisis intervention responses throughout the Field Services Bureau. In all, 45 thorough reviews were conducted during this reporting period, with the reviewer drawing upon OBRD video, incident reports, and CIT reports. We also reviewed the proposal detailing a methodology for conducting the reviews and all processes used to identify relevant incidents.

¹¹³IMR-12, Recommendation 4.7.115a: Conduct a complete assessment of all CIT/CIU responses involving the officer identified in the events outlined above. IMR-12, Recommendation 4.7.115b: Conduct a random sample of all CIT/CIU responses to ensure that the issues identified above have not been replicated in other CIT/CIU responses by other officers. IMR-12, Recommendation 4.7.115c: Provide the monitor the results of the inquiry outlined above for inclusion in IMR-13.

Results

The monitoring team continues to have some substantial concerns regarding whether the requirements of this paragraph are routinely met in the field; based on several outcomes during calls for service over four consecutive reporting periods. We suggest that APD assess current protocols, supervision, and oversight process related to field responses to crisis and mental health-related calls for service, uses of force, and surreptitious, unreported uses of force during those calls.

The monitoring team appreciates this on-going review focused on a sampling of field services officers' interactions with people with mental illness and people in crisis. We look forward to APD's continued reviews as they address our Recommendation 4.7.115b from IMR-12, which calls for a review of randomly selected mental health-related calls for service city-wide. Furthermore, we encourage the City to consider (a) the sustainability of this review process (i.e., should it continue, its processes should be formally memorialized in an SOP) and (b) where this type of review process fits into the City's and the APD's existing oversight and accountability mechanisms.

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

Recommendation for Paragraph 128:

4.7.115b: Ensure the sustainability of the process of conducting a random sample of all CIT/CIU responses to ensure that the issues identified above have not been replicated in other CIT/CIU responses involving other officers and memorialize these processes in writing.

4.7.116 – 4.7.124 Assessing Compliance with Paragraphs 129-137

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

The data and processes we reviewed indicate that APD's outreach and support efforts to those in the communities served by CIT processes are effective and problem-oriented. Still, we reiterate that we will be carefully observing how the ACS plays into these efforts, including the changes to COAST staffing levels. Data collection and reporting processes and protocols have been updated with improved accuracy and reliability, and training remains a strong point of this effort. APD's capacity to conduct meaningful analysis of the data they collect, however, remains in question.

As we indicate in Paragraph 128, there are some substantial issues with some of APD field Services Bureau's crisis response tactics. While these instances are relatively rare, they are concerning.

During this reporting period, we identified an officer whose response tactics with individuals in crisis were concerning (see APD case numbers [IMR-14-04] and [IMR-14-11]). Given our observations, we recommend APD conduct a thorough review of this officer's interactions with individuals in crisis to determine if an intervention is necessary.

4.7.116 Assessing Compliance with Paragraph 129

Paragraph 129 stipulates:

“APD shall collect data on the use of crisis intervention certified responders and CIU. This data will be collected for management purposes only and shall not include personal identifying information of subjects or complainants. APD shall collect the following data:

- a) date, shift, and area command of the incident;**
- b) subject's age, race/ethnicity, and gender;**
- c) whether the subject was armed and the type of weapon;**
- d) whether the subject claims to be a U.S. military veteran;**
- e) name and badge number of crisis intervention certified responder or CIU detective on the scene;**
- f) whether a supervisor responded to the scene;**
- g) techniques or equipment used;**
- h) any injuries to officers, subjects, or others;**
- i) disposition of the encounter (e.g., arrest, citation, referral); and**
- j) a brief narrative of the event (if not included in any other document).”**

Results

During the last reporting period, UNM's Institute for Social Research produced an updated data book per their agreement with the APD to analyze the data required by this paragraph; the updated data book included only data from 2020. No data book including 2021 data has yet been produced.

APD's partnership with UNM's Institute for Social Research was designed to advance its data analysis efforts, but that has not materialized. During this reporting period, the APD ended its partnership with the UNM Institute for Social Research and will bring the analysis of these data back in-house. The monitoring team is concerned about the collection, management, and analyses of these data in order to use them for “management purposes” as this paragraph requires. We understand that analyzing data is a complex task for any police department but especially difficult for APD, given its struggle with this paragraph in recent years, including UNM's incomplete analysis of the required data during the last reporting period. We also note that CIU has repeatedly

requested a data analyst position, and one has not yet been assigned. If the APD/CIU cannot develop robust data analysis capacity, an external agent may be necessary to facilitate the needed data analysis processes.

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

Recommendations for Paragraph 129:

4.7.116a: Staff and properly supervise appropriately trained personnel to provide accurate and complete data to meet the requirements of this paragraph.

4.7.117 Assessing Compliance with Paragraph 130

Paragraph 130 stipulates:

“APD will utilize incident information from actual encounters to develop case studies and teaching scenarios for roll-call, behavioral health, and crisis intervention training; to recognize and highlight successful individual officer performance; to develop new response strategies for repeat calls for service; to identify training needs for in-service behavioral health or crisis intervention training; to make behavioral health or crisis intervention training curriculum changes; and to identify systemic issues that impede APD’s ability to provide an appropriate response to an incident involving an individual experiencing a mental health crisis.”

Results

APD’s behavioral health units continue to innovate and address the requirements of this paragraph, including utilizing actual, recent 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

As it was in the prior reporting period, this policy is currently overdue for review, update, publication, and training. During this reporting period, SOP 2-20 Hostage Situations, Barricaded Individuals, and Tactical Threat Assessments was revised. It is currently in the APD’s internal review process and was made available for officer comments at the end of this reporting period, on July 29, 2021, for a 15-day comment period. As we stated in our last two reports, APD’s efforts to identify and implement a collaborative approach to policy, training, and implementation around this important issue continues to evolve. We encourage APD command staff and leadership to focus on these issues during the next reporting period. (We look forward to reviewing both the policy revisions and the APD’s collaborative work with the MHRAC to review best practices (see IMR-12 recommendations 4.7.118a-c, which we reiterate here) in the near future).

As in the last reporting period, the monitoring team saw some positive signs of increased collaboration across the department, especially between CNT and CIU, including discussions of memorializing their informal collaborative efforts in various handbooks. Since the policy revision was not finalized in this reporting period, no training regarding an updated policy occurred. We note that APD still struggles to update policies regularly, which means APD loses the ability to “learn” from others in the field, to adapt to and adopt new “best practices,” and to peer-test current APD response modalities.

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

Recommendations 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 staff should require 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 the 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, emails, and memos that APD’s COAST and CIU routinely follow up with members of the community who would benefit from connections with mental health service providers. During this reporting period, COAST members continued to use creativity and solid problem-solving approaches to address persistent issues. Due to retirements and resignations, there are currently only two COAST members who cover the six area commands, down from five a few reporting periods ago and three in the last reporting period. We understand that the newly formed Albuquerque ACS department has been tasked with providing services formerly addressed by COAST.

During this reporting period, CIU and COAST conducted numerous home visits, contacted people via email and phone, and spent many hours at community meetings to effectively connect people with a wide variety of services. Beyond that, COAST and CIU continue to function as a referral and assistance mechanism for those in the community confronted by persistent mental health issues. APD must be attentive to staffing in these critical areas. Staffing has decreased another 33% since our last monitor’s report. It is incumbent on the City to develop a services matrix that ensures adequate services to the chronically homeless.

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

The work done this reporting period by COAST and the CIU was compassionate and productive, as always. We also note that CIU explored community options to increase funding for COAST to enable team members to continue to provide food, clothing, emergency hotel rooms, and travel funds for people in crisis or facing eviction or other events that may precipitate a crisis. However, we caution APD to be cognizant of issues with staffing, as even the best of systems will eventually fail in the face of continual under-staffing. Since COAST is now a team of two members, we are concerned about the ability of this vital function to serve all six area commands. We reiterate our position in paragraph 132: It is incumbent on APD and the City to demonstrate that the new ACS Department is a mechanism that can deliver needed services to Albuquerque’s chronically homeless and individuals experiencing mental health crises.

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

During this reporting period, CIU continued to reinforce to officers in the Field Services Bureau the importance of completing the required CIT worksheets to make referrals to the CIU and COAST for follow up. To that end, CIU command staff began visiting all watches in each of the six area commands to provide updates about CIU in general – the availability of upcoming training, for example – but also to stress the importance of referral protocols and the work of the CIU detectives and COAST. As of the end of the reporting period, the CIU command staff had completed three of the area commands and plan to complete the remaining three in the next reporting period.

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

As we note above in paragraphs 132 and 133, the number of COAST specialists declined again in this reporting period, leaving only two COAST specialists to serve the City. The Crisis Intervention Section hopes to replace one of the COAST members who have recently left, in part due to the new and evolving Albuquerque Department of Community Safety (ACS). The monitoring team questions whether two COAST members constitutes “a sufficient number,” as this paragraph requires.

The City envisions that ACS will become the agency responsible for non-sworn responses to community members in crisis or living with mental illness. We remind the City that transference issues in such complicated processes require a great deal of forethought and planning to ensure that programs are discontinued in the former “parent agencies” are picked up without a significant dilution of service levels.

As of July 31, 2021, the number of CIU detectives was 12 (not including two sergeants and two lieutenants).

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 and update regularly.

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

Recommendation for Paragraph 135:

4.7.122a: Ensure that COAST and the MCTs are adequately staffed to handle the needs of the APD and the Albuquerque community.

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 and continue to develop robust relationships with a wide variety of service providers, including local hospitals, 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 as exercises in problem-solving, brainstorming, and coordinating local services. COAST and CIU members continued to engage in creative problem solving during this reporting period, especially regarding the ongoing COVID-19 pandemic. As we mentioned in paragraph 116, the City’s resource cards were updated recently, and CIU and COAST members continue to distribute them regularly.

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

The monitoring team remains concerned about the collection, management, and analyses of these data, and APD's ability to use them for "management purposes" to "demonstrate the impact of and inform modifications to crisis prevention services," as this paragraph requires. We understand that analyzing data well is a complex task for any police department but especially difficult for APD, given its struggle with this paragraph in recent years, including UNM's incomplete analysis of the required data during the last reporting period. We also note that CIU has requested a data analyst position repeatedly and one has not yet been assigned. If the APD/CIU cannot develop robust data analysis capacity, an external agent may be necessary to facilitate the needed data analysis processes.

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

Recommendations for Paragraph 137:

4.7.124a: Identify data necessary to fulfill requirements of Paragraph 137.

4.7.124b: Write specifications for selecting an outside contractor or internal employee to identify knowledge, skills and abilities required to analyze the requirements of Paragraph 137.

4.7.124c: Hire and staff personnel necessary to oversee the development of information stipulated in Paragraph 137.

4.7.125 Assessing Compliance with Paragraph 139¹¹⁴

Paragraph 139 stipulates that:

"APD shall review, develop, and implement policies and procedures that fully implement the terms of this Agreement, comply with applicable law, and comport with best practices. APD policies and procedures shall use terms that are defined clearly, shall be written plainly, and shall be organized logically."

Results

¹¹⁴ Paragraph 138 is judged to be prefatory to the following section on training, and as such established goals, but not quantifiable objectives. These are dealt with in paragraphs 139-148.

The APD and City routinely submit new policies and suggested revisions to existing policies to the monitoring team (and DOJ) for review and comment. We continue to find APD's responses to concerns voiced during these policy reviews to be meaningful and effective.

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."

Results

The APD continues to conform to accepted practice agreed to by the Parties and the monitor relating to policy development, archiving, and oversight.

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."

Results

The APD continues to conform to accepted practice agreed to by the Parties and the monitor relating to policy development, review by officers, and training.

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).”

Results

The APD continues to conform to accepted practice agreed to by the Parties and the monitor relating to the Policy Review Board.

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.”

Results

The APD continues to conform to accepted practice agreed to by the Parties and the monitor relating to the Policy Review Board.

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.”

Results

The APD continues to conform to accepted practice agreed to by the Parties and the monitor relating to the policy documentation and access procedures.

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.”

Results

Policies are routinely reviewed and updated as a normal course of business at APD.

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.”

Results

The monitor has conducted a reasonably detailed review of APD's disciplinary processes (see Paragraphs 201 and 202, below). The results of that review indicate that only 58 percent of the completed cases reviewed comply with the tenets of progressive discipline, as outlined in APD policy.

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

Recommendation for Paragraph 146:

4.7.132a: Ensure, via training, inter-office memoranda, or other methods, that all command-level personnel involved in assessing disciplinary outcomes are trained in monitor-approved (revised) policies regarding the use of the disciplinary matrix.

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 continue to routinely review 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

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 and the APOA have tended to be mutually supportive in getting policies moved through the approval process.

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 relating to their compliance methodology.

The monitoring team reviewed records from the department's PowerDMS system to ensure all personnel signed off and acknowledged that the material was reviewed and received. The class schedule and roster were reviewed by the monitoring team to ensure the dates of delivery of the material and attendance by the members. During this reporting period, only a lateral class graduated. Records reviewed by the monitoring team show that the lateral class was briefed and presented the terms of the Agreement, and all members of the class completed the review/signature for this reporting period. The City remains in compliance with this paragraph based on earlier performance.

Results

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

4.7.136 Assessing Compliance with Paragraph 150

Paragraph 150 stipulates:

“Within three months of issuing a policy or procedure pursuant to this Agreement, APD agrees to ensure that all relevant APD personnel have received and read their responsibilities pursuant to the policy or procedure, including the requirement that each officer or employee report violations of policy; that supervisors of all ranks shall be held accountable for identifying and responding to policy or procedure violations by personnel under their command; and that personnel will be held accountable for policy and procedure violations. APD agrees to document that each relevant APD officer or other employee has received and read the policy. Training beyond roll-call or similar training will be necessary for many new policies to ensure officers understand and can perform their duties pursuant to the policy.”

Results

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

Recommendations for Paragraph 150:

4.7.136a: Hold individuals of all ranks accountable for policy and procedure violations and ensure adequate discipline when necessary.

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 training function at APD suffered a major failure during the IMR-13 reporting period. During this reporting period (February 1 thru July 1, 2021), APD has refocused its training efforts, and made numerous changes to the training schedule. We anticipate these changes will continue to occur in the next reporting period. The monitoring team will continue to monitor new policies and changes to the policy that are pending approval, to ensure that the requirements of this paragraph are maintained, and that all training required by this agreement is delivered and followed. The Academy supplied the monitoring team with documentation of the training conducted during this reporting period and training scheduled to continue into the next reporting period. Compliance for the training processes will be reassessed once all members have attended courses scheduled for the next reporting period.

Results

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

Recommendations for Paragraph 151:

4.7.137a: Implement, in a timely manner, training responsive to the requirements of this paragraph.

4.7.138 Assessing Compliance with Paragraph 152

Paragraph 152 stipulates:

“APD shall ensure that all new lateral hires are certified law enforcement officers and that they receive all training required by this Agreement prior to entry onto duty.”

Methodology

The monitoring team requested from APD copies of COB documentation related to this paragraph. The monitoring team reviewed the Training History Reports for all the lateral hires for the 26th Lateral Class to ensure they are certified law enforcement officers. The APD Academy produced the class schedule for the lateral class, which was reviewed by the monitoring team to ensure all training required by the CASA was received before entry to duty. As documented by APD training records, all members of the 26th Lateral Class were briefed and presented the terms of the CASA Agreement. All members of the class completed the review/signature for this reporting period. The monitoring team will continue to monitor the lateral hire program in future site visits.

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 Academy supplied the monitoring team with documentation of the training conducted during this reporting period and training scheduled to continue into the next reporting period. Compliance for the training processes will be reassessed once all members have attended courses scheduled for the next reporting period.

Results

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

4.7.140 Assessing Compliance with Paragraph 154

Paragraph 154 stipulates:

“APD shall ensure that changes in relevant case law and statutes are disseminated to APD personnel in a timely manner and incorporated, as appropriate, into annual and pre- service training.”

Methodology

The monitor is routinely provided copies of APD’s “legal updates,” responsive to paragraph 154. These updates continue to be processed by APD on a routine basis, and are clear, understandable, and well crafted. APD continues in operational compliance for Paragraph 154.

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 requested, received, and reviewed data required for APD to maintain compliance with paragraphs 155 through 161 for this reporting period (February 1, 2021, thru July 31, 2021) in the forms of policy, programs, and results. Based on this visit and review, APD remains in Operational Compliance with the paragraphs in the CASA that relate to the Field Training and Evaluation Program.

The monitoring team met with the APD Academy personnel responsible for maintaining the program development and implementation as per SOP 6-1 “Training Division.” As in the previous reporting period, no known applicable changes to case law, core principles, or values occurred. As in the previous reporting period, revisions to SOP 1-46 Field Training and Evaluation Program (FTEP) had been submitted and remain in the chain of command and on hold until the FTEP Operational Manual updates are approved. 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. APD continues to meet the requirements of the CASA related to Paragraphs 155-161.

In assessing the requirements for this paragraph, the monitoring team reviewed Special Orders for the FTO Classes to ensure compliance for this reporting period. One member from the 121st Cadet class completed all phases of the program during this reporting period due to an extended approved absence. This action was captured on Field Services Bureau Special Order FSB SO 21-46.

Field Service Bureau Special Orders

- 24th Lateral Class SO 21-07, 21-09, 21-10, 21-11, 21-12 Phase II;
- 24th Lateral Class SO 21-13, 21-13, 21-17, 21-22 Final Phase;
- 122nd Cadet Class SO 21-08 Phase III;
- 122nd Cadet Class SO 21-18 Extension Phase;
- 122nd Cadet Class SO 21-25 Final Phase;
- 123nd Cadet Class SO 21-30, 31Phase II;
- 123nd Cadet Class SO 21-41 Phase III;
- 123nd Cadet Class SO 21-42 Phase III;
- 123nd Cadet Class SO 21-47 Final Phase;
- 123nd Cadet Class SO 21-53 Final Phase;
- 123nd Cadet Class SO 21-54 Final Phase;
- 123nd Cadet Class SO 21-55 Final Phase.

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 monitoring team reviewed the vetting process for the applications and backgrounds of the four new Field Training Officers, including the FTO applications, written tests, basic final tests, EWP's, oral board notes and results, board recordings, and certificates). Three candidates were successful in the process and were placed in an active status in the program. The monitoring team review of the documentation indicated that all requirements of the CASA were met. APD submits background checks and applications (on an ongoing basis) to the monitoring team for review to ensure compliance.

The supervisor and the FTEP continue to maintain a close relationship with recent graduates from the program and conduct Area Command visitations to present the program. They have seen a high level of interest in these members becoming FTO's.

The FTEP conducted one FTO Basic Course during this reporting period and supplied the monitoring team with the requisite documentation for the attendees;

- Class roster;
- Participant's folder (pre-test, final test, practical DOR, and certificate);
- Critiques;
- Schedule.

The FTEP continued to maintain compliance in the following areas for this reporting period:

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

The Special Orders listed above indicate that APD maintains compliance with these

requirements.

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

- A mechanism for confidential feedback regarding the 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 a given recruit.

The FTEP did not complete any of the critiques review and recommendations during this reporting period because the class finishes its required training during the next reporting cycle. The monitoring team will review these records during the next reporting period.

Current FTEP staffing levels are as follows:

- One Lieutenant;
- Fourteen (14) Field Training Staff Supervisors;
- Four (4) additional police officers and one civilian administrative staff;
- Sixty-five (65) Active FTO's; and
- Twelve (12) inactive FTOs (Administrative Leave);

The program saw a minor reduction in staffing during this reporting period, but efforts to continue growing the program have not wavered.

The monitoring team will follow up in future site visits on the program's progress.

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 (3) 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

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 forty (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: **In Compliance**

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 (formerly 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 and the duty of supervisors to

document information regarding the misconduct of subordinates and to report same to IAPS. It also requires failure to comply to be grounds for discipline.

During the reporting period and the 14th physical site visit, members of the monitoring team reviewed seventeen investigations for which IAPS was responsible – six completed by IAPS [IMR-14-19], [IMR-14-20], [IMR-14-21], [IMR-14-22], [IMR-14-23] and [IMR-14-24], two completed by an outside investigator [IMR-14-25] and [IMR-14-26], and nine referred to and completed by the Area Commands [IMR-14-27], [IMR-14-28], [IMR-14-29], [IMR-14-30], [IMR-14-31], [IMR-14-32], [IMR-14-33], [IMR-14-34], and [IMR-14-35]. The monitoring team also reviewed APD regulations and met with the IAPS Commander and staff.

Results

SOP 3-41-4 incorporates and mandates the reporting requirements of paragraph 163. Special Order (SO) 21-15, Internal Affairs Request Through BlueTeam, rescinded a similar SO 19-25 Second Amendment. SOP 3-41-4 specifies that reporting of misconduct by an APD member must take place within 24 hours of when the member has the knowledge of or reasonably should have had knowledge of the misconduct. This notice must be completed by an Internal Affairs Request within the IA database web application. This process is designed to bring uniformity to the time period in which reporting must take place and the method of reporting.

During this reporting period, we found that all 15¹¹⁵ of the IAPS Misconduct cases handled by APD implicated the tasks of paragraph 163. Using 24 hours as a guideline, the monitoring team continues to interpret the term “immediately document and report” in the context of the factual scenario of each case. In the six cases investigated by IAPS noted above, we found the referral time to IAPS to be satisfactory in three cases and not satisfactory in the other three cases. In the nine matters referred to area command for investigations, the monitoring team determined that four cases had satisfactory referral times. Of the remaining five, the investigative files of four cases contained insufficient information to determine whether the referral to IAPS was timely, [IMR-14-27], [IMR-14-28], [IMR-14-30], and [IMR-14-32]. One matter, [IMR-14-34] involved an untimely referral. That case involved an allegation of the failure of a supervisor to complete monthly inspections for the squad they supervised after being advised to do so. The supervisor who discovered that their orders were not complied with did not report the violation to IAPS for seven calendar days.

Therefore, we find definitive proof of timely referrals in only 47 percent of the 15 cases implicating this paragraph. This falls well short of the 95 percent required for a finding of compliance.

Results

Primary: **In Compliance**

¹¹⁵ Does not include the two investigations referred to outside agencies.

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

Recommendations for Paragraph 163:

Recommendation 4.7.149a: IAPS should build into the IAR template the requirement to document how and when the referring supervisor became aware of the alleged misconduct to determine whether documentation and referral of the alleged misconduct are made in accordance with paragraph 163.

Recommendation 4.7.149b: Require documentation in Blue Team to indicate the date when the reporting member learned of the allegation to better assist IAPS in identifying the lack of timely notifications.

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 information in Spanish and English and in different informational forums that increase the public's accessibility to complaint forms and facilitate misconduct reporting. These paragraphs also require the acceptance of civilian complaints and require that officers identify themselves upon request. APD and CPOA have had longstanding compliance with this section of the CASA.

In addition to meetings with IAPS and CPOA during the 14th site visit, members of the monitoring team continued to review the APD and CPOA websites for information regarding procedures to make civilian complaints. During this site visit, the monitoring team resumed its unscheduled visits, on a limited basis, to APD substations and City public properties to determine whether informational brochures and Complaint and Commendation forms were available. In addition to APD and CPOA properties, at the three City libraries that were visited, the monitoring team consistently found the informational brochures and Civilian Complaint and Commendation forms available 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 informational materials, brochures, and posters are displayed throughout the city. This information and the actual complaint forms were available online (in English and Spanish) on 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 readily accessible in hard copy at APD, CPOA, City buildings, as well as 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 IAPS and CPOA investigations, we found no instances of allegations of refusal to provide name and badge numbers when requested.

In light of this review period's observations of the public information requirements regarding complaints and complaint process and past APD and CPOA performance, operational compliance with Paragraphs 164 through 168 of the CASA has been maintained.

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."

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 steps necessary to receive, accept, and process 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. These paragraphs require an effective and uniform system that is allegation-based for classifying complaints, internal referrals, and appropriate assignment of complaints for investigation.

During the reporting period and the physical site visit, members of the monitoring team utilized the same methodology as prior periods, meeting with the IAPS Commander and members of his staff, and the CPOA Executive Director and members of his staff. We reviewed complaint log-in and classification records, selected (through a stratified random sample) and reviewed six IAPS, nine Area Command, two external, and 16 CPOA investigations completed during the reporting period. The monitoring team also reviewed the APD and CPOA websites and CPOA Board minutes relative to approval of investigations.

Except for paragraphs 178 and 181, the monitoring team finds full compliance regarding paragraphs 169 through 182. The findings related to Paragraphs 169 through 182 indicate the following outcomes related to the requirements of the CASA.

In previous monitor's reviews, APD was in operational compliance with the requirements of paragraph 178. In this monitoring period, through the review of the stratified random

sampling of 15¹¹⁶ IAPS cases we found the following results. Five cases were found to have been reported outside of the required time period by supervisors. Three cases completed by the area commands lacked any documentation regarding which documents and evidence were forwarded to IAPS [IMR-14-30], [IMR-14-32], [IMR-14-33]. The cases that were found to be non-compliant were [IMR-14-20, IMR-14-22, IMR-14-23, IMR-14-31, IMR-14-34]. The results are that eight of 15¹¹⁷ cases did not comply with the requirements of paragraph 178, which is a 53% compliance rate, far below the required 95% for operational compliance.

In prior reporting periods, numerous cases were improperly classified for assignment based upon the level of sanctions. Based on our present review, out of 31¹¹⁸ total investigations in our stratified random sampling, we found two instances in which the requirements of a proper classification protocol for assigning an investigation were not complied with [IMR-14-50], and [IMR-14-45]. This constitutes an error rate of 6.5 percent, higher than the allowable five percent error rate.

In prior findings, the monitoring team consistently found that internal and civilian (external) complaints were accepted, reviewed, 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 and IAPS and CPOA processes, we found no instances of a refusal or even a hesitation by APD or CPOA to accept a citizen's complaint. Further, we are not aware of any information received 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 discouraging a complaint are grounds for discipline. Although timely complaints are encouraged, untimely all complaints are accepted, as well as anonymous and third-party complaints. The monitoring team has also seen annual written requests from APD to relevant judicial officials requesting that APD be made aware of all allegations of officer misconduct made by judicial officials.

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.

Based on our comparisons with "known data," the tracking system appears to be used correctly and maintains accurate data. APD's Blue Team management software enables the tracking of allegations of misconduct by the homeless or those who have a mental illness. Our reviews of the relevant logs and investigations continue to show that complaints referred to or directly made to APD and IAPS that are within the jurisdiction of the CPOA are referred to CPOA within three (3) business days.

¹¹⁶ The two cases sent to outside investigators were not used in this calculation.

¹¹⁷ The two cases sent to outside investigators were not used in this calculation.

¹¹⁸ The two IAPS cases referred to outside investigative agencies are not included in this calculation.

Regarding the requirements to accept anonymous and third-party complaints per paragraph 172, our review of the IAPS log of civilian complaints referred to CPOA shows that “anonymous complaints” are accepted by IAPS and forwarded to CPOA. Our random sample for IMR-14 contained one case [IMR-14-36] based on a third-party complaint. Based on these findings and past operational compliance, APD and CPOA continue to be in full compliance with paragraph 172.

Moreover, we continue to find no cases in which APD received a civilian complaint of misconduct and failed to inform supervisors in a timely manner or failed to timely refer a complaint to IAPS. Thus, we continue to find operational compliance with paragraph 173.

Our stratified random sample found no instances in which a supervisor investigated an incident in which the supervisor was involved as a participant or witness. Therefore, operational compliance by APD for paragraph 182 continues.

We note that during this reporting period, APD is in the process of revising SOP AO 3-41, Complaints Involving Department Policy or Personnel, which addresses the procedures for accepting, processing, and investigating allegations of employee misconduct. We also note that IAPS started, in the IMR-13 period, consultations with the monitoring team which resulted in extensive technical assistance in overhauling its complaint intake function. In June 2021, APD hired a dedicated Intake Manager who is responsible for the proper intake and classification of all incoming complaints received by IAPS. This move was made to rectify misclassifications of complaints and complaints with a discipline sanction level of 5 or above, assigned to area commands.

A properly revised AO 3-41 and an improved complaint intake function will facilitate compliance with this section of the CASA. In IMR-12, the monitoring team stated that it expected the revised AO 3-41 would be implemented no later than the expiration of the IMR-13 review period. A draft of AO 3-41 was disseminated to all concerned partner agencies for review and recommendations and was expected to be implemented by the end of this monitoring period. Unfortunately, although imminent, the policy was not implemented by the end of this period.

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:

“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: IAD 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: **Not in Compliance**

Recommendation for paragraph 178:

4.7.164a: IAPS should require supervisors to document in BlueTeam reporting module the date they learned of the alleged violation and explain any delay in reporting to IAPS.

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 IAD

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: IAD 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: **Not In Compliance**

Recommendation for Paragraph 181:

4.7.167a: Revise necessary policies related to IAD Classification Protocols and responsibility for discipline to prohibit “no action” disciplinary findings on policy violations sustained by IAPS.

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: **In Compliance**

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 thoroughness, timeliness, reliability of findings, and overall quality regarding the investigation of misconduct complaints. These paragraphs require that all relevant evidence be considered and that those investigations are fair, impartial, and reach reliable findings. They also require time limits for completion of investigations, designate permissible findings with the corresponding standard 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 14th reporting period, members of the monitoring team reviewed a stratified random sampling of 17 investigations for which IAPS was responsible (six completed by IAPS, and nine completed by the area commands), including two investigations completed by outside investigators. In addition, a stratified sampling of 16 investigations completed by CPOA was reviewed. The monitoring team also met with the Chief of Police and the City Attorney, the CPOA Executive Director, CPOA Legal Counsel, the IAPS Commander, attended virtual meetings with CPOA Board members, and reviewed CPOA Board meetings and agenda minutes, and findings on the CPOA website.

First, we take this opportunity to repeat and supplement what we pointed out in IMR-13 regarding IAPS processing procedures improvements. The commander of IAPS now requires supervisory reviews of investigations at 10, 20, and 40-day marks after assignment. Also, investigations must be complete within 70 days of assignment, and the commander must approve any extension. The commander must likewise approve requests for the Chief's approval for an extension of IAPS cases beyond 90 days. The commander also performs a weekly "timeline check" on every open IAPS investigation,

and investigations surpassing 60 days are automatically flagged for the commander's review. Approval of completed investigations is electronically signed by the commander, leaving no room for the challenge of when the investigation was completed. The timeline for reviewing a completed investigation by the chain of command through the Chief is also tracked.

Organizational changes have also been implemented that will improve the quality of investigations as well as timeliness. The initial crucial steps in the IA process – proper intake/preliminary assessment/assignment were also assessed. During the week of June 20, 2021, a Civilian Intake Manager was hired and began his duties to intake and classify all incoming complaints.¹¹⁹ This position has allowed the lieutenant to oversee area command investigations and the IAPS commander to focus on the quality and thoroughness of investigations. The Civilian Intake Manager now decides which allegations to forward to the area command for investigations and is available if called upon for guidance and quality control for those minor investigations assigned to the area commands. Once investigations are assigned to IAPS investigators, the quality of those investigations is the area of supervisory focus of a separate Investigations manager. As we pointed out in the discussion of paragraphs 169-182, the monitoring team continues to provide extensive technical assistance in upgrading the Complaint Intake function. There is also an improved communication process among the parties and monitoring team regarding intake and discipline, as discussed in this report's Discipline and Transparency section (paragraphs 201-202).

The findings related to Paragraphs 183 through 194 address the following requirements of the CASA.

A Mediation Protocol is in place through a Memorandum of Understanding between the City, APD, APOA, and CPOA. The mediation process is thoroughly discussed in the narrative section of Paragraphs 271-292.

APD personnel is required by policy and practice to cooperate with the internal affairs system. This cooperation is required by regulation and practice. In the past IMRs, we found instances in our random sample of investigations where a member of APD refused to cooperate with an investigation. In this period, no cases were discovered indicating any refusal to cooperate. Therefore, APD continues to demonstrate operational compliance with the task of requiring cooperation in internal affairs investigations.

Based on past reviews, we have found that non-use of force investigations conducted by IAPS, and investigations conducted by CPOA, generally have contained reliable findings. The monitoring team is now focused on the investigations of minor misconduct allegations conducted by the area commands and division commands. As more fully explained below in the Discipline and Transparency section (paragraphs 201 and 202) of this report, we note serious concerns about the quality of these investigations, the documentation of investigative steps, and the discipline imposed at the area command level. We continue to believe the lack of supervision and executive oversight for the area

¹¹⁹ This is the civilian equivalent of a deputy commander.

commanders regarding how to conduct an internal investigation and the principles of progressive discipline are largely responsible for this state of affairs. Effective training and supervision of established processes is the only road to reform, in the monitor's opinion. Despite our extensive technical assistance and coaching over the last several reporting periods, APD's internal efforts regarding discipline continue to thwart the CASA requirements for Paragraphs 183-194.

Again, this reporting period, our stratified random sample revealed investigations that we deem to be deficient. The deficiencies noted are based on the review of completed files of these cases, as provided by the APD. These are discussed below.

First, our review of the 17 cases that the area commands (nine cases), IAPS (six cases) and the two cases conducted by outside investigators was responsible for revealed no administratively closed cases. The IAPS Commander advised that he has discontinued administratively closed cases once an "I" number has been assigned. During this period, an area command recommended a case [IMR-14-29] be administratively closed, but the IAPS Commander made a finding of "Unfounded" to depict the proper adjudication of the allegation accurately. The review of the 16 cases that CPOA was responsible for revealed five cases that resulted in at least one administratively closed finding, and two were found to be improper [IMR-14-39, IMR-14-40]. These cases are discussed further in paragraphs 271-292 of this report.

Area Command and IAPS Case Reviews

[IMR-14-19] was an investigation by IAPS concerning an allegation that an officer used his authority to attempt to interfere in a Children, Youth and Family Department (CYFD) investigation and unprofessional conduct by an officer. It was alleged that an officer became involved in a custody matter involving a relative. The officer didn't agree with the CYFD investigative findings, so he used his position to access government databases to identify the case investigator. It was alleged that the officer appeared at the CYFD investigator's home outside the city in an APD polo shirt and berated their father about the custody case. The investigation was criminally investigated by the local police department and administratively by IAPS. The CYFD investigator was not at home when the person in the APD polo shirt was there and reportedly spoke to their father, who allegedly has medical issues that may prevent them from being a good witness. However, a formal attempt should have been made to interview the father, as he was a fact witness. It should have been documented if the father of the CYFD investigator attested that his medical condition prevented him from participating in an interview. Other attempts could/should have been made to identify the person who appeared at the CYFD investigator's home. The investigation does not clarify what, if anything, the local police investigation showed. There was no mention of any other potential evidence, i.e., surveillance video from private residences and/or nearby businesses, that could have been located. When interviewed, the officer denied appearing at the CYFD investigator's home. The officer admitted that he acted in an official capacity as an APD officer when his relative told him about the investigation findings. The officer admitted calling the CYFD office to express his displeasure with their investigation and expressed a desire to

file a complaint against the investigator. As per APD policy, Procedural Order 2-16-2(C)(6), the officer was required to compose a report but failed to do so.

The allegation that the officer looked up confidential information for personal use by accessing the CYFD database was confirmed by CYFD. However, the IAPS investigator did not examine all the information to which he had access. The CYFD investigator alleged that their father had a brain tumor that affected his memory and would have prevented him from identifying the person who appeared at their home. Still, the IAPS investigation did not address what information the officer accessed, specifically the CYFD investigator's name and address. It was alleged by the CYFD investigator that their father described the person who appeared at his home as a white male that was approximately 5'9" tall. The investigation does not address if that description matches the subject officer. This investigation was clearly inadequate for the allegations made.

[IMR-14-20] was an investigation by IAPS that was the result of a Force Review Board meeting involving a Use of Force investigation by APD. The FRB determined the Use of Force was outside of APD policy, but three of the five APD board members voted not to refer it to IAPS, as required by policy, General Order 1-1-4.B.6. The chairperson, who voted to make an IAPS referral, spoke with the other member who voted to make a referral and instructed that member to make the referral in opposition to the vote. As such, the IAPS investigation revealed that the three members who voted against making the referral all violated APD policy and were administratively charged. The IAPS investigation was extensive; however, it failed to address the fact that the chairperson and the reporting complainant were both members of the APD, therefore, subject to all relevant policies. The chairperson was present during the September 17, 2020 meeting, but did not report the allegations to IAPS until September 22nd. This was not addressed in the IAPS investigation. The chairperson, who was technically the complainant as he instructed the other consenting member to make the referral, was a fact witness but not interviewed. Later in the investigation, the chairperson, a fact witness, served as the hearing officer for the discipline appeal, which creates a strong appearance of impropriety.

The investigation revealed that all board members received a two-day training concerning issues with serving on the board. The investigation did not address the contents of that specific training, which could be pertinent. The investigation does not specifically include the policy that governs the Force Review Board. The allegation against the three subject officers of this investigation was sustained, and one officer admitted that he was aware that they were required to make an IAPS referral. We find that the result appears to be proper; however, the investigation clearly was inadequate to establish the proofs and failed to address the delay in reporting.

[IMR-14-26] was an investigation that a private investigator/law firm completed, involving a delayed report of an allegation against the former Chief of Police. The APD hired an outside agency/investigator to conduct the investigation into an allegation that the previous Chief of Police sent a text to a subordinate requesting a "back-dated" memo concerning the commanders who failed to comply with a specific program he attempted to implement. The subordinate did not compose the memo, but it was later discovered

that the subordinate failed to report the potential inappropriate text from the former chief. The private investigator provided a summary of their investigation. Still, according to the contents of the complete file on this case, the actual investigation and any evidence contained therein were not present. Only an executive summary of the investigation that spoke of formal interviews was included in the final report, but the actual report did not contain them. A copy of the complete investigation and all evidence obtained should have been maintained in the IAPS records.

[IMR-14-21] was an investigation by IAPS resulting from allegations made by a person arrested for theft, allegedly using information from the individual's employer's credit card. The card was used to make multiple personal purchases of over \$2,000. The arrestee alleged that her employer was an APD officer and used his position to intimidate, harass, and violate her constitutional rights. She alleged that several APD officers mistreated her by telling her she had to leave the residence, where she worked as a live-in nanny, in the middle of the night, in her nightclothes, and in violation of her civil rights. She also filed a civil suit, which was pending at the time of this review. The investigation showed that the officer took steps to separate himself from this incident so as not to appear to have any improper influence. The complainant was never interviewed, as she alleged to have used a false name, and her identity was not verified or known. The complainant alleged that the officer she worked for sexually assaulted her and sexually and physically abused his children. This case was properly bifurcated. IAPS addressed the alleged administrative violations, and the criminal allegations were assigned to the Sex Crimes Unit. The criminal investigator made several attempts to contact the complainant, with negative results, as it appears she used a false name, and her real identity is not known.

We find that the IAPS investigator should have made additional attempts to locate her. She was released on her own recognizance, and a family member was located. Physical attempts should have been made to contact her via her civil attorney and via her family. The IAPS investigation did not indicate that any attempts via DMV or other law enforcement databases were attempted. The investigation revealed that the involved member's residence had surveillance cameras, but no mention of attempting to obtain any video evidence was made. The IAPS investigation also completely ignored the allegations that several responding members of the APD mistreated the complainant, and therefore, should have been interviewed as subject officers. Those officers' OBRD recordings should have been obtained and reviewed. They could have clearly supported or disputed her claims. The criminal investigation report contains a time discrepancy that was never explained. One of the OBRD recordings allegedly checked by the criminal investigator was stamped as 23:00 hours on August 15, 2020, but the call for service, as per CAD, indicates they were not dispatched until 00:39 on August 16. The IAPS investigation indicated that a family member of the complainant claimed she has a mental illness and was diagnosed as bipolar. However, that information was never codified via a formal recording of that family member or through any other means. Due to all the facts known, it appears that none support the complainant's allegations. Therefore, it appears the proper conclusion was made of "Unfounded." However, we remain concerned about the accessible facts that were not verified or considered.

[IMR-14-27] was an investigation, at the area command level, that resulted from a command-level audit of OBRDs. While reviewing OBRDs, a lieutenant observed a female being arrested, described as yelling in pain while being handcuffed. A sergeant was on-scene and allegedly present, but that sergeant did not identify the incident as a level 1 use of force. Therefore, no use of force investigation was conducted, as per policy. This investigation was assigned to an area command for review, but no investigation was conducted or documented. The area command handled it as a fact-based violation and sustained the allegation against the sergeant without any documented investigative steps. While it is clear that a complaint of pain is defined as a Level 1 Use of Force by policy, an investigation would have examined what the sergeant observed or knew at the time. Interviews of the arresting officer or other fact witness officers may have uncovered additional information such as conversations concerning the matter with the sergeant, if anyone told the sergeant what occurred, if the sergeant was distracted or doing something that may have interfered with their perception, or any other specifics concerning the incident. Since this investigation did not address or include any information, including any review of the OBRDs in question, it is impossible to determine if the investigation results were objective and fair. It is clear, however, that the process of the investigation was flawed. Additionally, if the sergeant in question did know the arrestee was yelling in pain and did not know that this incident required a Level I Use of Force investigation, other issues would need to be addressed.

Unfortunately, since none of these issues were documented in any type of formal investigation, it must be assumed that those basic investigative steps did not occur. The supervisor who failed to identify the Level 1 Use of Force was an acting sergeant; therefore, the resulting discipline was a verbal reprimand. Another supervisor reviewed the SOP with them to ensure the acting sergeant was aware of the requirements in the future. The incident in this investigation is reported in Blue Team as having occurred on October 7, 2020 but was reported to IAPS via Blue Team on 1/7/21. There is no documented information within the reviewed case to indicate when the OBRD review was conducted or the date the violation was identified. The case file should have addressed and documented the three-month time period between the incident and the reported date, but that was not the case. Based on these findings, we determine this case to be deficient under Paragraph 184.

[IMR-14-28] was an investigation, at the area command level, that resulted from a command-level review of an OBRD. During the review, it was learned that an acting sergeant misclassified a Level 2 Use of Force as a Level 1 Use of Force incident. The OBRD depicts an arrested subject who complained of pain during handcuffing and was transported to the hospital for medical treatment. The resulting injury clearly requires the incident to be investigated as a Level 2 Use of Force, which it was not at the time. Once the mistake was identified, it was properly referred to the IAFD for investigation. This incident occurred on November 15, 2020 but was not reported to IAPS until January 7, 2021. This investigation was assigned to an area command for resolution, but no formal investigation was conducted, nor was documentation provided of the outcome. Therefore, no information in the provided investigative case file addressed the particulars of the date the violation was discovered. The area command handled this as a fact-based violation and sustained the infraction. Since the acting sergeant was involved in

another case with a similar violation, and since the acting sergeant was a new supervisor, the discipline was merged with the previous case, and a verbal reprimand and SOP review was documented as the imposed discipline. It appears that the acting sergeant in both cases may not have clearly understood the requirements of classifying use of force incidents. Still, since no formal investigation or interviews were conducted, no specific information was provided to make an accurate assessment. Although it is clear that the acting sergeant misclassified the Use of Force, no information as to what the acting sergeant knew or was told is documented or included in the case file. There should have been a documented investigation into the allegations of this case.

[IMR-14-22] was an investigation initiated when a sergeant reported to an area commander that the acting lieutenant did not properly report a motor vehicle accident involving an APD prisoner transport van four months prior. The investigation revealed that the acting lieutenant initiated an internal investigation against the reporting sergeant a month prior to him making the allegation against that acting lieutenant. The investigation revealed that a recruit officer accidentally struck a pole at the Prisoner Transportation Center, which was reported up the supervisory chain to the lieutenant. The acting lieutenant and another sergeant physically inspected the van but did not readily identify any significant damage definitively attributed to the accident. Therefore, the sergeant had the incident reported on a Daily Observation Report for the new officer. The APD policy requires all agency-involved motor vehicle accidents to be reported on the New Mexico Uniform Crash Investigation Report, regardless of how minor. Since that was not done, the allegations against the acting lieutenant and the sergeant present were sustained. Allegations were noted against the reporting sergeant, alleging he knew about the accident but did not report the mishandling for several months, and only after the acting lieutenant initiated a separate investigation against him in another matter. An allegation of retaliation against the acting lieutenant by the reporting sergeant for initiating an internal investigation against him was sustained. The investigation of the acting lieutenant was completed by IAPS and was properly documented.

The shortcoming of this investigation was that it failed to address the fact that the commander failed to report the original allegation to IAPS for seven days after learning of it. Also, due to the discrepancies in the involved parties' statements about the actual damage to the van, it would have been appropriate to examine the reasonableness of classifying or not classifying the incident as a motor vehicle accident. There is no mention in the investigation of any attempts made by the IAPS investigator to view the damage on the van, check for any surveillance video from the Prisoner Transport Center, or to include any inspection sheets for that vehicle before and after the incident. It seems apparent that there was some damage, which even if minor, required the report on the mandated form.

[IMR-14-23] was an investigation resulting from a Dispatch Supervisor recognizing that a high priority call for service was pending for longer than permitted. The policy requires a Priority 2 incident, which includes domestic violence incidents, must be assigned within 3 minutes, or a certain procedure had to be taken by the dispatcher. In this case, the Dispatch Supervisor observed a DV Priority 2 incident unassigned after 8 minutes. The Dispatch Supervisor contacted the dispatcher via the data terminal system to inquire if

she complied with the mandated procedure, and the dispatcher replied that she did. However, the Dispatch Supervisor checked and learned that she did not comply with the mandated procedure and was untruthful when questioned about it. The investigation was conducted by IAPS, who found that the dispatcher did not adhere to the policy, was untruthful about notifying the patrol supervisor, and was, in fact, communicating negatively with another dispatcher about a co-worker. The incident, which occurred January 15, 2021, was identified that day by the Dispatch Supervisor, but was not reported to IAPS via Blue Team until January 24, 2021 (or January 25, 2021, according to the case file). The reporting policy mandates that any misconduct allegations must be reported by the end of the next shift. The investigation does not specifically address the reporting delay, which appears to be an uninvestigated misconduct violation by the Dispatch Supervisor or possibly someone else if they reported it to their supervisor. Without that issue being addressed and documented, it is unknown who is responsible for that violation. The investigation failed to interview all fact witnesses, as the patrol supervisor that the dispatcher claimed to have advised about the call was never interviewed. Other fact witnesses, i.e., the other dispatcher who was communicating with the subject dispatcher, the training coordinator, and the training officer, were not interviewed, even though the Dispatch Supervisor identified them all to the IAPS investigator. Training records to show that the subject dispatcher was trained on the procedure were not obtained, or at least not included in the investigation. In all investigations into misconduct, all fact witnesses, and documentation must be included to fully and fairly investigate and adjudicate the misconduct.

[IMR-14-29] was an investigation, at the area command level, that resulted from an OBRD audit, in which an acting lieutenant observed a seven-day gap in the records of when a recording was uploaded from an OBRD. The policy requires all OBRDs to be docked and any recordings uploaded at the end of the assigned officer's shift. A check of the Evidence Unit showed an electronic recordation of the OBRD being docked, but a malfunction occurred and failed to upload the recording. Since a technical error occurred with the electronic equipment, which was recorded automatically within the system, it was clearly not a violation by the subject officer. This incident was assigned to an area command for investigation, which revealed the above information. However, no formal documentation was completed of the specific steps including, who was spoken to, nor any formal statement by the subject officer. The case file contained sufficient documentation and information to conclude that no violation by the member occurred, and the IAPS commander appropriately made the recommended conclusion that the allegation be classified as "Unfounded." A formal investigation to document formal protocols should have been conducted to properly document and support the findings. Given the fact situation, and the lack of documentation of the "no violation" finding, the investigation was deficient under the requirements of Paragraph 184.

[IMR-14-24] was an investigation that resulted from an arrest of a female subject, who reported that the arresting officers raped her. The investigation was immediately reported and bifurcated. The Sex Crimes Unit was notified to investigate the alleged sexual assault. IAPS was assigned to investigate the alleged administrative violations. The IAPS investigation indicated that every minute of the incident was captured either on the subject officer's OBRD or OBRDs from other officers at the scene. Our review of the

six OBRD recordings indicated a 29-minute gap of time where no video recordings captured anything. The investigation conducted was fair and covered many of the facts. However, it indicated a telephonic interview of the complainant from jail. It is unknown why an in-person interview was not conducted, possibly due to COVID-19, but conducting personal interviews, especially of the complainant, is always better, as it removes the argument that it was not them. In this case, the IAPS report does not indicate that the complainant was identified via fingerprints, as she was trying to use a relative's identity. The investigation also addressed an allegation that an acting sergeant failed to classify a Level 1 Use of Force as one of the officers involved in the original call for service brandished his ECW. The investigation failed to sustain the allegation against the acting sergeant. The officer who exhibited his ECW stated that he kept it pointed at his chest the entire time and never pointed the complainant. A review of the OBRD shows that he made an effort to keep the taser pointed at himself. The technical report shows the taser was not activated, and the laser light was not activated. At one point, the officer stepped over the complainant's legs as she laid on the ground. The investigator examined if the taser could have pointed at her during that time. IAPS identified stepping over the complainant's legs as a poor tactic but did not make any training referrals, according to the documentation provided. The investigation should have been more detailed as to the above-listed issues. There appeared to have been poor supervisory review of the investigative process, as, once again, it was only the monitoring team who noticed issues with the investigation.

[IMR-14-30] was an investigation, at the area command level, that was the result of a reported Use of Force. The review of the OBRD by the area command lieutenant revealed that an officer did not activate his OBRD for several minutes after arriving and interacting with an arrestee. The investigation was referred to an area command for investigation. The area command investigation was extremely preemptory, as it did not contain numerous basic investigative steps. The outcome of the investigation appears to have been determined based upon the Use of Force Written Narrative for Involved and Witness Officers form, completed by the subject officer. In that form, the subject officer states that his OBRD was activated late due to the arresting officer's request for an expedited backup and the quickly evolving situation. No formal investigation was conducted (or at least none was documented). The officer never provided any detail on how the situation was evolving. On the form, the subject officer indicated that the arrestee was already handcuffed upon his arrival, and he did not see or use any force. A formal interview could have examined the fact that if the arrestee was already handcuffed and no force was used by anyone after his arrival, what exactly the specific circumstance was that prevented him from activating his OBRD. The area command review relied upon a request for an expedited backup, which was not confirmed as part of the investigation, and exonerated the subject officer for the late activation. The investigation does not mention any review of the OBRD from other supervisors on-scene or that of the subject officer. Since no formal investigation was conducted, it was never verified that an actual emergent situation existed. The form indicated that the arrestee was not resisting and did not pose any immediate threat to anyone. It is clear that the statements made on the form by the subject officer are contradictory to the exemption cited in policy, but the officer was nonetheless Exonerated, without explanation. We find

this investigation to be deficient, in that obvious unanswered questions about critical elements were not answered in the investigation.

[IMR-14-31] was an investigation, at the area command level, that was the result of an audit of OBRD reviews by a supervisor. An acting sergeant was required to complete a review of an OBRD for a subordinate but did not view the recording as required. The investigation was assigned to an area command for investigation, but it does not appear that any formal investigation was conducted. There is no documentation of any interview of the subject officer. The investigation appears to be based solely on the Evidence Audit Trail document, which shows the recording was not streamed to be viewed. Some informal conversation appears to have taken place with the subject officer, in which he did not recall any specifics of why he wouldn't have viewed the recording. This incident was treated as fact-based by the area command, but the investigation did not properly gather any supporting documentation or conduct any formally documented investigation. The area command sustained the violation, which was not challenged. The allegation was discovered by internal audit on March 11, 2021, but not reported until March 15, 2021. The extended delay was not addressed by the area command or IAPS.

[IMR-14-32] was an investigation initiated as the result of a judicial notification that two officers, who were subpoenaed to appear via Zoom for an Administrative Law Court hearing, failed to appear. The investigation was assigned to an area command, but no formal investigation was documented.

[IMR-14-33] was an area command investigation that was the result of a command-level review of a Level 1 Use of Force review by a sergeant. The command level review revealed that the sergeant's Level I review was severely lacking, as the sergeant did not conduct follow up interviews with potential witnesses, did not check for cell phone or local business audio/video recordings, and included no interviews of any of the EMS personnel who were present and/or who treated the arrestee. The investigation was assigned to an area command for investigation, but no formal investigation was completed or documented. The area command issued a verbal reprimand. There was no documentation or justification for their findings. A more troubling factor in this case is that the area command sustained and verbally counseled a sergeant for not conducting an adequate investigation, in turn mishandling the investigation as inappropriately as the sergeant. This type of investigation creates a perception that command-level personnel are not held to the same standards as the first-line supervisors, which is problematic on many levels. We recommend a formal investigation of these issues. The monitor expects to be copied on the result of that investigation for inclusion in IMR-15.

[IMR-14-34] was an investigation at the area command level resulting from an area command lieutenant sending an acting sergeant an email instructing them to conduct monthly line inspections for the squad they were supervising during March and April of 2021. When the lieutenant checked for the line inspections at the end of April 2021, they realized the inspections were not completed. The lieutenant indicated that he discovered this issue on April 27, 2021, but it was not reported to IAPS via Blue Team until May 4, 2021, seven days later. No formal investigation was conducted. At a minimum, the lieutenant who sent the email and was the complainant in this incident should have been

interviewed to determine and document what was said to the acting sergeant and when. An interview of the subject sergeant should have been completed to attempt to determine if they forgot to do them, or they intentionally disobeyed an order. It should have been determined and documented that the acting sergeant received the order and understood it. Basically, a formal investigation to include interviews of the fact witnesses, involved parties, and the collection of all evidentiary documentation should have been done.

[IMR-14-35] was an area command investigation resulting from an OBRD review of a recruit officer who failed to activate his OBRD prior to contact with a citizen on a back-up call. This investigation was assigned to an area command for investigation, but no formal investigation was documented. They handled this incident as a fact-based incident and sustained the allegation against the subject officer, based solely on the fact that the OBRD recording did not begin until after the recruit officer had contact and patted down an arrestee. The investigation did not include a copy of the OBRD as proof. Since the subject was newly out of the Academy, the allegation was sustained, and they were retrained in the policy, which is appropriate. However, a formal investigation to properly document all fact witness statements and the collection of all evidential documentation/recordings should have been done. We note this is a common process at APD of late—actions in compliance with the CASA are reportedly “taken,” but documentation is sparse or non-existent. We see this as a serious trend, depicting a lack of care by supervisory and command personnel. If there is no documentation of action taken available in APD’s reports, we assume the actions did not occur.

A comprehensive review of the 16 CPOA cases reviewed by the monitoring team is discussed in paragraphs 271-292 of this report. However, it was determined that there were numerous deficiencies within these investigations as well. We continue to find that the CPOA has difficulties in timeliness, thoroughness, and overall quality of investigations.

Regarding 12 investigations completed by the area commands and IAPS in our random sample, we find none that report unreliable in findings, based on the documentation contained within the case files. Deficiencies were noted in nine investigations, as outlined above. Any deficiencies in the imposition of discipline in these matters is discussed more fully in this report’s Discipline and Transparency section (paragraphs 201-202).

In regard to those investigations conducted by the area commands, we have serious concerns regarding the uniformity and thoroughness of all of these investigations. First, we make some general observations. The case file materials usually reflect reviews of allegations and summaries as opposed to actual investigations. In most of these matters, it cannot be determined if the subject officer was actually interviewed. When the officers are interviewed, there are only a short synopsis of what the officer stated. In some cases, a factual description of the alleged misconduct is missing, and only conclusory references to SOP violations are contained in the investigative materials.

Considering the review of the stratified random sample of 17¹²⁰ investigations conducted by the area commands, IAPS, and outside investigators, deficiencies were noted in the thoroughness and quality of 16 investigations. This yields a 6% operational compliance rate. This is most troubling, as the only investigations reviewed that were conducted in an efficient, logical order, that considered all available evidence, supporting documentation, and fact witnesses was conducted by an outside source. At this point, policies and training regarding investigative processes for internal “complaints” exist. The quality of investigations is greatly diminished by the lack of adequate documentation of the investigations by the investigators. Quite simply, most of the investigations appear to have reached a logical conclusion, but nearly all lacked sufficient supporting documentation to reach reliable conclusions. In cases in which fact witnesses were never interviewed, or supporting documentation was either never gathered or at least not mentioned in any documentation or contained within the complete case files reviewed, it is not possible to find compliance with paragraph 183.

It is not clear whether the deficiencies noted in these area command investigations are caused by a failure to uniformly document the evidence considered and the investigative steps taken uniformly, or due to summary and inadequate investigations. What is clear is that, although area command investigations should involve only minor allegations (Sanction level 6-7), these investigations must still meet the CASA requirements pertaining to the quality of investigations. These failures are serious impediments to “good order and discipline.”

In IMR-13, we noted that “APD must pay immediate attention to completing the training required for the area command investigators and must immediately act to standardize and upgrade the area command investigations, as well as the area command imposition of discipline (more fully discussed in the Discipline and Transparency, paragraphs 201-202, section of this report). Moreover, the IA investigations conducted by the area commands will continue to receive detailed scrutiny from the monitoring team.”

In IMR-13, an investigation was reviewed concerning an allegation of a sexual assault against an officer, which was classified as a Level 6 or 7 sanction case and assigned to an area command for investigation. During this period, a similar allegation was received but was properly classified and assigned to IAPS for any administrative violations and to the Sex Crimes Unit for the criminal allegation [IMR-14-24]. This is a positive sign that more consideration is being made during classification of complaints.

We strongly suggest that APD conduct a thorough quality review of all cases we found to be deficient or in which we identified shortcomings to determine how these shortfalls made it through supervisory and command review at IAPS. This trend is disturbing and calls into question APD’s commitment to command oversight and control.

In IMR-12, we stated that it was not uncommon for APD to assign individuals to task-specific assignments without prior training to build the requisite knowledge, skills, and abilities (KSAs) required in that assignment, and we therefore suggested appropriate

¹²⁰ Two of which were not investigated by APD, but outside agencies.

external training. In that regard, APD conducted the training in August 2021, which will be discussed in IMR-15..

CPOA findings and advisements are discussed in greater detail in paragraphs 271-292. The advisements to complainants regarding the reopening of administratively closed cases and of appealing 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 (CPOAB) meetings. During this reporting period, the monitoring team reviewed two appeals or requests for appeals [IMR-14-42 and IMR-14-43]. The review of the stratified random sampling of the 16 CPOA cases revealed that five were administratively closed and two of those were found to have been improper. The review of CPOA cases revealed that five were found to be deficient in either investigative steps or analysis, yielding a 69% operational compliance rate for CPOA, which is well less than the required 95 percent compliance rate.

In addition to the CASA criteria for administratively closing cases, the monitoring team, in the past IMRs, agreed that CPOA might also use an administrative closure disposition in cases in which a preliminary investigation reveals the allegations cannot be minimally sustained. The monitoring team has approved using a finding of “unfounded” in place of administrative closure in such situations. As with the prior use of administrative closures based on a preliminary investigation, we again caution CPOA not to utilize this disposition for the sake of expediency to counter the effect of an increased workload and present staffing levels.

In the cases reviewed by the monitoring team during this reporting period, we found one case that had preliminary indications of criminal conduct [IMR-14-24]. This case involved an allegation of sexual assault that was concluded with an appropriate administrative finding of unfounded. It was first investigated criminally, and no probable cause or even a lesser standard of reasonable suspicion was found. We find the coordination between the criminal and administrative aspects of this matter to be proper.

Based on our review of the findings in a sample of cases for the 14th reporting period, APD and CPOA remain in operational compliance with the requirements of paragraphs 186 through 188.

We likewise found no cases in which an officer failed to submit a public safety statement by claiming that the statement would be self-incriminating. Given APD’s performance related to this requirement over the past five reporting periods, the monitor continues to find APD in full compliance with the requirements of Paragraph 189.

Regarding the time requirements contained in Paragraph 191, the past performance of IAPS and CPOA generally have been consistent in terms of timely completion of investigations once they are assigned. In our current stratified random sample of the fifteen investigations for which IAPS was responsible, all cases were completed within mandated time frames. As stated in prior IMR periods, the IAPS commander

implemented a management system to track cases at appropriate intervals, which has resulted in full operational compliance.

Although no instances of IAPS investigations are outside the required 90-day time limit for completeness, CPOA continues to struggle with this area. The timeliness of CPOA investigations is addressed in detail in paragraphs 271-292.

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

Recommendations for Paragraph 183:

4.7.169a: City Legal should appoint an independent review and approval authority for all external APD IA investigations that are conducted by an independent investigator. The appropriateness of selection of independent investigators should be documented in writing.

4.7.169b: Investigations in which the complainant or logical witnesses are not interviewed or in matters that are administratively closed, the investigation should include a clear explanation of why the interviews were not conducted and or why further investigation steps were not warranted. These should be subject to managerial oversight regarding appropriateness.

4.7.169c: APD must ensure that investigations conducted by the area commands are held to the same standards that apply to IAPS and CPOA and are CASA compliant.

4.7.169d: APD should create an investigative guide with a checklist of requirements to assist any investigator in completing a thorough, fair, objective investigation. The guide should include interviewing the complainant (where possible), collection of any and all supporting documentation and evidence, interviewing all fact witnesses (all APD employees and all willing civilian witnesses), and all subject officers.

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 IAD/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: **Not In Compliance**
Operational: **Not In Compliance**

Recommendations for Paragraph 190:

4.7.176a: APD should identify a cadre of investigators at the Area Commands, who will conduct investigations of minor misconduct and provide appropriate training to those individuals relating to internal affairs investigations and CASA requirements.

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: 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 the date of the incident, date of receipt of the 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 where applicable.

4.7.177d: In regard to matters initiated by internal complaints, investigations should include a clear timeline that delineates when the APD employee who made the referral to IAPS first became aware of the alleged misconduct and when all employees in the chain of referral became aware of the misconduct so that the time from receipt of information of potential misconduct to referral to IAPS can be accurately gauged.

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**

Recommendations for Paragraph 192:

4.7.178: APD should conduct an internal audit of all “administratively closed” investigations, between 21 FEB 21 and 31 JUL 21 and ensure those cases were properly closed based on established facts and circumstances, and that none of those administratively closed cases were improperly classified, assigned, investigated or closed.

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**

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 APD members, 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 and appropriate. The monitoring team also selected and reviewed a stratified random sample of IA and CPOA cases completed during the 14th IMR review period. They also met with members of IAPS and CPOA during the site visit and received updates on the practices of each agency.

Retaliation is 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 prohibiting retaliation and making it grounds for discipline is found in SOP (AO 3-41-4-A, GO 1-1-4-E-10 and 11, GO1-4-3-C-2, and GO 1-5-4-B-4).

The monitoring team found two investigations in its review of the stratified random sample of IAPS and Area Command cases involving allegations of retaliation [IMR-14-25] and [IMR-14-22]. In [IMR-14-25], a lieutenant was found to have retaliated against an IAPS investigator and was subsequently demoted and suspended. In [IMR-14-22], a sergeant was found to have retaliated against an acting lieutenant by reporting that the acting lieutenant failed to properly report a minor motor vehicle accident by an officer under their command in retaliation for that acting lieutenant initiating an unrelated internal investigation against that sergeant. In that case, the sergeant was suspended for eight hours. Based upon data reviewed and observations made by the monitoring team for this reporting period, the City, APD, and CPOA 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 require that APD personnel who conduct misconduct investigations and CPOA investigators receive a baseline amount of initial and annual training.

Consistent with past site visits, the monitoring team met with IAPS and CPOA. Their respective offices and physical spaces have remained the same. The monitoring team discussed staffing needs and training, reviewed staffing charts and training records, and assessed the timelines of processing complaints and information of potential misconduct in investigations that were randomly selected assessing the quality of the investigations. The findings related to Paragraphs 198 through 200 indicate the following outcomes related to the requirements of the CASA.

At the present time, IAPS has a Commander, a civilian Investigation Manager, and a civilian Intake Manager, one acting lieutenant, one sergeant, one vacant sergeant's position, and seven detective positions. This is a significant increase from the IMR-13 monitoring period. The civilian intake manager oversees the complaint intake function. Despite the fact that IAPS, as discussed more fully in the Investigations of Complaints section (paragraphs 183-194) of this IMR, has made strides in improving its processes, it bears repeating that additional staff may still be required to complete thorough investigations in a timely manner, as required by the time constraints of the CASA and Collective Bargaining Agreement. 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 impacts the APD's ability to impose discipline on sustained charges (compliance with CASA paragraphs 201 and 202). Recent Labor Board decisions have put these timelines in flux in a manner that may be disruptive to "good order and discipline" at APD.

Thus, IAPS and CPOA must be staffed sufficiently to meet their timeline responsibilities so that CASA and CBA timelines are met, and discipline for sustained charges is not "time-barred." Compliance with the CBA in cases in which discipline is time-barred by the CBA does not absolve the City of its failure to comply with the progressive discipline requirements of CASA¹²¹.

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. CPOA had 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 ½ of 1% requirement has since been removed. Although we cannot state that the present CPOA budget was less than adequate during the IMR-14 period (as set forth more fully in this IMR in our discussion regarding paragraphs 278 and 279), we continue to observe strong indications of insufficient numbers of investigative personnel as evidenced by the number CPOA cases in which the requisite timelines are not met. The number of untimely cases revealed by our stratified random sample are discussed more fully in conjunction with paragraphs 191 and 281 of this report.

As discussed in Paragraphs 271-292, CPOA currently has three unfilled investigator positions. CPOA also has openings for two other approved and funded positions, a Community Engagement Specialist, and a Policy Analyst.

As we have pointed out since IMR-8, in regard to paragraph 199 of the CASA, we are satisfied that the training requirement is met for those members of IAPS who conduct the investigations involving allegations of other than minor 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. This training reportedly has not been provided.

There has been a practice of assigning IA investigations to members of an area command, at the rank of sergeant or higher, to conduct investigations alleging minor misconduct against an APD member of the same area command. In the later part of this monitoring period, the IAPS Commander has begun assigning these minor violation cases to area commands other than the one to which the subject member is assigned. This was done to create a separation between the investigator and the subject member.¹²²

¹²¹ After the close of the reporting period, the City approved the budget for additional CPOA investigators.

¹²² The IAPS Commander reports that this practice is no longer in place.

Since IMR-9, we have put IAPS on notice that an acceptable training policy must be developed for this cadre, or APD risks a finding of “willful indifference” to this task contained within paragraph 199. This training is crucial. As pointed out in the section of this report dealing with the quality of investigations (paragraphs 183-194), the quality of investigations conducted at the area commands continues to be of great concern. The cause of this state of internal affairs investigations conducted by area command is directly linked to this lack of effective training and oversight. While conducting the on-site visitation during this reporting period, each area commander was interviewed by the monitoring team. Five of the six advised that they still have received no training on properly conducting an administrative investigation. The only area commander that was trained in the distant past was previously assigned to IAPS. All the area commanders expressed a desire to receive some formal training to rectify their deficiencies. APD remains not in compliance with these paragraphs due to failures to train. Area command training related to these paragraphs was scheduled to be completed in October 2021 and will be discussed in IMR-15.

The monitor discussed the scarcity of information and quality of investigations conducted by the area commands more fully in this report's Investigation of Complaints section (paragraphs 183-194). Here, the monitor strongly recommends that IAPS ensure that the investigations conducted by the area commands contain adequate information to determine compliance status with all applicable CASA requirements. Unfortunately, the investigations conducted by area commands continue to display a lack of thoroughness and do not address all related misconduct allegations thoroughly.

We further discuss the CPOA and CPOAB training requirements in the Civilian Police Oversight Agency section (paragraphs 271-292) in this IMR.

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: **Not In Compliance**

Recommendations for Paragraph 198:

4.7.184a: CPOA must adequately staff its investigative responsibilities, using effective measures of workload, the time needed to complete the “average” CPOA investigation, and the time needed to assess and perform quality control processes.

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

Recommendations for Paragraphs 199:

4.7.185a: Identify the members of the area commands who may be assigned misconduct investigations and develop an annual IA training program for them. Ensure they complete the same on an annual basis. Annual training for those members of the area commands conducting internal affairs investigations of allegations of minor misconduct is an urgent priority.

4.7.185b: Do not assign a misconduct investigation to any APD personnel who have not met the annual training requirement.

4.7.185c: Investigations involving allegations that are CASA-related should remain with IAPS and not be transferred to area command personnel.

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: **In Compliance**

4.7.187 – 4.7.188 Assessing Compliance with Paragraphs 201- 202: Discipline and Transparency

Paragraphs 201-202 require discipline to be fact-based and imposed for sustained violations based on appropriate, articulated 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 balancing the aggravating and mitigating factors.

The monitoring team reviewed a stratified random sample of cases investigated during this review period, some of which resulted in sustained charges. We also met with the Chief of Police and Superintendent, the City Attorney, the CPOA Executive Director, CPOA Board members, and IAPS Commander and reviewed APD and CPOA discipline processes.

As we commented since IMR-8, marked improvements have been made in the APD disciplinary system. We have pointed out the implementation and continued refinement of the Disciplinary Action Packet (DAP) as a means of summarizing and providing pertinent information to the disciplinary authority to improve disciplinary decision-making. We note that not only is IAPS utilizing the DAP, but CPOA has also followed the monitoring team's recommendations and is utilizing the DAP. Thus, information in matters involving major discipline is being presented to the disciplinary authority in like formats.

The assignment of appropriate sanction levels to Standard Operating Procedures and the review and updating of SOP sanction levels has continued, as well as the updating of retention cards to facilitate accurate calculations of prior offenses. The practice of now having a representative of IAPS present at pre-determination hearings (PDH) involving major discipline has continued, along with improved communications regarding disciplinary issues among the parties consisting of regular (bi-weekly) conferences and reports. Over the last several reporting periods, all of these measures have proven to be an enhancement of the disciplinary process.

In light of these steady improvements, we are further encouraged to report several new developments during the IMR-14 period that should significantly impact the APD disciplinary system. The first is the completion and implementation of the revised disciplinary policy, SOP 3-46. Since IMR-6, we noted discrepancies with the disciplinary regulation, SOP 3-46, that needed to be addressed, and since IMR-11, we have emphasized that an overhaul of the same SOP 3-46 was necessary. We were particularly concerned about incongruencies in the regulation pertaining to the calculation of prior offenses and the lack of guidance given regarding holding a suspension in abeyance, and that the matrix failed to specify the prohibition, set forth in paragraph 202 of the CASA, against not taking “only non-disciplinary corrective action in cases in which the disciplinary action report calls for the imposition of discipline.”

The revised SOP 3-46 was finalized, approved, and implemented before the end of the IMR-14 review period. This achievement results from steady efforts over the last few reporting periods and great collaboration among the parties, particularly IAPS. SOP 3-46 is a milestone in the continued improvement of disciplinary processes.

Although not as directly related to the imposition of discipline as SOP 3-46, it bears repeating that the contemplated revisions to SOP 3-41 (Complaints Involving Department Policy or Personnel) are also important to the disciplinary process. Although not implemented by the end of the IMR-14 period, the revisions were completed and were awaiting final approval.

Another development that should have a major impact on the disciplinary process has been creating and hiring for a new “sworn position” entitled Professional Integrity Commander. The monitoring team has expressed concern in prior reports regarding the divergence among Area Commands in the investigation of minor disciplinary matters and the imposition of discipline for same. In that regard, we recommended that training in the administration of discipline per AO 3-46 and the tenets of progressive discipline be provided to the Area Command disciplinary authorities, or that one disciplinary authority – properly-versed in AO 3-46 and the principles of progressive discipline –be designated for those sustained matters arising out of Area Command investigations.

The Professional Integrity Commander position will directly address these concerns. This commander will impose discipline in cases involving minor discipline (Sanction levels 6 or 7), thus eliminating the divergence of approaches taken by different Area Commanders. In cases of major discipline, this commander will review the DAP and IAPS calculations and recommendations contained therein and the input of the subject officer’s chain of command and make final recommendations to the disciplinary authority before a PDH is held. In cases where the intended discipline involves a suspension of 40 hours or more, the disciplinary authority will be the Superintendent. Another development is that in cases in which the intended discipline is a suspension of 40 hours or less, the disciplinary authority will be one designated Deputy Superintendent. We view these changes as measures that should improve the consistency and uniformity of discipline while keeping with the tenets of progressive discipline that is fact-based and considers aggravating and mitigating circumstances.

We view these new developments addressed above as potential watershed events in the evolution and advancement of the disciplinary process and look forward to reporting on their impact in IMR-15.

The above-noted improvements in the process have not yet yielded compliance with progressive discipline as 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 twelve cases in which discipline was imposed [IMR-14-44, IMR-14-45, IMR-14-46, IMR-14-47, IMR-14-48, IMR-14-49, IMR-14-50, IMR-14-51, IMR-14-52, IMR-14-53, IMR-14-54, IMR-14-55].

Of those twelve cases, we identified five, [IMR-14-55, IMR-14-52, IMR-14-45, IMR-14-50, and IMR-14-47], in which discipline did not comport with the requirements of progressive discipline as outlined in the CASA. This equals a compliance rate of 58% with the requirements of paragraphs 201 and 202, an improvement from the 17% compliance rate in IMR-13, still short of the 95% required for compliance.

[IMR-14-55] involved a complaint of retaliation made against an APD supervisor. Due to a potential conflict, the investigation was assigned to an independent external investigator. The complainant had lodged a prior complaint against a supervisor. After that investigation was completed, they lodged an additional complaint stating that the complainant was still subject to a hostile work environment. The investigation was summarized as a sustained finding for retaliation, sanction level 1 to 5, calculated as a Class 5. There were several prior violations in the subject's disciplinary history within the last year, including one Class 4, and two Class 6 violations. That notwithstanding, the range was calculated as an 8 to 32-hour suspension (Class 5, First Offense) and the discipline imposed was a 16-hour suspension. We find the discipline to be deficient for several reasons. A true retaliation from a supervisor that followed the making of a prior complaint, with the subject's prior offenses/disciplinary record, merits a disciplinary range calculation higher than a Class 5/First Offense, and absent a cogent explanation of mitigating factors, substantially more than a sixteen-hour suspension. Due to the subject's advanced rank, a PDH was not applicable, and there is no record of discernible mitigating factors. However, there was no definitive finding that an SOP or City policy or law had been violated in this case. The conclusion was that the subject officer "gave the appearance" of retaliation that "caused a hostile work environment" and ended with "(t)he noted Policies may be applicable." Without a definitive finding of a violation of law, a policy, or an SOP, an exoneration should have been entered and no discipline imposed. Simply put, a finding of "noted policies may be applicable" does not suffice for the imposition of major discipline. It appears that despite the weak nature of the investigation and its conclusions, equitable principles were employed in the imposition of only a 16-hour suspension. What should have happened is that either the lack of clear finding should have resulted in exoneration and no discipline, or a finding of retaliation with this disciplinary record should have merited more than a 16-hour suspension. Another option would have been to return the investigation to the independent investigator for a definitive finding of whether there was a violation of a specific policy. Accordingly, we find discipline in this matter to be inappropriate and the matter deficient.

[IMR-14-52] involved a motor vehicle accident with a City vehicle that was not properly reported. Several months later, the issue came to light, and supervisors (lieutenant, acting lieutenant, sergeant, and acting sergeant) suspected of being aware of the vehicle accident were investigated for failure to follow proper accident reporting procedures, a Class 5 violation. These reporting procedures require all accidents, no matter how minor, to be recorded on a New Mexico Uniform Crash Report (UCR) and the City of Albuquerque Crash Report Form, and that any damage be photographed by a supervisor, Crime Scene Specialist, or Police Service Aide. The investigation did not sustain the charge against the lieutenant but did sustain against the acting lieutenant and the acting sergeant. Further, the failure to report was sustained against the sergeant. A sustained violation not based on the original complaint was also sustained against the sergeant for retaliation, finding that he did not reveal the failure to report the accident until he learned several months later that he would be the subject of an insubordination complaint by the acting lieutenant. Although IAPS investigated the matter, and the sustained violations were sanction levels (Class) 5, discipline was imposed at the Area Commands. Both the acting lieutenant and acting sergeant were assigned a pre-discipline range of an 8 to 32 hour suspension (Class 5/First Offense). However, only a non-discipline corrective action (NDCA) was ultimately imposed. The mitigation cited was lack of training or lack of clear guidance regarding reporting responsibilities as they pertain to accidents in which recruits are involved and how documentation occurs at the Prisoner Transport Center after an accident. We find that the NDCA imposed on both subjects to be inappropriate for a Class 5 offense. The cited mitigation of lack of training and guidance on accident reporting procedures is not compelling enough, in the monitor's opinion, to lower a Class 5/First Offense range of 8 to 32 hours to an NDCA. If not a minimum suspension, then at the very least, there should have been a written reprimand imposed along with the NDCA. It is common knowledge at APD that accident reporting procedures are required, and it is incumbent upon supervisors to know the correct procedures for any given situation or to ask the correct questions to determine same. Regarding the sergeant, the pre-discipline range assigned was 8 to 32 hours (Class 5/First Offense) on both the failure to report the accident and the retaliation. These were two separate courses of conduct - in fact, the retaliation occurred several months after the accident - that do not merge for disciplinary purposes. A total suspension of 32 hours was recommended (24 for retaliation and 8 for failure to report). However, only an NDCA was imposed on the failure to report, and an 8-hour suspension was imposed on the retaliation. The mitigation cited in the memorandum of the disciplinary authority ("retention card" meaning lack of disciplinary history that counts as a prior offense and lack of adequate training for supervisors on dealing with crashes of city owned vehicles) is not compelling enough to have two distinct violations, both Class 5, disciplined as an 8-hour suspension and an NCDA. Notable is the fact that no mitigation was cited for the retaliation, which was blatant under this set of facts. Accordingly, the discipline in this matter is deficient.

[IMR-14-50] is another matter that involved at least one Class 5 violation, was investigated by IAPS but had discipline imposed at the Area Command. The investigation involved an encounter between a complainant and the officer, which sustained charges for improper detention (lack probable cause to detain) (Class 5),

failure to read Miranda rights (Class 7), failure to use de-escalation techniques (Class 7), and failure to announce an intent to detain (Class 7). The different violations were basically one course of conduct during the encounter. There was one prior sustained violation (Class 6) for a use of force procedure for which discipline was not imposed due to time constraints. The pre-discipline range was calculated as an 8 to 32 hour suspension, and an 8-hour suspension and an NDCA intervention of refresher training on use of force were recommended. A PDH was conducted by the area commander/disciplinary authority. A union representative represented the subject officer, and the officer accepted responsibility for his actions. A representative of IAPS was not present at the PDH, apparently not scheduled to attend or given notice of the PDH. Discipline imposed was a written reprimand and additional use of force training. The disciplinary authority wrote a sound memo articulating his reasons for imposing a written reprimand in this matter. The lack of experience of the young officer, the officer's acceptance of responsibility, and realization that the incident could have and should have been handled better were cited as mitigating factors. In this case, we find fault with the process more so than the discipline. Despite the proficient handling of this matter at the area command level, Class 5 violations should be handled at the Superintendent or Deputy Superintendent level. In addition, a representative of IAPS should be present at the PDH, particularly when the subject officer has representation. Problems with the process do not per se make the discipline deficient and considering the memorandum of the disciplinary authority and the PDH, we agree that the issue of whether the mitigating factors warrant the reduced level of discipline should be given consideration. However, we find that the subject's prior sustained use of force violation and the multitude of errors made in this encounter offset the cited mitigation such that a suspension of at least 8 hours should have been imposed.

[IMR-14-45] involved a sustained use of force violation for failing to request medical attention when an individual is injured or complains of injury against several officers, a Class 5 violation. For one of the officers, with no prior offenses that count as enhancements, the range was calculated as an 8 to 32 hour suspension (Class 5/First Offense), and an 8-hour suspension was recommended. The disciplinary authority departed from the range and imposed a written reprimand. A memorandum with reasons for the departure was provided, which cited the officer's intent to transport the complainant to the hospital, de-escalation techniques in the event as mitigating factors, and reasons for departing from the presumptive range. A review of the video recording shows that this particular officer tried to reason with the arrested individual and convince him to get into the police car to be transported to the hospital. However, there were approximately 8 minutes on the video recording where the individual complained of pain. Several physical attempts were made to carry him to a police vehicle, lift, and put him into the police vehicle until the officers recognized the futility and called for an ambulance. In addition, the officer's retention card listed this violation as a Class 7, when it is clearly a Class 5. This was another case in which the disciplinary authority was an area commander for a Class 5 violation. Although the disciplinary authority identified and set forth good faith reasons for deviating from the Chart of Sanctions range (8 to 32 hour suspension), we believe the cited mitigating factors should not have been utilized to justify a suspension at the bottom of the range. The facts are that too much time went by, based on the video recording, and too much complaint of injury occurred before an

ambulance was called. The facts do not justify a departure from the disciplinary matrix to a written reprimand. Therefore, we find the discipline for this officer to be deficient. The discipline for the other officers involved we find to be reasonable within the chart of sanctions and tenets of progressive discipline.

[IMR-14-47] is another disciplinary matter in which discipline was imposed at the area command. It involved a sustained charge for failure to timely complete a Use of Force Report, a Class 6 violation. The subject officer had two prior offenses, both Class 7, regarding Supervisor Use of Force reviews. The range was properly calculated as an 8 to 32 hour suspension (Class 6/Third Offense). A PDH was held and a written reprimand with an NDCA intervention of refresher training was imposed. The post hearing memorandum from the disciplinary authority did not offer mitigating facts about the violation itself. In fact, it mistakenly cited that the officer's disciplinary record had no "other violations of this kind." The officer had two other violations related to supervisory reviews of use of force, so the interpretation that there were no other "like violations" was apparently based on the fact that there were no prior violations of the exact same regulation paragraph, which is an incorrect interpretation of what constitutes a prior offense. This officer's record shows prior problems with use of force reviews (for which reprimands were imposed), and progressive discipline demanded the imposition of a suspension in this case.

It is important to note that representations of APD and our review of the random sample of cases revealed no cases completed during the IMR-14 period in which discipline was not imposed due to being "time-barred" due to untimely investigations. It is also important to note that there were no instances of discipline being barred due to untimely "command review" process (review of sustained charges by subject's chain of command with recommendations to the disciplinary authority and issuance of Notice of Intent to Discipline letter within the requisite period). However, APD now reports another backlog of use of force cases (660 as of the October). Many of these cases are already time-barred for discipline should misconduct be found.

It bears repeating that 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 CASA requires APD and CPOA to be staffed sufficiently to meet their investigative responsibilities in a timely manner, operate efficiently, and bring sustained charges to the command review process in time for the review process to run its normal course.

Investigations ending with "failure to impose discipline on sustained charges due to time considerations" will be marked as deficient for purposes of paragraph 201 and 202 compliance.

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 an individual within the disciplinary process at the rank of IAPS commander or higher who has the authority to determine whether discipline cannot be imposed due to time violations, and that designation should not be made without the approval of the City Attorney.

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 continue the practice of having a representative of IAPS or CPOA attend all PDHs and represent the findings and recommendations set forth in the investigation.

4.7.187f: Ensure that all PDHs are recorded and preserved as part of the investigative file.

4.7.187g: IAPS should continue to determine if any prior violations count as prior offenses for all investigations requiring command review and review of the Professional Integrity Commander of sustained charges.

4.7.187h: To accurately calculate whether prior offenses come within the time periods specified in the disciplinary regulation, it is important that the date of imposition of prior discipline and the date of the conduct under review in the current case be readily discernible. We continue to recommend that the date discipline was imposed be clearly

entered on the retention cards. We further recommend that the date of conduct under review be clearly set forth in the recommended findings and conclusions section of investigative reports, that is, entering an “on or about” date for the conduct referenced in each specification.

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 presumptive range included in APD’s revised disciplinary matrix or that written explanations accompany them 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 resolve to foster behaviors required by the CASA.

4.7.188c: Ensure that all disciplinary packets, including the investigative report, 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 an accurate and exact calculation of prior offenses to calculate the presumptive range of the disciplinary matrix.

4.7.188ei: Revise AO 3-43 to contain guidance for when relief of duty is appropriate and warranted.

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

The monitoring team has systematically reviewed random selections of in-field officer behavior and has spent hundreds of hours and pages outlining in detail the issues with in-field supervision and administrative review and response to in-field policy violations.

Results

The monitoring team has provided specific and clear assessments of where and how APD personnel are non-compliant with the requirements of the CASA. At this point, it is not a matter of APD not knowing what their critical problems are. It is, instead, a matter of failure to have the will to correct aberrant behavior in the field. Even when confronted with advanced notice of the monitor’s opinions of problematic in-field behavior, APD has been, to date, virtually unwilling to confront this behavior with structured, progressive, and effective responses. Based on our review this reporting period, these errors are not due to staffing irregularities or other tangential issues but are due to a lack of will on the part of sergeants and command level personnel. Merely adding additional personnel, who exhibit the same lack of will, simply will continue the issues outlined above.

Results

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

Recommendations for Paragraph 203:

4.7.189a: Enforce existing policies that require supervisors to conform to the requirements of this paragraph.

4.7.189b: If necessary, revise supervision policies to ensure clarity of requirements. Then ensure enforcement of those policies.

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

The monitor is keenly aware that “adequate staffing” can have different meanings and interpretations. An inability to avoid backlogs in critical areas is not always attributable to a lack of staffing. We have noted elsewhere in this report an apparent inability of APD to process and complete appropriately normal operational functions, despite significantly increased staffing numbers in specific units. For example, despite increases in staffing at IAFD, case closure rates over the past few years have dropped precipitously. We are firmly convinced that the documented second backlog, which now stands at 660 cases, is a result of choices made by APD (for example allowing Internal Affairs personnel to take months—or longer—to complete many investigations). We note that cases that occurred between January 1, 2020, and July 15, 2021, show 660 cases still “open”, as of September 14, 2021. These productivity rates reflect a deeply serious lack of executive oversight and focus. We note that the inability of IAFD to complete significant numbers of force investigations over an 18-month period is extremely problematic. This is

particularly true given the significant amount of technical assistance APD has received from the monitoring team regarding the IA backlog and methods to improve performance in case clearances. At this point, the monitor concludes that APD's poor performance effectively executing critical IA functions is a question of will, not ability. Any meaningful "staffing study" will also address all critical functions of a police department, and develop a staffing plan that meets needs in multiple areas. APD has contracted with Alexander Weiss for a new staffing study.

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

Recommendations for Paragraph 204:

4.7.190a: APD should conduct a detailed staffing analysis at IAFD for the time period 2019-2021 and identify productivity and workload data, calculate efficiency rates, and assess "effectiveness" rates, e.g., cases received, cases cleared, cases deemed effectively investigated, and cases deemed inappropriately investigated.

4.7.190b: If appropriate, consider appropriate remedial action for command-level officers who allowed dysfunction and ineffectiveness within IAFD.

4.7.191 – 4.7.194 Assessing Compliance with Paragraphs 205- 208: Supervision and Related Paragraphs

The monitoring team reviewed and examined the data submitted by APD to demonstrate compliance with paragraphs 205 through 208 for this reporting period (February 1, 2021, thru July 31, 2021). APD provided additional data throughout the reporting period. APD appointed a new commander at the end of this reporting period to oversee these paragraphs. The paragraphs correspond to the supervision and related paragraphs as delineated in the CASA. These paragraphs address supervision requirements for first-line supervisors, the required span of control and levels of supervision, and the close supervision by the lieutenants and commanders.

As in the previous reporting period, the monitoring team reviewed Monthly Inspection Reports for Field Services Bureau Area Commands and Investigative and Specialized Units for this reporting period. The reports consist of, but are not limited to, the following;

- Detailed scorecards, on a monthly basis, containing the teams or units being monitored, the topic that each team or unit is measured on, and the compliance percentage attained;
- Detailed scorecards by topics, although limited due to some programs that are not fully implemented (Supervision/OBRD/Firearms/72-hour extension);
- Detailed scorecard sample size (number per team/unit and number per topic); and
- Detailed explanations of scorecards and rebuttals.

The review of the audits by the monitoring team continues to indicate improvement in the areas of monthly activity reports, check-off lists, line inspections, video inspections, and firearms.

Additional material received by the monitoring team included:

- Random line-up reports for six area commands (Verification for 8:1 Ratio (Compliance maintained));
- Random CAD entry reports for six area commands;
- Supervision scorecards status reports; and
- Random sergeant CAD entry reports for each area command.

The quality of assessment of use of force by APD supervisors as required by Section IV of the CASA is of serious concern to the monitoring team. Paragraph 210 of the CASA stipulates eleven (11) categories that the sergeants' training program shall incorporate. Some of these categories are evaluated in the current scorecards utilized for monthly evaluations. APD maintains primary compliance in these areas, but until all the categories are evaluated and implemented throughout the entire department, compliance beyond primary compliance will not be attainable. The progress made by APD in these areas is a positive sign that the department is moving in the right direction. The monitoring team will continue to review audits and actions taken to reduce repetitive oversight errors during future reporting periods. This is a critical issue, and until it is resolved by APD, compliance will be difficult to attain and manage.

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: **Not 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: **Not 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

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

Recommendations for Paragraphs 205, 206, 208:

44.7.194a: *APD should review findings in this report related to supervision, mid-level, and command level personnel, and should develop a strategic plan, supported by clearly articulated goals, objectives, and timelines designed to address specifically the requirements of paragraphs 205, 206, and 208. The planning document should be shared with the monitoring team for review and comment once it has been approved by the Chief of Police.*

**4.7.195 - 4.7.197 Assessing Compliance with Paragraphs 209 - 211:
Review of Sergeants' Training**

Paragraphs 209 through 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."

For this reporting period, the monitoring team reviewed the following data:

- March 2021 eighty-hour Mandatory Supervision course;
- June 2021 eighty-hour Mandatory Supervision course;
- Student Evaluation for eighty-hour courses;
- Critiques for eighty-hour courses;
- Rosters for eighty-hour courses;
- Test Results; and
- Certificates

The requirements for paragraph 210 are interwoven throughout the eighty-hour supervision course. These include the following topics.

- Techniques for effectively guiding and directing officers and promoting effective and ethical police practices;
- De-escalation modalities for dealing with conflict;
- Evaluating written reports;
- Investigating Use of Force
- Understanding supervisory tools (Early Intervention Systems (EIS), and On-Body Recording Devices (OBRD) systems;
- Investigating officer misconduct;
- Officer performance;
- Disciplinary sanctions and non-punitive corrective action such as coaching and enhanced supervisory oversight;
- Building community partnerships; and
- Legal updates.

Data requested and received by the monitoring team indicate that APD has addressed these portions of the requirement in the supervisory course delivered during this reporting period.

Tier 4 training is scheduled to be completed during the next reporting period by December 2021.

As noted in the previous IMR, the full impact of training recently delivered and currently being delivered by APD is not measurable during this reporting period. The monitoring team will closely monitor the impact of the training in future reporting periods.

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) investigating officer uses of force;**
- e) understanding supervisory tools such as the Early Intervention System and on-body recording systems;**
- f) responding to and investigating allegations of officer misconduct;**
- g) evaluating officer performance;**
- h) consistent disciplinary sanction and non-punitive corrective action;**
- i) monitoring use-of-force to ensure consistency with**

policies;
j) building community partnerships and guiding officers
on this requirement;
k) legal updates.”

Results

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

4.7.197 Assessing Compliance with Paragraph 211

Paragraph 211 stipulates:

“All sworn supervisors shall also receive a minimum of 32 hours of in-service management training, which may include updates and lessons learned related to the topics covered in the sergeant training and other areas covered by this Agreement.”

Results

Training required to reach secondary compliance was not approved until late in this reporting period and is scheduled for completion by the end of the next reporting period. At that time the monitoring will determine if compliance is attained upon reviewing documentation supplied.

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

Recommendation for Paragraphs 209 – 211:

4.7.195-4.7.197a: Complete all training as scheduled.

4.7.198 – 4.7.205 Assessing Compliance with Paragraphs 212-219 EIS/EIRS/PMEDS

During the final month of the monitoring period (IMR-14), the latest version of the Performance Evaluation and Management System (PEMS) policy 3-33 was approved by the monitor. In addition, with the understanding that the curriculum for supervisors would be updated to reflect the approved policy, training was also approved. Training for the APD supervisors began on August 16, 2021 and will continue through the end of the year. The training consists of a series of 3-day sessions, with the first session delivered to a group of upper command staff members as recommended by the monitoring team.

As approved, the policy, curriculum, and plans to move forward with a system that can meet or exceed CASA requirements have been established. PEMS is proposed to be a data-driven system with thresholds supported by data analysis and research, using a statistical process based using standard deviations to establish thresholds rather than arbitrarily assigned incident numbers (as we have long-recommended). Still in question is the methodology of comparing an individual's use of force to APD's calls for service data rather than the individual's arrest data. Members of the monitoring team have experienced the latter in other Early Intervention Systems, but APD has preliminary approval to test their proposal.

APD envisions the entire process as a significant project based upon policy, 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 policies will need to adapt and change when new systems are developed. Nonetheless, APD remains 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/departamental 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: Document learning assessment processes for the training provided for supervisors.

4.7.198-205b: : Design, document and implement audit protocols for supervisory review and reporting of PEMS processes.

4.7.206 – 4.7.217 Assessing Compliance with Paragraphs 220-231

During this monitoring period for IMR-14 (February 1, 2021-July 31, 2021), APD's PMU has continued to actively audit area commands for OBRD-related activities and has extended the auditing to the various Investigations Units. The findings so far yielded enough information to conclude that great strides have been made concerning APD's execution and training related to their OBRD requirements. This period's internal audit processes showed an overall compliance rate of 95% or higher in all six area commands with respect to OBRD requirements. However, the recent rollout to the Investigations Units continues to indicate a need for improvement. The actual takeaway from these processes is 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.

While trending in the correct direction, the areas of concern continue to be accountability and the response to the OBRD policy requirements violations. One hundred thirteen Internal Affairs Requests were initiated (97 closed) for allegations specific to SOP 2-8 On-Body Recording Devices during this monitoring period. The findings of the closed cases are as follows:

Sustained: 55
 Not Sustained: 4
 Unfounded: 8
 Exonerated: 20
 Administratively Closed: 3

Sustained Findings/Actions/Discipline:

Administratively Closed-Non-Disciplinary Corrective Action: 8
 Verbal Reprimand: 22
 Letter of Reprimand: 16
 Suspension: 9

Six officers were found to have two or more OBRD violations during this period. All twelve incidents for the six officers were Sustained. One of the six officers had both their cases Administratively Closed by Non-Disciplinary Corrective Action (NDCA), e.g., counseling, retraining, etc. Two officers received a verbal reprimand, one followed by a suspension and the other followed by a written reprimand. One received a written reprimand for both offenses. Three officers received suspensions. Overall, we note that OBRD policy requirements are critical elements of CASA compliance. The Internal Affairs Annual Report indicates that OBRD violations were once again responsible for the most cases referred during this monitoring period. While nine individual incidents recommended suspension, this percentage is still extremely low for one of APD's largest compliance problem areas. OBRD usage is a critical tool for assessing officer actions in the field. As such it requires serious oversight by command staff, holding first-line supervisors accountable in ensuring policy adherence.

Members of the monitoring team visited all six area commands during the June 2021 site visit. All the supervisors recalled attending the updated supervisors training regarding the OBRD requirements. All supervisors were able to explain the updated policy requirements, were fluent in using the various supervisory systems, and demonstrated that they had completed the required video reviews. (Note: At least two sergeants indicated that they were notified that they had not completed their required video reviews but had written documentation that they, in fact, had done so. The possible system malfunctions are under investigation). One sergeant stated that he selects his videos for review from Evidence.com rather than the required CAD system. One supervisor discovered one violation of the OBRD policy and referred the officer to Internal Affairs. Several supervisors (3) had discovered issues related to docking/charging OBRD's and reported the issues. APD's internal audits and the monitoring team's assessments are similar, indicating the reliability and validity of APD's internal audit functions aside from the one disparity mentioned above.

The monitoring team views well-trained supervisors as the lynchpin to making this entire process function properly. While more appropriate action appears to be starting, much improvement is still required. Internal Affairs is working to standardize the process for review of cases returned to the area command for investigation, with the intended results

being a more appropriate and consistent response to policy violations. Training and supervising the line supervisors in this area is critical for increasing compliance levels.

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.”**

Results

APD has developed a compliant policy for OBRD operation and has trained all appropriate personnel in the operation of OBRD units concerning those policies. During the 12th reporting period, APD showed great improvement in supervision and review by first-line supervisors and command cohorts, which continued through IMR-14. However, the important information 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. We

note, parenthetically, that we have engaged in several “oversight” conversations with APD’s Oversight Division relative to their internal audit processes. During those conversations, we provided insight, feedback, and coaching. Based on our review of APD’s work this reporting period, most of our advice has been operationalized and documented during this reporting period in COD’s work related to internal auditing and reporting. Those changes, it appears, have not yet been implemented in the field.

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

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. Supervisors have begun to document OBRD equipment failures, failures to upload required recordings, and failures to record. These failures are beginning to be referred to Internal Affairs. Internal Affairs outlined a plan to standardize the review process when cases are returned to the line supervisor for an investigation to obtain a more appropriate and consistent response to policy violations. Evidence of this will be crucial for additional levels of compliance.

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

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 was initiated at the end of the monitoring period for IMR-14. Internal Affairs received 113 referrals related to OBRD policy violations and closed 97 during the period for IMR-14. Only 56% were sustained, nine violations resulted in a suspension recommendation, and three resulted in suspensions. Members of the monitoring team will continue to spend significant time reviewing Internal Affairs files to determine if the actions taken because of OBRD policy violations were appropriate. A standardized process for case investigation, when referred to the line supervisor, is in the planning/approval stages to assist in obtaining consistent and appropriate response to policy violations. While policy and training have been executed, actions in the field do not reflect operations required by the policy and training.

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

Recommendation for Paragraph 222:

4.7.208a: Continue planning, implementation, and evaluation of the standardized process for OBRD oversight, until error rates are < 5 percent.

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

The monitoring team has reviewed the latest supervisors' monthly line inspection forms submitted online and assessed the OBRD related queries. During interviews with the monitoring team, supervisors reported several equipment failures and had replacements made immediately. APD supervisors are beginning to properly document equipment checks at an acceptable level. Effective supervision, documentation of behaviors, and application of appropriate discipline to sustained policy violations were key to elevation in compliance rates. The requirements of this paragraph have been accurately and satisfactorily documented by line supervisors.

Primary: **In Compliance**
Secondary: **In Compliance**
Operational: **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 Paragraph 224:

4.7.209-210a: Identify all supervisors who have substandard performance on OBRD activation review and assess the reasons for failure to enforce established process. Place these supervisors “on notice” that their performance on this task will be routinely reviewed, and continued failures will result in discipline.

4.7.209-210b: Follow up on these counseling sessions with discipline if necessary.

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 the June 2021 site visit to various area commands, APD supervisors demonstrated that they understand the policy regarding video reviews and have documented that they have conducted these reviews. These reviews demonstrate

whether the officer is acting within policy and that the equipment was in working order. Lieutenants have begun reviewing one video per squad and Commanders reviewing one video per shift per month.

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 provide 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**

Recommendations for Paragraph 228:

4.7.209-210a: APD should continue to document, assess, improve, and implement its OBRD policy supervisory processes until error rates fall below five percent.

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 past OBRD errors noted by the monitoring team (and APD's Force Backlog Review) indicated a failure of supervisors to assess and act upon OBRD failures exhibited by line personnel. Again, these were not policy or training errors, but errors in the implementation of approved policy. The errors were those of supervisory and management personnel failing to insist on compliance with the CASA. During this period, supervisors were discovering and referring policy violations to Internal Affairs for investigation. The final step in the process will be appropriate measures being taken for the violations. Of the 113 cases (97 closed) referred for investigation with only 56% being sustained, only nine incidents recommended a suspension. Although this is an increase over the one suspension in IMR-12 (held in abeyance) and three in IMR-13, unless continued improvement and adherence to OBRD policy and violations are appropriately and consistently implemented, Operational Compliance cannot be attained.

4.7.216 Assessing Compliance with Paragraph 230

Paragraph 230 stipulates:

“APD shall ensure that all on-body recording system recordings are properly stored by the end of each officer’s subsequent shift. All images and sounds recorded by on-body recording systems are the exclusive property of APD.”

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: **In Compliance**
Operational: **In Compliance**

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 during the COVID Pandemic and at a time in history in which interest in the profession is down significantly nationwide. Nevertheless, APD has managed to

increase interest in joining APD by setting new standards in police recruiting. This unit has successfully utilized digital platforms to reach an applicant pool that now includes at least 43 states. Members of the monitoring team “follow” the recruiting unit on Facebook and Instagram and have observed impressive innovative work.

In response to COVID, the recruiting unit had to rethink and innovate new ways to attend community events and gatherings to carry on its mission. While having created a social media footprint for recruiting, it has been enhanced with the addition of Twitter and YouTube accounts, including “live” events with the ability for live questions & answers. Zoom meetings were conducted with current cadets and applicants both in and out of state. APD has continued to produce videos, including the Academy Campus video, which provided an Academy tour, Physical Training demonstrations, Cadet interviews, and Specialty Assignments. Both TV and radio have been utilized with the “Stand Alone” videos broadcast by all the local stations and “live” radio segments with call-ins for Questions & Answers. During this reporting period, the recruiting unit continued to attend events related to transitioning military to civilian life with the Air Force, Army, and National Guard.

The monitoring team applauds the recruiting unit’s innovative solutions to COVID restrictions. Recruiting flyers have been included in ABQ water bills. Recruiting flyers and posters have been delivered to unemployment offices. The unit has done “in-person” recruiting at locations with displaced workers and utilizes an SUV as a mobile recruiting “billboard.” They have also been targeting gyms and jogging trails for the highest visibility to prospective applicants. Car shows and truck shows have been attended as these events draw large numbers, with APD building a “lowrider” show car which has received positive recognition.

The results of these efforts can be seen in the significant increase in phone queries, submission of interest cards, and new applicants. All areas have shown substantial increases over the prior years’ numbers. In recording the videos for recruitment purposes, APD has utilized diversity in the on-camera personnel. This has had a positive effect on recruitment as the number of diverse applicants have surged over prior years. Recognizing and celebrating diverse holidays such as the MLK birthday, Chinese New Year, and Black History month have been effective.

An online marketing company, Boomtime, has been used to reach possible applicants more effectively. APD continues to engage interested people who have withdrawn, failed, or missed a testing date. Testing continues to be offered on weekends and evenings and remotely (El Paso) to expand the pool of possible applicants, and PT testing without scores and mock interviews have been implemented to assist interested candidates. Along with the testing are a tutoring program for PT and the written exam for anyone interested.

During the June 2021 site visit, the monitoring team again conducted a random audit of the CASA requirements for two cadet classes. Due to the COVID response and a virtual site visit for IMR-13, this audit was not conducted. During all past audits, the monitoring team has not once found any of the requirements to be missing. APD has been in 100%

compliance with these requirements for more than five years. The same was true for this period, as shown in the graph below. For Cadet class 123, six records were randomly examined, and all required materials were contained in their records.

With the easing of restrictions, the Recruiting Unit began once again to interact with community leaders and stakeholders to ensure their involvement with the Albuquerque Police Department's selection process. They have begun recruiting at colleges with satellite academies, some out of state, and testing in El Paso. APD is truly setting new standards in police recruiting.

For the requirement of random drug-testing of current officers (Paragraph 237), APD submitted course of business documentation of testing current APD officers at an acceptable level during this monitoring period. All months had adequate random testing.

APD submitted the 2020 Annual Report and 2021 Strategic Recruitment Plan as required by Paragraph 233.

APD has met or exceeded all established requirements for Paragraphs 232-240.

Table 232a: Screening Points for Recruits Class 123

Class #123	New recruits and lateral hires to undergo a psychological examination to determine their fitness	New recruits and lateral hires, to undergo a medical examination to determine their fitness	New recruits and lateral hires, to undergo a polygraph examination to determine their fitness	Reliable and valid pre-service Drug testing for new officers and random testing for existing officers.	Detect the use of banned or illegal substances, including steroids.
Recruit 1	1	1	1	1	1
Recruit 2	1	1	1	1	1
Recruit 3	1	1	1	1	1
Recruit 4	1	1	1	1	1
Recruit 5	1	1	1	1	1
Recruit 6	1	1	1	1	1
Total	6	6	6	6	6
Number in Compliance Total all Incidents	6	6	6	6	6
% in Compliance Total by Category	100%	100%	100%	100%	100%

Table 232b: Screening Points for Recruits Class 123

Class #123	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
Number in Compliance Total all Incidents	6	6	6	6	6
% in Compliance Total by Category	100%	100%	100%	100%	100%

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

During the June 2021 site visit for IMR-14, the monitoring team checked the records of 25% of the promotions to Sergeant (six of 24) and 33% of the promotions to Lieutenant (two of six) in documentation maintained in Human Resources, Internal Affairs, and the Training Academy. All records indicated that personnel promoted were promoted as required by monitor-approved policy and process. APD has been in Operational Compliance with these requirements for more than three years.

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 past promotions made by APD, the department has promoted individuals who meet applicable standards and existing policies. APD retains its compliance findings based on both current and past performance.

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 completed the review and approval process for policy 3-32, “Employees Work Plan/Performance Evaluations” during the reporting period for IMR-11. The policy provides guidance on the use of the system, lists criteria to assess achievement of performance goals, and outlines 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 June 2021 site visit, members of the monitoring team visited all Area Commands and other duty locations, including Investigations Divisions. Supervisors were able to successfully demonstrate use of 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.

APD plans to implement the replacement of the current Talent Management System. The acting lieutenant responsible for compliance with these requirements continues to work diligently on revising policy and training and has implemented a pilot program to hold supervisors accountable within their performance evaluation requirements for Use of Force Investigations. This was one element missing from the current Talent Management System and required by the CASA. 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. Special Order 21-77 serves to amend SOP 3-32 until the SOP completes the full review process. This Special Order outlines the process for upper-level supervisors to hold line supervisors accountable for Use of Force investigations.

APD has created a new notification system to alert supervisors when the performance evaluations are due. It is set to automatically send out notifications 5, 10, and 30 days prior to the due date of the checkpoint. The 30-day notification enables supervisors to query any missing or additional personnel incorrectly assigned to them.

The monitoring team was provided with course of business documentation indicating that the APD acting lieutenant responsible for the Performance Evaluation requirements continues to refer supervisors to Internal Affairs for administrative investigations regarding the failure to complete their checkpoints promptly. The 2021 checkpoint 2 showed a success rate of 100% completed evaluations 868 of 868 required. During checkpoint 3, 800 of 806 reviews were completed (99.25%) with three supervisors being referred to Internal Affairs for failure to complete the six documents on time.

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 their family members.

The reporting period for this report was February 1, 2021, through July 31, 2021. The monitoring team requested and received documentation during the June 2021 site visit and was supplied the June and July data electronically from the Director promptly and as a complete package outlining all program processes.

Critical Incident Service, Therapy Service, and a Training Component continued through this reporting period as in previous reporting periods and were readily available to all APD personnel as required by the CASA. Documentation for these services confirms that the material reviewed contains and illustrates the work being conducted for Behavior Science Service (BSS) program.

As in previous IMRs, the monitoring team maintains that the nature of the documentation is highly confidential, and again, as in previous site visits, aggregate data was reviewed where it was deemed practical. In other cases, notes taken by the monitoring team were devoid of any direct or circumstantial information that would allow an individual to be identified.

BSS transitioned over to an online Electronic Health Record (EHR) system during the IMR-13 reporting period. This has allowed for easier care coordination, responsive data tracking, and better care for personnel utilizing the services.

BSS continues to be forward-thinking and in search of state-of-the-art processes. Revisions to the BSS process are ongoing and reviewed at regularly scheduled meetings to maintain the most current best practices in the industry.

Listed are a few areas where BSS continues to explore and work on to improve the program. These include, but are not limited to:

- Self-Care Interactive Online Network (SCION), Lectures and presentations available;
- APD plans to expand the SCION program and has applied for a COPS grant as well as planning to add a Podcast;
- Department-wide email link to anonymous survey data (the link also contained a reminder that BSS services are running during the Pandemic and seeing personnel via video conferencing and included contact information);
- Wellness SOP (pending approval); and
- BSS, Peer Support, and Albuquerque Fire and Rescue Department's meet periodically with plans to collaborate on projects;
- Addition of new Ph.D. to assist with therapy, pre-employment, and training;
- Looking for a new location with more space due to demand for services rising;
- Looking to expand personnel due to demand; and
- Wellness SOP pending research by BSS Director that will establish a new APD Unit concentrating on police officers and family members.

On-site inspections of the BSS facilities are normally conducted by the monitoring team to ensure security and confidentiality in the program and to ensure that only BSS staff have access to records maintained within the program. For IMR-13, BSS facilitated a virtual tour of the premises due to COVID 19. For this reporting period, the monitoring team conducted live inspections. As a result of the inspection, APD continues to meet all requirements with CASA.

The BSS program delivered supervision training to APD personnel during this reporting period and supplied the monitoring team with supporting documentation.

Peer Support supplied COB documentation for this reporting period to the monitoring team for review, and the documentation included:

- Peer Support Activity Data (date/times, method of contact, initiating party, referral, personnel from peer support group);
- Peer Support survey reports.

The Peer Support Program activities for this reporting period continue to show diligent work and dedication from Peer Support members. Peer Support continues to address Cadet classes, incoming telecommunicators, and members of the acting supervisor classes. Peer Support continues to work closely with the APD academy on the delivery of training to APD personnel. The material viewed by the monitoring team, as it relates to this program, is highly confidential, and operational compliance assessment is difficult. APD's BSS programs continue to be industry-standard and compliant with the relevant paragraphs of the CASA.

BSS continued to maintain updated Excel spreadsheets of available health professionals and flyers reviewed during the site visit at all APD's area commands. Material for the BSS programs is documented on their "Daily 49" system in APD briefing rooms throughout the department, with the most current information for the program.

APD maintains full compliance with the requirements of the CASA regarding these paragraphs. The monitoring team will continue to monitor this process closely in future site visits and through reviews of COB documentation.

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 the community, problem-oriented policing, and supporting administrative systems and serves as the foundational paragraph for APD’s community policing efforts. APD, in prior reporting periods, revised its mission statement, reflecting its commitment to community-oriented policing, and over time has engaged in multiple efforts to integrate community policing and problem-solving principles into aspects of its operations.

In October 2018, in conjunction with community members, APD developed the following mission statement, “The mission of the Albuquerque Police Department is to preserve

the peace and protect our community through community-oriented policing, with fairness, integrity, pride, and respect.” The APD vision statement includes the following language, which appears on their website. “Help provide a safe and secure community where the rights, history, and culture of all are respected.” APD made some progress integrating community policing principles into its management practices (policies, procedures, recruitment, training, deployment, tactics, and accountability systems). Most notable was increased connectivity to community partners and resources in APD enforcement activity as evidenced by the City’s violent reduction crime strategy, which included community partners, resources, and an emphasis on social service intervention to help deter future violence. In this reporting period, APD reported 116 violence prevention interventions resulting in 53 service referrals.

There were six one-day summer youth camps conducted in this reporting period with APD partnering with Albuquerque Fire and Rescue, New Mexico National Guard, Drug Enforcement Administration, and local community centers. There were 116 youth participants between the ages of 8 and 13 years. The focus of these camps was “Community Caretaker,” teaching youth lifesaving skills that included stop the bleed; CPR; and how to call 911 and provide the necessary information.

APD sponsored a Junior Police Academy with “Mothers Against Drunk Drivers,” and the Drug Enforcement Administration, New Mexico National Guard, New Mexico Judge Leos, New Mexico Second Judicial Courts, and the Public Defender Office. Fourteen youth participated in a week of activities, including team-building skills, crime scene investigations, basic defensive techniques, and scenario-based training to learn situational problem-solving skills.

APD also launched its Ambassador Program using officers to conduct targeted outreach to often marginalized groups. Eighteen officers have been selected and will begin their training at the end of August 2021. These officers will be responsible for making monthly contact with groups assigned to them and attending events as required.

During prior reporting periods, APD reported two sets of findings from its climate culture survey; the first was completed in July 2019. The second was published in February 2020, before the COVID-19 impact and before protests associated with high visibility incidents became prevalent. The six-month comparison showed little change in the items reported. Most troubling was the finding that nearly 25 percent of officers surveyed indicated that “APD’s work is not positively impacting citizens in the community.” This perception by a significant number of officers suggested a lack of belief in current APD policing practices designed to impact positively the communities they serve. The monitoring team finds very troubling this lack of confidence in delivering on the APD mission of securing communities through community policing principles. This concern raised questions about the efficacy of current approaches, the buy-in of officers, or both, and may indicate a need to rethink overall community policing strategies further.

APD’s primary response to this culture survey was to challenge the reliability and validity of findings, noting issues with the way questions were framed and inconsistencies in

response patterns. APD, while noting deficiencies in the survey, did acknowledge that some of these findings may have revealed issues that still need to be addressed.

The monitoring team saw no progress by APD in addressing concerns raised by the climate culture survey findings or seeking outside assistance in improving the reliability and validity of survey methods. The monitoring team believes APD should take these findings more seriously, suggesting that many officers lack confidence in APD's efforts to "positively impact citizens in the community.

APD has previously highlighted efforts to integrate community policing into its operations, noting the following:

- Sworn personnel are completing the COP/POP training;
- The department has incorporated community policing practices into numerous APD policies and procedures;
- Recruitment efforts are beginning to result in a workforce that closely mirrors City demographics;
- Personnel evaluations now include a community policing component;
- Deployment of PRT officers in each of the six Area Commands augmenting community policing activities;
- The assignment of crime prevention specialists in each Area Command; and
- The enhancing of the School Resource Officer program by reaching out to the National Association of School Resource Officers for training and assistance.

The APD School Resource Officer Program received National Recognition from the National Association for School Resource Officers during this reporting period. This program received the National Model Agency Award for its involvement in programming designed to build positive relationships with school-aged youth.

The monitoring team acknowledges that, during this reporting period, the City continued to involve residents in these discussions through presentations of the concept to the Community Policing Councils(CPCs). The monitoring team encourages these discussions to further garner input about the range of APD policing strategies and activities to make them both more effective and responsive to community needs.

The monitoring team continues to strongly encourage APD to consider hiring an independent contractor with the expertise to continue the climate surveys, which remain an important assessment and management tool to gauge workforce perceptions and attitudes. The internalization of the core principles of community policing through the training and supervisory process by APD officers needs to be tracked. This will allow

adjustments if there are challenges in ensuring the internalization of these principles by the APD workforce. Finally, the monitoring team encourages APD to scale up programming for youth, having more APD officers and other adults support a wider range of activities.

The monitoring team expects APD to make more progress and step up its outreach efforts, community consultations, and collaboration with community stakeholders to continue to “rethink” the delivery of policing and other community safety services.

Results

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

Recommendations for Paragraph 255:

4.7.240a: Continue to develop a remediation plan to culture survey findings and seek outside assistance to revamp the culture survey ;

4.7.240b: Continue to work with USAO and other community partners to expand and reach significantly higher numbers of high-risk youth through various 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.”

Methodology

APD has struggled from the onset in meeting the requirements of this paragraph that calls for a realignment of staffing resources to support community policing goals. The first attempt to comply with this requirement was APD’s PACT (Police And Community Together) plan, approved on December 27, 2016. Staff realignment 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 the deployment of Problem Response Teams (PRT) to all six area commands. The PRTs represented a marked improvement to the old PACT process, with strong goals related to problem-solving policing processes instead of PACT’s enforcement-based processes. Progress in implementation of and meeting the requirements stalled for several reporting periods, but efforts to complete deployments and initiate a more thorough staffing allocation

analysis are now proceeding. During this reporting period, PRT training was updated, including expanding lesson plans to make better use of referral tools and engender a better understanding of roles and responsibilities. In fact, PRT's were used to pilot a new "application" to replace TRaCS as the primary tracking mechanism for community engagement.

APD is now using a "calls for service" staffing analysis model to help guide the number and location of PRT deployments. The analysis considers the days of the week and the times of day optimal for the proactive activity to help make deployment determinations. The analysis also considers areas reporting the most criminal activity and calls for service and adequate geographic coverage of all areas. APD reports the following PRT assignments by reports by area command:

- Foothills- 4
- Northeast - 4
- Northwest- 4
- Southeast- 8
- Southwest - 5
- Valley- - 10 (two five-officer teams)

The Valley Area Command has two teams because of its much higher calls for service and a higher concentration of the homeless and persons in crisis.

At the end of the last reporting period, APD had not completed its newest staffing analysis(I still have not been provided a final version during this reporting period) , and as they reported at that time were still finalizing the related policy directives which would include specific performance metrics. If they can provide these finalized directives which will include appropriate performance metrics and the final version of their most recent staffing analysis then in my estimation they can achieve full compliance for IMR 15.

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 plan a priority, and continue to take the necessary steps to gain important input and support from settlement partners and community stakeholders, including CPCs;

4.7.241b: Consider a partnership with a local university to develop specific performance metrics and assess program effectiveness.

4.7.241c: *Continue ongoing analysis to ensure adequate numbers of specifically trained PRT officers 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

In previous reporting periods, the monitoring team reviewed documentation from APD outlining the newly implemented “digitized” bid packet process, including information about areas assigned to police officers, and to create better utility, tracking, and accountability within the department. APD previously reported completing the digitized process test phases and, as a result, identified issues and attempted corrective actions. APD was eventually not able to adequately address the technical issues that surfaced during the piloting phase of implementation, eventually leading to the abandonment of the effort to digitize the bid process at this time. More troublesome technical issues emerged as APD began to expand implementation concerning factoring seniority lists into the bidding process. More importantly, the system’s capacity to handle the volume of bids generated by APD was problematic.

These developments are disappointing, given the fact that APD has had six years to address these issues. APD conducted, at the end of this reporting period, a “drive-thru” bid process relying on previously used manual processes. The monitoring team will continue to work with APD to identify other improvements to the currently used process, including ensuring the ongoing updating of beat-related issues and challenges and identifying the key community stakeholders. The monitoring team still encourages APD to work with City to find a way to overcome technical and capacity barriers to digitizing procedures such as the bid process. The monitor expects to see evidence of improvements to the currently used process that ensure compliance with the requirements of this paragraph.

Results

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

Recommendations for Paragraph 257:

4.7.242a: Ensure that the City systems involved in these data-related problems noted with supporting electronic processes are noticed to the other City departments involved and noticed to the COA so that inter-department problem solving, and cooperation are enhanced to the point that solutions are identified and actualized.

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 the previous reporting period, APD continued delivering the revised Community Oriented Policing (COP) training to its sworn personnel. During this reporting period, out of the 939 sworn officers available, 928 attended the training, resulting in a completion percentage of 97.9 percent. During a prior reporting period, APD completed restructuring of its required 16 hours of COP training that better reflects the department’s 21st-century community policing philosophy, incorporates new training, evolving departmental policies and orders, and better alignment with COP training requirements. APD previously submitted its revised training to the monitor for review. The monitoring team noted several deficiencies which were addressed by APD training staff. The monitor subsequently approved the COP training, allowing for its first delivery during

2020. The COP training was developed using a documented seven-step process and covered all the required elements outlined in paragraph 258.

APD's decision in prior reporting periods 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 represented a major milestone for APD in their transformation journey. The training helps officers internalize a different way to perceive their relationship with 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 the delivery of the COP training curriculum is key to achieving some of the most important elements of the CASA agreement. These further investments in improving the quality and relevance of this training will, over time, be instrumental in driving culture change throughout the department.

The monitoring team remains disappointed that APD has not completed and implemented annualized COP refresher training. The monitor believes that completing the curriculum and including it in its annual refresher training requirements should be a departmental training priority. The monitoring team also expects APD to continue to adjust this training as its community policing and engagement processes continue to expand and evolve. APD also needs to develop measures to assess training impact to determine if it is achieving intended goals. The monitor acknowledges the adjustments originally made by APD in its COP training. APD now needs to ensure that nearly all APD officers participate in annualized refresher training. The monitoring team also expects APD to develop assessment processes to measure the impact of training on-field practices.

Results

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

Recommendations for Paragraph 258:

4.7.243a: Ensure that supervisory processes are oriented with the COP training and new COP goals and objectives.

4.7.243b: Finalize COP annualized refresher training and ensure future training schedules that provide annualized refresher training.

4.7.243c: Develop assessment processes to measure the impact of training on-field practices.

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

In the previous reporting period, APD initiated the development of a web-based “app” to track community events and officer response and made some progress developing its capability to track officer community engagement and outreach activity goals. Previously, APD utilized TRaCs for tracking purposes. Still, this software was not designed for this purpose. Over the years, it has posed technical and programmatic challenges in creating a viable way to track and monitor officer community contacts and activity. An internal audit of the TRaCs revealed only 52.5 percent compliance in its use by officers.

APD has now committed to a web-based application to replace TRaCS as the primary means to track community contacts and outreach. During this reporting period, the web-based app was field-tested using PRTs. As part of the field test, officers received training on how to install and use the “app” to enter information from community contacts, assigning a “75-4” code when applicable for concerns or requests made during these contacts and capturing them as a “call for service.” Officers use the “75-10” for community events. APD acknowledges the importance of finishing development and additional training to use this “app,” which will give APD a robust capability to track community events, contacts, and follow up on community concerns.

By the end of this reporting period, APD completed the pilot testing, made some adjustments to its use protocols, and has now implemented this tracking system department-wide. According to APD, the tracking system will produce reports meeting the CASA requirements. APD acknowledges that system improvements are still needed to best capture referrals and outcomes by officers resulting from their community interactions.

The monitoring team recognizes that tracking and measuring community outreach by field officers is to both encourage and track specific outreach and problem solving with community-based service providers, emphasizing mental health providers. While the monitoring team recognizes that this is a major step toward reaching that goal, APD must now fully operationalize the use of this tool, assess compliance, identify any additional training needs, and produce monthly reports on outreach activity. System improvements are needed to facilitate the reporting of contacts and referrals and provide

evidence of identifying and effectively networking with a range of community service organizations and advocacy groups. The monitoring team recognizes the progress made in the implementation of the web-based application. However, we urge APD to follow through with needed improvements to capture referrals and work with community partners to respond to resident needs.¹²³ APD must continue to assess additional training needs and supervisory controls to ensure adherence to policy and effective implementation of these new processes.

Results

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

Recommendations for Paragraph 259:

4.7.244a: Continue development of new web-based tracking system and implement department-wide during the next reporting period.

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, resource sharing, decision-making, roles, and responsibilities parties.

4.7.245 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

APD reported developing a process during the prior reporting periods that allow each area command to post relevant and timely information. Crime prevention specialists from each area command develop a monthly events calendar with information about past and upcoming events and photos. Each area command also maintains its website, which typically captures crime information, agendas for upcoming CPC meetings, schedules of upcoming events, other news items, information on reporting crimes, and how to file complaints. During this reporting period, the monitoring team’s review of area command web pages continues to reveal information gaps, limited messaging about police activity in the area command, and sometimes failure to list monthly events calendars. For example, the websites are generally very limited in presenting information pertinent to that area command. It is often difficult to navigate for information

¹²³ We note, parenthetically, that we have made similar recommendations for several reporting periods, yet these issues persist.

about upcoming community meetings, including their agendas. Some area command websites continued to omit any coherent community outreach and public information programs. In this reporting period, APD updated biographical sketches for area commanders and posted them; however, little if any additional progress was made in implementing the requirements of this paragraph. This paragraph requires community outreach to identify problems and issues pertinent to the policing domain and collaborative approaches to solving identified problems and issues. Full compliance requires these elements to be present and effectively designed to achieve effective community outreach.

Towards the end of this reporting period, the monitoring team initiated technical assistance to help APD address program requirements, beginning with helping APD develop templates to help guide their plans, and will work directly with APD area commanders during the IMR-15 reporting period to provide additional guidance on program implementation. The goals of the area command-based public information plans and programs are to specifically address community outreach, messaging, outreach to marginalized segments of the population, and use of social media to enhance community engagement. The monitoring team also expects that APD consults with the area commands' CPCs when developing these public information and outreach plans.

Results

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

Recommendations for Paragraph 260:

4.7.245a: Further develop and document area command public information strategies and programming by developing a planning template and aiding formulating customized approaches for each Area Command .

4.7.245b: Seek outside assistance to help formulate effective community outreach and public information plans for each Area Command that fully utilizes up-to-date engagement tools and processes.

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 prior reporting periods, APD used the CPCs as a platform to share information about the implementation of CASA requirements. For this reporting period, APD provided presentations at several CPCs. APD conducted a series of community town hall meetings in each Command Area devoted to summarizing IMR-13 findings.

APD has six functioning CPCs that provide a community platform for APD to convey and receive relevant and timely information to community stakeholders and members. The monitor notes the increased acknowledgments by Albuquerque's citizens of the work of the CPCs, raising awareness of specific community safety issues and helping facilitate a response from both APD and other city agencies. The monitor encourages APD to use CPCs as conduits for updates on policy change; new training; policing strategies; tactics; and addressing residents' community safety concerns. The monitoring team also suggests that APD continue to use CPCs to update the community on CASA progress and challenges.

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

The monitoring team has noted in previous IMRs that "CASA-related reports are posted on the APD website. Further, APD has information on an individual's rights and responsibilities during a police encounter." We noted no changes to these processes during this reporting period. Full compliance is therefore continued.

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

In the previous reporting periods, APD heavily relied on TRaCS, a cumbersome tracking system not specifically designed for tracking the community engagement activity of officers. Recognizing these limitations, APD began work on a web-based “app” specifically designed to capture an officer’s community engagement activities. APD completed its development during this reporting period, piloted the “app” with PRT teams, and fully deployed the “app” across the department at the end of the reporting period. Officers were guided on its usage.

The monitoring team acknowledges the development as a significant step in APD’s ability to track, document, and apply these data to inform department leadership of APD’s community engagement activity levels and processes. While the “app” does represent significant progress, APD indicated that further improvements are needed to not only capture and upload information about officer participation in meetings and attendance at community events but also outcome information and any resulting referrals, if applicable. We find this an important milestone: APD is beginning to identify and address issues related to compliance with the CASA without monitor prodding.

The monitoring team looks forward to reviewing the reports generated from this web-based system to confirm officer participation and the outcomes of officer and citizen encounters. APD previously reported that commanders submitted all non-enforcement contact information in a standardized format on a spreadsheet to command staff for tracking purposes. We note that APD previously established, through SOP-3-02-1, the requirement and tracking mechanisms to implement this task. The monitoring team assumes some modifications to these APD reporting protocols will result from the change to the web-based “app” tracking system.

The monitoring team expects APD to finalize the development of standardized reporting formats, audit officer compliance with reporting, and to continue to improve the web-based “app,” including a capacity to capture referral information, when applicable, as well as other contact outcomes. The monitor also expects these reports on non-enforcement contacts to be used to target engagement efforts and promote community policing practices. The monitoring team urges APD to move quickly to implement the necessary supervisory controls and provide any additional training as required to ensure full implementation of these processes.

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

APD reported and posted monthly crime statistics for each area command and city-wide crime trends during the reporting period. The monthly data are posted roughly two to three months after the reporting period. The data sets are a complete reporting on FBI index crimes and other categories as well. They are easy to follow and now meet CASA requirements. APD also continues its contract with a service that provides up-to-date crime mapping services based on “calls for service” that can be accessed on APD’s website. This has proven to be a very useful tool for members of the community. During this reporting period, the monitoring team reviewed postings on the APD website and found monthly reporting, including easy-to-follow graphics to help discern trends. The monthly reports were posted three months after the close of the monthly reporting periods. The monitoring team recommends that ABQ take measures to provide more timely posting of these monthly crime data.

Results

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

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 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 continued to post in a timely fashion on the APD website.

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. Since their establishment nearly seven years ago, there has been a remarkable consistency and adaptability displayed over time. At times, many CPCs struggled with attendance, maintaining records, functioning transparently and inclusively, and having a diverse membership. In the previous reporting period, the monitor noted that often CPCs struggled with inadequate support and guidance from APD. Through the commitment of CPC leaders, they forged ahead and have now achieved a long-held objective of permanently establishing the CPCs as part of the City's governance framework which was accomplished when the City enacted an ordinance that statutorily provides for their ongoing operations.

During this reporting period, the transfer of administrative oversight from APD to CPOA continued, including hiring staff by CPOA that are assigned to support CPC operations. This transfer continues to yield benefits for CPC operations, including ongoing virtual meeting support, program guidance, and outreach. During this reporting period, CPCs primarily continue to rely on virtual meetings to conduct their public meetings. The number of voting members continued to increase for most CPCs, while attendance at CPC meetings leveled off towards the end of the reporting period, coinciding with the onset of the summer months. City-wide CPCs added 18 new members by the end of the reporting period. The monitor observed and reviewed agendas from CPC meetings and recognized the maturation in topics covered that align strongly with the goals of the CASA, ranging from officer recruitment and training to APD's use of force policy. CPCs also found ways to highlight community concerns such as "street racing" on neighborhood streets and facilitating remedial steps by APD to address this issue.

The monitor understands that for CPCs to continue providing a meaningful outlet for community members to share their views and concerns about APD's policing practices and making meaningful recommendations for consideration by APD, there must be ongoing collaboration and responsiveness from APD. The monitor also recognizes that gains made over the past year are due in part to the strong and consistent leadership provided by CPOA. Continuing with that strong leadership is critical to the sustainment of CPCs moving forward. The CPCs Council of Chairs continued in their role in helping to coordinate the CPCs processes of working closely with CPOA. The CPC program continues as a national model for other cities and departments to replicate as an effective community engagement method.

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

In the previous reporting period, the monitoring team reported CPC membership criteria and selection processes changes and the misinformation about those changes posted on the APD/CPC website. The Council of Chairs, comprised of the Chairs of each of the six CPCs, took a leadership role in revisiting the guidance for CPC membership selection. Working closely with the CPOA Executive Director and the DOJ, they began this work by requesting technical assistance from the monitoring team in helping to re-engineer the recruitment, the selection criteria, the selection process, the removal of members, and other considerations. The revised and updated guidance was approved in July 2020 by the City's newly designated manager of this program, and the CPOA Executive Director. This guidance included the following:

- Citizen's Police Academy: moving forward, The CPA 12-week course will not be required but recommended. (This requires an amendment to the CASA, which has the support of the City, the USAO, the Civil Rights Division of DOJ, and the monitor);
- Ride-alongs: not required but recommended;
- Background Checks: not required; however, if one chooses to do a ride-along, then the background check is conducted using APD stipulated criteria;
- Criminal history: a criminal history will not exclude a person from serving on a CPC. However, current active felony warrants or criminal charges will disqualify a person from membership.

Pending approval of the CASA amendments, the parties agreed to continue to suspend the CPA ride along with membership requirements, and the criminal history disqualification. The July 2020 revisions to the CPC guidance were not posted on the APD website during the last reporting period, thus limiting public awareness of these changes. Misinformation was posted indicating that any felony conviction disqualified applicants from CPC voting membership absent the Chief of Police's waiver. Corrections were made during this reporting period. The posted selection criteria now align with the guidelines approved by the CPC Council of Chairs and the Executive Director of CPOA, the oversight administrator for CPCs. To our knowledge, no investigation was mounted to determine who posted the incorrect language on CPC memberships.

The rationale for these changes offered by the CPC Council of Chairs and the CASA Parties included removing barriers to membership, with many prospective members simply being unable to meet the onerous time requirements of completing the CPA training¹²⁴, and criminal histories possibly limiting others who now could make significant contributions having already answered for any past criminal conduct. They noted that adhering to the CPC membership code of conduct held more relevance than any past behavior. The monitor takes note of the differences in needed supportive training for

¹²⁴ CPC members do not require this level of training. In contrast, CPOA Board members must be fully familiar with current APD policies, standards, and processes to fulfill their responsibilities. Therefore, this training is critical for CPOA Board members.

CPOA Board members viz a viz CPC members. Members of the CPOA Board require a great deal of task-specific training as CPOA Board members are required to deal with, make decisions related to, and opine on issues such as adherence to policies, policy violations, etc.

As noted in the previous monitor's report, extensive progress was made in expanding and diversifying the CPC membership with the transfer of program authority from APD to CPOA and the corresponding work with the City Attorney's Office, the DOJ, and the CPC leadership. In this reporting period, progress slowed but continued in expanding membership and greater diversification of that membership.

The monitoring team remains encouraged that the CPC expansion and diversification will continue under the leadership of CPOA and an increasingly active Council of Chairs. The monitoring team is concerned about any instability in the CPOA leadership that may have a bearing on further CPC development and sustainment. Despite the limitations posed by the Coronavirus public health emergency, CPCs continued virtual meetings during this reporting period. They maintained good participation, with some fall off at the onset of the summer months. Moving forward, CPOA and the Council Chairs have pledged to step up their membership recruitment efforts, with diversification as a priority and to increase overall 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 the IMR-12 reporting period, the City finalized the transfer of the CPC program to CPOA. This has proven to be an important milestone in the evolution of CPCs. The City

provided funding for a CPC liaison position, liaison assistant position, and an additional \$25,000 for non-personnel funding. During the previous reporting period (IMR-13), CPOA staff provided technical support in helping the CPCs from each Area Command host well over 30 virtual meetings. The CPOA filled both the liaison and liaison assistant positions in this reporting period and provided support for 35 regularly scheduled CPC monthly meetings and five councils of chairs CPC Council of Chairs meetings. CPOA leadership also continued to make a significant difference in coordinating support for the CPCs and providing guidance and leadership in working through CPC membership issues.

The monitor reviewed posted CPC minutes and agendas for this reporting period and found most to be up to date with a few exceptions. Each of the CPC required annualized reports for 2020 were completed, and recordings of CPC meetings are now available. This constitutes ongoing positive change regarding CPCs and speaks volumes for CPOA oversight and coordination of CPC functions.

The most CPCs' important resource of is the members themselves. As noted in previous IMRs, volunteers have devoted their time and effort to build the foundation for the successful operations of CPCs. CPC voting members updated program guidance during the previous period and demonstrated flexibility by fully adapting to hosting meetings virtually. The current leadership of CPCs was instrumental in expanding and diversifying membership and finalizing the enactment of the City Ordinance codifying CPC operations. In this reporting period, the CPC Council of Chairs continued its fine-tuning of the CPC selection process, enhanced mediation of disputes, and engaged in CPC strategic planning. The monitoring team believes that it is essential that the City continue to find ways to celebrate and honor this volunteerism that contributes to community safety and advances reform efforts. Their tireless efforts on behalf of the residents of Albuquerque are helping to create a national model for engaging community members with the police officers that serve them and providing opportunities for meaningful information sharing and dialogue.

Results

Primary: **In Compliance**
 Secondary: **In Compliance**
 Operational: **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 the last reporting period, CPCs enjoyed success in converting to virtual platforms to host meetings. Meeting invites were posted and announced using social media platforms. A participatory webinar format was used, allowing for exchanges among voting members and Q and A from other meeting participants. These sessions, in many instances, included over 60 participants. Virtual meeting formats continued for this reporting period, still drawing at times an impressive number of participants. Voting member numbers expanded for most CPCs, and agendas and topics were more aligned with CASA objectives and concerned a wider range of APD policies, practices, and strategies. CPCs also provided opportunities for other community stakeholders to present their perspectives on APD reform efforts. Topics covered in this reporting period included the following:

- APD Recruitment Strategies;
- Violence Intervention and Prevention Programming;
- Use of Force Policy Changes;
- Restorative Justice; and
- Sexual Assault Awareness

Agendas also included presentations at each CPC by the APD Chief of Police and Superintendent for Police Reform. The County District Attorney also addressed CPC members. The direct involvement of senior APD leadership was welcomed and resulted in meaningful dialogue with community members.

During this reporting period, CPCs have also generated six recommendations for APD’s consideration, including a recommendation to address street racing in the Foothills Area Command and public order and community safety concerns relating to screening voucher distribution for emergency housing at a motel in the Foothills Area Command. Despite initial resistance by APD to take responsibility for helping to address this concern, the Foothills CPC persisted in their advocacy and eventually facilitated a city-wide coordinated response to address the issue. Examples of other CPC recommendations included: requiring area command staff to attend CPC meetings; extending the tenure of area commanders; and equipping patrol vehicles with moving radar systems for speed enforcement.

The CPCs continue to mature and actualize their vision as a significant linchpin in the APD community engagement strategy to interact with the community members they serve. These formalized and highly active advisory bodies in each of the six Area Commands raise their public profile and increase their collaborative efforts with their Area Commands. There were some breakdowns in the recommendation submission and review process that APD and CPC leadership are remediating. The monitoring team will be reviewing and assessing for adherence to recommendation submission and review processes.

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

In the previous reporting period, APD posted all of its 2019 CPC annual reports and, for the first time, presented them in a standard format and captured CPC annual activities and achievements. APD held training during a prior reporting period, which helped to promote standardization in annual reports among CPCs. CPOA reports that all six CPCs have finalized their 2020 annual reports and posted those reports on the CPC website. During this reporting period, the monitoring team also became aware of some recommendations not being forwarded to APD. In other instances, APD was simply non-responsive. APD and CPOA are revisiting the recommendation submission and review process and have posted a status report on current recommendation reviews and outcomes. At a minimum, if APD determines that CPC recommendations are unworkable, they should inform the CPCs of the reasons for not implementing the recommendations.

Results

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

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 or CPOA office”), including the Civilian Police Oversight Board. These paragraphs require an independent, impartial, effective, and transparent civilian oversight process that investigates civilian complaints and renders disciplinary and policy recommendations, trend analysis, and conducts community outreach, including publishing reports.

During the monitoring period and the June 2021 site visit, members of the monitoring team held meetings with the CPOA Executive Director and members of his staff, with the CPOA/CPOAB Attorney, with members of the CPOAB, and reviewed relevant training records, and selected (by way of a stratified random sample) and reviewed, sixteen (16) CPOA investigations and two (2) appeals for review. The CPOA investigations are [IMR-14-37, IMR-14-56, IMR-14-38, IMR-14-57, IMR-14-58, IMR-14-39, IMR-14-59, IMR-14-36, IMR-14-40, IMR-14-61, IMR-14-62, IMR-14-63, IMR-14-64, IMR-14-41, IMR-14-65, IMR-14-66]. There were two appeals or requests for reconsideration [IMR-14-42 and IMR-14-43].

We also identified and reviewed two non-concurrence decisions, [IMR-14-66 and IMR-14-63].

The findings related to Paragraphs 271 through 292 indicate the following outcomes related to the requirements of the CASA.

CPOA Board (CPOAB)

Since IMR-12, the CPOAB approved substantial revisions to the CPOA Policies and Procedures. These revisions deal primarily with the ethics, code of conduct, and impartiality incumbent upon Board members. In addition, we also reviewed practices governing discipline of Board members. The monitoring team approved these revisions or additions to the Policies and Procedures, and they were implemented during the IMR-13 review period. They illustrate the CPOAB’s proactive commitment to its mission and responsibilities, which will prove to be enhanced by the ethics guidelines for its members.

Based on meetings with the CPOA Executive Director, members of the CPOAB, and our review of CPOAB meetings, agenda, and minutes, we are satisfied that the current Board and the Agency recognize the need to be fair, objective, and impartial and to be perceived by the public as such. The CPOAB has demonstrated itself to be an impartial and dedicated body that strives to provide effective civilian oversight of the APD. It is an independent agency whose appointed members 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 non-appointed members of the CPOA. Thus, the monitoring team continues to find the Board in compliance with paragraph 273 of the CASA.

Despite its past personnel shortcomings, the CPOA Board has continued to make progress. In addition to the revised Policies and Procedures reflecting a code of conduct and ethical guidance for Board members, the Board finalized its process to review use of force incidents. The Executive Director of CPOA participates in the Force Review Board as a non-voting, ex-officio member. In this role, he can state on the record his concurrence or non-concurrence with FRB findings. Based on the monitoring team's observations of the FRB process, we find the Executive Director to be a productive, contributing participant in the FRB process. The Executive Director also prepares findings letters based on his review of OIS and Serious Use of Force cases for the CPOAB's review. The CPOAB notes whether it agrees or disagrees with the Executive Director, and the findings letters are forwarded to the chief. Under the current model, CPOA does not investigate OIS or Serious of Force incidents. However, both the Executive Director and the CPOA Board can share their findings and insight with the upper command structure of APD on serious use of force issues, which lie at the heart of the CASA. During IMR 14 review period, the Board reviewed 33 Level 3 Use of Force investigations conducted by the Executive Director. This review process and its findings letters, with concurrence or non-concurrence forwarded back to the Chief of Police, will be subject to increased monitor focus in future IMRs.

Toward the end of the IMR 14 review period, the Board also made a policy recommendation regarding SOP 2-98 (Gunshot Detection Procedure). It has not yet been determined whether the policy recommendations will be accepted or whether the Chief would issue a report explaining why APD will not follow the recommendation, pursuant to paragraph 289 of the CASA. In the interest of good government, such a statement, in the monitor's opinion, should be forthcoming.

CPOAB and CPOA Staffing

Since IMR-9, the monitoring team has discussed the lack of full membership of the CPOA Board, and the negative impact that has on workload and effectiveness. We pointed out that the nine-member Board had been operating with only six (6) members during the IMR-13 period and that the City risked a finding of "willful indifference" if the Board did not regain full composition. In that regard, we are encouraged to report that during the IMR-14 period, the nine-member Board had been reconstituted.

During our site visit, we had several meetings with various City Council members. We continue to find that Council is dedicated to the principle of effective civilian police oversight and understands the importance of a productive Board comprised of a full complement of qualified members in the police oversight process and is attentive to issues involving the improvement of the process.

The challenge for City Council is to refine the vetting process for Board applicants so that once a future opening occurs, a qualified candidate, as defined by the requirements of paragraph 273 of the CASA, has already been identified and can be appointed within a short period of time, so that the Board does not suffer from less than a full nine-member complement. The process must also include impressing upon potential appointees the demands of time and commitment placed upon Board members by the CASA and the

Police Oversight Ordinance, particularly the initial and annual training requirements. Ideally, applicants who are identified in the process as qualified and as probable nominees, will gain a realistic assessment of the demands of a Board appointment, prior to formal appointment by Council. A realistic assessment of the demands of a Board appointment, including training requirements, can be provided in this manner. We have received information that Council is taking steps to refine and improve the vetting process; however, we have not been provided with documentation to reflect how those refinements and improvements will be actualized.

Not only does the Board need to be fully staffed, under paragraphs 278 and 279, but the CPOA must also have an adequate budget and personnel (non-appointed members of the agency) to perform its roles. The budget and approved positions are adequate at this time for compliance with paragraphs 278 and 279 of the CASA as well compliance with the Ordinance, which 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.” Section 9-4-1-4(A)(2).”

Presently, it is not a matter of having enough positions approved; it is a matter of filling them. In addition to the Executive Director, CPOA has seven (7) approved investigative positions, consisting of one Lead Investigator and six investigators. CPOA has had several resignations and has made several hires in the last year. CPOA currently has four investigative positions that are filled (one lead investigator and three investigators). The hiring process is ongoing at this time for the three open positions. CPOA expects that these positions will be filled during the IMR-15 period. To maintain operational compliance with its “sufficient staffing” requirements, absent extraordinary circumstances, CPOA must fill these positions during the IMR 15 period. The (post IMR-14 reporting period) resignation of the CPOA Executive Director leaves another critical vacancy to be filled.

After the close of the monitoring period, the monitor has learned that the Executive Director has resigned to take a similar position with another jurisdiction. We see this as a loss of a critical resource in the process of reform management.

CPOA also has an opening for two other approved and funded positions, a Community Engagement Specialist and a Policy Analyst. The Community Engagement Specialist will enhance the office's community outreach efforts, and the Policy Analyst will focus on aiding the Board in its trend analysis and policy and training recommendations. The Community Engagement Specialist opening came about due to a recent resignation. The Policy Analyst position was restored in the 2022 budget after being considered in the 2021 budget process, but that position was withdrawn in favor of an additional investigative position being approved

We reiterate in this IMR that we believe CPOA is operating in a relatively efficient manner within the confines of its present staffing and the number of complaints it receives. However, as outlined in this and past IMRs regarding the timeliness of completion of investigations and quality of investigations, the CPOA's ability to meet CASA requirements will be extremely difficult to achieve without an increased number of investigative staff being in place. 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. If the expected increase in investigative personnel does not result in substantial improvements in the timeliness of investigations, a staffing and time-management study may be in order for CPOA.

Training

Although the Board has continued to make strides in carrying out its mission and related tasks, it has again failed to meet requirements regarding its training requirements. The initial and annual training requirements for the Board members and ride-along requirements are contained in paragraphs 274 through 276 of the CASA. The initial training consists of 24 hours and must address "at a minimum" six subject areas enumerated in paragraph 274. Per paragraph 275, the annual training shall consist of eight hours of training. It shall address changes in law, policy, or training in the areas enumerated in paragraph 274, plus address any changes in the ongoing implementation of the CASA. Regarding the ride-along requirement, two ride-alongs are required every six months per paragraph 276. The monitoring team has acknowledged that the time periods for annual training do not begin until the initial six-month period for initial training has concluded.

Annual Training

Regarding the 8-hour annual training requirement for Board members who are not in the initial six-month period after appointment, the monitor has found that attendance at the annual National Association for Civilian Oversight of Law Enforcement (NACOLE) conference (fall of 2020 – virtual) sufficed to meet the annual training requirement. Having viewed CPOAB meetings and subcommittee meetings, we are confident that changes in law, policy, training, and updates regarding the CASA are briefed to Board members by the Executive Director or Board Counsel. We feel that attendance at the NACOLE annual conference and gaining insight from other Civilian Police Oversight professionals is beneficial to the CPOAB in carrying out its mission. However, our prior and current criticisms of CPOA and CPOAB external training have focused on the lack of testing measures.

Our review of training records reveals that of those Board members who are not in the initial training period (within six months of appointment), one member did not attend the 2020 NACOLE Training (fall of 2020), nor complete substitute training, and thus we do not find operational compliance with paragraph 275 of the CASA. We have noted since IMR-12 that, because the NACOLE conference does not contain a written test or assessment measurement of training effectiveness, we would accept in lieu thereof a written exercise on the subject matter of the NACOLE training and how it relates to the

mission of the CPOAB. In IMR-13, we again pointed this out; however, since only two members had submitted a written exercise relative to the NACOLE training, we entered a finding of “not in compliance” with the annual training requirement of paragraph 275 in that IMR. At the end of the IMR-14 period, despite our previous comments in IMR-12 and 13, again not all members who utilized the NACOLE seminar as their annual training requirements had complied with the written exercise requirement. We consider this deliberate indifference to the requirements of the CASA regarding suitable training processes to constitute a serious refusal to adhere to the operational requirements of the CASA.

The Board has spent considerable time talking about this issue of assessment measure of its annual training requirement at several Board meetings and at the June meeting of the Community Outreach Committee. During the site visit, the monitoring team met with Board members, and a main topic of discussion was the assessment requirement for the annual training requirement. It was a frank discussion in which the participants professionally addressed their concerns. The Board requested the opportunity to propose its own written exercise to meet the external training assessment requirement. The monitoring team agreed, and by the end of the IMR-14 period, the CPOAB proposed an evaluation form for each seminar/webinar that each member attends during the NACOLE conference. This reasonable proposal exceeded a summary of the entire NACOLE conference originally contemplated by the monitoring team, and the monitor readily approved the proposed process.

We would now expect the Board to spend its limited time on more pressing issues relative to the Police Oversight process and comply with this reasonable assessment measure of the annual training requirement that it has proposed. In addition, should there be changes in law, policy, or in CASA or Ordinance implementation, changes that are relevant to APD and the CPOA/CPOAB, but which would not be part of NACOLE training, we expect that the Board Counsel and/or the Executive Director will instruct the Board on these changes as part of the annual training requirement. In summary, approved annual training for both the CPOA office and Board members, depending on whether it is internal or external in nature, will need to contain either internal testing measures or external testing measures such as that recently approved (by the monitor). Furthermore, this process will have to be completed for all members attending the training in order for the Board to regain compliance with paragraph 275.

Initial Training

Regarding the initial in-service training requirement, upon review of the Board member appointment dates in conjunction with training records, it was found that three members had not completed the initial training requirements within the first six months of appointment. This issue had been brought to the attention of the Board members during the IMR-13 period and was also addressed by the Executive Director. The monitor expected that the training requirements would be completed by the end of the IMR-13 period or shortly into the IMR-14 period. Unfortunately, no formal extension has been requested, nor have the initial training requirements been achieved by three members,

as of the end of the IMR-14 period. As a result, CPOA and the City are not in compliance with paragraph 274.

Since the close of IMR 14 reporting period the monitoring team has received training checklists, an updated training spreadsheet, and communications from CPOA and the Board relative to the initial training compliance by Board members, purporting to show that the CPOAB is in compliance with initial training requirements.

We note some anomalies in the current state of records. The most updated spreadsheet received from the Board does not show the exact dates the training of the different topics required by paragraph 274 were completed. Instead, it shows one date by which the different training topics were completed, which appear to be estimates. Since 24 hours of training was obviously not completed on one date, we recommend that CPOAB revise its reporting strategies to reflect actual dates on which specific training was delivered. The spreadsheet also shows that the 24-hour training requirement was completed before the actual appointment date for two members, leading to a distinct possibility that the "orientation training" required by the Ordinance in order to officially sit as a Board member, was confused with or substituted for the initial training requirements of the CASA. The spreadsheet also shows several topics for two different members who did not complete same within 6 months of initial appointment.

The Board member training checklists that were submitted are oriented toward the paragraphs of the Ordinance training requirements as opposed to the topics required by the CASA, and in some instances where the Ordinance training requirements mirror the CASA training requirements, either no date is entered in the relevant column of the checklist or the same "completed by date" is utilized for all six CASA required topics. Only one Board member checklist was observed in which different distinct completion dates were utilized for the different CASA-required initial training topics.

Viewing the records (available at the close of the IMR 14 period, and revised records submitted after the close of the period) and communications in their entirety, we conclude by a preponderance of the evidence that Board members took efforts to comply with training requirements. However, applying the same standard, we are not convinced that all Board members - who have completed more than 6 months of service since initial appointment - completed 24 hours of initial training addressing the six topics required by paragraph 274 within six months of the initial appointment. Accordingly, the Board remains out of compliance with paragraph 274.

Ride-alongs

The requirement of two semi-annual ride-a-longs has been suspended during the pandemic, and with recent concerns about the Delta Variant, continues to be suspended. During the IMR-14 site visit, the Board requested guidance on the length of time of an individual ride-along and expressed concern about the length of an 8-hour ride-along. The Board felt a four-hour ride-along was easier to arrange for their schedule and can be just as productive from a learning objective as a lengthier one. The monitoring team agreed and received no objection from the parties. The monitor has approved that two

four-hour ride-alongs per six-month period will satisfy the requirements of paragraph 276. Although non-observable for IMR-14, the CPOAB continues to be operationally compliant with paragraph 276 due to its long-standing pre-pandemic adherence to the ride-along requirement. The monitoring team expects the CPOAB to renew ride-alongs starting in January 2022. If ride-alongs cannot be renewed due to health concerns, then the monitoring team expects suitable alternative training to be proposed and to be used in lieu of the ride-alongs until they can be safely pursued.

Training Summary

We recommend that a process be implemented whereby Board initial training of the topics, presented by Board counsel, is verifiable electronically, or if an in-person class setting is utilized, then verifiable. If successfully implemented, this measure should eliminate reporting issues. In addition, Ordinance training topics should be recorded separately from CASA training topics. The current training checklists are oriented toward the Ordinance requirements and should be revised to prevent any potential confusion between the Ordinance and the CASA requirements. They should also contain exact dates of completion – as opposed to estimates – for each CASA required training topic.

The CASA places clear training requirements on the CPOAB and those requirements are subject to monitoring. Board members know or should know this before accepting appointment. If effective oversight is to be performed by the Board, it must keep current with its own training requirements and start with exercising oversight over its own members. If it fails to do so, it risks losing credibility.

We are aware that addressing the training issues has become a priority issue for the Board at the initiation of the IMR 15 period. All of the parties, including DOJ, City Legal, and City Council, have commendably addressed these issues in the spirit of correcting them and moving forward. All realize that any organizational body has a limited amount of collective energy, and that this volunteer Board can best prioritize its limited time and energy by being properly trained and not being diverted by issues that need not exist. We look forward to reporting on the refinement of the CPOAB training and reporting processes in IMR 15.

CPOA Training

Investigative personnel of the CPOA office also have initial and annual training requirements, which, although set forth in a different section of the CASA (paragraph 200), for purposes of CPOA reporting in its entirety, we discuss these requirements in this paragraph. CPOA investigative personnel are required to complete 24 hours of initial training within their first year of employment and 8 hours of annual training. Like our process for Board members, the monitoring team determines the annual training period to begin at the expiration of the initial training period. Accordingly, we find that at the end of the IMR-14 period, the CPOA investigative personnel were either still within the initial 1-year period or had completed their initial training requirement, and those who have annual training requirements also completed the requirement. We find that the Internal Affairs Training provided by the Daigle Law Group, together with the CASA and

Ordinance centric topics addressed by CPOA Legal Counsel, suffice to meet the initial training requirements for CPOA investigators. We find that the Daigle Advanced Internal Affairs Training taken by the Executive Director and the lead CPOA investigator suffice to comply with the annual training requirement. Likewise, we have in the past found the NACOLE Annual Seminar also to meet the annual training requirement, providing both are supplemented with updates on any changes to CASA implementation, the Ordinance, and relevant law and regulation by the CPOA Counsel or Executive Director. We find the CPOA office to be in full compliance at this juncture with its initial and annual training requirements. Of course, by the end of the IMR-15 reporting period, we expect all investigative staff outside of their initial year of employment to have completed the initial training requirements.

Another area of continued challenge is one of the CPOAB finding the correct balance of the tasks required of the Board by the CASA, which consists of review of the handling and disposition of citizen complaints (referral to mediation or completed investigations with findings), reviews of OIS and Serious Use of Force incidents, recommendations regarding changes to APD policy and training, and the monitoring of long-term trends, particularly as it relates to use of force. Disagreement resulting at times uneasy relations has developed between the investigative office of CPOA and the Board concerning the amount of the information the Board requires to oversee the CPOA investigative findings relative to citizen complaints. Before the Board approves investigative findings, it has available the proposed findings letters of the CPOA. These proposed letters are addressed to the complainant and generally contain a summary of the complaint; the laws, SOPS, or other source of regulation implicated by the allegations; the investigative steps and relevant information obtained; and conclusion and findings. If the Board requests the full investigative file to review in addition to the findings letter, the file must be specifically uploaded by the CPOA staff minus any *Garrity* materials. The number of full investigative files requested by the Board in order to fulfill its review function is the primary source of disagreement between the CPOA office and the Board, as the uploading of the investigative files can take considerable time.

In the past, the Board has varied its approach to achieving its oversight of the CPOA investigative work product, utilizing at times a Case Review Committee (CRC) to perform due diligence on each case. The CRC then moved to more of an audit function, whereby only a random number of cases involved a CRC review of the entire investigative file. The CRC met seven times in 2020, but during the IMR-14 period met only in January and April. It appears that its use may have been discontinued, with the Board now requiring that the full investigative case be made available for every complaint.

Paragraph 271 states that the Board shall provide a “meaningful, independent review of citizen complaints.” In turn, paragraph 280 requires CPOA to forward investigative findings to the Board. Paragraph 285 specifies that the Executive Director, with the approval of the Board, shall have the authority to recommend disciplinary action in incidents it reviews. Within those broad parameters, the CASA provides no specific direction on how the Board carries out a “meaningful, independent review of all citizen complaints.” Based on CASA interpretation and considerations of practicality and efficiency, the monitoring team has never required a Board review of each complete

investigative file. This process is contingent on the Board reviewing the complaints and the findings letters. The Board can gain access to the full investigative file when it deems it necessary.

We again repeat that this is a matter to be worked out by the Board and the CPOA investigative office. The monitoring team expects a process that allows the Board to fulfill its review function while allowing it adequate time to address issues requiring deeper analysis, such as policy and training recommendations, the requesting and analysis of data, and long-term trend analysis, as well as a process that does not unnecessarily burden the investigative function of CPOA.

In this regard, the monitoring team would repeat recommendations made in discussions with the parties. In addition to the complaint and proposed findings letter, the Board must have the ability to obtain the full investigative file for any investigative findings it reviews where it deems the full file necessary to carry out its review. On the other hand, many CPOA complaints do not engender an investigation of such complexity that a review of the full investigative file is necessary to approve/disapprove of the investigative findings. The proposed findings letter must contain enough information for the Board to make a reasoned judgment. We recommend that the Board consider a hybrid approach toward reviewing and approving the Executive Director's findings. This approach might include a Board review of each complaint and findings letter, with the ability to request a full investigative file for cases where the Board deems more than the findings letter is necessary for its review. This could be coupled with an audit function that entails a review of the complete investigative file for a statistically significant random sample. This should allow for sufficient Board oversight of the CPOA investigative work product without the necessity of CPOA staff uploading each full investigative file. This is especially true when one considers that the Board's review of complainant appeals and requests for reconsideration should require a more detailed analysis than a review of the findings letter.

By the time this report is filed we will be well into the 15th monitoring period, and more than enough time has passed for a practicable and efficient process to be in place regarding Board review of CPOA investigations (and findings) of civilian complaints. The monitoring team expects that such a process will be finalized and firmly in place by the end of the 15th monitoring period. The process should be one that both the CPOA and CPOA Board can agree with. This feasibly allows adequate time to complete the various tasks and responsibilities that go beyond the investigation and review of civilian complaints. The final process should strike the appropriate balance between the Board's approval authority over the investigative findings and recommendations of the Executive Director, and the realistic challenges of an in-depth review of every case file. In short, equilibrium must be reached. The monitoring team feels the Board can offer valuable insight and community perspective to policy, training, and data and trend analysis that would be a very positive development in enhancing civilian oversight of police matters. We urge the Board to find the time to increase its efforts in this regard. The monitoring team also recommends that thought be given to revision of the Ordinance such that it is not interpreted to mean that the Board must review the full investigative file of each investigation conducted by the CPOA.

As a final observation regarding reaching a practical balancing of tasks and the relationship between CPOA and the CPOAB, we note that in IMR-11, we reported positively on the use of a facilitator to conduct meetings between CPOA personnel and members of the CPOA Board. The facilitator enhanced understanding and respect for the office and the board's different roles, strengthened their relationship, and improved the working environment. The professional working relationship between the Board and CPOA appeared to have improved in the IMR-12 and IMR-13 periods. During our most recent site visit, it was apparent that the relationship between the CPOA and CPOAB was again in need of improvement. The monitor recommended a mediator and offered to refer one to reach an effective and harmonious working relationship. To date, that offer has not been pursued. We are concerned that this failure is evidence of serious schisms within CPOA and the CPOA Board. External intervention may be warranted.

Investigations and Reliability of Findings

Satisfactory cooperation between the CPOA and IAPS has been long-standing. 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. The CPOA has the necessary access to information and facilities reasonably necessary to investigate complaints and review serious use of force and officer-involved shootings.

The Executive Director continues to have the authority to recommend disciplinary action in cases involving civilian complaints investigations. The Chief of Police, or his designee, retains the discretion to impose discipline but is tasked with writing a non-concurrence letter to the CPOAB where the disciplinary authority disagrees with the CPOA recommendations.

As we noted in the past several IMRs, the investigations produced by the CPOA, once complaints are assigned, are generally thorough. However, again this monitoring period, our stratified random sample revealed investigations that we deem to be deficient. We discuss those below.

First, our review revealed that the 16 CPOA cases involved five (5) administratively closed investigations or had allegations that were partially administratively closed [IMR-14-37, IMR-14-38, IMR-14-39, IMR-14-40, and IMR-14-41]. Of these five, we find two, specifically [IMR-14-39 and IMR-14-40], were not proper administrative closures.

[IMR-14-39] involved a complaint that officers failed to do a welfare check in a domestic violence case. They banged on residence doors without announcing themselves and failed to telephone the residence before leaving without performing the welfare check. The investigation was administratively closed on a review of CAD data. Investigative materials contain CAD data for the date of the incident, which shows a negative response at the door and no answer to the phone call ("goes to VM"). No statements were taken from the complainant or officers despite direct contradiction between the

CAD and the complainant's statement. The investigator missed fundamental investigative steps and issued a premature and incorrect use of administrative closure.

[IMR-14-40] involved a complaint about the lack of officer response to an argument that happened in line at Walmart due to lack of COVID distancing. According to the complaint, several teenagers who were not masked and failed to socially distance used foul language to the complainant after she complained about them failing to socially distance. An officer arrived at the scene and, according to the complainant, took no enforcement action and merely said that the teenagers had a right to free speech. In the CPOA investigation, there was no interview of the subject officer nor interview of the complainant. There was a delay in assigning this matter. Once the investigation was initiated, no OBRD recording existed as it had been deleted due to the passage of time. Absent a recording that definitively closed all potential issues; administrative closure was premature. To reach a finding, the investigator should have taken statements from the officer and complainant, with a credibility assessment of any inconsistencies in the statements. The findings letter cites the fact that the Governor's mask mandate was issued after the date of the incident as a reason for the administrative closure, which missed the essence of the complaint – a loud and vulgar exchange due to disagreements over COVID safety, to which there was alleged inadequate APD officer response. The mask mandate or lack thereof had no bearing on the disposition of the complaint. As such, the investigation and findings in this matter are clearly deficient.

In light of these improper administrative closures, we must reiterate here that the monitor has allowed approval of administratively closed resolutions in situations in which a preliminary investigation cannot minimally sustain the allegations contained in a complaint. In a subsequent approval of the use of an "unfounded" finding in lieu of "administrative closure," the monitor allowed that, in cases in which a preliminary investigation shows by clear and convincing evidence that the conduct which is the subject of the complaint did not occur, care must be taken not to use this practice as a panacea to keep current with CPOA workload. Once again, we stress that this practice should only be utilized where the preliminary investigation shows, by clear and convincing evidence, that the allegations of misconduct did not occur and shows no indication of misconduct not related to the original complaint that would require further investigation.

Regarding CPOA investigations in which administrative closure was not utilized, we found three to be deficient in that the investigative record did not support the findings, or the investigative record was not thorough enough for purposes of a reliable finding because proper investigative steps were not taken and/or the analysis of evidence was lacking [IMR-14-59, IMR-14-63, IMR-14-66].

The first, [IMR-14-59], was a matter in which, although the investigative record is consistent with the findings, the investigation should have been more thorough to ensure the reliability of the outcome. That complaint alleged a falsified police report that unnecessarily referred to the complainant's mental health and that a psychiatrist treated the complainant. The video recording shows the officer being very professional. Apparently, it does not show the entire encounter as there is no discussion about mental

health, psychiatric care or medication on the video. In contrast, the police report did mention medication and psychiatric care and the fact that the officer filled out a mental health evaluation form. Neither the subject officer nor the complainant were interviewed in the investigation. The investigator felt that there was enough information from the CAD, the police reports, the complaint, the video lapel, and the frequent phone calls to dispatch from the complainant to decide this matter. The resolution in this matter was unfounded as to the biased-based policing allegation and not sustained as to the falsifying report allegation. Since the recording was missing part of the encounter with the complainant, statements from the officer and complainant, with a credibility assessment of any inconsistencies in the statements, should have been pursued to determine a finding. The fact that the entire encounter was not recorded and any reasons for that failure, therefore, should have been topics of inquiry. This was not the case.

[IMR-14-63] involved a complaint about improper detention. After neighbors complained about an individual looking into parked cars, officers encountered the complainant and detained, patted down, and questioned him. The complainant was released after establishing his identity, and officers verified that he was a resident of the apartment complex. The investigation was exonerated on constitutional allegations (detention and pat-down) and the code of conduct of allegation (abuse of authority) but sustained on code of conduct (failure to treat with respect, courtesy, and professionalism). The Chief of Police non-concurred on the sustained allegation. Our review concurs in finding the requisite constitutional basis for the officers' actions and no abuse of authority. Regarding the sustained charge of unprofessional conduct, the complainant, in a telephonic interview, alleged the officers were disrespectful and complained of one specific comment where the officers told him to speak English after the complainant switched from English to Spanish in the conversation. We note the statement taken from the officer against whom the charge was sustained in the investigation was relatively short, less than eight minutes in length. In the statement the officer was not directly questioned or confronted on the exact comments the investigative report identified as unprofessional in the officer's banter with the complainant when the complainant refused to identify and confirm his residence. Also, the second officer was not questioned about those exact comments. The totality of both officers' conduct as shown in the video does not indicate unprofessional conduct. Regarding specific comments in the verbal interplay between the officers and the complainant, more direct questioning of the officers regarding the necessity and context of their comments should have occurred. Without further evidence obtained in more robust questioning, the investigation is not thorough enough, and the record does not support the sustained charge. Put another way, allegations of disrespectful or unprofessional comments warrant specific questioning of the officer about the nature and meaning of comments, and the context in which they are made, and require an assessment of the totality of circumstances involved in the event before reaching a finding.

[IMR-14-66] involved a 3rd party (defense counsel) complaint regarding detention, arrest, and search of the counsel's client. Detention was made on suspicion of trespass, and suspicion heightened when the detainee gave the wrong birthday and claimed he did not know his social security number. A warrant check revealed warrants, and a search

revealed drugs and paraphernalia. In the investigation, the officer was exonerated on Constitutional issues and sustained on code of conduct (failure to treat complainant with respect, courtesy, and professionalism). Adequate investigative steps were taken, but we find the analysis of whether the facts indicated an actual trespass or the officers' good faith belief that a trespass was occurring, and whether the extensive search was within the parameters of a search incident to arrest could have been more robust. Care must be taken not to substitute a listing of what the officer said in his interview and what the video recording showed was utilized in lieu of an analysis of the evidence. Also, a second on-scene officer was not interviewed. The sustained finding on unprofessionalism also involved a superficial analysis. There was some banter and verbal jousting between officer and detainee caused by the detainee's evasiveness and false or incorrect information regarding his identification. Although the officer was questioned on some of his comments and explained their meanings and the context in which they were made, the investigative finding did not specify exactly what the subject officer said or did, that was unprofessional.

In summary, of the sixteen CPOA investigations selected in our stratified random sample, our analysis reveals five (5) to be deficient. This represents a CPOA compliance rate of 69%, well short of the 95% required for compliance.

In addition, there are several matters that, although we do not find them deficient for compliance purposes, we nonetheless utilize to point out concerns about "closing the loop" on investigative issues or the pursuit of potential mediation.

[IMR-14-56] involved a complaint by a mother alleging improper handling of a child abuse investigation (search of child and transporting for medical evaluation without the consent of the parents), not wearing a mask, and rudeness of the officer. The complaint was assessed primarily on video recording and interviews of officers. The investigator reached out to the complainant one time but was unable to interview her at that time. The investigator found the allegations to be either exonerated or unfounded. The Board sent the matter back for reconsideration, asking if the evidence was reviewed in light of relevant child investigation SOPs, other directives or guidelines regarding child abuse investigations, and whether recommendations could be made to provide additional training or SOP revision. The Board also pointed out that only one attempt was made to contact the complainant. Some members expressed concern about the demeanor of one of the officers and the scope and manner of searching the child's body for injuries. Although we find that the investigative record, particularly the video recording, supports the investigative findings, the Board's raising of concerns about whether the investigation should have been more robust shows a review process that worked appropriately and renders this investigation sufficient in terms of a process ensuring reliability of outcome.

[IMR-14-36] involved a complaint by a 3rd party, a husband complaining on behalf of his wife. The complaint email was entitled "Case Apology" and sought an apology for handcuffing and forcing the wife to go for a mental health evaluation, as well as seeking expungement of mental health transport of wife for evaluation. Although the matter appeared on its face to be appropriate for mediation, it was not referred to mediation and thus required investigative resources. Thought should be given to maximizing mediation

opportunities, particularly where a complaint signals an inclination to engage in a mediation process.

[IMR-14-64] involved a complaint made by a mother against officers who conducted a welfare check and child abuse investigation, alleging unprofessional, rude and excessive police action. Interviews of the complainant and complainant's mother (a partial witness) were not conducted because they did not respond to CPOA attempts to interview. Another witness, the complainant's boyfriend, was not interviewed, and attempts to interview him were not documented. No reason was given for not seeking to interview him. Although the video recording supports the findings, a logical witness must be interviewed, or an explanation must be given as to why an interview was not necessary or attempts to interview were unsuccessful.

Complainant Appeals to the Board of CPOA Findings and Recommendations
Regarding the task of permitting a meaningful opportunity to appeal CPOA findings to the Board, we examined two appeals this review period along with the underlying investigations [IMR-14-42 and IMR-14-43]. These appeals were both denied, and we did not find the denials to be improper. The Board has consistently demonstrated its willingness to entertain appeals and to give complainants a meaningful opportunity to be heard. Thus, it maintains operational compliance with this CASA requirement contained in paragraph 287.

Non-Concurrence with Findings and Recommendations of Executive Director

Our meetings with the CPOA and a review of a random sample of cases revealed two partial non-concurrences by the Chief or designated disciplinary authority in the IMR-14 review period. In [IMR-14-66], the disciplinary authority issued a thorough non-concurrence letter in which he detailed his analysis and reasons for the non-concurrence. This letter is a prime example of what suffices as meeting the paragraph 285 requirement of articulating reasons for disagreement with the CPOA findings and recommendations. In the second non-concurrence situation, [IMR-14-63], a non-concurrence letter was not issued to the CPOAB. A non-concurrence letter from the chief to the complainant was provided to the monitoring team. It merely showed disagreement with the sustained finding of unprofessional conduct but offered no articulated reasons or explanations. As such, it was wholly deficient. This represents a 50% compliance rate, and operational compliance is therefore revoked with paragraph 285. We note that this non-concurrence finding accrues to APD, not the CPOA.

Timeliness of Investigations

As the monitoring team has noted since IMR-8, when reviewing a random sample of investigations, regarding the CPOA requirements "as expeditiously as possible" processing of complaints contained in paragraph 281 of the CASA, and the related 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 chain of command review and notification of intent to impose discipline (where applicable).

The monitoring team has discussed with the parties in past site visits the issue of delays 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.

Regarding the expeditious investigation requirements contained in paragraph 281, related to the timelines expressed in paragraph 191, in our current stratified random sample of sixteen investigations, we have identified eight investigations [IMR-14-56, IMR-14-57, IMR-14-58, IMR-14-39, IMR-14-59, IMR-14-36, IMR-14-40, and IMR-14-61], that did not proceed in accordance with the time requirements expressed in paragraphs 191 and 281 of the CASA.

- In [IMR-14-56], the complaint was made via the CPOA website. The investigation was completed approximately five months after the complaint initiation, beyond the 90 days/120 days (with extension) mark.
- [IMR-14-57] involved a handwritten complaint form submitted approximately a year before the completed investigation and findings letter back to the complainant.
- IMR-14-58 involved a handwritten complaint form where the investigation was completed almost nine months from the submission of the complaint.
- In [IMR-14-39], the complaint was made via the CPOA website. Although the investigative report and related documents do not reveal the exact date the investigation was completed, the findings letter addressed to the complainant was a year after the complaint was made.
- [IMR-14-59] involved a website complaint. Although the investigative report and related documents do not reveal the exact date the investigation was completed, the findings letter addressed to the complainant was eleven months after the complaint was made.
- [IMR-14-60] involved a third-party complaint made via email. The investigation report is dated thirteen months after the complaint was filed.
- In [IMR-14-40], the complaint was made via a handwritten downloaded form. The case documents do not reveal the exact date the investigation was administratively closed. The findings letter addressed to the complainant was approximately eleven months after the complaint was submitted.
- In [IMR-14-61], the complaint was made via the CPOA website. The investigation was completed approximately five months after the complaint initiation, beyond the 90 days/120 days (with extension) mark.

In [IMR-14-41], an administrative closure was made almost eight months after the complaint was made. However, we do not find this investigation deficient from a time standpoint due to special circumstances - the complaint in this matter lacked specificity and was difficult to follow. CPOA made diligent efforts, documented through APD records to establish an incident that matched the general location, description, and timeframe that could be fathomed from the complaint. These efforts show the CPOA's commitment to taking all complaints seriously, regardless of difficulty understanding the complaint.

Since none of these eight investigations cited as deficient for timeliness purposes resulted in sustained findings, the non-sustained findings did not result in an inability to impose discipline due to time constraints. It appears from this and past reviews that CPOA is conducting an initial triage, and those cases involving strong initial indications of provable misconduct are fast-tracked as they are likely to result in discipline. Those that do not have strong initial indications of provable misconduct are not fast-tracked, resulting in our findings of untimeliness. However, the CASA timelines apply regardless of the findings.

Thus, eight untimely investigations of the 16 equal a CPOA compliance rate of 50% for this reporting period, an improvement from the 38% of IMR-13 but still well short of the 95% requirement for compliance. CPOA continues to be out of operational compliance with the requirements of paragraph 281 related to timeliness.

We are satisfied that the Executive Director has exclusively assigned the complaint intake and assignment process to the lead investigator. With this mechanism in place for review, classification, and assignment of all complaints, we suggest that CPOA take specific steps to ensure that all investigations are completed within required CASA timelines.

Mediation

Regarding timeliness of investigations, we have noted in past monitor reports the importance of an effective mediation program as a complaint disposition tool that should positively affect CPOA's ability to timely and thoroughly investigate non-mediated complaints and, more importantly, improve relations and understanding between the community and APD. As we pointed out in previous reports, a new mediation policy was developed that was an improvement and was expected to enable CPOA to make greater use of the mediation process. Still, 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 had, for the most part, opted not to pursue mediation. As a result, during the 12th monitoring period, a second revised version of the mediation program was completed. The new Mediation Protocol, in the form of a Memorandum of Understanding between the City, APD, APOA, and CPOA, was approved by the Court in the 13th reporting period.

This new mediation program (Phase 2) is off to a promising start, making slow but steady progress in the IMR-14 review period. Once the complainant and the officer choose

mediation, the mediation - as opposed to investigation of complaint - becomes the recourse for handling the complaint. Once mediated, the complaint is closed and is not reopened absent the complainant providing new evidence in support of a request to reopen. During the IMR-14 period, 37 complaints were identified and referred as appropriate for mediation. At the end of the review period, of the 37 mediation referrals, six were successfully mediated, ten were not successfully mediated, and 21 have pending results.

There are indications that the number of cases referred to mediation and the number of cases successfully mediated may be adversely impacted by the pandemic. There are anecdotal observations from the CPOA that complainants are reluctant to engage in, or are not satisfied with, Zoom meetings or telephonic mediations.

As a positive sign for the program's future, APD officers did not decline the opportunity to mediate in all cases identified as potential mediation referrals. We also note that in our review of a random sample of CPOA cases, we have seen instances in which response to the question on the complaint form of whether a complainant would be interested in mediation, complainants answer that they require more information about the mediation program. The monitoring team recommends that CPOA follow up immediately on such a complaint by supplying the complainant with information summarizing the mediation program and its benefits. This immediate follow-up may increase the number of complainants who choose mediation as a recourse.

The monitoring team emphasizes that effective use of a viable mediation policy is an important component of the APD disciplinary process and can prove to be consequential in improving understanding and relations between the community and APD. Mediation can help to alleviate CPOA's investigative burden, thus resulting in more timely investigations.

Community Outreach and Public Information

CPOA continues to have an active and robust community outreach program, which also utilizes social media and other media. The CPOA's outreach efforts are addressed and itemized in its semi-annual reports.

As pointed out in IMR-13, the Public Safety Committee of the City Council and the City Council approved an Ordinance that realigns the CPC function under CPOA. The bulk of CPOA's outreach efforts in the IMR-14 review period has been continued efforts to assimilate CPCs into the CPOA and support and enhance CPC efforts. With the establishment of the CPC Liaison position, it appears to the monitoring team that CPOA has the necessary resources to administer the CPCs effectively. As more fully addressed in paragraphs 266 through 270 of this report, this integration of CPC with CPOA, under the direction of CPOA, is proving to be a significant enhancement to the CPC mission and the community outreach function of the CPOA.

The Executive Director and representatives of CPOA have continued to have regular meetings with City Council. They also attend the monthly meetings of the Public Safety

Committee of the City Council. In addition to these efforts and the coordinated efforts with the CPCs, CPOA has continued other outreach efforts, such as giving presentations at the Academy to the APD Cadet and Lateral classes, a presentation to the City Council Services Staff, and a meeting with the Mayor, Chief Administrative Officer, and the CPC. The monitoring team finds the CPOA to have robust community outreach efforts, and therefore operational compliance is maintained for paragraph 291 of the CASA.

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 the release of public reports are being addressed. Regarding 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 written reports per year.

With the hiring of the Data Analyst, CPOA has made noticeable improvements in the timely filing of semi-annual reports such that the data contained therein is not stale for purposes of public consumption. Both semi-annual reports for 2019 were filed before the end of the IMR-13 period. The first semi-annual report for 2020 was filed during the IMR-14 period. The final 2020 semi-annual was completed at the end of the IMR-14 period, approved by the CPOAB, and on the City Council agenda for approval shortly after the review period. In addition, the draft of the first 2021 semi-annual report was completed shortly after the expiration of the IMR-14 period. It will be available to go through the review and approval process of the CPOAB and City Council soon. The CPOA has made great strides in the content and timeliness of the public reporting requirement and is steadily approaching the target of filing the report within 120 days of the expiration of the relevant semi-annual 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: **Not 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**

Monitor’s Note:

The CPOA Board must continue to reinforce the need for its members to commit to sections § 9-4-1-5 (B) (4) and (5) of the Albuquerque Police Oversight Ordinance and paragraph 273 of the CASA requiring its members to demonstrate an ability to engage in mature, impartial decision-making; a commitment to transparency and impartial decision making; and to the impartial, transparent and objective adjudication of civilian complaints, as well as the importance of public perception of impartiality by CPOA Board members.

During the vetting process, applicants must be made aware of the time commitment, training requirements, and CASA monitoring to which they will be subject as Board members.

City Council should ensure that appointments and reappointments of CPOA Board members meet the qualification requirements set forth in § 9-4-1-5 (B) of the Albuquerque Police Oversight Ordinance and paragraph 273 of the CASA, and that continued service and reappointments meet the training requirements set forth § 9-4-1-5 (F) of the Ordinance and paragraphs 274-276 of the CASA.

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: **Not In Compliance**

Recommendation for Paragraph 274:

4.7.259a: Ensure that newly appointed CPOA members receive the necessary 24 hours of training within the required six-month time period.

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: **Not In Compliance**

Recommendation for Paragraph 275:

4.7.260a: For future training, ensure that current CPOA Board members complete the agreed-upon assessment requirements of annual training within an established time frame.

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: **Not In Compliance**

Recommendation for Paragraph 279:

4.7.264a: Expeditiously fill all approved and funded investigative positions with qualified personnel.

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: **In Compliance**

Monitor’s Note:

CPOA and IAD should avoid conducting independent investigations on the same alleged misconduct. Jurisdiction should lie with one office or the other. In the rare instance where 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.

The Board must exercise its oversight of citizen complaints in a fashion that provides meaningful review while at the same time adequately addressing trend analysis and policy and training recommendations, particularly concerning Use of Force and APD interaction with the public.

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 refine the internal tracking system and other processes that ensure all complaints are either assigned for investigation, referred to mediation, or administratively closed within seven working days of receipt of a complaint, and once assigned for investigation, proceed according to the timelines outlined 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.

4.7.266c: Ensure the inclusion of an investigative timeline clarifying each investigative time point so that the assessment of CPOA's timeliness requirements under the CASA and CBA are clear and not subject to interpretation.

4.7.266d: Expeditiously fill all approved investigative positions and provide initial training as soon as practicable according to CASA training requirements.

4.7.266e: Make greater use of the mediation program by providing the public with sufficient information for a complainant to decide on the choice of mediation as a complaint resolution process.

4.7.266f: A preliminary investigation may be completed without the necessity of a full investigation only where it shows by clear and convincing evidence that the allegations of misconduct did not occur, and also shows no indication of misconduct not related to the original complaint that would require further investigation and should not be used for expediency sake in tackling investigative burdens.

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: **Not In Compliance**

Recommendation for Paragraph 285:

4.7.270a: The Chief of Police should issue non concurrence letters to the CPOA for every case in which he disagrees with the CPOA’s findings. These letters should clearly delineate why the Chief disagrees with the CPOA’s findings, using specific point-by-point analysis.

4.7.271 Assessing Compliance with Paragraph 286: Documenting Executive Director’s Findings

Paragraph 286 stipulates:

“Findings of the Executive Director shall be documented by APD’s Internal Affairs 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:

A meaningful way for the Board to exercise oversight of the CPOA investigative findings and recommendations is through the handling of appeals and requests for reconsideration of complainants. These cases are appropriate for the highest degree of scrutiny by the Board. The resulting decision-making by the Board – approval, disapproval, or request for additional investigation -- and interaction with CPOA on these issues is an opportunity for an understanding to evolve between the Board and CPOA as to what constitutes an appropriate investigation under a given set of facts.

When the CPOA Board grants an appeal, before sustaining any violations that were not determined by CPOA or otherwise altering CPOA findings, its first threshold question should be whether the investigation needs to be returned to the CPOA investigative staff for additional investigation. If the CPOA Board makes findings that were not noted by CPOA or otherwise alters CPOA findings, it should do so only if the record of investigation sufficiently supports the Board’s findings and additional investigation is not warranted. When the CPOA Board grants an appeal and sustains violations not found by CPOA or otherwise alters CPOA findings, appropriate disciplinary recommendations should be made, and training/policy recommendations made, if applicable.

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 continue its current processes that have improved the timeliness of the release of semi-annual reports and brought CPOA close to issuing semi-annual reports within 120 days of completion of the semi-annual period.

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.”

Methodology

APD has routinely provided notice of the requirements of this paragraph to the monitor and the DOJ within 12 hours. The monitor then compares those notices to events already known to have occurred, for example, by scanning media reports related to OIS in the sources that the monitor routinely uses to validate this section of the CASA, e.g., media reports, *amici* discussions and notices, and routine operational reports and processes such as FRB, etc.

Results

Generally, the City is exceptionally good at informing the monitor and DOJ when an OIS, in-custody death, or arrest of an officer occurs. This reporting period, however, three notifications involving incidents outlined in this paragraph were reported to the monitor past the 12-hour timeframe. We have no doubt this was due to leadership changes in the City’s compliance team. Nonetheless, the City has missed a significant compliance requirement.

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

Recommendation for Paragraph 320:

4.7.278a: The City should ensure that critical incidents continue to be noted, and where required by the CASA, are reported to the monitor and DOJ.

5.0 Summary

APD has made progress this reporting period. Effective management is evident in the policy development and dissemination function. The Performance Metric Unit continues to do stellar work in planning, developing, and implementing practices to assess

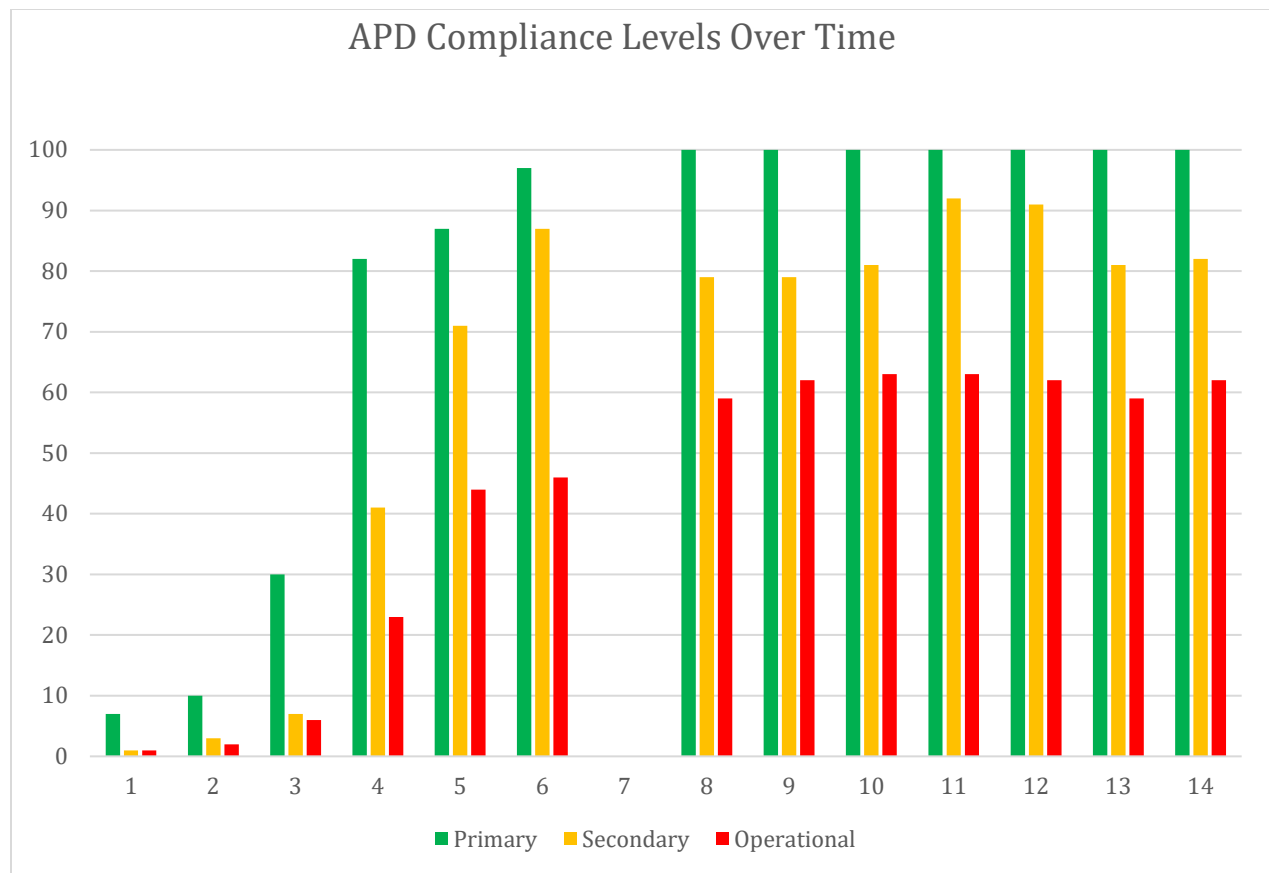
performance in the field. SOD and SID, the recruiting function, and Citizen Policing Councils all have shown consolidation and integration of effort this reporting period. In addition, APD has completed the 2021 Firearms training cycle, moving several paragraphs back into operational compliance as a result.

The policy development and approval process is much improved over the past few reporting periods, with APD demonstrating the ability to think critically about work-processes and producing policy drafts that require only modest input from the monitor. Given the results of our review of APD support and administrative functions, APD has made substantial progress in resurrecting its training practices (which we found to be in disarray in IMRs 12 and 13). In addition, we found no major compliance issues with ECW usage by APD during this reporting period, though we note that a new training cycle related to ECW is imminent and recommend that the training documentation be provided to the monitor for review prior to implementation.

We have noted critical potential issues with APD's Force Review Board this reporting period, including our assessment that the number of uses of force requiring review by FRB are likely to overload the review and assessment mechanism. This speaks as much to APD's inability (or unwillingness) to control unnecessary or improper uses of force as it does to the efficacy of the FRB itself. The sheer volume of reported uses of force by APD officers threatens to overload the oversight system. This is both a commentary on the magnitude of reportable uses of force effectuated by APD officers and the relative inability or unwillingness of APD field commanders to call out improper uses of force.

As with past reporting periods, however, the central CASA requirements related to use of force continue to need a great deal of scrutiny and oversight if APD is to reach full compliance with the requirements of the CASA. APD's training and in-field practices related to crowd control, oversight, and related processes also show the need for improvement. In general, policy development, training, supervision, and oversight of force-related practices require intense scrutiny from all APD command levels. We have developed multiple recommendations for improvement processes related to use-of-force issues in the 14th report. We recommend APD review these recommendations carefully, and consider, create, and deliver a broad-scale, coordinated response designed to address those issues and recommendations. As usual, we recommend APD develop a detailed Problems-Issues-Needs-Solutions assessment outlining their findings related to identifying, classifying, and managing use of force events involving APD personnel. The monitoring team stands ready to assist APD with this process.

Figure 5.1 below is a recapitulation of APD's compliance levels for the last fourteen reporting periods. For the last seven reporting periods, operational compliance levels have been virtually static, with operational compliance levels holding at or near an average of 62 percent. Actual data points range from a low of 59 percent (IMR-8 and IMR-13) to a high of 66 percent (IMR-11).



Our assessment is that APD has dealt with the low hanging fruit of the CASA and has deliberately failed to deal with the issues that are the crux of the reform process: officers' tendencies to use unnecessary force, to under-report (or fail to report) uses of force, and supervisory and oversight personnel's unwillingness to identify, classify, and correct these issues. Obviously, use of force practices are a key element of the reform process. To date, APD, as an organization, has simply refused to deal effectively with pressing use of force issues. The monitoring team has provided, and continues to, provide more technical assistance to APD than any other police department it has monitored. For the most part, that technical assistance is not implemented by APD when it comes to identifying, classifying, investigating, and correcting unnecessary uses of force by its personnel. The monitor is convinced that, at this point, failures by APD to deal with improper uses of force are related to will, not ability.