Monitor's Tenth 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 tenth monitoring period, which covers February 2019 through July 2019.

2.0 Executive Summary

Overall compliance rates improved this reporting period, with APD achieving primary compliance in 100 percent of project requirements. This means that as of the end of this reporting period APD has completed the policy work required by the monitor's compliance methodology. Frequent readers of the monitor's report will realize this as an important milestone. As of the close of this reporting period, APD has a monitor-approved policy reflective of national practice for each of the requirements of the CASA. APD is currently in 100 percent compliance with all primary requirements of the CASA. This means that a policy has been written and promulgated requiring specific steps necessary according to the CASA. Frequent readers of the monitor's reports will note this is the first-time 100 percent primary compliance has been attained by APD. This accomplishment is indicative of the focused and committed work that APD has put into the foundational step of any significant planned change effort: establishing agreed-upon operational requirements that must be implemented in order to achieve success in a long-term organizational planned change process.

With primary compliance in place, APD has built a solid foundation for moving forward with secondary (training) and operational (observed routinely in the field) compliance processes. We are cognizant of the focused and intense work that APD has committed to achieving primary compliance with the first phase of this long-term reform process.

3.0 Synopsis of Findings for the 10th Reporting Period

APD has reached three major milestones during this reporting period. First, it has produced a valid set of policies guiding field performance in all critical aspects of CASA-compliance. Second, during this reporting period, it has implemented training development and documentation practices that appear to meet CASA requirements and address national "best practices" in training of law enforcement officers. Third, it has organized and fielded an internal data management, analysis, and reporting process that has begun to perform the internal audit processes necessary for long-term maintenance of the objectives attained to date. These are major milestones, and reflect a commitment, focus, and operational intent to become fully CASA-compliant.

APD's policy development process has improved markedly in the last two years, with APD now reasonably capable of identifying issues with current policy and developing clear and sufficient guidance for field officers, supervisors, command personnel, support personnel, and administrative oversight. The agency has taken the first steps toward becoming a data-based "learning organization."

APD's internal systems are beginning to note the same operational issues noted by the monitoring team. Unlike the first few years of CASA implementation, APD's internal audit and review functions are CASA-focused and data-based.

We have long noted in our on-site guidance to APD that building APD-wide CASA-compliant systems depends on good policy; good training; good systems monitoring and assessment capacities; and good supervisory, management and leadership processes. The Chief and the leadership cadre have hit the mark solidly on the policy front. Training processes have been basically rebuilt, and APD is currently in the "growth phase" of building internalized planning, development, organization, documentation, delivery, evaluation and supervisory mechanisms to ensure effective and constitutional operations.

We note and document throughout this report, however, serious lapses in internal reporting, supervision, and command oversight that are in need of continued attention and improvement. Put simply, at this point, supervisory processes and command oversight remain basically unchanged, or actually moving backwards, by failing frequently to either note policy (and CASA) violations and failing frequently to take clear and unequivocal steps to inform officers that they have violated policy or procedures. What "corrective actions" that do occur are often executed at the lowest levels of the disciplinary process, e.g., verbal or written reprimands, regardless of the seriousness of the violation. The most frequent CASA violations are also in the most crucial aspects of CASA compliance, e.g., the widespread and unnoticed practice of many APD patrol officers failing to activate their OBRDs when required, or even turning off their OBRDs in the middle of a given contact. This point of failure often tends to interdict the systems improvement process, as APD is effectively blind to in-field

violations—and for that matter, best practices—by its field personnel. These failures are seldom noted by supervisors, and even less likely to be noted by lieutenants and commanders.

This is a serious and potentially fatal shortcoming in the compliance process and needs to be addressed immediately and clearly by APD.

4.0 Current Compliance Assessments

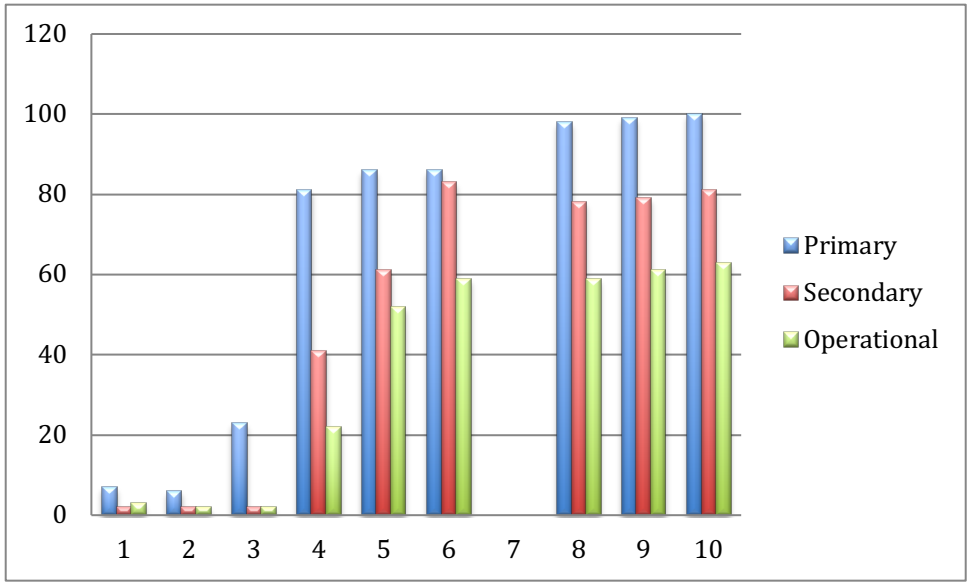
As part of the monitoring team's normal course of business, it established a base-line assessment of all paragraphs of the CASA for the Independent Monitor's first report, (IMR-1). This was an attempt to provide the Parties with a snapshot of existing compliance levels and, more importantly, to provide the Parties with identification of issues confronting compliance as APD continues to work toward full compliance. As such, the baseline analysis is 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-10, 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 tenth reporting period. As of the end of the tenth reporting period, APD continues to make progress overall, having achieved primary compliance in 100 percent of the applicable paragraphs of the CASA. Primary Compliance relates mostly to development and implementation of acceptable policies (conforming to national practices). APD is in 81% percent Secondary Compliance as of this reporting period, which means that effective follow-up mechanisms have been taken to ensure that APD personnel understand the requirements of promulgated policies, e.g., training, supervising, coaching, and disciplinary processes to ensure APD personnel understand the policies as promulgated and are capable of implementing them in the field. APD is in 64% percent Operational Compliance with the requirements of the CASA, which means that 64 percent of the time, field personnel either perform tasks as required by the CASA, or that, when they fail, supervisory personnel note and correct in-field behavior that is not compliant with the requirements of the CASA

Figure 4.1.1 below depicts APD's compliance performance over the last ten reporting periods. We note that there was no "conventional" IMR written for the seventh monitoring period. Instead, given the fact that a new administration was on-board, we spent the IMR-7 period almost exclusively on technical assistance (TA) as opposed to actual compliance monitoring. The monitor developed and published two "mini-reports" outlining that TA.

Figure 4.1.1 **Longitudinal Compliance Levels for Reporting Periods 1-10**



4.2 Project Deliverables

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

4.3 Format for Compliance Assessment

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

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

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

4.5 Operational Definition of Compliance

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

- **Primary Compliance**: Primary compliance is the "policy" part of compliance. To attain primary compliance, APD must have in place operational policies and procedures designed to guide officers, supervisors and managers in the performance of the tasks outlined in the CASA. As a matter of course, the policies must be reflective of the requirements of the CASA; must comply with national standards for effective policing policy; and must demonstrate trainable and evaluable policy components.

- **Secondary Compliance**: Secondary compliance is attained by implementing acceptable training related implementation of supervisory, managerial and executive practices designed to (and effective in) implementing the policy as written, e.g., sergeants routinely enforce the policies among field personnel, and are held accountable by managerial and executive levels of the department for doing so. By definition, there should be operational artifacts such as reports, disciplinary records, remands to retraining, follow-up, and even revisions to policies if necessary, indicating that the policies developed in the first stage of compliance are known to, followed by, and important to supervisory and managerial levels of the department.

- **Operational Compliance**: Operational compliance is attained at the point that the adherence to policies is apparent in the day-to-day operation of the agency e.g., line personnel are routinely held accountable for compliance, not by the monitoring staff, but by their sergeants, and sergeants are routinely held accountable for compliance by their lieutenants and command staff. In other words, the APD "owns" and enforces its policies.

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

4.6 Operational Assessment

APD and the City (CPOA and POB) have agreed to comply with each of the articulated elements of the CASA. The monitoring team has provided the Parties with copies of the team's monitoring methodology (a 299-page document) asking for comment. That document was then revised, based on comments by the Parties. This document reflects the monitor's decisions relative to the Parties' comments and suggestions on the proposed methodology and is congruent with the final methodology included in Appendix One of the monitor's first report[1]. The first operational paragraph, under this rubric, is paragraph 14, as paragraph 13 is subsumed under paragraph 14's requirements.

4.6.1 Methodology

The monitor assessed the City and APD's compliance efforts during the ninth reporting period, using the *Monitor's Manual*, included as Appendix A, in the monitor's first report (see footnote 1, below). The manual identifies each task required by the CASA and stipulates the methodology used to assess compliance.

4.7 Assessing Compliance with Individual Tasks

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

4.7.1 Assessing Compliance with Paragraph 14

Paragraph 14 stipulates:

"Use of force by APD officers, regardless of the type of force, tactics, or 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;

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

f) APD shall explicitly prohibit using force against persons in handcuffs, except as objectively reasonable to prevent imminent bodily harm to the officer or another person or persons; to overcome active resistance; or as objectively reasonable where physical removal is necessary to overcome passive resistance;

g) Officers shall not use force to attempt to effect compliance with a command that is unlawful;

h) Pointing a firearm at a person shall be reported in the same manner as a use of force, and shall be done only as objectively reasonable to accomplish a lawful police objective; and

I) immediately following a use of force, officers, and, upon arrival, a supervisor, shall inspect and observe subjects of force for injury or complaints of pain resulting from the use of force and immediately obtain any necessary medical care. This may require an officer to provide emergency first aid until professional medical care providers arrive on scene."

Methodology

Throughout 2018, and up to the end of the IMR-9 reporting period, APD reworked their use of force policies to integrate a new, three-tiered reporting system. Members of the monitoring team provided extensive perspective, feedback and technical assistance specifically related to that three-tiered system. The CASA requirements stipulate that the use and investigation of force shall comply with applicable laws and comport to best practices. Central to these investigations shall be a determination of each involved officer's conduct to determine if the conduct was legally justified and compliant with APD policy. We 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 in the past, the monitoring team also spent significant time during the IMR-10 reporting period in processes providing perspective, feedback and technical assistance to APD related to officer uses of force, supervisor investigations into that force and disciplinary procedures in which misconduct is identified. We also met with key APD personnel who have primary CASA compliance responsibilities and provided our perspective to help them better understand and deal with historical difficulties the agency has had achieving compliance, and to provide ideas concerning how they could best be addressed. While we have seen examples of our technical assistance being implemented in certain areas, as well as an improvement with the overall handling of use of force incidents, we still find evidence of significant force reporting and investigation issues, as well as system and process disconnects that will hinder Operational Compliance moving forward.

We have seen significant progress in areas of force investigations through APD's Internal Affairs Force Division (IAFD), and we believe if that unit is properly staffed and given the resources it needs, APD will be better positioned in the future when Operational Compliance determinations are more prevalent.

The current Commander of IAFD, in our opinion, is highly committed to the task of providing the agency with honest and thorough use of force investigations that include legitimate assessments of whether force was justified and objectively reasonable.[2] As the new use of force "suite of policies" become operationalized,[3] IAFD is expected to make a shift from its current role, principally focused on uses of force already investigated, to taking on initial investigatory responsibilities in the field. Based on our meetings with APD, we are uncertain if APD is prepared to make a sustained commitment of staffing to IAFD for them to maintain their high quality of work. While reviewing backlogged uses of force, IAFD uncovered hundreds policy violations by officers or supervisors that were either missed, improperly handled or both in the field. We can reasonably predict that once IAFD begins to conduct initial use of force investigations, they will continue to uncover policy violations at a higher rate than field supervisors, APD must prepare itself for the work that will be necessary to address those contemporary policy violations through its internal affairs processes and in a meaningful way. We have commented in the past on APD's lack of appetite for disciplining its officers, so if a stream of new misconduct cases is encountered, APD's interest and resiliency for discipline will be tested. As we comment later in this report, our review of APD's internal affairs function continues to reveal serious defects that hinders the proper remediation of performance deficiencies and the application of discipline.

As we reported previously, the Monitor worked closely with the parties to write use of force policies that can be trained and implemented in the field. The new use of force "suite of policies" were not approved until January 2019, which was near the end of the IMR-9 monitoring period. During the IMR-10 reporting period, we again reviewed use of force investigations, records related to training gaps that were previously reported, proposed training for APD's new use of force "suite of policies", and reviewed internal memos and IA reports that assisted our assessment of APD's current CASA compliance effort. APD's new policies were intended to accomplish several issues related to uses of force, including reducing the burden of investigations on field supervisors and shifting that responsibility to IAFD. We have cautioned APD on several occasions that we see the assessment of uses of force between the new Tiers 1 and 2 to be a potential area of concern moving forward. In our opinion, it will be at the lower levels of use of force classification that issues emerge, since that duty will continue to fall on field supervisors who have demonstrated deficiencies in the past. If the agency does not account for the possibility that field supervisors will make improper classifications by establishing some additional layer of audit and

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[2] Notwithstanding concerns the monitoring team has with APD's handling of policy violations, IAFD does an excellent job identifying violations and justifying their findings.

[3] APD's use of force training for its new policies will likely extend to the end of the IMR-11, or into the IMR-12, reporting period.

oversight, our experience with APD tells us that this will be an area of vulnerability to CASA compliance.

Results

While we have seen positive strides by APD with respect to handling uses of force, including instances where the chain of command reviewing use of force incidents has documented performance issues, policy violations and miscategorized uses of force, there still exists cultural, procedural, and systemic issues that could impact Operational Compliance with respect to holding officers accountable when misconduct occurs. Timeliness of use of force investigations are of particular concern, and proper staffing of units responsible for CASA related paragraphs needs to be monitored closely. Since APD intends to pivot its use of force investigation responsibilities after it implements its new use of force suite of policies, to be effective, the organization will need appropriate allocation of resources to these tasks. While the need to be detailed in the review of use force cases is self-evident, it is apparent that the need to become proficient with the detailed investigations of serious use of force matters requires close oversight, keen investigative skills, and integrity regarding established policies and procedures. We report more extensively on these observations in Paragraphs 41-57 and 60-77.

The overall structure and standardization of training documents we now receive are a marked improvement to when our CASA oversight began, but the academy staff must focus on the finer points of curriculum development in order to create a sustainable system. These finer points (i.e. proper learning objectives, valid test questions, connecting curriculum to measures, needs assessments), are factors that could impact Operational Compliance in the field, so APD must embrace the need to carefully craft their training programs. We have discussed the importance of properly mapping training objectives through the core curriculum and to test questions within courses APD delivers (over the past few years), but APD's understanding of how to complete that task is still a work in progress. These are not simply administrative exercises, but basic training development principles that help build the agency's capacity to sustain any reform they achieve. We continue to see examples where deadlines supersede quality, and when coupled with apparent staffing deficiencies, the results are administrative mistakes and training programs that may not impact field performance in the way APD needs. Several members of the monitoring team have led a law enforcement academy under circumstances similar to APD. The technical assistance and feedback that is provided originates from experience on how to guide an agency through a reform process from a training perspective. That said, while there is still significant work to be done, APD is better off today than it was when the CASA oversight process began or even 20 months ago when the new leadership took over the department.

As noted in IMR-9, the current Academy Commander was referred to past Monitor reports where tables were provided to outline the status of numerous training gaps that have lingered for the past three years. These gaps originate from APD's past attempts to deliver training for its current SOPs on use of force. At the time, the monitoring team provided extensive technical assistance and feedback before APD began its training and warned of issues we thought they would encounter with the training as well as implementation of that training in the field. Despite those warnings, the department forged ahead and essentially encountered each problem we wanted them to avoid. It is important to call attention to these past mistakes, since APD is again embarking on the development and delivery of training for its new use of force "suite of policies." APD has a new leadership team and early in their tenure they were alerted to training gaps that were lingering. In IMR-9 we reported that 5 training gaps were remediated and 2 additional lingered.[4] We report extensively in Paragraphs 86-88, but based on data presented to the monitoring team, we believe APD has satisfied the training needs related to de minimis force and crowd control.

APD has finally addressed training gaps we first identified three years ago. The current academy staff took an extended time to remediate the issues as well. While the current APD administration was not in place when these gaps first occurred, this should serve as a lesson for addressing future training gaps that may emerge. To demonstrate a true capacity for overseeing its own training, we expect APD to self-identify gaps that occur instead of waiting for people outside the organization to point them out. When those gaps exist, if APD takes proactive steps to remediate the issue it will be looked upon very favorably by the monitoring team.

Conducting the use of force gap training was essential to APD's success because we still saw evidence this reporting period that demonstrated issues still exist that squarely fall within the requirements of this paragraph. APD is continuing to mature in its use of their 7 Step Training Cycle, and the use of that training development system will help organize its work and help better manage the training needs of the organization. We recommend that APD Academy personnel review the feedback we provide in Paragraphs 24-36, 41-59, and 60-77 when developing its new use of force training. We comment extensively on progress APD has made and shortcomings we identified related to officer uses of force, as well as the quality of force investigations and command level oversight of those investigations. We will not reiterate that information here, but even with significant strides APD is making it is also clear there is still ground to be gained toward compliance with this paragraph.

[4] Training gaps related to *de minimis* force and crowd control were still pending at the end of IMR-9.

Paragraph 14 remains in Primary Compliance since APD never achieved Secondary Compliance with its original use of force training. Even with the training gaps being remediated, there is sufficient evidence to demonstrate the original use of force training, as a whole, was ineffective as significant issues with use of force reporting and investigations existed since it was first delivered. APD reworked its use of force "suite of policies," so we will assess their training of those policies and revisit a Secondary Compliance determination during the IMR-11 reporting period.[5]

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**."

Methodology

Throughout 2018, and up to the end of the IMR-9 reporting period, APD reworked their use of force policies to integrate a new, three-tiered reporting system. Members of the monitoring team provided extensive perspective, feedback and technical assistance specifically related to that three-tiered system. The CASA requirements stipulate that the use and investigation of force shall comply with applicable laws and comport to best practices. Central to these investigations shall be a determination of each involved officer's conduct to determine if the conduct was legally justified and compliant with APD

[5] APD's new use of force system adds a new level of force that impacts reporting, classification and investigatory responsibilities. These changes required a complete retraining of the organization to achieve Secondary Compliance.

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 in the past, the monitoring team also spent time during the IMR-10 reporting period in processes providing perspective, feedback and technical assistance to APD related to officer uses of force, supervisor investigations into that force and disciplinary procedures when misconduct is identified. We also met with key APD personnel who have primary CASA compliance responsibilities and provided our perspective to help them better understand and deal with historical difficulties the agency has had achieving compliance, and to provide ideas concerning how they could best be addressed. While we have seen examples of our technical assistance being implemented in certain areas, as well as an improvement with the overall handling of use of force incidents, we still are finding evidence of significant force reporting and investigation issues, as well as system and process disconnects that will hinder Operational Compliance moving forward.

As we reported previously, the Monitor worked closely with the parties to write use of force policies that can be trained and implemented in the field. The new use of force "suite of policies" were not approved until January 2019, which was near the end of the IMR-9 monitoring period. During the IMR-10 reporting period, we again reviewed use of force investigations, records related to training gaps that were previously reported, proposed training for APD's new use of force "suite of policies", and also reviewed internal memos and IA reports that assisted our assessment of APD's current CASA compliance effort. APD's new policies were intended to accomplish several issues related to uses of force, including reducing the burden of investigations on field supervisors and shifting that responsibility to IAFD. We have cautioned APD on several occasions that we see the assessment of uses of force between the new Tier 1 and Tier 2 levels to be a potential area of concern. In our opinion, it will be at the lower levels of use of force classification that issues emerge, since that duty will continue to fall on field supervisors who have demonstrated deficiencies in the past.

Results

In IMR-9 we reported that 5 training gaps were remediated and 2 additional lingered.[6] We report extensively in Paragraphs 86-88 but based on data presented to the monitoring team, we believe APD has satisfied the training needs related to de minimis force and crowd control. Even with the training gaps being remediated, there is sufficient evidence to demonstrate the original use of force training, as a whole, was ineffective as significant issues with use of force reporting and investigations existed since it was first delivered.

[6] Training gaps related to de minimis force and crowd control were still pending at the end of IMR-9.

Paragraphs 15 remains in Primary Compliance since APD never achieved Secondary Compliance with its original use of force training. APD reworked its use of force "suite of policies," so we will assess their training of those policies and revisit a Secondary Compliance determination during the IMR-11 reporting period.[7]

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."**

Methodology

APD previously achieved Secondary Compliance, notwithstanding changes that have occurred to use of force policies that directly relate to this paragraph. Throughout 2018 and up to the end of the IMR-9 reporting period, APD reworked their use of force "suite of policies" to integrate a new, three-tiered reporting system. Members of the monitoring team provided extensive perspective, feedback and technical assistance related to this new three-tiered system. The new use of force "suite of policies" were not approved until January 15, 2019, which was near the end of the IMR-9 monitoring period, but steps were taken during the IMR-10 reporting period to develop training for the new policies. Those efforts are discussed in greater detail in Paragraphs 86-88.

Results

Paragraphs 16 remains in Secondary Compliance.[8]

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

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[7] APD's new use of force system adds a new level of force that impacts reporting, classification and investigatory responsibilities. These changes required a complete retraining of the organization to achieve Secondary Compliance.
[8] APD's new use of force system adds a new level of force that impacts reporting, classification and investigatory responsibilities. These changes required a complete retraining of the organization to achieve Secondary Compliance.

4.7.4 – 4.7.10 Assessing Compliance with Paragraphs 17 - 23

The 2019 annual firearms training cycle was placed on hold during this monitoring period. APD will be receiving new firearms from Smith & Wesson and, it made little sense to conduct training with the old weapons, and then retrain with the new weapons. This pause has created additional issues for APD. They anticipate that six weeks will be necessary to implement the issuance of new weapons. The intention is to also inventory/audit all weapons along with the annual qualification. Given these factors, six weeks will be necessary. With several of Albuquerque's largest events rapidly approaching (New Mexico State Fair and Balloon Fiesta), along with a sitting academy class that will require two weeks on the range, time and personnel issues arise.

At the end of this monitoring period, in response to CASA requirements and numerous recommendations from the monitor, APD issued a completed staff work document designed to address those requirements and concerns. This document highlighted all of the Monitor's IMR-9 recommendations regarding CASA Firearm requirements, issues, problems and solutions. Planned solutions include policy revisions, training revisions, additional training for range staff and line supervisors and a better understanding of how to properly prepare for and conduct an audit. We note this as an excellent example of APD noting monitor concerns and providing clear and comprehensive guidance to address those concerns.

The Chief of Police commissioned the Audit Division to conduct the 2018 Firearms Audit—the results of which were extensively reviewed in IMR-9. APD has made a great deal of progress in moving forward with what was learned in this audit. In conducting a follow-up to the 2018 firearms audit, APD has found and corrected many of the inconsistencies—most of which were related to a mismatch of data from two separate databases and additionally, a lack of understanding of the difference in a firearm accessory as opposed to a modification. During the 2019 firearms qualification cycle, APD plans to issue new weapons; inventory/audit all weapons; and train all personnel in policy requirements regarding modifications, accessories and issued ammunition. Additional training for line supervisors is planned to ensure proper monthly inspections of firearms, modifications, accessories and ammunition.

Secondary compliance will be attained once APD has documented that this supervisory training has been conducted. Operational compliance will be reached once the monitoring team can observe that line supervisors are in fact making formal weapons inspections monthly, and documenting any failures identified and follow up corrections to the failures.

During the May 2019 site visit, members of the monitoring team visited several Area Commands and duty locations and spoke with supervisors at each location. Some supervisors continued frank discussion of monthly inspections, informing the monitoring team that there are both formal and *informal* inspections, explaining that

they do not in fact physically check every officer's weapon for make, model, serial numbers, modifications or ammunition every month. Issues relayed to the monitoring team included time, quick daily visual inspections, the cumbersome SharePoint database and the reliance on officer integrity to be carrying the proper weapons and ammunition. Until the solutions that APD plans are initiated, higher compliance levels cannot be attained.

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

4.7.5 Assessing Compliance with Paragraph 18: On-duty Weapons

Paragraph 18 stipulates:

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

Results

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

4.7.5 4.7.6 Assessing Compliance with Paragraph 19: On Duty Weapons

Paragraph 19 stipulates:

> **"APD issued Special Order 14-32 requiring all officers to carry a Department- issued handgun while on duty. APD shall revise its force policies and protocols to reflect this requirement and shall implement a plan that provides: (a) a timetable for implementation; (b) sufficient training courses to**

allow officers to gain proficiency and meet qualification requirements within a specified period; and (c) protocols to track and control the inventory and issuance of handguns."

Results

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

Recommendations for Paragraphs 17-19:

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

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

4.7.7 Assessing Compliance with Paragraph 20: Weapons Qualifications

Paragraph 20 stipulates:

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

Results

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

4.7.8 Assessing Compliance with Paragraph 21: Firearms Training

Paragraph 21 stipulates:

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

Methodology

As noted in IMR-9, APD SOP's related to use of force remain approved as of June 2017; however, APD undertook the task of rebuilding their use of force "suite of policies" that includes a new 3-Tier reporting system. A great deal of feedback and technical assistance was provided throughout 2018. APD finally received approval for their new policies at the latter part of the IMR-9 reporting period, and following the delivery of the academy's Tier 1 training of those new policies (during this reporting period), APD sought to refine certain provisions.[9] Past reviews of use of force cases have revealed serious deficiencies in the oversight and accountability process, particularly with respect to force reporting, supervisory-level investigations and chain of command reviews. In 2018 APD put the Internal Affairs Force Division (IAFD) in place to investigate a backlog of 2017 use of force cases. IAPD found similar deficiencies with force investigations that were being conducted in the Field Services Bureau. They also uncovered hundreds of misconduct violations that were missed and/or unreported properly to IA, which included shows of force. As we have previously reported, deficiencies related to APD officers and supervisors properly reporting and investigating shows of force has directly impacted compliance efforts with this paragraph. APD has been unable to develop clear policy provisions and deliver quality training in the past; however, we are optimistic about the new policies and tiered-training method APD has proposed.[10] That said, the best law enforcement training cannot overcome a culture where officers are not legitimately held accountable in the field, and where commanders fail to address instances where supervisors miss, or fail to report, policy violations. To be successful, APD must assess each involved officer's conduct and decide if their conduct was legally justified and compliant with APD policy.

As previously reported, APD made the decision to again adjust the use of force "suite of policies", and the revision process continued into the IMR-10 reporting period. APD was then required to create meaningful training of those policies and developed a 4-tiered methodology that begins with an on-line orientation through their learning management system and concludes with experiential reality-based training (RBT). The academy first believed that the multi-tiered training approach would extend to the latter part of 2019, but we learned that it

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[9] APD is delivering their new use of force training in a multi-tier approach. The first tier was delivered through the agency's learning management system, during which they solicited feedback from officers on the new policies. The purpose was to obtain feedback and determine if the second tier of training needed to better clarify certain provisions. Likewise, APD was alerted to policy conflicts that needed to be fixed, which will be clarified during the second tier, in-class training with the whole organization.

[10] Parenthetically, of the policy provisions APD requested adjustments to following its Tier 1 training, they decided that need to be more explicit and include language defining the pointing of a 40mm and bean bag shotgun as a show of force. That request was approved by the monitor and the Parties and will be reflected in IMR-11.

will likely extend into the early part of 2020 because of delays that occurred following Tier 1. More details concerning the overarching use of force training is located in Paragraphs 86-88.

In IMR 9, APD achieved Secondary Compliance for this paragraph. It will be APD's responsibility to assess the new use of force suite of policies to determine what additional training is necessary to retain Secondary Compliance. Operational Compliance will be assessed following APD's successful delivery of the overarching use of force tiered training.

Results

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

Recommendations for Paragraph 21

4.7.8a: APD's Training Academy command should build comprehensive training evaluation systems that assess the degree to which the officers and supervisors they train understand the trained processes and can execute the trained requirements in the field.

4.7.8b: As a result of the articulated need in "a" above, the Academy command should be looped in to field inspections reports (and other internal assessments) and should ensure that all current or planned training functions include responses to issues uncovered during those processes.

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

Paragraph 22 stipulates:

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

Methodology

As noted in IMR-9, APD undertook the task of rebuilding their use of force "suite of policies", which were approved by the monitor during the ninth reporting period. The new policies established a new 3-Tier reporting system. A great deal of feedback and technical assistance was provided throughout 2018 and up to the end of the IMR-9 reporting period to reach that point. APD has decided to deliver training of the new policies through a multi-tiered approach that began with an on-line orientation and will conclude with experiential, hands-on reality-based training. Following the academy's Tier 1 training of their new policies, APD sought to refine certain provisions.[11],[12]

Parenthetically, APD has decided to include certain policy language related to the firing of 40mm and bean bag shotgun rounds at structures and stationary vehicles. We believe their request stems from situations in which SOD has identified the need to breech the window of a structure to introduce chemical munitions as a means of addressing a barricaded subject. However, APD also sought the inclusion of language for similar situations in which a person may be inside a vehicle. This revealed itself while the parties were attempting to refine other use of force policy provisions[13]; however, the monitoring team found the language concerning vehicles to be highly problematic and want to amplify that opinion here and before any incidents may occur.

Informed law enforcement executives can draw reasonable connections between the provisions of this paragraph and the proposed language related to a stationary vehicle. If not approached with the utmost caution, operational compliance could be adversely affected in the future, depending on the exact nature of policy, training related to that policy, and supervisory and management processes dealing with (or making decisions about) actions covered by that policy. We have spent extensive (and intensive) time working through these issues with APD, and they are aware of our concerns.

Results

During the IMR-9 reporting period, APD advanced training curricula that remediated several training gaps, including a gap related to this paragraph. APD made the decision to again adjust the use of force "suite of policies", and the revision process continued into and through the IMR-10 reporting period. APD's

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[11] APD's first tier was delivered through the agency's learning management system, during which they solicited feedback from officers on the new policies. The purpose was to elicit feedback and determine if the second tier of training needed to better clarify certain provisions. Likewise, APD was alerted to policy conflicts that needed to be fixed, which will be clarified during the second tier, in-class training with the whole organization.

[12] Tier 2 training will not commence until the IMR-11 reporting period.

[13] Ultimately the parties decided to table discussion, believing that the language was better suited for APD weaponry SOPs. It will continue to be addressed through the IMR-11 reporting period.

academy has initiated the training of its new policies through a 4-Tiered methodology. The academy first believed that the multi-tiered approach would extend to the latter part of 2019, but we learned that it will likely extend into the early part of 2020 following delays after Tier 1. More details concerning the overarching use of force training are reported in Paragraphs 86-88.

In IMR-9, APD achieved Secondary Compliance for this paragraph. It will be APD's responsibility to assess the new use of force suite of policies to determine what additional training is necessary to retain Secondary Compliance. Operational Compliance will be assessed following APD's successful delivery of the overarching use of force tiered training.

We have determined that Secondary Compliance is retained during this reporting period.

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

Recommendations for Paragraph 22:

4.7.9a: Complete planned training for Paragraphs 86-88.

4.7.9b: Evaluate the effectiveness of these paragraphs via report review processes, supervisory use of force review practices, and other reasonable modalities (identified by APD);

4.7.9c: Build continuous quality-improvement loops that tie in-field performance with training practices and ensure error-correction loops are incorporated to facilitate removal of "errors" from the use of force training processes (including line, supervisory and management levels).

4.7.10 Assessing Compliance with Paragraph 23: Tracking Firearm Discharges

Paragraph 23 stipulates:

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

Methodology

After the close of the 10th reporting period, APD has not yet produced the annual report for 2018. Until annual reports, including the sections dealing with critical firearms discharges are completed accurately and in a timely manner, APD will remain out of compliance for Paragraph 23.

Results

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

Recommendations for Paragraph 23:

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

4.7.11-4.7.18 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 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.

As a result of a sample (18%) of case reviews in IMR-9, APD compliance with five Paragraphs was adversely impacted. During a site visit in May 2019, the monitoring

team reviewed several of these cases in depth with various members of APD to provide perspective on how to assess ECW cases. This was part of our technical assistance focus with APD during the site visit for IMR-10 as well as prior site visits.[14]

During this monitoring period (February 1, 2019 through July 20, 2019), APD case ledgers revealed 34 cases in which an ECW was utilized (inclusive of 14 ECW Shows of Force). In mid-2019, the monitoring team randomly selected six ECW cases for review. This 30% sample of cases in which an ECW was actually deployed on subjects represents a cross-section of 2019 ECW deployments that occurred during IMR-10. The cases reviewed, and a short synopsis of each case are listed below.

Case #IMR-10-1 (ECW Application)

APD officers attempted to execute a felony warrant at a residence. The officers set up a perimeter around the residence with officers armed with rifles, 40mm launchers, and spike strips. While officers were on the scene, the subject exited the residence on foot and evaded officers with the rifle and 40mm launcher but was stopped by an officer who deployed an ECW a distance from the scene. The officer and subject were running towards each other and the officer deployed the ECW as the subject was stopping and had both of his hands raised above his head. The officer's out of policy use of the ECW was inappropriately found to be an in-policy use of the ECW by the frontline supervisor but was appropriately deemed to be an out of policy use of the ECW when reviewed by the lieutenant and commander. The investigating sergeant was involved in the warrant execution and it was determined that the supervisor briefed APD personnel prior to the operation that they were authorized to utilize their ECWs and 40mm less-lethal launchers if the subject fled or failed to immediately follow verbal commands. Additionally, all of the officers at the scene failed to activate their OBRD's under the misguided assertion that they were saving their batteries. Approximately one month after the use of force, IA was notified that five officers did not activate their OBRD (a sixth officer was not listed on this notification). A separate notification was made to IA regarding the officer's two SOP violations associated with the use of the ECW. More than two months after the use of force, the sergeant was verbally counseled by the reviewing lieutenant for improperly setting up a perimeter and inappropriately authorizing force absent a perceived threat. The counseling documentation made no mention of the sergeant's deficient, biased investigation that included the failure to properly document a show of force with a rifle by an APD officer.

Such errors will only be winnowed from the force-review system when they are declared improper procedure, and effective discipline is administered. Eventually, APD's supervisory and mid-level management will need to overcome their apparent aversions

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

to “calling the ball” on obvious violations of policy and training. A verbal warning, when issued, should be accompanied by a clearly articulated statement by APD reviewing authorities, that the given individual had no related, previous warnings. Continual use of a verbal warning for repeated offenses, e.g., poor show of force practices, poor supervisory processes, etc. simply are not supportable. To be clear, the “discipline” imposed on this case appears to have been abjectly deficient and is part of a pattern or practice that needs to be identified by reviewing authorities and rectified. The errant sergeant was trained by appropriate monitor-approved authority, and the “oversight” could hardly be accidental. Eventually, APD supervisory, mid-management, and command level authority will need to take objectively reasonable steps to declare errors as errors. The myth that every “first violation,” despite its seriousness, must be dealt with by a verbal warning, needs to be abolished at APD. This is a custom in the agency, and it is a custom which has, in the past, brought APD to the point that federal intervention is necessary.

Case #IMR-10-2 (ECW Application)

APD officers responded to a domestic violence call and upon arrival observed the alleged aggressor attempting to make entry back into the residence. Two officers attempted to restrain the suspected aggressor in handcuffs, but he resisted by pulling away and refusing to allow officers to place his second hand into handcuffs. Officers moved the subject away from hazards and coordinated a takedown of the subject to gain better control of him to complete placing him in handcuffs. The subject continued to resist and disobey verbal commands. An officer deployed his ECW with two cycles and two follow-up drive-stuns. These applications were compliant with APD policy (as was the physical force applied to the subject), but the ECW use was not properly reported by the officer. The officer’s reporting failure was not discovered or addressed by the investigating supervisor or chain of command reviews. As a justification for being placed “in an unsafe situation” and needing to deploy an ECW, one of the officers wrote in his report that while struggling with the subject, “some residents began to walk outside, but were given commands to go back into their residence, to which they all complied.” This was verified on the officers’ OBRDs. Despite this written statement and the statements by officers to residents or onlookers as recorded by OBRDs, the investigating sergeant reported he conducted an unrecorded canvass for witnesses, but nobody saw the use of force. Since there were multiple uses of force over a four-minute period, no factual basis was established that a bona fide canvass was conducted and that none of the uses of forces were witnessed. The sergeant stated in his report that APD policy does not “specifically” state canvasses need to be recorded. Under the “Interviews Conducted” section of this sergeant’s 1st Line Supervisor report where the sergeant must summarize the statements of officers, the sergeant does not offer a summary, but instead directs the reader to see officer interviews for their exact statements. Additionally, the investigating sergeant, reviewing lieutenant, and Commander all failed to identify that more than one ECW cycle was utilized (as reported in the sergeant’s investigation), despite it being plainly evident on the recording and ECW audit logs.

However, a subsequent IAFD review identified nearly all the same issues as the monitoring team.

These “misses” by APD supervisors and mid-management are frequent enough, in the monitor’s opinion, to warrant a declaration of a pattern and practice of mid-management and supervisory personnel being unwilling to identify and “call” violations with a host of established use of force training and policies. APD needs to overcome the inertia at supervisory, management and command levels, and to ensure that policy and training violations result in correct and warranted supervisory and mid-management declarations of the failure of line personnel to adhere to the policy and practices to which they have been trained. Where these violations are seen to be deliberate, more than a “verbal warning” is essential if APD is ever to gain control of its in-field use of force practices.

Case #IMR-10-3 (ECW Application)

APD officers were at a mall handling two unrelated matters when their attention was called to a shoplifter exiting the mall. The shoplifter was observed swinging what turned out to be two swords at a mall security officer. The shoplifter ran into the parking lot followed by APD officers. Heading towards populated public spaces, the officers pursued the shoplifter, while giving him commands to stop. The shoplifter eventually discarded the two swords, but disregarded commands to stop and continued through the parking lot clutching a large bag against his chest and carrying a backpack. Officers eventually utilized an ECW to stop the shoplifter and needed to utilize physical force while the shoplifter was on the ground to place him into handcuffs. These applications (as well as a Show of Force with a handgun) were compliant with APD policy. The supervisory investigation offered no evidence to indicate the officers were advised to remain separated and not to discuss the use of force. Following the handcuffing of the subject, one officer was heard mentioning that he heard the swords contact each other in the presence of the officer who deployed the ECW. This appeared to take place in front of a supervisor and was not specifically addressed within the chain of command reviews.

Case #IMR-10-4 (ECW Application)

APD officers were dispatched to a disturbance call in which a male subject was reportedly intoxicated and physically assaulting a female victim. Upon arrival, officers met with a female victim who indicated that her son's friend was inside the residence acting irrationally, breaking property, and appeared intoxicated. The subject had reportedly at one point jumped on the female and attempted to grab her genital area. Officers approached the apartment and attempted to make contact with the suspect, who was behind a closed front door. They made several attempts to deescalate his demeanor, to no avail, and could hear him inside acting irrationally. They used a key that was provided to them by the victim to open the front door, and once it was opened,

the officers made multiple commands to the subject not to close distance and to get on his knees or he'd be "tased." The subject made a movement toward the officers at which time the Recruit Officer deployed her ECW and the suspect fell to the ground. He was handcuffed and later placed in a passive restraint system because he was being physically aggressive. The ECW use was in compliance, but numerous issues were found with supervisory and command level reviews of the incident, and there were issues with proper documentation and failure to report a show of force.[15]

Chain of command reviews failed to identify a show of force, failed to identify boilerplate language in the officers' written reports, and an overlooked a problematic order by an on-scene sergeant. Specifically, before officers opened the apartment door one sergeant told a Recruit Officer to use her ECW on the suspect if he failed to follow a single verbal command. The officer who received the command did not follow that very precise order. Instead, officers made several verbal commands before the suspect stepped at the officers and was tased. The order to "tase" the suspect in that manner is problematic, could have resulted in a lack of independent judgement (based on observations when the door was opened) on the part of the officer and could have led to an unjustified use of force. The officers' written reports and initial supervisory force report were submitted within two days of the event, but the Commander's review was 2 ½ months later. All levels of review failed to identify issues with the case, but a subsequent IAFD review identified nearly all the same issues as the monitoring team. While it appears the lieutenant, who investigated the force received subsequent training, all the necessary referrals for counseling and training either did not occur or were not documented. Either is a serious issue.

Case #IMR-10-5 (ECW Application)

APD officers were dispatched to an early morning disturbance call in which a witness reported a male subject was damaging property by throwing rocks through windows of business establishments. Upon arrival, officers met with a witness who provided a general description and direction of travel for the subject. A short distance away the APD officers encountered the subject exiting a business through a broken window. The officers announced themselves and told the subject to "stop." Both officers drew their service pistols, but when the subject began to run away and down an alley one officer holstered his weapon and drew his ECW. As the subject was running, the officer with the un-holstered ECW gave commands for him to stop or he would be tased. An officer discharged his ECW at the subject as he was still running away, but it was ineffective.[16]

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[15] IAFD conducted an independent review of the case after it passed through the entire chain of command reviews and identified many of the same deficiencies as the monitoring team.

[16] The time was approximately 1:00 AM and there were no civilians in the area. The officer documented being in fear of his life because the subject had been throwing rocks and had a "small white tube" in his hands (which was later determined to be a marijuana container). The officer's attempt to describe a level of threat that would justify the use of an ECW against a person who was running away was not compelling to the chain of command that reviewed the case, nor to the monitoring team.

A second officer tackled the subject to the ground and a third assisted in handcuffing him. The original officer caught up to the others and used the ECW as a show of force as the subject was being handcuffed. The uses of force and show of force were each identified by the investigating supervisor, but the documentation revealed several issues with the event beyond an improper use of the ECW.

One assisting officer failed to turn on her OBRD until after the subject was already being handcuffed. Other officers turned their OBRDs on, but purposely turned the audio portion off on several occasions.[17] The sergeant who investigated the uses of force deemed the ECW deployment as out of policy, but his analysis was convoluted with qualifying language. He also failed to make appropriate and timely referrals for policy violations and training deficiencies. However, the lieutenant and Commander above the sergeant who reviewed the incident were less ambiguous with their determinations, with the Commander stating the officer's force was "…not objectively reasonable" and that he "…used unreasonable force and was not within our policy." The Lieutenant made an IA referral for the ECW violation, which is categorized as a level 6/7 violation, and for one officer's failure to immediately engage her OBRD. He also contacted the academy and conducted a counseling session for one officer who activated his OBRD with the same hand with which he was holding his service weapon. The Lieutenant also addressed a potential show of force when the officer was running after the subject.[18] In this case, the command elements dealt with the operational issues, but there is no evidence in the record they notified the sergeant who missed these issues of his or her errors, and no record that a counseling—or other system-improvement process -- were taken with the sergeant.

Case #IMR-10-6 (ECW Application)

APD officers were dispatched to a business establishment during late evening hours to the report of a male subject harassing patrons, attempting to enter their vehicles and threatening that he had a firearm in his possession. Two sergeants and an officer responded to the scene and encountered the subject, who was sitting at the rear of an empty, but well lit, parking area. Not knowing if the subject was actually armed with a weapon, the officers approached with a force array, including a firearm and patrol rifle[19], and began to make commands for the subject to show his hands. The subject stood up and began to walk toward the officer making the commands. In his report, the officer

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[17] This has been noted in case reviews in the past. While the supervisor listed an officer not turning her OBRD properly, other officers disengaging the audio was neither explained by the officer nor identified as an issue by any level of supervision. This appears to be a recurring issue in videos reviewed by the monitoring team, and needs to be addressed on a global basis via a "training video" or other reasonable process.

[18] The video is unclear as to whether the officer conducted a show of force, but the manner in which he was handling the weapon from the time he exited his patrol car was problematic. However, the issue was appropriately addressed by the lieutenant.

[19] During the encounter one sergeant returned to his patrol vehicle to get a beanbag shotgun, but the subject stood up and was ultimately tased before that weapon was retrieved.

documented that he could see that the subject's hands were empty, and video shows the subject staggering toward the officer slowly and talking incoherently.[20] The officer transitioned to his ECW and made several commands for the subject to stop walking toward him. After several commands, and attempting to maintain distance, the officer discharged his ECW at the subject, but it was not effective. The subject continued to walk toward the officer, and the officer was able to grab the subject's arm and pull him to the ground with one hand. When he fell, the subject sustained an injury to his face. The two sergeants then handcuffed the subject without any further force being necessary. One of the sergeants who witnessed the event and assisted with the handcuffing conducted the use of force investigation.

The uses of force by the officer were determined to be in compliance; however, numerous issues were identified with the quality of the reports and chain of command oversight. A sergeant who witnessed the use of force and handcuffed the subject inappropriately conducted the use of force investigation, and this was neither noted nor corrected by the chain of command.[21] The use of force investigation was deficient and failed to assess all the use of force types that occurred, and incident reports lacked sufficient detail and contained boilerplate language. These issues were not addressed during the chain of command review.

Observations and Comments

The cases the monitoring team reviewed this reporting period revealed a number of deficiencies, from ECW deployment problems by officers, to supervisory review and oversight errors. Officer deployment problems include discharging an ECW on a person who was incorrectly identified by the discharging officer as a threat to an officer [*IMR-10-1]*, discharging an ECW based solely on the fact that a subject is fleeing an officer making a lawful detention or arrest [*IMR-10-1; IMR-10-5]*, problematic supervisor instructions *[IMR-10-1; IMR-10-4]*, failing to self-report a second (compliant) drive-stun [*IMR-10-2],* and failure to report an ECW show of force *[IMR-10-4]*.

Supervisory review and oversight issues of ECW deployments would normally be reported in the section of this monitor's report consistent with Force Investigations and Supervisory Force Investigations (Paragraphs 46-59). However, since APD has yet to achieve Secondary or Operational Compliance with any of those Paragraphs of the CASA, the monitoring team includes commentary on these supervisory review and oversight issues (as they relate to the ECW cases reviewed) in this section of IMR-10. These issues include supervisors conducting use of force investigations when they were

[20] The observations were consistent with a person that was intoxicated, and later the officers documented the odor of an alcoholic beverage on the subject's breath.

[21] The sergeant explicitly states in the use of force investigation that he witnessed the use of force but did not document he assisted with handcuffing the subject. Because this created an obvious conflict when he would document statements by witness officers, he deferred to his own police report. We noted that the report he referenced was deficient and contained boilerplate language and insufficient details.

involved in the incident *[IMR-10-1, IMR-10-6];* failing to analyze all reported uses of force *[IMR10-1, IMR-10-2, IMR-10-6]*, errors in the review of OBRD activations and audit logs *[IMR-10-1, IMR-10-5]*, failure to counsel a sergeant or lieutenant for conducting a deficient investigation [*IMR-10-1; IMR-10-4; IMR-10-6]*, not properly assessing preponderance of evidence standards when assessing justifications for ECW deployment [*IMR-10-1],* failing to note boilerplate language in reports *[IMR-10-4; IMR-10-6]*; supervisor's failure to make appropriate referrals for an IA investigation, counseling or training *[IMR-10-5]*, failure to conduct and document a diligent neighborhood canvass and dismissing the need for such diligence [*IMR-10-2; IMR-10-4]*, failing to synopsize officers statements from "Interviews Conducted" [*IMR-10-2]*, an investigating sergeant, reviewing lieutenant, and Commander all failing to identify that more than one ECW cycle was utilized [*IMR-10-2]*, not properly supervising an investigation *[IMR-10-4; IMR-10-5; IMR-10-6]* and not providing evidence of a supervisor advising officers post-arrest to remain separated and not to discuss the use of force (in a case when one officer asked a second officer post-arrest about a subject's use of weapons prior to the second officer's ECW deployment), [*IMR-10-3]*. Timeliness of chain reviews are still of concern and we encountered instances where a Commander qualified their assessment of chain reviews by stating the reviewers "…generally completed a thorough analysis and review of this incident" *[IMR-10-4, IMR-10-5].*

The monitoring team continues to identify a trend of officers making excuses for not activating their OBRDs. More serious is supervisory and command willingness to accept these excuses. We see this as a significant problem that needs to be addressed by APD, since we have reported extensively over the past few monitoring periods about the lack of compliance with OBRD use in the field. It does not appear that the current OBRD policy, training, and verbal counseling of noncompliant officers is effectively remedying the problem of officers randomly not activating OBRDs in the field. Significant is one case [*IMR-10-1]* where all APD personnel failed to activate their OBRDs in an operation, essentially all for the same reason (according to the supervisor): to conserve OBRD battery power. No Internal Affairs request was submitted by the investigating supervisor for the OBRD non-compliance issue and one officer simply was excused by supervisory personnel for the OBRD non-compliance. Interestingly, the investigating supervisor also did not utilize his own OBRD during the incident, in accordance to SOP. An Internal Affairs request for five of the six officers (inclusive of the investigating supervisor) eventually was made <u>one month after the incident</u> by the reviewing Lieutenant.[22]

Problematically, the supervisor of the arrest operation also investigated this ECW deployment. This supervisor also improperly pre-authorized officers to utilize their ECW's and 40mm less-lethal launchers, if the subject fled or failed to immediately follow

[22] The monitoring also saw frequent instances where officers purposely muted the audio on the OBRD, and those instances were neither justified by officers nor identified as problematic during chain of command reviews *[IMR-10-5]*.

verbal commands. This case further illustrates the problematic nature of utilizing supervisors who are biased (or perceived to be biased) to investigate uses of force in operations where the investigating supervisor actually authorizes force, witnesses force, or is a part of the operation. In this particular case, the investigating supervisor improperly found the ECW deployment within policy, despite 1) a lack of imminent threat to the officers; and 2) the fleeing subject was "tased" merely for fleeing (consistent with the supervisor's improper pre-operation authorization to deploy ECWs or 40mm launcher).

This predilection to allow supervisors involved in operations in which a use of force is found, or who witness a use of force, to self-investigate the use of force continues to present authenticity problems for APD in the short term, and will more likely than not present compliance issues in the long term. This has been addressed continuously during on-site visits and in IMR-8 and IMR-9. In IMR-9, one ECW case [*IMR-9-9]* was investigated by a supervisor who was identified as being involved in a possible show of force with a firearm himself, and who was also a witness to an out of policy use of an ECW and an out of policy use of force on a kneeling citizen. This supervisor's participation in the incident and his deficient investigation was so problematic that it was forwarded to Internal Affairs by a commander for further action. In IMR-8 (Paragraphs 41-59), another case [*IMR-8-04]* was detailed in which a supervisor who ordered an officer to use an ECW actually investigated that officer's ECW show of force. In Paragraph 52 of IMR-8, the problematic issue of supervisors reviewing their own actions was discussed in detail. Given APD's supervisory performance again this reporting period, we note weak, inadequate, improper, deliberately imprecise or policy-prohibited supervisory oversight is APD's most critical use of force-related issue. Serious, focused, and deliberate supervisory oversight in this area is essential. Where that fails, the same applies to the lieutenants or other management personnel who routinely fail to hold officers accountable.

These problems (credibility issues, omission of facts, improper findings of compliance with use of force SOPs, etc.) continue to arise from bias and/or conflicts of interest when compromised supervisors investigate use of force incidents in which they are involved (as participants, witnesses, etc.) or have overseen. The residual impact of these problematic issues places an undue burden on the APD hierarchy to reconcile defective investigative conclusions at higher review levels. These oversights are a significant hindrance to achieving compliance. APD should immediately discontinue its practice of allowing or authorizing supervisors to investigate use of force incidents when the supervisors have any nexus to the actions taken by officers subjected to the scrutiny of supervisory investigations. Finally, when mistakes occur within a use of force investigation (at any point in the chain of command), we continue to see supervisors not being trained, counseled or disciplined for those oversights. It follows that these issues are likely not documented, aggregated and reflected in performance evaluations of those supervisors. This is also a key component of Paragraph 56.

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

Table 4.7.11a ECW Usage As Compliance Techniques

	In Compliance
IMR-10-1	N
IMR-10-2	Y
IMR-10-3	Y
IMR-10-4	Y
IMR-10-5	N
IMR-10-6	Y
Compliance %	**67%**

Our analysis indicates that APD field personnel were in compliance with only four of the six incidents we reviewed for Paragraph 24. One of the six ECW applications we reviewed exhibited use of an ECW as a "compliance technique." The weakest link in compliance efforts again appears to be supervision.

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

4.7.12 Assessing Compliance with Paragraph 25: ECW Verbal Warnings

Paragraph 25 stipulates:

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

Results

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

Table 4.7.12: Verbal Commands Prior to Deployment of Tasers

	In Compliance
IMR-10-1	Y
IMR-10-2	Y
IMR-10-3	Y
IMR-10-4	Y
IMR-10-5	Y
IMR-10-6	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

Results of our review of Taser deployments are presented in Table 4.7.13 on the following page.

Table 4.7.13 Deployment of Tasers in Situations Posing Risk of Serious Injury or Death

	In Compliance
IMR-10-1	Y
IMR-10-2	Y
IMR-10-3	Y
IMR-10-4	Y
IMR-10-5	Y
IMR-10-6	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 on the following page.

Table 4.7.14: Continuous Cycling of ECWs

	In Compliance
IMR-10-1	Y
IMR-10-2	Y
IMR-10-3	Y
IMR-10-4	Y
IMR-10-5	Y

IMR-10-6	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

Table 4.7.15: ECW Use in Drive-Stun Mode

	In Compliance
IMR-10-1	Y
IMR-10-2	Y
IMR-10-3	Y
IMR-10-4	Y
IMR-10-5	Y
IMR-10-6	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

Table 4.7.16: Use of ECWs Based on All Circumstances of Incident

	In Compliance
IMR-10-1	N
IMR-10-2	Y
IMR-10-3	Y
IMR-10-4	Y
IMR-10-5	N
IMR-10-6	Y
Compliance %	**67%**

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

4.7.17 Assessing Compliance with Paragraph 30: ECW Targeting

Paragraph 30 stipulates:

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

Results

Compliance data for Paragraph 30 are presented below.

Table 4.7.17:Targeting Subject's Head, Neck, or Genitalia

	In Compliance
IMR-10-1	Y
IMR-10-2	Y
IMR-10-3	Y
IMR-10-4	Y

IMR-10-5	Y
IMR-10-6	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

Table 4.7.18: Taser Usage on Handcuffed Individuals

	In Compliance
IMR-10-1	Y
IMR-10-2	Y
IMR-10-3	Y
IMR-10-4	Y
IMR-10-5	Y
IMR-10-6	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

Table 4.7.19: Taser Holstered on Weak-Side Only

	In Compliance
IMR-10-1	Y
IMR-10-2	Y
IMR-10-3	Y
IMR-10-4	Y
IMR-10-5	Y
IMR-10-6	Y
Compliance %	**100%**

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

4.7.20 Assessing Compliance with Paragraph 33: ECW Certifications

Paragraph 33 stipulates:

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

Results

Table 4.7.20: Annual Training for ECWs

	In Compliance
IMR-10-1	Y
IMR-10-2	Y
IMR-10-3	Y
IMR-10-4	Y
IMR-10-5	Y
IMR-10-6	Y
Compliance %	**100%**

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

4.7.21 Assessing Compliance with Paragraph 34: ECW Annual Certification

Paragraph 34 stipulates:

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

Results

Table 4.7.21: Training re Risks of ECW Usage

	In Compliance
IMR-10-1	Y
IMR-10-2	Y
IMR-10-3	Y
IMR-10-4	Y
IMR-10-5	Y
IMR-10-6	Y
Compliance %	**100%**

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

4.7.22 Assessing Compliance with Paragraph 35

Paragraph 35 stipulates:

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

Results

Table 4.7.22: Provision of Medical Attention

	In Compliance
IMR-10-1	Y
IMR-10-2	Y
IMR-10-3	Y
IMR-10-4	Y
IMR-10-5	Y
IMR-10-6	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

Table 4.7.23: Notification to Supervisors Re ECW Usage

	In Compliance
IMR-10-1	Y
IMR-10-2	Y
IMR-10-3	Y
IMR-10-4	Y
IMR-10-5	Y
IMR-10-6	Y
Compliance %	**100%**

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

Operational: I**n Compliance**

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.

4.7.24 Assessing Compliance with Paragraph 37: ECW Safeguards

Paragraph 37 stipulates:

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

Results

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

4.7.25 Assessing Compliance with Paragraph 38: ECW Reporting

Paragraph 38 stipulates:

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

Results

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

Recommendations for Paragraphs 24, 25, 27, 29, 32 and 38

4.7.23a: APD should conduct an internal review of compliance for paragraphs 24, 25, 27, 29, 32, and 38 using a broader sample.

4.7.23b: Error rates should be reported for each paragraph (24, 25, 27, 29, 32, and 38), listing the number of events sampled and the number of errors identified, by area command, shift, and supervisor.

4.7.23c: For each area command, shift and supervisor identified with multiple errors, develop a remediation process that addresses the officer, the officer's supervisor, and the shift command structure.

4.7.23d: Ensure that the errors identified in the internal review are analyzed and categorized by policy segment, supervisor, lieutenant, and area command.

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

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

4.7.23g: If compliance levels have not improved, consider appropriate remediation or discipline for the responsible sergeants, lieutenants, and area commanders.

4.7.23h: Repeat steps 1-6 until error rates are less than five percent.

4.7.23i: The internal review should focus on areas of non-compliance noted by the monitor and other internal processes.

Monitor's Note

In response to monitor's recommendations for these paragraphs in IMR-9, on May 15, 2019, PMU completed a PINS report that documents the inspection process they will use to determine internal compliance with ECW paragraphs. PMU also completed two random ECW audits and will conduct quarterly ECW audits for area commanders to review.

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

Paragraph 39 stipulates:

> **"APD shall maintain crowd control and incident management policies that comply with applicable law and best practices. At a minimum, the incident management policies shall:**
>
> **a) define APD's mission during mass demonstrations, civil disturbances, or other crowded (sic) situations;**
> **b) encourage the peaceful and lawful gathering of individuals and include strategies for crowd containment, crowd redirecting, and planned responses;**
> **c) require the use of crowd control techniques that safeguard the fundamental rights of individuals who gather or speak out legally; and**
> **d) continue to prohibit the use of canines for crowd control."**

Paragraphs 39 and 40 of the CASA address requirements that APD must meet related to crowd control policies, and the management and supervision of APD responses to events involving mass demonstrations, civil disturbances and other crowd situations. While the policies apply to all APD officers, the tasks associated with Paragraphs 39 and 40 are overseen by members of the APD Emergency Response Team (ERT). The monitoring team met with ERT members during its May 2019 site visit and found them to be positive toward our feedback and interested in advancing the requirements associated with Paragraphs 39-40. We discussed the ERT policy and training requirements for APD personnel that are pending relating to ERT protocols. The following paragraphs represent our findings related to Paragraphs 39-40.

Past changes at APD created a lack of continuity in ERT operationally and slowed down certain compliance efforts in areas of policy development and training. APD's current administration has grappled with a of host training gaps that were left incomplete when they took command of the organization in December of 2017.[23] One of the gaps concerned crowd control training that is relevant to ERT compliance efforts. Frankly,

[23] The training gaps included crowd control instruction that have been pending for more than three years. This has been discussed extensively in past IMRs.

not closing the gap on training related to crowd control until well into 2019 is emblematic of poor prioritization, academy staffing levels, or both. When the monitoring team first met with APD concerning training gaps in early 2018, it was our opinion that all of the training gaps (there were several) could be remediated in a matter of a couple months. Instead, nearly 18 months later, APD worked urgently to complete a basic lesson plan and video that would be delivered through its learning management platform to every APD officer. The monitoring team expedited its approval process so it could be completed before the end of this reporting period, but that type of hectic approach to training delivery has plagued APD since we first began working with them. Training is not something one can effectively expedite. There are too many steps, too many critical points to rush development, documentation, review, and submission (to the monitor) of proposed training plans.

The monitoring team continues to share the opinion that staffing levels in units with CASA-heavy responsibilities, like the Academy, have to be sufficient to meet those responsibilities. In past IMRs, we alerted APD to the jeopardy they would experience from a training perspective once policies began to be approved. Meeting training requirements is not a one-time event for each CASA Paragraph, but instead is ongoing and meant to build sustainable processes that will outlive the CASA. We repeat here, yet again, that APD must ensure that academy staffing levels are sufficient to sustain its training requirements across all CASA paragraphs, otherwise their ability to achieve and sustain training compliance will be severely impacted.

As we noted in IMR-8 and IMR-9 (In paragraphs 90-105), certain types of force used by SOD were not being reported that also have relevance to ERT compliance efforts.[24] On June 2, 2018, APD promulgated Special Order (SO) 18-51, "Use of Chemical Munitions Noise Flash Diversionary Devices" that served as notice to the organization that chemical munition and NFDD deployments will be investigated as uses of force. Although ERT has not had any deployments during this reporting period, it is important to reiterate that APD's ERT must follow SOD's lead by ensuring that the its members are clear that the use of chemical munitions and NFDDs constitute a use of force. APD has redone its use of force policies, and we know that the issue of NFDDs and chemical munitions were being considered for those policies. Parenthetically, in August 2019, conversations continued with the parties and it was decided that use of force provisions related to NFDDs and Chemical Munitions are better suited for weaponry SOPs as opposed to the core use of force suite of policies. The monitoring team has provided feedback on the proper wording of those policy provisions. At this date, they remain "pending."

In the past, ERT weaknesses in the documentation of pre-event preparation and post-event After Action Reports (AAR), coupled with incident command shortfalls, were

[24] The unreported uses of force related to chemical munitions and deployments of NFDDs is of serious concern to the monitor.

contributing factors in APD's problematic response to past major protests. We reiterated to ERT supervisors that in light of the fact there have been no ERT deployments since at least January 2019, it becomes even more important that they revisit commitments ERT made in the past concerning pre- and post-event documentation requirements. However, we were impressed that ERT was reviewing contemporary discussion of ways that crowds occur. We learned that ERT is developing a process to collect data for "flash gatherings" where FSB was forced to address a crowd and ERT was not deployed. They are determining the best method to capture the size of a crowd and the decision-making process that resulted in ERT not being called out. Low frequency, high impact events carry the most risk to an agency, so remaining aware of their requirements, past commitments, and emerging trends is all the more important.

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

> **Stage 1** – All department personnel will receive training on SOP 2-29 through an on-line training platform, which will also cover aspects of use of force concerning chemical munitions and NFDDs.
>
> **Stage 2** – All ERT supervisors will receive an in-person "train the trainer" course on the new (when approved) ERT SOP, which will incorporate practice in crowd control formations and movements, so they are consistent across the entire ERT. (Note – There are a total of 5 teams of ERT, and approximately 90 personnel)
>
> **Stage 3** – All other ERT personnel will receive in-person training[25] to go over use of force, including force related to chemical munitions and NFDDs, training on SOP 2-29, and squad formations and movements utilizing ERT supervisors as trainers.

ERT worked with the Academy to advance their Stage 1 training through the 7-Step Training Cycle, which was submitted to and approved by the monitoring team at the end July 2019. APD promulgated Special Order 19-73 "Crowd Control Gap Training" on July 22, 2019, that required that it be completed by July 29, 2019. We were also provided with a July 30, 2019, "Close Out" memorandum that documented the to-date compliance with Special Order 19-73.[26] We reviewed training documentation that APD assembled to assess the outcome of the Stage 1 training, which was delivered through their learning management platform. A total of 1,001 APD personnel were required to

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[25] Supervisors who attended the "train the trainer" course will be used as trainers.

[26] APD providing the "Close Out" memorandum is a solid step forward. Incorporating this type of document as a routine part of the training process has been noted by the monitoring team many times in the past. When "Close Out" memoranda become routine they are considered course of business documents that the monitoring team can then rely upon in future compliance assessments.

attend the training, and the documentation we reviewed demonstrated that APD achieved an overall performance score of 96%. Four officers failed the initial and remedial training, and another 32 officers are categorized as "in progress"[27] due to various authorized leaves of absence.

ERT were again encouraged to develop and maintain training plans for ERT and non-ERT members of the Field Services Bureau. ERT assigned personnel levels remained steady at approximately ninety (90) ERT personnel (75 officers and 15 supervisors).

The monitoring team, as a part of the normal data collection process, will inspect policy changes, any related training records, and After-Action Reports to any demonstration or crowd control events as a component of the IMR -11 monitoring period. As noted earlier, we recommend that current ERT supervisors review past reports and comments we provided concerning the quality of records associated with ERT deployments. Previous ERT Commanders put forms in place that are required to be used to gain feedback from other agencies when APD's ERT is activated.

ERT is continuing its efforts by coordinating with the Training Academy to ensure their training programs are advanced through the current Academy systems.

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

4.7.26 Assessing Compliance with Paragraph 39: Crowd Control Policies

Paragraph 39 stipulates:

> **"APD shall maintain crowd control and incident management policies that comply with applicable law and best practices. At a minimum, the incident management policies shall:**
>
> **a) define APD's mission during mass demonstrations, civil disturbances, or other crowded (sic) situations;**
> **b) encourage the peaceful and lawful gathering of individuals and include strategies for crowd containment, crowd redirecting, and planned responses;**

[27] Many officers that were categorized as "In Progress" were on authorized duty leave (i.e. FMLA or Military Leave)

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 is centered on crowd control policies. That training should include scenarios, practical exercises, and lessons learned from previous APD responses to events. Training must meet the instructional objectives documented within APD lesson plans.

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

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

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

This series of related Paragraphs (41 through 59) encompass requirements for reporting, classifying, and investigating uses of force that require a supervisory-level response based upon the type and extent of force used. The CASA delineates this larger group of paragraphs into three separate sub-groups: Use of Force Reporting – Paragraphs 41-45; Force Investigations – Paragraphs 46-49; and Supervisory Force Investigations – Paragraphs 50-59. The following represents our finding relative to these series of paragraphs.

The CASA requirements stipulate that the use of an investigation of force shall comply with applicable laws and comport to best practices. Central to these investigations shall be a determination of each involved officer's conduct to determine if the conduct was legally justified and compliant with APD policy. We 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-10 reporting period in consultative processes providing perspective, feedback and technical assistance to APD personnel regarding force investigations. We provided perspective to APD to help the administration better understand and deal with historical difficulties the agency has had in achieving compliance, and provided ideas concerning how they could best be addressed. We have seen examples of our technical assistance being implemented in certain areas, as well as an improvement with the overall handling of use of force incidents; however, we still find evidence of significant force reporting and investigation issues, as well as system and process disconnects that continue to hinder Operational Compliance moving forward.

During IMR-10 the monitor and the parties collaborated on a way forward to resolve the lingering issue of ACMs. Several tenuous issues were created by the past practice of ACMs, many of which we dealt with extensively in IMR-8. In short, ACMs appeared to create a second category of policy violations, which under then-current APD practice, was a category that consisted of probable secondary policy violations (violations generally not as critical as the main violations encountered in a given incident). In the past, these related violations were noted as "additional concerns." Sometimes these constituted less serious violations of policy; other times the violations were problematic and violated CASA provisions. These "additional concerns" were observed to be poorly documented conclusory statements not supported by careful documentation or analysis. More importantly, they were virtually completely devoid of meaningful corrective action. We viewed this as a serious and proximate concern.

One month prior to the May 24 meeting during our May 2019 site visit, APD promulgated Special Order (SO) 19-25, entitled, "Internal Affairs Request Through BlueTeam." Effective immediately, Internal Affairs Professional Standards (IAPS)

Division would be the central intake for "all identified or suspected violations of Department Standard Operating Procedures (SOP)." The Special-Order rescinded SOP 2-54-D.5-6 (Additional Concern Memo) and "replaces the Supervisory Action Report (SAR)."

SAR 10-1, provided to the monitoring team during IMR-10, revealed two officers failed to safeguard and secure a prisoner (felony warrant arrest resulting from the Safe City Strike Force) at a hospital and the handcuffed prisoner escaped. Supervisors conducted various command-level reviews and interviews of the two officers and seemed to determine that the officers failed to call for assistance and were trying to find the escaped prisoner in another Area Command (on their own) when an acting sergeant in this other Area Command took cognizance of officers "checking yards around the area the prisoner was last seen." The acting sergeant completed an Interoffice Memorandum on the date of the incident, documenting that approximately 25 minutes after first hearing an "Attempt to Locate," no supervisor had been advised of a prisoner escape. Air support was eventually contacted, but their efforts to search the area were fruitless due to the elapsed time from the escape until they could search the area. The sergeant expressed concern that he was never notified that an escaped prisoner was in his Area Command, in close proximity to a school that was not placed in "lock-down" (especially important since the sergeant was informed that the prisoner "ran through school property trying to get inside"). A synopsis of an unrecorded interview of one of the officers indicated the escaped prisoner ran through the school yard while children were at recess playing on the playground. The officers indicated they notified dispatch after they lost sight of the prisoner during the ensuing foot chase. The SAR indicates doubt about the officers' version of the story and that the school should have been put into lock-down. Approximately one month after this incident, a lieutenant memorialized a Supervisory Action by completing a 1.5-page report. The summary of the officers' statement was documented as, "Officer X explained to me what occurred." We note that the poor documentation of the interviews are, quite simply, egregious, given the potential seriousness of the event. Like almost every ACM or counseling session reviewed by the monitoring team over the past few years, boilerplate language in this SAR indicated, "Officer X took responsibility for his actions and decisions that were made during that call." Then, establishing the rationale for assessing no further action to take place, the Lieutenant wrote, "I have personally worked with Officer X and have not observed any bad judgment calls. Officer X is a respected training officer with no patterns of misconduct or poor decision making. I do not believe this is a training issue." More problematic is that the lieutenant found that the only policy violated was SOP 2-82 (Restraint and Transportation of Prisoners). Interestingly, the lieutenant reports calling Internal Affairs and because no other violations of this SOP existed for these officers, this incident was handled as a Class 7 sanction that resulted in a verbal warning.

While those conversant in contemporary American policing understand that the Chief of Police is the primary disciplinarian of a department, APD has apparently authorized this lieutenant (as well as dozens of other sergeants, lieutenants, and commanders in other

cases) to consider "this matter to be resolved" and that no further action is necessary. Unfortunately, this lieutenant did not consider any other SOPs violated by these officers.[28] For example, SOP 2-83 (Hospital Procedures and Rules), the very next SOP following SOP 2-82 (the SOP applied to the officers' actions and inactions in this matter), details the procedures to be followed when taking in-custody individuals to the hospital or medical facilities. This relevant SOP indicates:

- Felony and all domestic violence arrestees will not be left unattended at a hospital;
- Officers should maintain a line of site supervision of the arrestee;
- Arrestees will be restrained at all times, including during any medical movements or when the arrestee uses the restroom and shower facilities; and
- If the safety or security of an arrestee is compromised, then a request will be made to move the arrestee into another hospital room as soon as possible

Absent a proper internal affairs investigation, we can only assume that at least a few of these SOP provisions were applicable…and violated. For further consideration in the analysis of this failed supervisory event, 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 SAR represent "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;
- Personnel will be responsible for safeguarding, using, and properly maintaining all departmental-issued property.[29]

Sanctions for these violations range from Class 1 to Class 7.

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[28] We have noted in the past that when assessing cases involving misconduct, APD will typically focus on the most obvious of policy violation instead of assessing all policy violations. Obviously, this is an improper process. All allegations need to be addressed and findings must be issued on each.

[29] The prisoner escaped with the officer's handcuffs.

SOP 2-34 (Notification of Significant Incidents) is promulgated to "ensure that all levels of the Department are adequately informed about noteworthy incidents." Amongst the incidents defined as significant within SOP 2-34 is "any incident or arrest an officer and/or supervisor may deem noteworthy." Violations of this SOP are considered Class 7 sanctions.

Another supervisory action (SAR 10-2) taken by a lieutenant pertained to a sergeant violating SOP 1-1 (Personnel Code of Conduct), as well as SOP 2-34 (Notification of Significant Events). However, the lieutenant chose not to invoke SOP 2-34 in citing the sergeant's inaction, but instead cited a commander's directive for notifying the chain of command on significant events, as the directive that constituted violating SOP 1-1-4B (5). The lieutenant incorrectly indicated the SOP violation was a Class 4 sanction that carried a "40 to 80-day suspension" (actually it carried 40 to 80-hour suspension). However, the lieutenant indicated the sergeant "has proven to be a good leader and has a worthy work history." Next came a sentence that the sergeant admitted the mistake, followed by the boilerplate language noted in the SAR pertaining to the escaped prisoner, that the sergeant "took full responsibility for his actions." Somehow, APD supervisory personnel have been empowered to waive significant discipline for its members based upon numerous spurious factors, including, but not limited to having personally worked with an officer and not observing any bad judgment calls, based upon being a respected training officer, based upon a sergeant having "a worthy work history," or admitting to misconduct as a means of not being targeted in an internal affairs investigation. These types of *de minimus* "excuses" for sergeants or lieutenants failing to perform are serious and potentially fatal flaws in APD's processes designed to correct aberrant behavior, as required by APD policy. They need to be eliminated.

This 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 incidents. Over the course of reviewing hundreds of cases in the past three 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, if the action or inaction was formally referred to internal affairs, or if some level of supervisor 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, thus justifying mere verbal counseling. This disparate impact on discipline is rooted in these pathways APD has allowed to erode the more formal (although still flawed) disciplinary mechanisms. APD has a demonstrated aversion to meting out discipline on a case in which a supervisor has already taken action pursuant to an ACM or a SAR. Although a Special Order has been issued after repeated calls for the ACM process (and the lesser known SARs problem) to be discontinued, APD's bigger challenge now is how to rein in the culture it created in the past, with its supervisors taking disciplinary matters into their own hands, and allowing them to protect officers, at times officers with lengthy lists of previous policy violations, also handled informally at the supervisory level. SOP 3-41 (Complaints Involving Department Policy or Personnel) has long directed that when

supervisors receive an internal report of alleged misconduct (defined in SOP 3-41 as violation of departmental policies or procedures; violation of federal, state, or local criminal laws; constitutional violations, whether criminal or civil; violation of personnel rules; or violation of administrative rules or regulations), they will "immediately document the conduct and report this information to the IAD," and that failure to do so "will be grounds for discipline, up to and including termination of employment." To date, we are unaware of any supervisor who has been held accountable to these provisions. What has arisen is an extra-procedural usurpation of the chief of police's authority to oversee the disciplinary process. These informal usurpations of established policy and the chief's authority must be brought to a timely and clear stop, if APD is to have any chance to meet the CASA requirements regarding oversight, discipline, and effectiveness of remedial processes. This is a critical and wide-reaching failure at APD, apparently built from a long history of the agency's sergeants and lieutenants being less than circumspect about discipline.

SAR 10-3 notes that a supervisor deemed a search for CDS and contraband after a use of force to be "not within policy." An acting Commander referred this matter to internal affairs and recommended training as the intervention. The acting Commander indicates that the unconstitutionality of the search (or "not within policy" as per the acting lieutenant) is not addressed in SOP 2-71 (Search and Seizure Without a Warrant) and states, "as a result of the misconduct not being deliberate, and the reported confusion as it relates to warrantless searches, I request this SOP be classified as a Class 7 and the disposition be documented as non-disciplinary corrective action (NDCA) through Mandatory Training." The monitoring team is not aware of APDs position that it is confused about warrantless searches, but Commanders are making this determination, as well as recommending to internal affairs how to assign sanctions to matters pertaining to the Constitutionality of searches. This usurpation of executive authority must be brought to a clear, convincing, and inviolate stop, if APD is to have any chance to gain operational compliance for this CASA paragraph.

The evolution of supervisory discretion to review incidents and policy violations pertaining to Constitutional matters (searches, use of force, etc.), "fact find," and issue discipline has effectively tied the hands of Internal Affairs and the Chief of Police in exercising their role in the disciplinary process in APD. The monitoring team has given exhaustive technical assistance and feedback to APD concerning the problems associated with their IA processes and the disparity that exists by deferring disciplinary decisions to area commands. At some point in time, if APD is ever to gain compliance in this area, the executive functions at APD must reclaim fact-finding, issue identification and resolution from those who have usurped it: field sergeants, lieutenants, and commanders. We see this as perhaps the number one critical issue to be resolved by APD if is ever to achieve Operational Compliance for this task.

This concern about criteria and timelines also extends to the Paragraph 53 requirement of completing supervisory force investigations within 72 hours. The monitoring team

observed numerous incidents of what seem to be Commanders elongating the amount of time (up to 60 days) that supervisors have to submit supervisory force investigations for Commander review by summarily granting longer extensions than requested by supervisors.[30] The monitoring team opines this elongation of deadlines for a Commander review is directly counter to the spirit of the CASA, and has no genesis in official policy of which we are aware. An earnest and immediate effort by APD to codify their position concerning permitting lengthy extensions in supervisory force investigations for Commander review as crisp adherence to timelines will obviously be necessary if APD is to be successful in its compliance efforts.

As always, it is important to consider that the monitoring team's presentation of scenarios and potential policy violations in our reports is made to raise important points. Primary monitor's concerns focus on the importance of ensuring immediate supervisory interaction with IA and completing a thorough investigation within the established timelines for effective discipline to be issued. Second, there is still significant progress to be made in the field with respect to the proper reporting and investigating uses of force; and third, the scenarios discussed in our reports should inform the training programs APD develops and delivers. As we understand the new policies, IAFD will assume the primary investigative role for most uses of force. However, if improper reporting of force occurs in the field, then APD's compliance efforts will not move forward for varying reasons.

In IMR-8, only 50% of the supervisory force investigations initiated during the reporting period were completed by the close of that monitoring period. Additionally, 81% of the supervisory force investigations initiated during the first half of IMR-8 had been completed and findings made prior to the close of that period. In the IMR-9 reporting period, 73% (162) of the 222 supervisory force investigations initiated between August 1 and January 14, 2019 were completed and findings were made prior to the close of the monitoring period. All supervisory force investigations (142) initiated during the first three months of IMR-9 had been completed by the close of the period. These results provided important and continued assurance that the backlog of force investigations dating back to 2017 was not being compounded by the addition of a large number of contemporary investigations onto the backlog list. The monitoring team was encouraged to see this improvement in the pace of investigations. However, for the IMR-10 reporting period, APD reverted back to completing less than 50% (121) of the 241 supervisory force investigations initiated between February 1 and August 20, 2019.

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

Ninety-three percent of all 107 supervisory force investigations initiated during the first three months of IMR-10 had been completed prior to the close of the period.[31]

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

Paragraphs 41-59 started IMR-10 in Primary Compliance only. One of the reasons cited for this poor compliance status was persistent outstanding training gaps that relate to these paragraphs. We report extensively in Paragraphs 86-88 of this report on the recent efforts the APD Academy has taken to remediate those gaps. In short, APD took successful steps to remediate these outstanding training gaps during this reporting period. Those steps were important because the training gaps have lingered for the past several monitoring periods, and compliance efforts in the field were negatively impacted by these training gaps. During the past year, APD has decided to change its use of force policies and worked to train those policies through a new 4-tiered training program that will likely extend into 2020. Since APD never achieved Secondary Compliance under its original use of force policies before they were adjusted, we have determined Primary Compliance should be continued for Paragraphs 86 through 88. Once the new use of force policies are successfully completed, trained, and implemented, Secondary Compliance for Paragraphs 86-88 will be reassessed. As things stand at this point, we view the poor quality of sergeant-level reviews to be a major impediment to moving compliance efforts forward for paragraph 86-88.

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

Other APD functions related to these paragraphs continue to demonstrate the spirit and rigor that will ultimately be required to achieve compliance. Specifically, the Internal Affairs Force Division's (IAFD) use of data, workload analyses, keen attention to detail, and role-specific training has clarity in purpose and grasp of the relevant CASA language. These processes stand as the gold standard for the rest of the APD who have a focus in progressive discipline. We also note that newly promoted field supervisors continue to be rotated through the IAFD to see first-hand the current methodology employed to investigate and review supervisory use of force cases. This system, devised and implemented entirely at the initiative of APD and the IAFD, appears to be a viable method to positively influence force investigations in the field.

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

That said, we note our belief that, if APD fails to properly support and staff IAFD, then the quality of their work will likely suffer many of the issues that have plagued field supervisors.

As noted in Paragraphs 60-77, the mission of reviewing all of the 304 backlogged use of force cases has been completed by the IAFD. As IAFD now focuses its attention on contemporary use of force cases, the monitoring team expects to focus on APD's demonstration of its adherence to the 14 points of supervisory use of force investigations pursuant to Paragraph 52.

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

1. Activation of OBRDs continue to be an issue. A number of case reviews reveal what appears to be a pattern of officers muting their OBRDs audio at various times before or after a recordable incident, including when interacting with detained individuals and members of the public. Additionally, the number of cases where OBRDs are not recording, or cease to record, is a matter of serious concern.[32]

2. There is still a worrisome failure of supervisors to separate officers during fact-finding interviews and a lack of offering recorded admonishments to officers as a reminder to refrain from discussing uses of force.

3. Evidence suggest that canvassing of neighborhoods and areas surrounding uses of force has improved, especially as supervisors record these canvasses. The narration of supervisors looking for security cameras is also a positive development. When supervisors do not expend, or at times even truncate this effort while recording their actions on their OBRDs, it is a blatant resistance to implementation of effective fact-finding and needs to be addressed by APD commanders so as to not jeopardize future compliance. This is also still true in cases when surveillance or OBRD recordings reveal that persons were in the area of a given police action and APD investigators note their canvass efforts revealed no witnesses or persons in the area. Such deliberate actions will

[32] Failure to properly engage an OBRD recording device during use of force events has been an ongoing issue. In the past, we have commented that APD should consider treating a failure to activate an OBRD during a use of force event as an inherent aggravating factor when making disciplinary decisions. In our view, APD's tepid approach to addressing the issue has little chance of remediating the problem, which in turn will adversely impact compliance efforts.

jeopardize compliance efforts if it is not noted and dealt with by secondary review processes. If these issues are not addressed by APD, they will certainly be noted and addressed by the monitoring team.

We have seen positive strides by APD with respect to handling uses of force, including instances where the chain of command reviewing use of force incidents has documented performance issues, policy violations and improperly categorized uses of force. Once the new suite of use of force policies is fully trained and implemented, the monitoring team will increase its case review volumes to assess compliance with the following set of Paragraphs. Thus, based on our reviews this monitoring period, Primary Compliance is continued for this series of paragraphs. Secondary and Operational compliance will require renewed focus and point-by-point adherence to applicable CASA paragraph requirements. It will also depend on APD's assertiveness in identifying and stopping supervisory and mid-level command usurpation of executive authority by overlooking or actually obfuscating or deliberately wrongly categorizing clear assessments of blatant policy violations.

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

Paragraph 41 stipulates:

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

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 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.

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

4.7.33 Assessing Compliance with Paragraph 46: Force Investigations

Paragraph 46 stipulates:

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

Results

Primary: **In Compliance**
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

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

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, serious uses of force shall be investigated by the Internal Affairs Bureau, as described below. When a serious use of force or other incident is under criminal investigation by the Multi-Agency Task Force, APD's Internal Affairs Bureau will conduct the administrative investigation. Pursuant to its Memorandum of Understanding, the Multi-Agency Task Force shall periodically share information and coordinate with the Internal Affairs Bureau, as appropriate and in accordance with applicable laws, to ensure timely and thorough administrative investigations of serious uses of force. Uses of force that do not rise to the level of serious uses of force or that do not**

indicate apparent criminal conduct by an officer will be reviewed by the chain of command of the officer using force.

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 the use of force to initiate the force investigation and ensure that the use of force is classified according to APD's force classification procedures. For serious uses of force, the supervisor shall ensure that the Internal Affairs Bureau is immediately notified and dispatched to the scene of the incident."**

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, <u>shall not</u> 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 investigations of uses of force, the supervisor shall:**
>
> **a) Respond to the scene, examine all personnel and subjects of use of force for injuries, interview the subject(s) for complaints of pain after advising the subject(s) of his or her rights, and ensure that the officers and/or subject(s) receive medical attention, if applicable.**
>
> **b) Identify and collect all relevant evidence and evaluate that evidence to determine whether the use of force was consistent with APD policy and identifies any policy, training, tactical, or equipment concerns;**
>
> **c) Ensure that all evidence to establish material facts related to the use of force, including audio and video recordings, photographs, and other documentation of injuries or the absence of injuries is collected;**
>
> **d) Ensure that a canvass for, and interview of, witnesses is conducted. In addition, witnesses are to be encouraged to provide and sign a written statement in their own words;**
>
> **e) Ensure that all officers witnessing a use of force incident by another officer provide a use of force narrative of the facts leading to the use of force;**
>
> **f) Separate all officers involved in a use of force incident until each has been interviewed and never conduct group interviews of these officers;**
>
> **g) Ensure that all Use of Force Reports identify all officers who were involved in the incident, witnessed the incident, or were on the scene when it occurred;**
>
> **h) Conduct investigations in a rigorous manner designed to determine the facts and, when conducting interviews, avoid asking leading questions and never ask officers or other witnesses any questions that may suggest legal justifications for the officers' conduct;**
>
> **i) Utilize on-body recording systems to record all interviews;**
>
> **j) Review all use of force narratives and ensure that all Use of Force Reports include the information required by this Agreement and APD policy;**
>
> **k) Consider all relevant evidence, including circumstantial, direct, and physical evidence, as appropriate, and make credibility determinations, if feasible;**

l) Make all reasonable efforts to resolve material inconsistencies between the officer, subject, and witness statements, as well as inconsistencies between the level of force described by the officer and any injuries to personnel or subjects;

m) Obtain a unique tracking number; and

n) Where a supervisor determines that there may have been misconduct in the use of force, immediately notify the Area Commander and the Internal Affairs Bureau."

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

a) all written or recorded use of force narratives or statements provided by personnel or others;

b) documentation of all evidence that was gathered, including names, phone numbers, and addresses of witnesses to the incident. In situations in which there are no known witnesses, the report shall specifically state this fact. In situations in which witnesses were present but circumstances prevented the author of the report from determining the identification, phone number, or address of the witnesses, the report shall state the reasons why. The report should also include all available identifying information for anyone who refuses to provide a statement;

c) the names of all other APD employees witnessing the use of force;

d) the supervisor's narrative evaluating the use of force, based on the supervisor's analysis of the evidence gathered, including a determination of whether the officer's actions complied with APD policy and state and federal law; and an assessment of the incident for tactical and training

implications, including whether the use of force could have been avoided through the use of de-escalation techniques or lesser force options; and

e) documentation that additional issues of concern not related to the use of force incident have been identified and addressed by separate memorandum.

The monitoring team met with members from APD assigned to this paragraph during the May 2019 site visit. The purpose of this meeting was to ensure that the department continued to a) utilize the changes implemented during the previous site visit and; b) sustain the corrective actions implemented to maintain compliance with this portion of the paragraph. APD has made remarkable progress with this paragraph as it relates to the 72-hour requirement. APD submitted 50 Use of Force files for review by the monitoring team for the time period February 2019 through July 2019. Three reports failed to meet the criteria as set forth in the CASA:

- Case number **IMR-10- 7** (Request submitted six (6) days after incident. No follow up by lieutenant)

- Case number **IMR-10- 8 (**Request made within 72-hour rule, but no approval given for request)

- Case number **IMR-10- 9 (**Request made seven (7) days after incident)

APD has not met the 95% threshold for the 72-hour requirement of this paragraph. With the three reports that did not meet the requirement APD is at 94%, based on our sample. A high number of the initial supervisory reports continue to require an extension, as was the case in the previous reporting period.

The extensions were reviewed by Commanders and extensions (when approved) were granted with stipulated timeframes depending on the circumstances for completion. APD Commanders demanded more in-depth explanation for extension requests. During this reporting period, the monitors' review of extension requests revealed detailed explanations for the requests. The monitoring team continues to note that the other requirements of the paragraph will become harder to track because they will run into future reporting periods.

The monitoring team will continue to monitor closely the progress of this paragraph during future site visits.

Results

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

4.7.41 Assessing Compliance with Paragraph 54: Command Review of Force

Paragraph stipulates:

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

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:

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

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

Results

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

4.7.44 Assessing Compliance with Paragraph 57: Force Review Board

Paragraph 57 stipulates that:

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

Methodology

This topic was discussed in depth in paragraph 78, above.

Results

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

Recommendations for Paragraph 57 and 78:

4.7.44 & 65a: Report regularly on progress on the established goals and objectives related to the FRB process.

4.7.44.& 65b: Closely monitor referrals that are made from the FRB to ensure that each referral is clear and is followed through on by the impacted command.

4.7.44. & 65c: APD should organize its pre and post FRB meeting documentation in a manner that clearly demonstrates how it meets each of the relevant provisions of the CASA.

4.7.45 Assessing Compliance with Paragraph 58: Reassignment of Force Review

Paragraph 58 stipulates that:

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

Results

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

Recommendations for Paragraph 58:

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

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

4.7.46 Assessing Compliance with Paragraph 59: Abuse of Force Discipline

Paragraph 59 stipulates:

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

Results

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

Recommendation for Paragraph 59:

See recommendations 4.7.44.1a-4.7.44j, above.

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

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

Paragraph 60: IAB Force Review
Paragraph 61: Criminal and Civil Force Investigations
Paragraph 62: Revision of IAB Manual
Paragraph 63: IAB Staffing
Paragraph 64: Training IAB Personnel
Paragraph 65: Referral of Force Investigations to MATF
Paragraph 66: MATF Assistance to IAB
Paragraph 67: Notice to External Agencies of Criminal Conduct in Use of Force
Paragraph 68: Consultation with External Agencies and Compelled Statements
Paragraph 69: IAB Responsibilities in Serious Uses of Force
Paragraph 70: Use of Force Data Reports

Paragraph 71: IAB Investigative Timelines
Paragraph 72: IAB Report Review
Paragraph 73: IAB Findings Not Supported by Preponderance of the Evidence
Paragraph 74: IAB Quality Control
Paragraph 75: IAB Quality Control (Force Review Board)
Paragraph 76: Force Investigations by MATF or FBI
Paragraph 77: Discipline on Sustained Investigations

As with other reporting periods, the monitoring team spent significant time working with APD's Compliance Bureau and Force Division personnel during its November 2018 and May 2019 site visits. Personnel were found to demonstrate a genuine level of receptiveness and a sincere interest in attaining CASA compliance. This receptiveness and interest, along with skilled, investigative tenacity was largely responsible for its success in its review of the backlog of cases. The work done by these units in the past year stand as an exemplar of how reform processes should be managed.

During this reporting period, the monitoring team received regular updates on the Internal Affairs--Force Division's (IAFD) efforts in reviewing APDs extensive backlog of use of force investigations. Prior to our June 2019 site visit, IAFD completed its review of the 304 backlogged investigations. This review identified 22 cases involving out-of-policy uses of force, a 14 percent error rate in the then-current APD system in place at the time of the incidents. Two of the reviewed cases revealed officer conduct that resulted in APD referring the cases to be reviewed for possible criminal conduct. The reader should note that these 22 cases would have been buried in the bureaucratic system, had IAFD not been established.

While the need to be detailed in the review of use force cases is self-evident, it is equally apparent that the need to become proficient with the detailed investigative regimen of serious use of force matters is proving to be challenging to APD, with respect to contemporary investigations. Paragraph 71 of the CASA requires APD conduct "complete administrative investigations within two months after learning of the use of force." During IMR-9 (data through January 16, 2019), APD recorded 46 cases involving the serious use of force by its members. Only three of these investigations (approximately 7%) were deemed to be completed by mid-January 2019. The average completion time for these three cases was 140 days; more than double the maximum time allowed. When compounded with initial failures by field supervisors to properly categorized uses of force as serious, the concern for timeliness for these cases to be completed is obvious.[33] In short, the use of force processes established by APD have

[33] We commented in Paragraphs 41-59 of IMR-9 on several serious uses of force that were improperly categorized when they initially occurred. While identified within the chain of command reviews, it is unclear if what the monitoring team was provided constitutes all improperly categorized cases. It also reveals that these cases did not result in a response to the scene by CIRT, thereby possibly influencing the quality of the investigation.

become effective when outcomes are considered; however, the process is so complex that it is difficult (from an operations management perspective) for the process to be *efficient*. In the monitor's opinion, this lack of efficiency is due to what can only be described as a reluctance of area commands to engage in effective information gathering and reporting processes related to uses of force. At this point, this constitutes a serious barrier to APD's ability to identify, classify, process, and complete effective use of force control.

During IMR-10 (data current through July 20, 2019), APD recorded 54 cases involving the serious use of force by its members. Only eight of these investigations (approximately 15%) were deemed to be completed by mid-July 2019. The average completion time for these cases was 72 days. This average time is improved from IMR-9, but still inconsistent with Paragraph 71 of the CASA that requires APD to "complete administrative investigations within two months after learning of the use of force." During IMR-10 only 9% of the serious use of force cases were completed within 60 days. Again, when compounded with initial failures by field supervisors to properly categorize uses of force as serious, the concern for timeliness for these cases to be completed is obvious. The continued lack of timeliness in completing serious use of force investigations requires the serious attention of APD. It impacts not only the effective reviews of force, but any resulting performance improvement plans for officers' lack timeliness and loses their potential positive impact. Also, as APD timelines across all use of force investigations continue to take months to complete, that elongated completion rate contributes to APD losing opportunities to appropriately prescribe corrective process for policy violations.

During this period, cases involving unreported force, as well as commanders and lieutenants finding misclassified force (almost two months after the initial incident), continue to plague APD's system for addressing serious uses of force. This may be rectified when the new suite of use of force policies is implemented. APD must be vigilant to ensure that SO 19-25 amended is followed and all discipline stems IA. Continued deference to the Area Commanders to influence investigative timelines and discipline will continue to plague compliance efforts, unless they are specifically prohibited, and violations result in corrective measures at the Area Command level. Until Internal Affairs is a central, well-staffed APD function handling all interventions and discipline, desired CASA-compliant outcomes for Paragraphs ranging from 41-77 can, and probably will, be undermined. Obviously, this is a critical problem, and should be addressed adroitly by senior-level command elements.

In the past we have noted APD's aversion to appropriately disciplining its officers, and in our view that remained true in IMR-10 as well. In IMR-9 we reported findings regarding several ECW cases we reviewed and prior to our May 2019 site visit we requested a meeting with IA and IAFD to discuss two of those cases.

In **Case #IMR-9-6 (ECW Application)**, APD officers were dispatched to a business establishment in the early morning hours for a reported burglary in progress. Officers arrived at the front door and a suspect began to run away. Several commands were given to the suspect to "stop" but he continued across a street and onto the property of a nearby high school. The suspect scaled a fence and was briefly entangled by his jacket. The officer reported "painting" the suspect with his ECW and documented, "Before (the suspect) started running again I painted him in the center of his back with my Taser and fired it in an attempt to stop him before he began running again." It was apparent that the ECW was deployed when there was an intermediate barrier between the suspect and officer, the suspect had already turned and begun to run away, and the area was unpopulated. Based on our observations, there was a failure to warn the suspect prior to the use of the ECW, thus the use of the ECW was not within APD policy. The officer deployed the ECW through an opening in the fence but missed the subject, which can be seen on the lapel camera video. The officer said in his report: "Due to the exertion of being in a foot pursuit I was unable to issue a verbal warning prior to firing the ECW", which is not consistent with the video the monitoring team reviewed.[34] We note that this appears to be another incident of APD command staff giving unwarranted credibility to easily "testable" statements from officers whose actions are under review.

The suspect ran a short distance before giving up and laying on the ground. The officer was able to take the suspect into custody without further force being used. A second officer was not considered a witness to the use of force, which we were unable to reconcile. This case was not initially reported as a use of force and was identified as such by the commander nearly two months following the incident. There was no documentation of any remediation of performance deficiencies in this case, including, but not limited to, failure to report a use of force.

When we met with APD's IA Commander he expressed equal concern over the case and also found several policy violations that were troublesome. As we questioned the actions IA intended to take, now that these policy violations were obvious to APD, the IA Commander seemed uninspired to take any action.[35] It was only through the monitoring team's continued questioning that he finally agreed to take an "I" number for these obvious policy violations. We were provided with the "I" number before the end of our visit IMR-10-10, but a subsequent data request revealed that it was not until two months later that IA target letters were drafted against the lieutenant and commander that

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[34] The officer was actually heard making radio updates as he ran, and made a command to stop, instead of an ECW warning. After continuing to run after the suspect and catching him, the officer was still able to make announcements to the suspect and talk to an assisting officer. These details bring into question the officer's rationalization for not "announcing" the deployment of his Taser, but these inconsistencies simply were not noted by the command-level APD review of this case. The monitor strongly condemns these types of "liberties" by command-level personnel. They are counterproductive and counter-CASA, and particularly aberrant, given the source.

[35] During this meeting, a member assigned to IA admitted in another matter to a purposeful delay taking an "I" number because the "clock would start to run." We find no policy support for such a rationale.

reviewed the use of force. Further, no action was taken against the officer who improperly deployed his ECW and misreported his actions related to that ECW use of force. Cases such as this seem to be at the root of APD's problematic processes designed to control unnecessary uses of force: unreasonable delays leading, in the final analysis, to a finding of improper actions, but, due to the delays, no discipline is applied.

The second case the monitoring team reviewed during our meeting was Case #IMR-9-9 **(ECW Application)**. This case represents a glaring example of the undermining of and misapplication of intervention and discipline at APD.

In IMR-9, the monitoring team noted numerous problematic officer and supervisory actions in the use of ECWs and other force applications. The supervisor in this particular use of force incident (IMR-9-9) was cited for poorly controlling the situation as well as conducting a deficient supervisory investigation. The reviewing lieutenant appropriately found both uses of force in the incident to be out of policy and referred the matter to the commander, who made the appropriate internal affairs referral.[36] On May 21 (during our May 2019 site visit), the monitoring team was presented with hard-copy documents (signed and dated May 15, 2019 by the sergeant's Area Commander), thus revealing the Area Commander's awareness of IA sustaining Class 5 and 6 violations against the sergeant, and a recommendation for 40 hours of suspension. On May 17, the same Area Commander submitted two memos (both dated May 17) to Internal Affairs to address the same sergeant's supervision once again, this time in IMR-10-7. One memo (consisting of one page) advises IA that the sergeant "will receive (emphasis added) a verbal reprimand" since the Area Commander "did not locate any Class 7 violations in the past 12 months."

The monitoring team reviewed documents for this sergeant that reflect several disciplinary actions. These documents include the sergeant's *Police Action Card/ Employee Member Card*, the sergeant's *Concise Employee History* (IAPro), and an unlabeled 2-page printout. The documents did not all align with each other to reflect the

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[36] A review of the related IA for this incident revealed deficiencies that may have led the investigator to a different conclusion regarding what the monitoring team viewed as an out of policy use of force (with injuries) caught on video. The synopsis of the IA investigation indicated one of the core issues investigated was the use of force by an officer. The investigator's written analysis of the OBRD video that captured the force used language that the video is "not definitive," despite stating in the next sentence that it appeared the officer's body "moved abruptly forward in the direction [of] the top of the subject's head was pointing." The preponderance standard does not need to rely on *definitive* evidence in the consideration of liability. In the findings section of the IA report on this officer, language from the officer's statement indicated the person subjected to force threw himself face first into the ground. In the opinion of the monitoring team, this is contradicted by the OBRD video. This material discrepancy of whether the officer forced the person onto the ground, or the person drove himself into the ground, could have been addressed by asking this question of the person who was subjected to force by this officer. Remarkably, however, the person subjected to the officer's force was never interviewed by IA about this matter, nor were the other two civilian witnesses present at the scene. We find this to be an example of deliberate indifference.

totality of the problematic disciplinary actions involving this sergeant. For example, a CASA-related OBRD violation that appears on the Police Action Card/ Employee Member Card does not appear on the sergeant's IAPro Concise Employee History report or the unlabeled accompanying 2-page printout. Although the Area Commander stated he couldn't locate "any Class 7 violations in the past 12 months" for the sergeant, the monitoring team's review of the aforementioned disciplinary action documents reveals the sergeant's retention card lists a written reprimand for a CASA-centric SOP 2-52 (use of force) violation. Another written reprimand for a motor vehicle accident was recorded on the unlabeled 2-page printout but was not listed in the sergeant's IAPro *Concise Employee History* report.

The second memo to IA (consisting of four pages, but with the same May 17 date) from the Area Commander details the Commander's opinion of why certain violations of SOP do not apply to the proposed discipline for IMR-10-7. In one part of the memo, the Commander states that an SOP 2-52 violation does not apply because he feels a good plan was in place for the deployment of a 40mm launcher. This contradicts the Commander's assertion in another section of the memo where he stated more time should have been allotted to gain the subject's attention prior to using the 40mm, especially since the level of crime that was occurring (property crime, possession of a stolen vehicle) presented no reasonable, immediate or exigent circumstance to deploy the 40mm launcher to breach the window within approximately three minutes of the sergeant's arrival at the scene. This criticism of the sergeant's control of this use of force scene is also consistent with the findings of the ECW investigation (IMR-9-9) in late 2018. This Area Commander was involved in the back end of the IMR-9-9 disciplinary matter, as he signed the IA document sustaining Class 5 and 6 violations against the sergeant, and a recommendation for 40 hours of suspension. Thus, APD personnel, inclusive of the Area Commander and Internal Affairs personnel, had access to this sergeant's contemporary and historical disciplinary records and they still proceeded with an Area Commander's prescriptive intervention/discipline of a verbal counseling when he wrote that the sergeant "<u>will receive</u> (emphasis added) a verbal reprimand" for another violation of a CASA-centric policy. In short, more serious errors were ignored, and less serious errors were noted and resulted in the ubiquitous "verbal reprimand" for a deployment of a less-than-lethal 40mm launcher round.

This is precisely the outcome from the lack of connectivity and system failures that the monitor has pointed out over the past few monitor reports. Even when recorded information exists, APD allows inappropriately applied progressive discipline to a supervisor (recommended by an Area Commander) whose actions or inactions would be flashing red on any bona fide early warning system. When an objective observer reviews the various use of force investigations, correspondence, and time expended to review and manage the activities of this sergeant as they relate to use of force incidents and that the sergeant has received verbal reprimands, written reprimands, and significant suspension time for various actions and/or inactions in CASA-centric SOPs, it is shocking to the monitor how APD could justify a verbal counseling in light of all of the

warning signs present in a review of the totality of the circumstances in this case. No evidence has been provided that indicates Internal Affairs conducted any investigation into these matters. In this case, Internal Affairs seems to act as merely a clearing house for obtaining case numbers and memorializing the recommendations of Area Commanders.[37]

In another case (IMR 10-11; ACM-10-1) during this reporting period, a lieutenant in an area command provided a comprehensive and detailed ACM concerning an officer failing to activate his OBRD during a use of force. He stated, "Having reviewed this incident in depth, it is apparent that Officer X had numerous opportunities to activate his OBRD but neglected to do so. His assertion that he was unable to activate his OBRD 'due to (female) actively fleeing from Officer X' and 'the expeditious nature' of his departure from his vehicle are not supportive of an excusable violation in this case and are, in essence, 'boilerplate language." The lieutenant documented the relevant policy violations and we saw his memo as a legitimate attempt to initiate a discipline request to IA through an Area Commander. However, even though the Area Commander concurred with the lieutenant and cited the violation as a sanction level 6 requiring a written reprimand, he stated, "…I do not support a written reprimand in this matter. In lieu of a written reprimand, I support a documented verbal reprimand." While he directs his comments to IA, this type of interaction at the Area Command level is precisely the type of dysfunction and disparity we have noted across the organization, which undermines the legitimate authority of IA as the disciplinary arm of the Chief of Police. In short, even when faced with obvious policy violations and a Chart of Sanctions with prescribed disciplinary measures for those violations, this Area Commander took measures to essentially undermine the IA process and to neutralize potential corrective measures.

We have stated in previous reports that delays in the comprehensive investigation of use of force incidents significantly impedes the ability of APD to react to policy violations when force is used. In assessing compliance with Paragraphs 41-59 and other Paragraphs in this report, we have already noted that APD has not convened a Force Review Board since November 2017 to review use of force matters. As it relates to Paragraph 75 and the requirement to forward completed cases to the Force Review Board, the delay in completed cases have been creating a second backlog at the back end of the force investigation process. This exacerbates the workload for APD's oversight processes to ensure the quality and rigor of these investigations. It also creates a disciplinary quagmire that severely impedes APD's ability to impose discipline for even the most severe of policy violations. The implications for Operational Compliance efforts moving forward are self-evident. We reiterate our comments previously in this report (Paragraphs 41-59) pertaining to the need for APD to complete

[37] We have pointed out to APD on numerous occasions that the manner in which area commanders, lieutenants and sergeants pass around internal memos related to policy violations, thus giving the appearance of the likelihood that dysfunction and disparity exists across the commands. Apparently, this occurs outside the purview of the Chief of Police.

thorough investigations within the stipulated timelines and eliminate lengthy extensions in supervisory force investigations for Commander reviews. The monitoring team cannot overstate the adverse impact these issues will have on the effectiveness of APD's compliance efforts. We note that APD has prohibited the use of ACMs. We see these delaying tactics (protracted timelines for incident review, use of informal—and non-CASA compliant—surrogate disciplinary actions) as worrisome, and potentially critical compliance barriers.

Pursuant to Paragraphs 65, 66, and 76, certain CASA-defined uses of force can be assigned to the MATF for investigation. Consistent with Paragraphs 81-85 of this report the MATF reported receiving ten cases during this monitoring period (through July 22, 2019). Seven of those cases originated with APD, inclusive of five officer-involved shootings, one in-custody death, and one aggravated assault/battery.

Paragraphs 70-74 deal with the quality of the investigative process of Internal Affairs. The monitoring team has observed the Force Division's significant efforts to improve the quality of use of force investigations, reviews, and the quality of the personnel assigned to these functions. At the same time, the efforts to resolve investigative inconsistencies and findings not supported by a preponderance of evidence (with exceptions noted) have markedly improved over past monitoring periods. This improvement can be attributed to the clear direction and oversight of the supervision and command of the Compliance Bureau and Force Division of Internal Affairs. Directly attributable to this focused direction and oversight was the design and implementation of the assignment and training processes of newly assigned personnel to the Force Division. As APD intends to pivot to a new 3-tiered use of force reporting system, it will move all but lower level initial force investigations to the IAFD. To succeed, APD leadership will have to embrace the fact that IAFD will require adequate staffing, training and resources to be successful. It would be very unwise for APD to not seize on the opportunity IAFD has created by improving the quality of their work product. To not provide IAFD with the resources that will be necessary to properly review and investigate new use of force policy violations, would be, in the monitor's opinion, short-sighted and counterproductive.

Compliance Findings

Based on our review, we have determined Secondary Compliance is continued for Paragraphs 60 through 74, and 76-77. Paragraph 75 is not in compliance, due to lengthy delay in impaneling a Force Review Board (since November 2017). The first session of the newly comprised FRB occurred outside the dates of this reporting period.

4.7.47 Assessing Compliance with Paragraph 60: IAB Force Review

Paragraph 60 stipulates that:

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

Results

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

Recommendation for Paragraph 60:

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

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

Paragraph 61 stipulates:

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

Results

APD IA processes focused on criminal and civil issues appear reasonably staffed given current workload. Policies are reasonably crafted and have been approved by the monitor. What remains is simply a matter of working through the backlog in a persistent, methodical manner, ensuring the process produces effective, industry-standard work. This will simply take time to resolve.

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

Recommendation for Paragraph 61:

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

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

Paragraph 62 stipulates:

> **"Within six months from the Effective Operational Date, APD shall revise the Internal Affairs Bureau manual to include the following:**
>
> **a) definitions of all relevant terms;**
>
> **b) procedures on report writing;**
>
> **c) procedures for collecting and processing evidence;**
>
> **d) procedures to ensure appropriate separation of criminal and administrative investigations in the event of compelled subject officer statements;**
>
> **e) procedures for consulting with the District Attorney's Office or the USAO, as appropriate, including ensuring that administrative investigations are not unnecessarily delayed while a criminal investigation is pending;**
>
> **f) scene management procedures; and**
>
> **g) management procedures."**

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 CASA and known best practices in the field.

4.7.50 Assessing Compliance with Paragraph 63: Staffing IAB

Paragraph 63 stipulates:

> **"Within ten months from the Effective Date, APD shall ensure that there are sufficient trained personnel assigned to the Internal Affairs Bureau to fulfill the requirements of this Agreement. APD shall ensure that all serious uses of force are investigated fully and fairly by individuals with appropriate expertise, independence, and investigative skills so that uses of force that are contrary to law or policy are identified and appropriately resolved; that policy, training, equipment, or tactical deficiencies related to the use of force are identified and corrected; and that investigations of sufficient quality are conducted so that officers can be held accountable, if necessary. At the discretion of the Chief, APD may hire and retain personnel, or reassign current APD employees, with sufficient expertise and skills to the Internal Affairs Bureau."**

Results

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

Recommendation for Paragraph 63:

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

4.7.51 Assessing Compliance with Paragraph 64: Training Force Division Personnel

Paragraph 64 stipulates:

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

> **staff, and Civilian Police Oversight Agency staff; and investigative equipment and techniques. Internal Affairs Bureau personnel shall also receive force investigation annual in-service training."**

Results

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

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

Paragraph 65 stipulates:

> **"Where appropriate to ensure the fact and appearance of impartiality and with the authorization of the Chief, APD may refer a serious use of force or force indicating apparent criminal conduct by an officer to the Multi-Agency Task Force for investigation."**

Results

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

4.7.53 Assessing Compliance with Paragraph 66: MATF Assistance to IAB

Paragraph 66 stipulates:

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

Results

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

4.7.54 Assessing Compliance with Paragraph 67: MATF Assistance to IAB

Paragraph 67 stipulates:

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

Results

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

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

> **"If the Internal Affairs Bureau determines that a case will proceed criminally, or where APD requests a criminal prosecution, the Internal Affairs Bureau will delay any compelled interview of the target officer(s) pending consultation with the District Attorney's Office or the USAO, consistent with Paragraph 186. No other part of the investigation shall be held in abeyance unless specifically authorized by the Chief in consultation with the agency conducting the criminal investigation."**

Results

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

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

Paragraph 69 stipulates:

> **"In conducting its investigations of serious uses of force, as defined in this Agreement, the Internal Affairs Bureau shall:**
>
> **a) respond to the scene and consult with the on-scene supervisor to ensure that all personnel and subject(s) of use of force have been examined for injuries, that subject(s) have been interviewed for complaints of pain after advising the**

subject(s) of his or her rights, and that all officers and/or subject(s) have received medical attention, if applicable;

b) ensure that all evidence to establish material facts related to the use of force, including but not limited to audio and video recordings, photographs, and other documentation of injuries or the absence of injuries is collected;

c) ensure that a canvass for, and interview of, witnesses is conducted. In addition, witnesses should be encouraged to provide and sign a written statement in their own words;

d) ensure, consistent with applicable law, that all officers witnessing a serious use of force by another officer provide a use of force narrative of the facts leading to the use of force;

e) ensure that all officers involved in a use of force incident remain separated until each has been interviewed and never conduct group interviews of these officers;

f) review all Use of Force Reports to ensure that these statements include the information required by this Agreement and APD policy;

g) ensure that all Use of Force Reports identify all officers who were involved in the incident, witnessed the incident, or were on the scene when it occurred;

h) conduct investigations in a rigorous manner designed to determine the facts and, when conducting interviews, avoid asking leading questions and never ask officers or other witnesses any questions that may suggest legal justifications for the officers' conduct;

i) record all interviews;

j) consider all relevant evidence, including circumstantial, direct, and physical evidence, as appropriate, and make credibility determinations, if feasible;

k) make all reasonable efforts to resolve material inconsistencies between the officer, subject, and witness statements, as well as inconsistencies between the level of force described by the officer and any injuries to personnel or subjects; and

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

Results

APD has provided the policy and training components of this paragraph to IAB personnel. What remains to be accomplished is consistent and persistent supervision and review to ensure that IAB findings are consistent with best practices.

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

Recommendations for Paragraph 69:

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

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

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

Paragraph 70 stipulates:

> **"The Internal Affairs Bureau shall complete an initial Use of Force Data Report through the chain of command to the Chief as soon as possible, but in no circumstances later than 24 hours after learning of the use of force."**

Results

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

Recommendations for Paragraph 70:

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

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

4.7.58 Assessing Compliance with Paragraph 71: IAB Investigative Timelines

Paragraph 71 stipulates:

> **"The Internal Affairs Bureau shall complete administrative investigations within two months after learning of the use of force. Any request for an extension to this time limit must be approved by the commanding officer of the Internal Affairs Bureau through consultation with the Chief or by the Chief. At the conclusion of each use of force investigation, the Internal Affairs Bureau shall prepare an investigation report. The report shall include:**
>
> **a) a narrative description of the incident, including a precise description of the evidence that either justifies or fails to justify the officer's conduct based on the Internal Affairs Bureau's independent review of the facts and circumstances of the incident;**
>
> **b) documentation of all evidence that was gathered, including names, phone numbers, addresses of witnesses to the incident, and all underlying Use of Force Data Reports. In situations in which there are no known witnesses, the report shall specifically state this fact. In situations in which witnesses were present but circumstances prevented the author of the report from determining the identification, phone number, or address of those witnesses, the report shall state the reasons why. The report should also include all available identifying information for anyone who refuses to provide a statement;**
>
> **c) the names of all other APD officers or employees witnessing the use of force;**
>
> **d) the Internal Affairs Bureau's narrative evaluating the use of force, based on the evidence gathered, including a determination of whether the officer's actions complied with APD policy and state and federal law; and an assessment of the incident for tactical and training implications, including whether the use of force could have been avoided through the use of de-escalation techniques or lesser force options;**
>
> **e) if a weapon was used by an officer, documentation that the officer's certification and training for the weapon were current at the time of the incident; and**
>
> **f) the complete disciplinary history of the target officers involved in the use of force."**

Results

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

Recommendations for Paragraph 71:

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

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

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

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

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

4.7.59 Assessing Compliance with Paragraph 72: IAB Report Review

Paragraph 72 stipulates:

> **"Upon completion of the Internal Affairs Bureau investigation report, the Internal Affairs Bureau investigator shall forward the report through his or her chain of command to the commanding officer of the Internal Affairs Bureau. The Internal Affairs Bureau commanding officer shall review the report to ensure that it is complete and that, for administrative investigations, the findings are supported using the preponderance of the evidence standard. The Internal**

Affairs Bureau commanding officer shall order additional investigation when it appears that there is additional relevant evidence that may assist in resolving inconsistencies or improve the reliability or credibility of the findings. "

Results

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

Recommendation for Paragraph 72:

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

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

4.7.60 Compliance with Paragraph 73: IAB Findings Not Supported by Preponderance of the Evidence

Paragraph 73 stipulates:

"For administrative investigations, where the findings of the Internal Affairs Bureau investigation are not supported by a preponderance of the evidence, the Internal Affairs Bureau commanding officer shall document the reasons for this determination and shall include this documentation as an addendum to the original investigation report. The commanding officer of the Internal Affairs Bureau shall take appropriate action to address any inadequately supported determination and any investigative deficiencies that led to it. The Internal Affairs Bureau commanding officer shall be responsible for the accuracy and completeness of investigation reports prepared by the Internal Affairs Bureau."

Results

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

Recommendations for Paragraph 73:

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

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

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

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

4.7.61 Assessing Compliance with Paragraph 74: IAB Quality Control

Paragraph 74 stipulates:

> **"Where a member of the Internal Affairs Bureau repeatedly conducts deficient force investigations, the member shall receive the appropriate corrective and/or disciplinary action, including training or removal from the Internal Affairs Bureau in accordance with performance evaluation procedures and consistent with any existing collective bargaining agreements, personnel rules, Labor Management Relations Ordinance, Merit System Ordinance, regulations, or administrative rules."**

Results

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

Recommendations for Paragraph 74:

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

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

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

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

4.7.62 Assessing Compliance with Paragraph 75: IAB Quality Control

Paragraph 75 stipulates:

> **"When the commanding officer of the Internal Affairs Bureau determines that the force investigation is complete and the findings are supported by the evidence, the investigation file shall be forwarded to the Force Review Board with copy to the Chief."**

Results

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

Recommendations for Paragraph 75:

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

- ***a. Identify key causes of failure;***

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

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

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

4.7.63 Assessing Compliance with Paragraph 76: Force Investigations by MATF or FBI

Paragraph 76 stipulates:

> **"At the discretion of the Chief, a force investigation may be assigned or re- assigned for investigation to the Multi-Agency Task Force or the Federal Bureau of Investigations or may be returned to the Internal Affairs Bureau for further investigation or analysis. This assignment or re-assignment shall be confirmed in writing."**

Results

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

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

4.7.64 Assessing Compliance with Paragraph 77: Discipline on Sustained Investigations

Paragraph 77 stipulates:

> **"Where, after an administrative force investigation, or a use of force is found to violate policy, the Chief shall direct and ensure appropriate discipline and/or corrective action. Where a force investigation indicates apparent criminal conduct by an officer, the Chief shall ensure that the Internal Affairs Bureau or the Multi-Agency Task Force consults with the District Attorney's Office or the USAO, as appropriate. The**

Chief need not delay the imposition of discipline until the outcome of the criminal investigation. In use of force investigations, where the incident indicates policy, training, tactical, or equipment concerns, the Chief shall ensure that necessary training is delivered and that policy, tactical, or equipment concerns are resolved."

Results

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

4.7.65 Assessing Compliance with Paragraph 78: Force Review Board Responsibilities

Paragraph 78 stipulates that:

> **"APD shall develop and implement a Force Review Board to review all uses of force. The Force Review Board shall be comprised of at least the following members: Assistant Chief of the Professional Accountability Bureau, the Deputy Chief of the Field Services Bureau, the Deputy Chief of the Investigations Bureau, a Field Services Major, the Training Director, and the Legal Advisor. The Force Review Board shall conduct timely, comprehensive, and reliable reviews of all use of force investigations. The Force Review Board shall:**
>
> **a) review each use of force investigation completed by the Internal Affairs Bureau within 30 days of receiving the investigation report to ensure that it is complete and, for administrative investigations, that the findings are supported by a preponderance of the evidence;**
>
> **b) hear the case presentation from the lead investigator and discuss the case as necessary with the investigator to gain a full understanding of the facts of the incident. The officer(s) who used the force subject to investigation, or who are otherwise the subject(s) of the Internal Affairs Bureau investigation, shall not be present;**
>
> **c) review a sample of supervisory force investigations that have been completed and approved by Commanders every 90 days to ensure that the investigations are complete and timely and that the findings are supported by a preponderance of the evidence;**
>
> **d) order additional investigation when it appears that there is additional relevant evidence that may assist in resolving inconsistencies or improve the reliability or credibility of the force investigation findings. For administrative investigations,**

where the findings are not supported by a preponderance of the evidence, the Force Review Board shall document the reasons for this determination, which shall be included as an addendum to the original force investigation, including the specific evidence or analysis supporting their conclusions;

e) determine whether the use of force violated APD policy. If the use of force violated APD policy, the Force Review Board shall refer it to the Chief for appropriate disciplinary and/or corrective action;

f) determine whether the incident raises policy, training, equipment, or tactical concerns, and refer such incidents to the appropriate unit within APD to ensure the concerns are resolved;

g) document its findings and recommendations in a Force Review Board Report within 45 days of receiving the completed use of force investigation and within 15 days of the Force Review Board case presentation, or 15 days of the review of sample supervisory force investigation; and

h) review and analyze use of force data, on at least a quarterly basis, to determine significant trends and to identify and correct deficiencies revealed by this analysis."

Methodology

As with other reporting periods, the monitoring team spent time providing perspective, feedback and technical assistance to APD personnel responsible for the tasks associated with the Force Review Board (FRB) during its May 2019 site visit. The following paragraphs represent our findings related to Paragraphs 57 and 78:

While on site we met separately with members of the APD academy, the FRB development team and SOD, all of whom have a role in reconstituting the FRB. APD had already developed a training program for a (new) FRB and requested that the monitoring team review the training materials so they could begin delivering it to APD command staff. We set aside time, and before the end of the week, provided our feedback for the FRB "Introduction" and "Tactical Activation Review and Analysis" lesson plans. APD was approved to deliver the training, with the suggestion they incorporate the feedback.[38] Following our site visit, APD was given an additional approval to deliver a third lesson plan

[38] APD intended to deliver FRB training in three parts, which was documented in the following lesson plans: 1) FRB Introduction; 2) Tactical Activation Review and Analysis; and 3) Previously Investigated UOF Review. APD was committed to first addressing tactical activations at the FRB first, since they feel they are easier to assess. That would provide them with an opportunity to assess the mechanics and flow of the new FRB before scheduling more complex uses of force. We agree with that approach.

entitled, "Previously Investigated UOF Review" that was intended to be delivered by APD's IAFD.[39]

As we have noted many times, in the past the FRB was ineffective and failed to provide any meaningful oversight for APD uses of force. Convening an FRB is intended to serve several key purposes, chief among them is to create a forum for executive oversight that pushes department level expectations down through all levels of supervision. In our opinion, past FRB meetings simply went through the motions as a rudderless ship, which clearly validated our view that until, 2018, APD, as whole, had a *laissez faire* attitude toward use of force oversight and accountability. As a consequence, APD lost many opportunities to oversee use of force because of its apathy toward meaningful oversight. During that time APD simply failed to hold officers accountable --- even in the face of obvious misconduct. The monitoring team believes these past realities are important for APD to accept if the new FRB is to have any chance of being successful and capable of sustaining agency level oversight in the future.

The FRB have not convened since November 2017 (nearly two years) and that lapse has helped enable policy violations by officers and supervisors to continue unchecked in any meaningful way. When the new administration took over at APD in December 2017, issues with the FRB were immediately brought to their attention, notwithstanding the extensive documentation that existed in past IMRs that was at their disposal. In fairness, the new leadership team was left with an extraordinary organizational, administrative, and supervisory mess that would take any experienced law enforcement executive months to disentangle. The monitoring team has spent more than a year meeting with and providing technical assistance to members of APD who are now responsible for the tasks associated with the FRB. As months and site visits passed, we found the team receptive and enthusiastic, but progress toward a reconstituted FRB was slow to be effectuated. APD has two distinct populations of use of force cases to address,: (1) those that occurred under their standing policies (November 2017 to present) and (2) those that occur after their new use of force policies are launched.[40] It is also notable that much of the work of the FRB team has been reliant upon monitor approval of acceptable use of force SOPs, the Force Review Board SOP 2-58, as well as the development and delivery of acceptable FRB training.

As noted in IMR-9, where in the past it did not appear consideration was being given to feedback the monitoring team provided, the new FRB development

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[39] Following meetings between the monitoring team and discussion among the parties, APD received monitor approval for their new Force Review Board SOP 2-58 on July 25, 2019.

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

team has been very receptive to technical assistance. They appear to grasp the relevant goals and objectives necessary to make progress and have considered the practices of other similarly situated police departments when developing their own policies and procedures. Likewise, they are leveraging internal APD teams that have demonstrated past high performance (i.e. IAFD and SOD) for guidance. Also, APD convened focus groups and ran mock FRBs in March 2019 to identify and resolve issues that may arise during an FRB meeting. These informed their policy and training development.

APD's IAFD has been principally focused on the investigation of a "backlog" of uses of force that occurred in 2017.[41] During their review, they reported finding hundreds of misconduct violations that were missed, went unreported, and/or were not addressed by supervisors in the field. Through our conversations with IAFD, it is obvious they believe those issues likely exist for 2018 and 2019 use of force cases they have not reviewed. With that in mind, APD has decided to leverage IAFD's experience to benefit the FRB as it begins to hear 2018 and 2019 cases.

The FRB is responsible for reviewing tactical activations, serious uses of force and a 10% sample of all other uses of force. Once the cases in the 10% sample are identified, two IAFD detectives will address those cases using their review methodology in order to bring them to the same level of quality as the backlog cases. We agree with the approach and note that it will be a tremendous undertaking for only two detectives. Like many other areas of the organization with CASA responsibilities, APD would be wise commit more assets to this initiative. It is easily predicable that if overloaded, the work product of the two detectives will suffer-- resulting in poor outcomes at the FRB. We were told that if a case contains policy violations not previously identified, those violations would be reported to IA for investigation, which will help FRB share some of the load with other Divisions. Nonetheless, staffing of these units raises concerns with the monitoring team.

APD conducted its FRB training on July 30 and 31, 2019. It was delivered to personnel who are expected to be members of the FRB. The monitoring team reviewed records from the training, including sign-in sheets, pre- and post-test results and an Academy "Close Out Memo"[42]. Special Order 19-55 scheduled

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[41] There are smaller populations of 2016, 2018 and 2019 cases that have also been reviewed by IAFD. We noted the high quality of their reviews in IMR-9 and feel that the sooner APD properly staffs and operationalizes IAFD (to conduct initial use of force investigations) the sooner APD will begin to achieve operational compliance in the field.

[42] The "Close Out" memorandum was dated August 30, 2019 and was apparently completed in response to a monitoring team request. These memoranda, if completed routinely after training, will constitute course of business documentation that can be considered for assessment purposes. These are a valuable piece of any training process, such as the 7-Step Cycle adopted by APD.

27 enlisted personnel to attend, but due to various reasons only 20 commanders were able to attend and successfully complete the course. We requested and reviewed videotapes of the training to assess the quality of the instruction in the classroom. Quality reviews of in-classroom instruction from past APD training revealed serious deficiencies that required remediation efforts and caused significant delays in compliance efforts.[43] We found similar issues during the FRB training, which were immediately brought to the attention of APD's Academy Director.

The FRB "Introduction" consisted of several blocks of instruction and was intended to set the tone for the new FRB and set the expectations and procedures for how the FRB would perform. Considering the importance of the FRB and magnitude of past problems associated with it, we would have expected a senior member of the organization to open the training. This was not the case. Proper messaging from the top of an organization carries weight, so it was somewhat surprising it did not occur here. Instead, a member of the FRB development team provided the initial comments and instruction, which we found to be disappointing. It was our impression that the instructor, because of rank differences, was too deferential to the audience, where directness was necessary. The training in the class did not follow the lesson plan and portions were either missed or toggled through quickly,[44] which made it extremely hard to follow at times. At one point the instructor saw class participants taking notes and told them "everyone is going to do outstanding on the test" and told them that whenever she came across information for the test, she would let them know. That caught the monitoring team's attention, to say the least.

We were not surprised, but extremely concerned, when the instructor began to overtly telegraph test questions for the class as she delivered the training. This is highly problematic behavior by an instructor and could seriously impact the integrity of the test results for the class.[45] The mechanism for verifying a transfer of learning (a testing process) is an essential component of training, since it allows an organization to later assess the performance of officers in the field. It also provides valuable feedback to the academy to determine if the test is valid, if the training is effective and if that curriculum needs to be adjusted. APD needs to self-monitor all training on the critical path for CASA compliance to ensure that this custom by instructors is noted and eliminated from the training process.

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[43] After three years APD has finally remediated, through various "gap training" events, all the deficiencies we identified. These efforts are discussed in greater detail in Paragraphs 86-88.

[44] At one point the instructor indicated "I'm going to breeze through this…"

[45] This is the type of observation that causes the monitoring team concern across all training, since the instructor was aware that the training was being videotaped and the room was filled with high level executives from APD and other CASA parties, yet these overt comments were still made.

When this issue was brought to the attention of the Academy Director, who was in the room for the training, we were told that she too noticed the instructor's comments (at the time). After the second break in the training, the Academy Director addressed the behavior.[46] We appreciate that the behavior was stopped, but the fact it took as long as it did is disappointing. We would expect the mistake to occur once, and then immediately be addressed by any one of the executives in the room. We alerted the Academy Director that if these issues are encountered again in other APD training it will likely impact their compliance efforts.

Conversely, we found the instructors from SOD and IAFD (Days 1 and 2) to be exceptional. Their tone and demeanor were exactly what the monitoring team expects at this point, and is not surprising, based on other interactions we have had with those divisions. They stayed on point and guided the class participants through the training, while constantly providing personal perspective and guidance on how the FRB should assess cases that come before it. Frankly, in terms of compliance determinations, the high quality of the training offered after the "Introduction" was necessary to overcome the deficiencies we noted. SOD and IAFD demonstrated credibility and provided valuable guidance to the class. We noted good interaction between the class and the instructors during the second SOD and IAFD sections of the course. We believe the class was engaged and interested in learning.

Finally, we want to comment on a certain point we observed being brought up in the training, where certain attributions were made to the monitoring team. Specifically, those comments relate to the type of reviews FRB members should be required to make. On a few occasions we observed an instructor comment about things the "IMT wants us to do" or what the "monitoring team wants." That type of comment undercuts the legitimacy of the topic in question. That said, it is important to draw a distinction between guidance we have provided though our technical assistance over the past 20 months, and what APD perceived as what the monitoring team "wants." A perfect example is whether FRB members should be required to review all OBRD videos in order to make proper determinations. Over the past four years, APD field supervisors have demonstrated a marked inability (or unwillingness) to conduct consistently thorough and accurate use of force investigations, and commanders above them have been cited for failing to capture those mistakes. On several occasions we have told APD that there is yet to be a reason to have faith in

[46] We noted while reviewing the video tapes that the instructor stopped telegraphing test questions at the point in time the Academy Commander indicated she addressed the issue. She also indicated that the instructor will be scheduled to attend an instructor training class in the future. In our opinion, any professional would inherently know that telegraphing test questions is improper regardless of their training background.

lower level reviews,[47] which would necessitate watching the entirety of each video to meet the requirements of the FRB. To be clear, if APD chooses to not have FRB members watch all OBRD videos in their entirety, that is their prerogative. However, they are still responsible to meet their CASA responsibilities, and if information is missed during lower level reviews, and caught later during reviews by the monitoring team, it will impact operational compliance.

We strongly encourage all FRB members to read carefully the actual provisions of Paragraphs 57 and 78 so they are fully aware of how their work will be assessed. In the past, there was little self-assessment to determine the tangible "proofs" that can be advanced that demonstrate that the FRB meets each provision of those paragraphs.

Paragraph 78 states, "The Force Review Board shall conduct timely, comprehensive, and reliable reviews of all use of force investigations." We believe the FRB is a key organizational feature influencing organizational reform. We stress that fact again here. The IA Force Division has uncovered hundreds of policy violations as they reviewed and investigated the extensive backlog of UOF cases from 2017. We know from experience that similar issues found in 2017 will likely exist in 2018 and 2019 cases that were not under review by the IAFD. The FRB should expect that, as it begins its work reviewing its own backlog of cases, policy violations and performance issues will be uncovered there as well. The formula to success is simple, and operational compliance is achievable if the FRB embraces its responsibilities and conducts legitimate oversight of uses of force. The perspectives provided in the FRB training should have conditioned APD to be vigilant in their FRB reviews. As we noted in IMR-9, if APD is ever to achieve operational compliance in its use of force requirements, having a fully functional, engaged and well-documented FRB will be essential. To that end, we recommend that APD monitor initial FRB meetings carefully, and ensure they are headed in the right direction.

Based on our review, we have determined Secondary Compliance has been achieved for Paragraphs 57 and 78.

Results

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

Recommendations for Paragraph 57 and 78:

[47] Notwithstanding the good work being conducted by IAFD.

4.7.44 & 65a: Report regularly on progress regarding the established goals and objectives related to the FRB process.

4.7.44.& 65b: Closely monitor referrals that are made from the FRB to ensure that each referral is clear and is addressed meaningfully by the impacted command.

4.7.44. & 65c: APD should organize its pre- and post-FRB meeting documentation in a manner that clearly demonstrates how it meets each of the relevant provisions of the CASA.

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

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

Paragraph 79 states:

> **At least annually, APD shall publish a Use of Force Annual Report. At a minimum, the following information should be included in the Annual Use of Force Report:**
>
> **a) number of calls for service;**
> **b) number of officer-initiated actions;**
> **c) number of aggregate uses of force;**
> **d) number of arrests;**
> **e) number of custodial arrests that involved use of force;**
> **f) number of SWAT deployments by type of call out;**
> **g) number of incidents involving officers shooting at or from moving vehicles;**
> **h) number of individuals armed with weapons;**
> **i) number of individuals unarmed;**
> **j) number of individuals injured during arrest, including APD and other law enforcement personnel;**
> **k) number of individuals requiring hospitalization, including APD and other law enforcement personnel;**
> **l) demographic category; and**
> **m) geographic data, including street, location, or Area Command.**

Methodology

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

The monitoring team has previously spent time providing perspective, feedback and technical assistance to APD regarding Paragraph 79. During past site visits the monitoring team has consulted closely with APD regarding the requirements of this paragraph. We continued that practice during our May 2019 site visit, by meeting with members of APD's Compliance Bureau and discussing issues

related to this paragraph. As in the past, they were receptive to our perspective and were prepared to discuss the provisions of this paragraph.

In the past, we reported on many instances where APD personnel failed to properly report or investigate force that was used, which obviously impacts the veracity of statistics they may publish in their Use of Force Annual Reports. We have seen positive steps in this regard with respect to the Internal Affairs Force Division's (IAFD) investigation of the backlog of use of force investigations, which mostly occurred in the year 2017[48]. They also took steps to investigate some cases that are not part of the backlog, which occurred in 2016-2018. As noted in IMR -9, IAFD identified hundreds of policy violations during that process, including unreported uses of force, so it is reasonable to believe that similar deficiencies they found in 2017 existed throughout 2016 as well. While we are encouraged by the thoroughness of the IAFD's work, we communicated to APD that we were concerned with the legitimacy of statistics that would be contained in reports like the Use of Force Annual Report.

Over the past 18 months we understand that APD has grappled with historical failures to adequately report uses of force. In prior conversations we made clear the need to qualify information contained in their Use of Force Annual Reports, since the quality of the past reporting was significantly compromised for a host of reasons. We believed that APD would want to avoid giving a false impression of its use of force statistics, so clear language in its Annual Use of Force Report was appropriate, and reflective of the strong efforts they have implemented to reconcile past data inaccuracies. During the IMR-9 reporting period, we were told that APD was in the final stages of publishing Use of Force Annual Reports for the years 2016 and 2017, and that the monitoring team would have an opportunity to review them during the next reporting period.

APD had not published an Annual Use of Force Report as required by Paragraph 79 since 2015, so they decided to organize use of force data from the years 2016 and 2017 together, which we found to be an appropriate approach under the circumstances. The "Use of Force Report for the Years 2016/2017" was finalized in February 2018 and published in March 2018.

APD attempted to call out past data discrepancies in their opening "Introduction" as follows:

> "The third reason for taking this approach is that the quality of the use of force data gathered by APD during previous years has been poor at best.

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[48] IAFD performed well in their role of reviewing "backlog" cases. While they did review some 2016 cases, their main charge was 2017 use of force cases. Likewise, there were instances that while reviewing a 2017 case their attention may have been drawn to a use of force investigation that happened in 2018.

> One of the biggest challenges faced by the new APD administration is ensuring that all Use of Force data is complete, accurate, timely and useful. Over the last year, APD sworn and civilian staff have worked to ensure that the use of force data produced since 2015 have been reviewed and corrected for accuracy and completeness.[49] In addition, policies and practices are now in place to ensure that the data collected from now on meets high standards of quality." (Page 3)

In other locations in the report APD qualified their data in another way.

Examples include:

> "It is likely that many of the changes between the years covered in this report are the result of more accurate reporting and improvement in process rather than actual increases in the use of force." (Page 6) or
>
> "Over the past two years these SOPs have been subject to revision. Some of these revisions may have had an impact upon the data produced by the Department around incidents of use of force, show of force and canine bites. The following revisions to policy have had an impact upon the number of use of force and show of force incidents depicted in this Report:
>
> - The Department added distraction techniques as a reportable use of force in SOP 2-52 in June 2017. Before this point in time Department personnel *were not required to report their use of distraction techniques as an application of force*. Importantly, the term "distraction technique" was not defined in Department policy in June 2017 or at any time prior." (Page 9, Emphasis Added).

The following should have been considered:

1. The reference to distraction strikes and APD officers not being "…required to report…" them as uses of force is problematic and potentially misleading. APD not reporting distraction strikes was a fundamental failure by the department, which was documented in previous monitor reports and discussed extensively in past meetings with APD. The failure to report such actions as a use of force was a cultural and systematic failure, not a matter of policy gaps.

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[49] While variances between reported uses of force and the data collected are still being identified and reduced, we know that force reporting issues are not only an issue of the past at APD. That is why we stressed the need to qualify statements since accurately reporting uses of force data is an ongoing project. Suggesting that the efforts "ensured" data are accurate and complete is incorrect and gives an improper impression to readers. We believe it is true that APD worked diligently to make the data as accurate as possible, but uncontrollable factors exist that impact the veracity of data. Data reliability and collection is a work in progress at APD.

2. Page 16 of the Annual Report offers the heading, "SWAT Use of Force Incidents From 2016 – 2017, but Chart 14 focused only on SWAT "Deployments." This is relevant for the following reason:

   On October 28, 2018, APD's SOD Commander submitted a report that outlined his analysis of unreported uses of force by SOD for 2016 and 2017. That report documented: 1) 12 unreported uses of force for chemical munitions and one unreported use of force for an NFDD (Noise-Flash Distraction Device) for 2016; and 2) 20 unreported uses of force involving chemical munitions and three unreported uses of force by NFDDs for 2017. Therefore, the Commander self-reported 36 total unreported uses of force for the years 2016 through 2017. We compared the data reported in Chart 21 of Section VI: Context and The Use of Force (Page 21) and the report prepared by the SOD Commander, and the data in Chart 21 reflects use of force numbers that the SOD Commander documented as being incorrect.[50] This is a laudable example of APD self-correcting without monitor interventions.

3. Chart 12 of the Annual Report under the heading, "Electronic Control Weapons Used in Use of Force Incidents From 2016 to 2017", has a category of data that combines ECW standoff and drive stun incidents. In our opinion, ECW data should be separated for standoff and drive stun mode occurrences, since the latter has its own specific requirements and conditions for use as a weapon. Also, APD has previously reported that ECW arcing data was unreliable since it was difficult to differentiate between a test at the beginning of a shift, a test when an officer was responding to a scene and an actual ECW arch as a show of force.[51] This fact is not articulated as a qualification to better explain the data reliability.

APD is currently drafting its 2018 Annual Use of Force Report. We highly encourage APD to consider the comments we are providing here before publishing that report. Anecdotally, during meetings with IAFD personnel it was our impression that similar policy violations and failures to report uses of force extend into 2018 since they have not taken on the role of being the initial investigators of use of force. Reporting errors have been prevalent in the Field Services Bureau, and as APD transitions to a new three-tiered reporting structure, we believe they will continue to be vulnerable to mistakes in reporting levels by field supervisors. We caution that if those reporting errors continue data reliability could be significantly compromised.

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[50] When we met with the Compliance Bureau, they appeared frustrated that these numbers were not shared with them and we were told that information requested of SOD was not provided. It was unclear how such an internal data breakdown occurred, but it further galvanized the need to qualify numbers that are published as APD continues to refine its processes. We have found Compliance Bureau staff to be remarkably "data savvy," and to have provided some of the best analytic and written self-commentary on APD we have noted to date.

[51] We note that following our review of data from PMU these reliability factors continue to exist. APD hopes to be able to differentiate the different data elements when they transition to a different ECW.

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

Results

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

Recommendations for Paragraph 79:

Recommendation 4.7.66a: APD should monitor use of force, serious use of force and show of force reporting discrepancies found as the IA Force Division reviews of the backlog of cases. Reporting errors must be reconciled to ensure that statistics published in its Annual Use of Force Reports are accurate.

Recommendation 4.7.66b: As APD transitions to a three-tiered use of force reporting system, they should create an auditing process for tier-one uses of force to ensure proper categorization is taking place. This system should be in place before the new use of force reporting system is launched. We consider this a critical recommendation.

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 investigations carried out by supervisors, the Internal Affairs Bureau, or Multi-Agency Task Force; and all force reviews conducted by the Force Review Board. APD shall integrate the use of force tracking system with the Early Intervention System database and shall utilize the tracking system to collect and analyze use of force data to prepare the Use of Force Annual Report and other reports, as necessary.**

Methodology

As with past reporting periods, the monitoring team spent time providing perspective, feedback and technical assistance to APD personnel responsible for the tasks associated with this paragraph. As with past reporting periods, we found APD personnel to be receptive to our feedback.

Results

APD's capacity to build systems and processes that accurately collect, collate and analyze use of force data continues to mature, but much more work is necessary. To date, APD has been unable to build a comprehensive and sustainable EIS that can provide accurate data and competently inform decisions of APD supervisors. As we have reported in the past, the monitoring team has identified many instances in which serious uses of force, uses of force, and shows of force have gone unreported by APD officers. Likewise, supervisory efforts to address policy violations and performance issues of officers are often disconnected and many times lost without being addressed in any meaningful manner, and sometimes not at all. The data analysis capabilities of APD's Performance Metrics Unit (PMU), which is an extension of the Office of the Chief of Police, continue to demonstrate a superior understanding of their responsibilities and are building an auditing capacity that would exceed most sophisticated law enforcement agencies. As we noted in IMR-9, we are encouraged with the manner in which PMU is conducting audits, and we believe that those audits will bring better data to APD in order to make informed CASA compliance determinations. The key is that management and oversight functions must be aware of, and responsive to, PMU's work product.

APD's Internal Affairs Force Division (IAFD) addressed a significant backlog of use of force investigations from 2017, and in the course of their work they self-identified unreported uses and shows of force. Because IAFD's focus was on 2017 cases, the majority of 2018 use of force cases did not have the same quality of review or oversight, so it is reasonable to believe that the significant issues IAFD uncovered in 2017 continued into and beyond 2018. We learned that of its own volition, IAFD has taken on the task of conducting a random sample of post-2017 use of force cases to assess the level of inaccurate use of force reports. We applaud that effort and see it as a measure of sophistication and awareness of the need to reduce risk and identify potential problematic trends, but that effort alone cannot remediate wide-spread reporting deficiencies that may exist.

APD has not conducted a Force Review Board of any kind since the fall of 2017, so the organization-level oversight of force has been non-existent.[52]

APD submitted a Use of Force Annual Report for the years 2016 and 2017, wherein we identified data gaps in their use of force reporting. We have provided feedback to the Compliance Bureau so those issues can be addressed as they prepare the 2018 Annual Use of Force Report. We comment more extensively in Paragraph 79.

APD has been unable to establish an overarching Early Intervention System, and as a consequence, they are regularly playing "catch up" when problematic behaviors or performance by an officer occurs. That has resulted in massive inefficiencies and lost

[52] The monitoring team worked with the APD Academy to finalize an acceptable FRB policy and training program that is geared toward tactical deployments. That training was delivered at the very end of this reporting period and our assessment is addressed in Paragraph 78. That said, APD did not conduct an actual FRB until after the close of the IMR-10 reporting period so it will be discussed in our next IMR.

opportunities to remediate problems before they reach a crisis. We have provided exhaustive technical assistance and feedback on the manner in which use of force investigations are conducted and problems that exist in the structure and operation of APD's IA. APD made a meaningful change in their business processes related to use of force reporting and misconduct that it identified during those investigations.

We have discussed issues associated with ACMs for the past three years, most recently in November 2018. We are seriously concerned about APD's past use of ACMs. The Special Order discontinuing the use of ACMs was executed by the Chief in April 2019. The original intent of an ACM was innocuous to CASA compliance, but over time supervisors in the field began using them as information harbors for misconduct violations, without the knowledge of Internal Affairs or the Chief of Police. It appears APD has finally accepted the significance of this issue and is aware of how it has impacted their ability to initiate misconduct investigations or impose discipline. Discipline and investigative outcomes for CASA-related incidents must be able to be tracked from incident to remediation event(s).

Finally, APD promulgated Special Order 19-25 (2nd Amendment) "Internal Affairs Request Through Blue Team." This SO designated Internal Affairs Professional Standards (IAPS) as the central intake for identified or suspected violations of APD policies. The SO states, "Upon identification of a policy violation … or having reasonable cause to believe that a policy violation has or may have occurred, supervisors shall immediately (not to exceed 24 hours) initiate an IA Request by utilizing the IA Request template provided within BlueTeam." We believe this SO Amendment was also a result of technical assistance the monitoring team provided, and we appreciate that there has been a response to that process.

Notwithstanding the fact that the current APD policies already required certain IA notifications, this SO Amendment, in combination with the termination of ACMs/SARs related to CASA-connected policies, are a necessary step to reduce incidences in which an APD officer or supervisor fails to make a required IA referral. We caution APD that they must closely supervise and regularly audit the point of IA intake where misconduct reports are made in response to SO 19-25 (2nd Amendment). This should be done to ensure those reports are properly categorized and that all investigative and disciplinary decisions are consistent with SOP 3-41 and the chart of sanctions. We will focus our attention on that point in the future to ensure a new problem is not created. We expect APD's leadership would have the forethought to put auditing measures in place before promulgating the Special Order (2nd Amendment), so we will seek out course of business documents as verification during the IMR-11 reporting period.

APD retains its Primary Compliance status with Paragraph 80. Through a private vendor, APD is working to implement a robust analytical system that will finally give APD a platform to assemble training, internal affairs, use of force and performance data in a central repository. APD will likely not attain any higher compliance standard with this paragraph without such a system in place.

Results

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

Recommendation for Paragraph 80:

4.7.67a: APD should monitor use of force, serious use of force and show of force reporting discrepancies. Reporting errors must be reconciled to ensure that statistics published in APD's Annual Use of Force Reports are accurate.

4.7.67b: APD should monitor and audit the intake of misconduct reports that are submitted through BlueTeam, as delineated in SO 19-25 (2nd Amendment) to ensure that misconduct violations are being fully and properly identified and addressed in keeping with SOP 3-41 and APD's disciplinary sanction chart.

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

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

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

MATF protocols have evolved over time and address CASA requirements (e.g., canvass for and interview of witnesses, ensuring officers involved in a use of force incident remain separated until each has been interviewed and/or complete a report, etc.).

APD members assigned to the MATF have formally proposed a succession plan for members currently assigned to the MATF. The proposal seeks to address

potential turnover issues when transfers or other personnel actions impact the complement of personnel assigned to the Task Force.

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

4.7.68 Assessing Compliance with Paragraph 81: MATF Participation by APD

Paragraph 81 of the CASA stipulates:

> **"APD shall continue to participate in the Multi-Agency Task Force for as long as the Memorandum of Understanding continues to exist. APD agrees to confer with participating jurisdictions to ensure that inter-governmental agreements that govern the Multi-Agency Task Force are current and effective. APD shall ensure that the inter-governmental agreements are consistent with this 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.

Throughout the IMR-10 reporting period and during our May 2019 site visit, the monitoring team provided feedback on training programs APD intended to deliver to either remediate past training gaps or to provided initial deliveries of training related to other APD needs. Throughout 2018 and 2019 the monitoring team has continued to deliver technical assistance during calls, in-person meetings and through written documents, and APD has attempted to incorporate that guidance. The overall structure and standardization of training documents we now receive are a marked improvement compared to those we received when our CASA oversight began, but the academy staff must focus on the finer points of curriculum development in order to create a sustainable system. These finer points relating to curriculum development (needs assessments, proper learning objectives, valid test questions, and connecting curriculum to outcome measures), are factors that could impact operational compliance in the field. It is critical that APD understand why that is true and embrace the need to carefully craft their training programs. The academy is continuing its efforts to meet CASA requirements and refining its administrative and instructional capability.

We met with the academy staff responsible for the tasks associated with Paragraphs 86-88. We commented in IMR-9 that after several changes in leadership at the academy, APD hired an academy director with more training experience from outside the organization. As in the past, we found the academy personnel to be engaged in their responsibilities and receptive to feedback. The academy is continuing to manage with systems that will benefit APD's long term training initiatives. The 7-Step Training Cycle[53] that APD has implemented was a strong step toward establishing a legitimate training development process (which did not exist in the past). APD's ability to implement their system is still maturing, and we saw growing pains as the academy staff struggled to advance acceptable training documentation. As we meet with non-academy personnel, they regularly make reference to the 7-Step Cycle, so the process is beginning to have a wider impact on how APD views training development.

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[53] The "seven-step" training cycles was identified for APD (by the monitoring team) early on in the compliance process. It is an amalgamation of the training processes the monitor has recommended for both the Pittsburgh Bureau of Police and the New Jersey State Police, and has been highly successful in those agencies in developing and clarifying statements of 1.) training needs; 2) curriculum development and documentation of process; 3.) integration, oversight and approval of the training process; 4.) delivery of training product; 5. Implementation and delivery of training; 6. evaluation of training; and 7. evaluation of the impact in the field of the delivered training.

As in the past, we reiterate the importance of the proper allocation of staff and resources to the academy, since training is an ongoing process, not a series of one-time events. Without such support for the academy, it will be difficult to sustain high-level training programs capable of achieving (and maintaining) compliance. Of particular concern for the department, and the monitor, is the potential fatigue that supervisors and instructors experience when not properly supported. We continue to see examples where deadlines supersede quality. That, when coupled with staffing deficiencies, results in administrative mistakes and training programs that may not impact field performance in the way APD needs. Several members of the monitoring team (responsible for overseeing academy activities) have led a law enforcement academy under circumstances similar to APD. The technical assistance and feedback that the monitoring team has provided may at times seem harsh, but it originates from experience on how to guide an agency through a reform process from a training perspective. That said, while there is still significant work to be done, APD is better off today than it was when the CASA oversight process began or even 20 months ago when the new leadership took over the department[54].

Several training programs occurred during this reporting period, but not without significant feedback from the monitoring team and adjustments by APD. The following paragraphs represent our findings related to Paragraphs 86-88.

Gap Training

As noted in IMR-9, we referred the current Academy Commander to past Monitor reports, where tables were provided to outline the status of numerous training gaps that have lingered for the past three years. These gaps originate from APD's past attempts to deliver training for its current SOPs on use of force. At the time, the monitoring team provided extensive technical assistance and feedback before APD began its training, and we warned of issues we thought they would encounter with the training, as well as the implementation of that training in the field. Despite those warnings, the department forged ahead and essentially encountered each problem we wanted them to avoid. It is important to call attention to these past mistakes, since APD is again embarking on the development and delivery of training for its new use of force "suite of policies."

[54] At times, despite the detailed and extensive "technical assistance" (TA) provided by the monitoring team to APD during this process, departmental needs exceed the scope of TA, and simply required external support. We noted that what was needed at the academy is clear: detailed job-task analyses, development of job descriptions, crafting staffing plans, building internal skills regarding assessments of delivery processes, budgeting, physical plant issues, and detailed planning processes). We suggest that the current state of academy processes far exceeds the scope of technical assistance. External guidance is certainly needed, and this and past monitor's reports provide an excellent starting point for such a process. It should start with a detailed review of the dozens of recommendations related to academy that have been provided in this, and eight other, extensive monitor's reports.

APD has a new leadership cadre and early in their tenure they were alerted to training gaps that were lingering. When the new Academy Director took command, she too was made aware of the problem, and she began attempts to remediate the issues with technical assistance provided by the monitoring team.

During the IMR-9 reporting period, the monitor approved the curriculum they intended to use to address the following previously reported training gaps:

1. Neck Holds;
2. Distraction Techniques (Strikes);
3. Problematic Supreme Court cases related to shooting at vehicles (*Plumhoff);*
4. Show of Force reporting and investigations; and
5. Un-resisted Handcuffing

After that approval, the monitoring team was provided records that demonstrated that APD's testing compliance reached 98% for this training program; therefore, the topics appear to have been sufficiently remediated. The following gaps were not addressed during this initial gap training:

1. De minimis force[55]
2. Crowd Control Training[56]

De minimis Force – The monitoring team has highlighted the problems associated with this term, as it related to use of force determinations, for the last several IMRs. On May 21, 2019, APD promulgated Department Special Order 19-38 rescinding the use of the term in use of force determinations. The SO stated, "The term 'de minimis' as defined in SOP 2-55 has created confusion in identifying, reporting and investigating uses of force." APD then disseminated training through its on-line learning management system. The monitoring team reviewed training records, to include a July 2, 2019 academy "Close Out" memorandum that demonstrated that of 988 APD personnel required to receive the training, 959 people passed, resulting in a 97% compliance rate. APD documented its intent to continue to address the 37 members of the department who did not receive the training or were on authorized duty-related leave. Based on the documentation we were provided we believe the *de minimis* force training gap finally has been adequately remediated. However, APD is encouraged to complete the training with any officer who has not yet attended.

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[55] We noted in IMR-9 that the fact that this concept had not yet been remediated through training, or rescinded through a Special Order, was highly problematic. The Academy Commander assured us this will be addressed as soon as practicable during the IMR-10 reporting period.

[56] The academy was reliant upon ERT to develop training to remediate this gap, which is appropriate.

Crowd Control - During the IMR-9 reporting period, we documented the academy and ERT efforts to develop training. We were told that ERT intended to address its requirements through a 3-Stage process as follows:

> **Stage 1** – All department personnel will receive training on SOP 2-29 through an on-line training platform, which will also cover aspects of use of force concerning chemical munitions and NFDDs;
>
> **Stage 2** – All ERT supervisors will receive an in-person "train the trainer" course on the new (when approved) ERT SOP, which will incorporate practice in crowd control formations and movements, so they are consistent across the entire ERT. (We note that there are a total of 5 teams of ERT, and approximately 90 ERT-trained personnel);
>
> **Stage 3** – All other ERT personnel will receive in-person training[57] regarding use of force, including force related to chemical munitions and NFDDs, training on SOP 2-29, and squad formations and movements. The training will be conducted by ERT supervisors.

ERT worked with the Academy to advance their Stage 1 training through the 7-Step Training Cycle. This training was submitted to and approved by the monitoring team at the end of July 2019. APD promulgated Special Order 19-73 "Crowd Control Gap Training" on July 22, 2019, that required that it be completed by July 29, 2019. We were also provided with a July 30, 2019 "Close Out" memorandum, a normal course of business memorandum, that documented the to-date compliance with Special Order 19-73.[58] We reviewed training documentation that APD assembled to assess the outcome of the Stage 1 training, which was delivered through their learning management platform. 1,001 APD personnel were required to attend the training, and the documentation we reviewed demonstrated that APD achieved an overall performance score of 96%. Four officers failed the initial and remedial training, and another 32 officers are categorized as "in progress"[59] due to various authorized leaves of absence. Based on these efforts APD has satisfied the crowd control training gap. However, they are encouraged to complete the training with any officer who has not yet attended.

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[57] Supervisors that attended the "train the trainer" course will be used as trainers.

[58] APD providing the "Close Out" memorandum is encouraging to the monitoring team. Incorporating this type of document as a routine part of their training process has been called out many times in the past. When it becomes routine it is considered a course of business document that the monitoring team can then rely upon in future compliance assessments.

[59] Many officers that were categorized as "In Progress" were on authorized duty leave (I.e.. FMLA or Military Leave)

With these two training deployments, APD has finally addressed gaps we first identified three years ago. While the current academy staff took an extended time to remediate the issues as well, the department can now see how easy these gaps would have been to fix had they been addressed properly from the beginning. While the current APD administration was not in place when these gaps first occurred, this should serve as a lesson for addressing future training gaps that may emerge. To demonstrate a true capacity for overseeing its own training, we expect APD to self-identify gaps that occur instead of waiting for people outside the organization to point them out. When those gaps do exist, we would expect APD to take proactive steps to remediate the issue.

Risk Assessment Matrix (RAM) Training

The monitoring team reviewed documentation for the delivery of organization-wide training on the proper use of the SOD Risk Assessment Matrix (RAM), and approved it as suitable to be delivered to the department.[60] We reviewed documentation for the delivery of training which occurred during this reporting period. That documentation included rosters, test results and a July 23, 2019 academy "Close Out" Memorandum. 977 APD officers took the initial on-line course, and 868 passed the test. APD conducted remedial training for 96 of the 109 APD officers who failed, bringing the overall compliance rate to 98% for the RAM training. APD documented their intention to continue addressing those officers who failed the initial test or were on authorized leaves of absence when the course was provided, but their current compliance rate, not including those who were on authorized leave, is above the required threshold. It is important that APD "close the loop" on the officers who were initially on leave, and train/test them upon return to work.

Force Review Board Training

The monitoring team has provided extensive feedback and technical assistance to an APD team that was given the task of reconstituting an effective FRB. While on site in May 2019, we met separately with members of the APD academy, the FRB development team and SOD, all of whom had a role in reconstituting the FRB. APD had already developed a training program for a (new) FRB and requested that the monitoring team review the training materials so they could begin delivering it to APD command staff. We provided our feedback for the FRB "Introduction" and "Tactical Activation Review and Analysis" lesson plans.[61] APD

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[60] APD promulgated Special Order 18-50 that codified the use of the RAM and the manner SOD would conduct audits of its use throughout the organization. The auditing program provides an internal oversight mechanism to ensure that the RAM, which originates with SOD, is being properly applied.

[61] Prior to the site visit, APD provided us with its lesson plan for the "Tactical Activation and Analysis" training, and we provided feedback. The documentation we were provided on-site represented modifications they made to the training based on our feedback.

was approved to deliver the training, if they incorporated the feedback.[62] Following our site visit APD was given an additional approval to deliver a third lesson plan entitled, "Previously Investigated UOF Review" that was intended to be delivered by APD's IAFD.[63]

As we noted in Paragraphs 57 & 78, APD conducted its FRB training on July 30 and 31, 2019. It was provided to personnel who are expected to be members of the FRB. The monitoring team reviewed records from the training, including sign-in sheets, pre/post test results and an academy "Close Out Memo"[64]. Special Order 19-55 scheduled 27 enlisted personnel to attend, but only 20 commanders were able to attend and successfully complete the course. We requested and reviewed videotapes of the training to assess the quality of the instruction in the classroom. Quality reviews of in-classroom instruction from past APD training revealed serious deficiencies that required remediation efforts and caused significant delays in compliance efforts.[65] We found similar issues during the FRB training, which were immediately brought to the attention of APD's Academy Director.

The FRB "Introduction" consisted of several blocks of instruction and was intended to set the tone for the new FRB and set the expectations and procedures for how the FRB would perform. Considering the importance of the FRB, and magnitude of past problems associated with it, we would have expected a senior member of the organization to open the training. Proper messaging from the top of an organization carries weight, so it was somewhat surprising it did not occur here. Instead, a member of the FRB development team provided the initial comments and instruction, which we found to be disappointing, in terms of the message it sent regarding the importance of the training. It was our impression that the instructor, because of rank differences, was too deferential to the audience, where directness was necessary. The in-class training did not follow the lesson plan and portions were either missed or toggled through quickly,[66] which made it extremely hard to follow at times. At

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[62] APD intended to deliver FRB training in three parts, which was documented in the following lesson plans: 1) FRB Introduction; 2) Tactical Activation Review and Analysis; and 3) Previously Investigated UOF Review. APD was committed to addressing tactical activations at the FRB first, since they feel they are easier to assess. That would provide them with an opportunity to assess the mechanics and flow of the new FRB training before scheduling more complex uses of force. We agree with that approach.

[63] Following meetings between the monitoring team and discussion among the parties, APD received monitor approval for their new Force Review Board SOP 2-58 on July 25, 2019.

[64] The "Close Out" memorandum was dated August 30, 2019 and was apparently completed in response to a monitoring team request. These have been completed for other training programs, so it was disappointing that this particular memo was not completed as a matter of routine.

[65] After three years APD has finally remediated all the deficiencies we identified through various "gap training." These efforts are discussed in greater detail in Paragraphs 86-88. We commend APD's diligence in these matters.

[66] At one point the instructor indicated "I'm going to breeze through this…"

one point the instructor saw class participants taking notes and told them "everyone is going to do outstanding on the test" and told them that whenever she came across information for the test, she would let them know.

That caught our attention. We were not surprised, but were extremely concerned, when the instructor began to overtly telegraph test questions for the class as she delivered the training. This is highly problematic behavior by an instructor and could seriously impact the integrity of the test results for the class.[67] The mechanism for verifying a transfer of learning (testing) is an essential component of training, since it allows an organization to later assess the performance of officers in the field. It also provides valuable feedback to the academy to determine if the test is valid, if the training is effective and if that curriculum needs to be adjusted.

When this issue was brought to the attention of the Academy Director, who was in the room for the training, we were told that she too noticed the instructor's comments (at the time). After the second break in the training, the Academy Director addressed the behavior.[68] We appreciate that the behavior was stopped, but the fact it took as long as it did is disappointing. We would expect the mistake to occur once, and then that it immediately be addressed by any one of the executives in the room. We alerted the Academy Director that if these issues are encountered again in other APD training it will likely impact their compliance efforts.

Conversely, we found the instructors from SOD and IAFD (Days 1 and 2) to be exceptional. Their tone and demeanor were exactly what the monitoring team expects at this point and is not surprising, based on other interactions we have had with those Divisions. They stayed on point and guided the class participants through the training while constantly providing personal perspective and guidance on how the FRB should assess cases that come before it. Frankly, in terms of compliance determinations, the high quality of the training offered after the "Introduction" was necessary to overcome the deficiencies we noted. SOD and IAFD demonstrated credibility and provided valuable guidance to the class. We noted good interaction between the class and the instructors during the SOD and IAFD sections of the course. We believe the class was engaged and

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[67] This is the type of observation that causes the monitoring team concern across all training, since the instructor was aware that the training was being videotaped and the room was filled with high level executives from APD and other CASA parties, and yet these overt comments were still made.

[68] We noted while reviewing the video tapes that the instructor stopped telegraphing test questions at the point in time the Academy Commander indicated she addressed the issue. She also indicated that the instructor will be scheduled to attend an instructor training class in the future. In our opinion, any professional would inherently know that telegraphing test questions is improper regardless of their training background.

interested in learning, so we are sanguine that it will translate to strong performance during an actual FRB meeting.

Finally, we want to comment on a certain point we observed being brought up in the training, where certain attributions were made to the monitoring team. On a few occasions we observed an instructor comment about things the "IMT wants us to do" or what the "monitoring team wants." That type of comment undercuts the legitimacy of the topic in question. That said, it is important to draw a distinction between guidance we have provided though our technical assistance over the past 20 months, and what APD perceived as "what the monitoring team wants."

Use of Force Policy Training

The current academy team has been saddled with an enormous task to develop and deliver effective training for APD's new use of force policies. As we previously noted, the academy has been accomplishing tasks and show signs of training sophistication that is needed to positively impact APD's training programs. A significant barrier to APD's ability to advance meaningful use of force training was its inability to advance acceptable policies related to use of force, which were resolved at the end of the IMR-9 reporting period. As a consequence, little had been accomplished toward APD's long-term compliance efforts with Paragraphs 86-88; however, some positive steps occurred during the IMR-10 reporting period.

Since the summer of 2018, the Academy has articulated its intentions as to how they will address use of force training when the new "suite-of-policies" are finalized (and approved by the monitor). The Academy Director outlined a plan to deliver training in four distinct "Tiers" that provide different learning modalities.[69] The following is a synopsis of four (4) Tiers of training the Academy intends to deliver throughout 2019 and into 2020:

Tier 1 would include an introduction by the Chief of Police and the delivery of all new use of force policies through APD's on-line learning system. This was intended to increase the quality of learning in the classroom (that occurs later), by allowing officers and supervisors to learn the policy provisions prior to arriving for in-class portions of the training.

1. A pretest would be taken by all officers before any other training commences.

[69] In IMR-9 we noted three Tiers of training, however, APD has included a Tier (now Tier 3) for supervisors related to force investigations. The final Tier (now Tier 4) was the original Tier 3 and involves reality-based training for the entire organization.

2. Each officer will be expected to submit questions to the Academy staff (through the online training platform) that can be used to develop the in-person training found in Tier 2. The intent is to elicit information from officers concerning topics they may still be struggling to understand.[70]

Tier 2 would include in-person instruction of the use of force policies and incorporate information gleaned from the on-line testing data and student surveys during Tier 1. Tier 2 would consist of lecture-based classroom instruction, along with video and live scenario reviews[71]. The video and scenario reviews, which involve group assessments, will allow officers to cognitively apply the new use of force policies by observing them being implemented in a controlled setting.

1. All officers must have successfully completed Tier 1, prior to attending the Tier 2 training.
2. The academy would assess any areas of difficulty during Tier 1 pre-testing and address them in a more comprehensive manner by hands-on learning and in-class scenarios.
3. Instructors would enact scenarios in which pre-established learning objectives require the class participants to identify and apply key policy provisions.
4. A post-test will be administered to all attendees.[72]

Tier 3 would be provided to all supervisors and acting supervisors in a lecture-based, classroom training program. The instruction would include video scenarios to ensure the class understands their responsibilities related to SOP 2-57.

Tier 4 will include Reality Based Training (RBT) for every enlisted member of the organization. There will be a defensive tactics component of training, and then scenarios that require the interwoven use of APD's use of force provisions with proper defensive tactics.

APD sent training materials for all four tiers of training to the monitoring team to review at the beginning of the IMR-10 reporting period. Prior to receiving the training materials, we provided feedback on an academy "Needs Assessment"

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[70] We were told that the academy is building a SharePoint portal for APD personnel to submit training needs. We see this as a positive mechanism for receiving information on contemporary training needs.

[71] Our understanding was that in Tier 2, instructors would deliver scenarios that will be assessed by class participants. This tiered training approach will be designed like the "tell, show, do" method of instruction, with the hands-on portion by participants occurring during Tier 4.

[72] The draft plan provided to the monitoring team indicated that attendees will take a post-test remotely and within ten (10) days following the training. While we appreciate the technological limitations the academy may have, we recommend that the post-test occur prior to attendees leaving the training session.

that would serve as the foundational document for the development of APD's use of force training. When we received the use of force training materials, we alerted APD that we would only review Tier 1, since it was our understanding that Tier 1 test results and student surveys would likely influence the development of Tiers 2, 3 & 4 (The in-class and RBT portions of the training).[73]

The monitoring team and DOJ provided extensive feedback on the Tier 1 training, both believing that the training, as presented, would not be effective. The feedback prompted a conference call among the parties in April 2019, in which our perspective was provided in greater detail. An abstract of our observations included:

1. APD was simply directing officers to their on-line learning management system to read the new policies.
2. Salient points and changes to policies were not highlighted.
3. There was no accompanying instruction, videos, PowerPoint or other instructional tools.
4. The pre-test APD presented was entirely insufficient and could not reasonably be expected to meet the learning objectives (also deficient) in the lesson plan. For six new use of force policies, there were a total of 28 test questions, and the structure, content and topics addressed within the questions were extremely rudimentary.[74]
5. Test question construction, as written, did not facilitate randomization of questions or answers.
6. The pretest was being provided before the officers were ever exposed to the new policies.[75]

Conceptually, the 4 Tiers of training were positively received by the parties and the monitoring team, but the initial execution of Tier 1 was not well executed. We alerted APD that once they adjust the materials, if they maintain the current delivery method of Tier 1, it will not constitute training. At best, simply providing APD officers with the policies to review on their own is an orientation or "front load" of material that APD intends to train during Tier 2. We recommended that under that method, the pre-test should be given after the officers review the policies, not before. Finally, we expressed our belief that reviews of other tiers of

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[73] Ultimately, we were correct, since APD received meaningful feedback on the student surveys that not only influenced training but unearthed policy gaps. Remediation of those policy gaps extended past the end date of the IMR-10 reporting period.

[74] The Academy Commander agreed with our assessment of the test questions, so it's unclear how the materials reached the monitoring team to review in the first place.

[75] The nuances associated with pre-testing are important to note. In most instances a class participant has at least some basic understanding of a particular topic. In this instance, APD has demonstrated poor performance in the field and they recast their entire use of force "suite of policies" to include new levels of force.

material would likely take a protracted time to review based on this initial submission.

APD re-submitted materials for Tier 1, which included a more robust bank of test questions.[76] They were also written more clearly, and APD planned to randomize questions and answers in the learning management system—a major step forward. APD was given approval to move forward with Tier 1, after which the monitoring team reviewed academy test data and a July 2, 2019 "Close Out" memorandum. The documentation we reviewed demonstrated that 987 officers took the Tier 1 pre-test, which was broken into six parts to address each new use of force policy. For each of the six tests, APD had a pass rate of above 95% for each test. APD indicated that they intend to follow up with any officers who did not take Tier 1 or were on an authorized leave of absence at the time.[77]

Previously, the Academy Director advised that the completion timeline associated with this "Tiered" approach will likely continue into the Fall of 2019. Parenthetically, adjustments to policy and training continued well past the end of the IMR-10 reporting period, so it is our expectation that the new use of force policies will not be operational until the beginning of 2020. That may not be appealing to some of the leadership at APD; however, like many instances in the past, we recommended that the academy not sacrifice quality, efficiency and effectiveness, just to "get it done." We noted in IMR-9 that the Academy Director will be challenged to manage organizational expectations, because, based on the timeline, we do not expect to be conducting Operational Compliance assessments until 2020.

While we have seen a significant increase in quality of APD lesson plans, there are certain basic areas where the academy staff continue to struggle. As noted in past reports, historically APD has had little respect for the importance of mapping and connecting training needs through the curriculum development process. We continue to recommend that APD seek out and attend training courses that are focused on training development and measurement of performance outcomes. This type of continuing education will greatly benefit the whole organization and should not be confined to academy staff alone. All command personnel responsible for curriculum development should receive advanced training in these areas.[78]

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[76] Where the initial Tier 1 test submission had 28 questions, the updated test had well over 100 questions.

[77] APD will be asked to produce records for each of the individuals who did not attend, or failed, Tier 1 to demonstrate salient issues were addressed prior to attending Tier 2.

[78] DOJ strongly recommended APD Academy personnel attend an LAPD Advanced Instructor Certification Course, which was executed by APD toward the end of the IMR-10 reporting period. While on-site the Academy Commander asked our opinion as to whether the course was worth attending. We were unable to make comment or make such a recommendation, since we were unfamiliar with the course or the quality of the training.

As we noted in the past, the Academy Director should have the legitimate authority to influence all organizational training. As training development and delivery extends outside the academy, issues directly impacting CASA compliance can emerge. Since the Academy Director has the most experience assessing CASA training requirements and has worked directly with the monitoring team on those requirements, she is in the best position to offer guidance to APD leadership.

All remaining training gaps have been remediated during this reporting period. This is a major and laudable achievement. APD has decided to change its use of force policies and has endeavored to train those policies through a new 4-Tiered training program that will likely extend into 2020. APD never achieved Secondary Compliance under its original use of force policies before they were adjusted. The lack of quality of the original training is undeniable and has been a major contributing factor to APD's continued issues with force reporting and investigations in the field. Based on our review, we have determined Primary Compliance should be continued for Paragraphs 86 through 88. Once the new use of force policies are successfully completed and trained, Secondary Compliance for Paragraphs 86-88 will be reassessed.

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

Paragraph 86 stipulates:

> **"APD will review all use of force policies and training to ensure they incorporate, and are consistent with, the Constitution and provisions of this Agreement. APD shall also provide all APD officers with 40 hours of use of force training within 12 months of the Operational Date, and 24 hours of use of force training on at least an annual basis thereafter, including, as necessary, training on developments in applicable law and APD policy."**

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 Bureau, as part of their initial and annual in-service supervisory training, shall receive additional training that includes: a) conducting use of force investigations, including evaluating officer, subject, and witness credibility; b) strategies for effectively directing officers to minimize uses of force and to intervene effectively to prevent or stop unreasonable force; c) incident management; and d) supporting officers who report unreasonable or unreported force, or who are retaliated against for using only reasonable force or attempting to prevent unreasonable force. "

Results

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

Recommendations for Paragraphs 86-88

4.7.73-75a: Academy staff should be properly augmented to support the 2019 4-Tiered approach in order to ensure quality is not negatively impacted due to staffing shortages. This may require an external manpower and workload analysis to identify appropriate staffing levels.

4.7.73-75b: APD academy staff should seek out and attend training courses focused on the proper development of training curricula and how to connect those curricula to the measurement of performance outcomes. Likewise, proper test question construction should be emphasized in the training plan for academy staff.

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

4.7.73-75d: APD should ensure that each provision that is required by Paragraphs 86-88 is specifically addressed through training, and that training documentation is organized and presented to the monitoring team in a way that easily demonstrates compliance with those provisions.

4.7.76 Assessing Compliance with Paragraph 89: Annual Firearms Training

Paragraph 89 stipulates:

> **"Included in the use of force training set out above, APD shall deliver firearms training that comports with constitutional principles and APD policy to all officers within 12 months of the Operational Date and at least yearly thereafter. APD firearms training shall:**
>
> **a) require officers to complete and satisfactorily pass firearms training and qualify for regulation and other service firearms as necessary, on an annual basis;**
>
> **b) require recruits, officers in probationary periods, and officers who return from unarmed status to complete and satisfactorily pass firearm training and qualify for regulation**

and other service firearms before such personnel are permitted to carry and use firearms;

c) incorporate professional low-light training, stress training (e.g., training in using a firearm after undergoing physical exertion), and proper use of force decision- making training, including continuous threat assessment techniques, in the annual in-service training program; and

d) ensure that firearm instructors critically observe students and provide corrective instruction regarding deficient firearm techniques and failure to utilize safe gun handling procedures at all times."

Methodology

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

While the 2019 Firearms training cycle has been placed on temporary hold, the Firearms staff have compiled extensive data to document all that is required, and all that they have accomplished, in order to meet or exceed the CASA requirements. We view this as excellent work that easily could and should be emulated by other APD staff as they consider how to respond to monitoring team findings.

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

It appears that the APD will complete the required Firearms training cycle for 2019. They have provided documentation that the delay was reasonable and necessary and have outlined possible obstructions to completing the task along with viable solutions to ensure that compliance is met. The November 2019 site visit will provide a better indication of progress. APD remains in compliance with this task based on past performance.

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 spent time providing perspective, feedback and technical assistance to APD's Special Operations Division (SOD) personnel, including during its May 2019 site visit. We met with SOD personnel responsible for the tasks associated with these paragraphs and, as in the past, found them to be professional and sincerely interested in reform efforts that increase their capabilities. SOD spent the latter part of 2018 and early 2019 implementing technical assistance the monitoring team provided that was meant to address CASA-related issues relative to the proper reporting of NFDD and chemical munitions deployments as uses of force. While the issue is still being resolved through policy and practice, we are confident that SOD is moving in the right direction with respect to remediating issues the monitoring team have identified. We saw evidence that SOD is now reporting those instances as uses of force, and other documentation related to SOD deployments have also shown an increase in quality.[79] The following paragraphs represent our findings related to Paragraphs 90-105.

[79] We previously noted some SOD After-Action Reports failing to specifically note which supervisor authorized a particular use of force, and what specific officer deployed an NFDD or chemical munition. We saw a significant improvement beginning in April 2019.

SOD enlisted and civilian support staff have established administrative business processes that help them sustain operational compliance, and we found that continuity of information in the Division has remained stable during this reporting period. In the past we have commented on the need for strong systems and policies across APD, since they help ensure that reform efforts are not impacted as a consequence of Command-level changes. That said, it has been our experience that, if the monitoring team identifies an issue, SOD is equally interested in remediating that problem, and their attitudes toward compliance remained strong during IMR-10. In the past we have stressed the importance of selecting commanders for SOD that have demonstrated mature, sophisticated thought processes, and people who respect the reform that has been achieved. APD continues to make such selections, and in our opinion that has served them well in retaining Operational Compliance with SOD related paragraphs.

In preparation of this report, the monitoring team conducted reviews of four SOD use of force cases. APD is training all supervisors and officers in the new use of force "suite of policies." That training is expected to carry into 2020. In the interim, we want to provide feedback and perspective on three of the cases detailed below.

Case Reviews

IMR-10-12

Members of APD's SWAT assisted an APD auto theft detective with the investigation of a stolen vehicle. A victim reported his vehicle stolen and it was later seen and chased until it became disabled when a detective deployed a "stop stick." Two suspects exited the vehicle, with one being taken into custody and the second fleeing the scene. The suspect was later located in a back yard and an NFDD was deployed as an "air burst" to cause confusion and get the suspect to comply.

Monitoring Team Observations

1. The quality of the supervisory investigation for the above-noted incident was good, and the actions of the officers were sufficiently tied to applicable policy and law.
2. The lieutenant-level review identified deficiencies in the supervisory investigation and returned it for further investigation. Of particular note was the lieutenant's opinion that potential shows of force were not identified and investigated. The sergeant was able to articulate the actions of the officers as reasonable and not shows of force. The appearance of a higher muzzle angle was due to the suspect being in an elevated position.

3. The supervisor and chain of command identified a potential NFDD use that requires further discussion and potential policy revisions. Specifically, an NFDD was used while a suspect was in an elevated position. The NFDD was appropriately captured as a use of force, but in the supervisor's opinion the precautions taken with respect to other intermediate weapons (i.e. ECW) when engaging a suspect in an elevated position should have applied to an NFDD use. We find this type of self-identification as a positive sign and will follow up with SOD command personnel during our next site visit. Such proactive self-correction could, and should, be adapted by other field services units.

IMR-10-13

An APD officer was called to a business establishment to a reported suspect in a vehicle, asleep, with a hypodermic needle in his arm. Before the officer arrived at the scene of the call, he determined that the vehicle the suspect was reported to be in was stolen. After arriving at the scene, the officer located and attempted to stop the vehicle, at which time the driver recklessly fled the scene. The vehicle was later located near the Rio Grande River, but when the vehicle was found, it was abandoned, so APD officers created a perimeter and began a search of a vast wooded area with the assistance of a patrol service dog (PSD). The vehicle was reported to be occupied by a male and female when last seen by the originating officer. After approximately 30 minutes of search, during which multiple warnings were provided to the suspects to surrender, a PSD was deployed. The PSD located the suspects in thick brush and bit both the female and male suspects. When the officers arrived to where the suspects had been hiding, the PSD still had hold of the male suspect's shoulder.

Monitoring Team Observations

1. The IAFD conducted a review of the incident and documented their findings well. Applicable law and APD policy were applied to the incident.
2. The force was determined to be justified and officer reports documented their efforts.
3. A potential discrepancy was noted. Several commands were given to the PSD to release the suspect, but ultimately officers had to cut the suspect's shirt with the PSD still clinching it. The PSD handler documented that the dog's teeth were caught in the cloth, and the IAFD documented the fact that the PSD did not "immediately release" its bite. The PSD failing to release the suspect and shirt is relatively clear on the lapel cameras, but it is unclear if IAFD objectively agreed that the PSDs teeth were stuck or if it was refusing to release, which necessitated the cutting of the suspect's shirt. The monitoring team points this

out as a potential training issue that may exist. We will follow up with SOD's K9 supervisor during our next site visit.

4. Overall the quality of the IAFD is what we have come to expect, very good. In our opinion, the sooner APD can properly staff and deploy IAFD for initial use of force investigations the sooner they will be able to achieve higher compliance levels for use of force investigations.

IMR-10-14

SOD SWAT personnel were requested to assist another agency with a wanted felon who was in a residence and was failing to follow commands to come outside. After a period of time, a chemical munitions plan was devised and ultimately deployed while attempting to take the suspect into custody. This resulted in a use of force investigation being initiated by a SOD supervisor.

Monitoring Team Observations

1. A SOD supervisor initiated a use of force investigation in accordance with Special Order 18-51.
2. The Area Command chain of command agreed with the sergeant's assessment that the force used was objectively reasonable and in accordance with applicable policy and law.
3. The executive staff chain of command identified significant deficiencies with the force investigation and made a referral to IA by way of an internal memorandum. They requested that the violations result in a verbal reprimand.[80]
4. The monitoring team agreed with the assessment of the chain of command with respect to the issues with the supervisor's use of force investigation.

APD's SWAT has been commended by the monitoring team in the past for the quality of their activations and the After-Action Reports (AAR) that they generate following an activation. SOD reports have always shown significant detail and readers can easily understand the sequence of their movements and decisions during events. They also document (in great detail) the thought processes a supervisor goes through when decisions are made. In IMR-9, we noted that the

[80] We cast no dispersion on the chain of command's referral to IA and find it to be an appropriate step. There has been an ongoing dialogue with APD's higher command levels over the proper addressing of policy violations. The monitoring team is of the opinion that a verbal counseling should immediately occur with the supervisor in question being provided the relevant SOPs to review. These are reasonable steps for a commander to take, in the moment, without impeding any future disciplinary decisions. This event occurred on May 9, 2019; the referral to IA was on June 10, 2019, and the supervisor signed a letter indicating he was being "verbally reprimanded" on June 19, 2019. This is the type of timely remediation of performance that is necessary to achieve operational compliance for force investigations in the future.

reporting responsibilities for uses of force have some overlap with SWAT's AARs, but are not an exact 1:1 comparison when considering CASA compliance. As good as the AARs were, they did not capture all the necessary information that would achieve compliance related to use of force investigations. We stressed the importance of proper force reporting and how compliance with Paragraphs 90 and 93 could be impacted unless there was an "…immediate and significant increase in quality of force reporting." During our May 2019 site visit with SOD, they were concerned with the language in IMR-9, since they had only recently been provided with a draft of that report.

The unfortunate and inherent lag time between IMR-9 being drafted and SOD receiving it, and their inability to act upon recommendations the monitoring team made, was evident at the beginning of this reporting period. However, the SOD Commander and Lieutenant advised us that immediately after reading IMR-9 they met with the IAFD (as we recommended) and created SOD specific "job aids" to assist them in their use of force reporting and investigation. We were told to expect a significant increase in quality of the SOD AARs, in terms of attributing supervisor authorizations and officer actions to specific people, in AARs beginning in April 2019, which is when SOD first received our feedback in the draft version of IMR-9.[81] Based on our past interactions with SOD we expected they would adjust and work to properly document their efforts in the future. This is exactly the critical self-assessment of critical behaviors we have recommended in the past, and we support its usage in more areas than SOD. The monitoring team reviewed 26 SOD AARs that were created between February and May 2019. We saw the quality of the AARs increase, and proper attributions of supervisory authorizations and officer actions were being documented. We also noted that there are now specific sections listed at the end of the AARs for the types of force used, names of the officers who used force and the supervisor who was responsible for investigating the use of force.[82] We note that when the monitoring team makes observations and recommendations to SOD, they usually are met with positive and contemplative attitudes. We attribute that to SOD's culture, which has shown itself to be one of continuous growth and quality improvement. We will continue to review AARs to ensure the trend continues in a positive direction, but we expect them to continue their upward trend.

As we noted in IMR-9, Paragraphs 37-38, the Performance Metrics Unit (PMU) conducted an audit report for SOD, SWAT, and SOP 6-8, and organized their findings into easily digestible sections with an objective perspective SOD could consider. The "Summary of Results" section provided specific

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[81] AARs previously would state such things as "…supervisory approval was given" or "tactical officers then deployed" when describing actions instead of being specific with names and ranks of SOD personnel.

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

recommendations for SOD to consider from policy, training and operational perspectives. PMU reported that the audit and oversight it provided was embraced by SOD, and ultimately the SOD Commander gave positive feedback to other APD Commanders. In May 2019, PMU published a second audit of a SOD unit, this time for the K9 Unit and SOP 6-9. This particular audit began in August of 2018 but continued into the IMR-10 reporting period and again gave prospective, feedback and recommendations SOD could consider.[83] We comment further on that audit below.

The monitoring team previously reviewed documentation for the delivery of organization-wide training on the proper use of the SOD Risk Assessment Matrix (RAM) and approved it as being suitable to be delivered to the department.[84] We reviewed documentation for the delivery of training, which occurred during this reporting period, including rosters, test results and an academy "Close Out" Memorandum. 977 APD officers took the initial on-line course, and 868 passed the test. APD conducted remedial training for 99 of the 109 APD officers who failed, bringing the overall compliance rate to 99% for the RAM training. APD documented their intention to continue addressing those officers who failed the initial test or were on authorized leaves of absence when the course was provided; however, their current compliance rate is above the required threshold.

We reviewed course of business documentation that was provided by SOD, the Special Investigation Division (SID), and the Criminal Investigation Division (CID) and determined SOD has been completing audits of RAMs in the field. APD personnel assigned to specialized investigative units are required to consult with SOD for specific types of search warrants and to fill out a Risk Assessment Matrix (RAM)[85] to determine if they are required to call out SOD. In its normal course of business SOD audited the RAM records for SID and CID and documented their findings. In one instance, SOD determined that SID improperly scored a search warrant on the RAM and documented that discrepancy in a

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[83] PMU noted that SOP 6-9 prohibits the use of Patrol Service Dogs (PSDs) for crowd control, but that an APD web page dedicated to SOD activities indicated that PSDs could be used to "assist officers" during crowd control situations. PMU called this out as a potentially contradictory message. The contradictory language was still on the APD web page after the close of the IMR-10 reporting period, so the monitoring team brought it to the attention of the Compliance Bureau, and it was immediately removed.

[84] APD promulgated Special Order 18-50 that codified the use of the risk assessment matrix (RAM) and the manner SOD would conduct audits of its use throughout the organization. The auditing program provides an internal oversight mechanism to ensure that the RAM, which originates with SOD, is being properly applied. SOD has utilized a (RAM) for the past few years when assessing whether a SWAT response is necessary for a search warrant execution. The RAM is now used by non-SOD units; therefore, SOD implemented an audit program wherein they periodically review and assess whether the RAM is being properly used by these other APD commands.

[85] There are pre-set and scored categories APD units must consider when filling out a RAM, and a score of 25 or more requires an 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).

memorandum to the SID Commander. The score in that case was inconsequential since the disagreement was between scores of 7 and 11, which did not approach the required call out score of 25. However, APD has unearthed an important issue that requires resolution. When SOD documented the discrepancy, a separate memorandum was issued by the SID Commander disagreeing with the SOD opinion of the score. This interaction between Commanders is expected, but had the incident involved a scoring discrepancy that was below the threshold for a SOD call out, we are unclear how the issue is resolved beyond dueling memos. This as an outstanding opportunity for APD to stay in front of a potential problem and to engage higher levels of supervision for a clear standard before a more serious event is encountered. We believe this only occurred because these two APD units are on top of their responsibilities. We alerted both SID and SOD to this observation and will follow up with both units during our next site visit so see how this was resolved.

The monitoring team reviewed SOD records related to the selection of APD personnel into the unit and found those records to be sufficient. The records reviewed included Department Personnel Circulars with job descriptions, Transfer Orders and Unit Handbooks for SWAT, K9 and the Bomb Unit. SOD continues to maintain strong records that track the selection process from the posting of an opening through to the selection of an officer for assignment to SOD. We reviewed internal SOD training records for the SWAT, K9 and Bomb Units, and found them to be sufficient. In the past, we recommended SOD review its lesson plans and enhance them to reflect new Academy standards. The RAM training SOD created was a good example of them moving toward Academy standards. Routine training SOD conducts at the Division level now includes goals, objectives and measures for assessing the training they provide, but there is still room to grow. APD's 7-Step Cycle has been used for the agency-wide training SOD provided; however, we believe running individual, daily SOD training sessions through that cycle would be too cumbersome. That said, we believe that SOD and Academy training programs would find a mutual benefit by creating a SOD lesson plan template and reporting system that meets the Academy's standards but does not hinder SOD's ability to quickly address training needs. During our next site visit we will discuss this opportunity more with the relevant units.

Based on our review of the existing SOD policy requirements and other related documentation, we determined that SOD remains in Operational Compliance with respect to tactical unit missions and policies and annual reviews of policies (P93–95; 100). SOPs 6-7, 6-8 and 6-9 are still under review by APD, and have been moving through the approval process for several months. We discussed the status of the policies with a SOD Commander who was of the opinion those policies should be submitted to the monitor for approval during the IMR-11 reporting period. Parenthetically, after the close of this reporting period the

monitoring team provided feedback on draft policy language pertaining to the uses of force involving chemical munitions and NFDDs. Once those policies receive monitor approval, SOD Handbooks will require updating and internal documentation must be created for all incumbent SOD personnel that demonstrates they have been advised of the policy changes. Likewise, at the end of the IMR-9 reporting period, APD received monitor approval for its new use of force "suite of policies." APD is currently delivering training of those policies through a 4-tiered process that will likely carry into early 2020. Once completed, that will also require the SOD Handbooks and procedures to be reviewed to ensure that they comport with the new SOPs. (P93). SOD Handbooks are a collection of SOPs, background information, and expectations for new SOD members. The Handbooks are provided to a new SOD member and reviewed with a supervisor, after which both sign and date the document as a record for future reference in the event a performance issue arises. A review of six SWAT Handbooks demonstrated that SOD is continuing the "onboarding" practice established by previous Commanders.

We reviewed Monthly Inspection Reports that were completed and determined that SOD continues to capture information regarding uniform cleanliness and completeness; equipment; proper identification markings; and functionality of officers' OBRDs. Informal site inspections of SOD personnel occurred during our May 2019 site visit. The monitoring team has attended SOD training sessions in which we observed SOD personnel to be in appropriate tactical attire.

APD has not conducted a Force Review Board (FRB) session related to SOD Tactical Deployments since November 2017. The lack of FRB activity has likely created significant issues that could put Operational Compliance for Paragraph 99 at risk, but our review of AARs, training materials and other data demonstrate that SOD attitudes remain stable and they continue to track cases that will be required to be reviewed by the FRB, once it is reconstituted. While on site we met separately with members of the APD Academy, the FRB development team and SOD, all of whom have a role in reconstituting the FRB. APD had already developed a training program for a (new) FRB and requested that the monitoring team review the training materials so they could begin delivering it to APD command staff. We set aside time, and before the end of the week we provided our feedback for the FRB "Introduction" and "Tactical Activation Review and Analysis" lesson plans. APD was approved to deliver the training if they incorporated the feedback.[86] Following our site visit, APD was given an

[86] APD intended to deliver FRB training in three parts, which was documented in the following lesson plans: 1) FRB Introduction; 2) Tactical Activation Review and Analysis; and 3) Previously Investigated UOF Review. APD was committed to first addressing tactical activations at the FRB first, since they feel they are easier to assess. That would provide them with an opportunity to assess the mechanics and flow of the new FRB before scheduling more complex uses of force. We agree with that approach.

additional approval to deliver a third lesson plan entitled, "Previously Investigated UOF Review" that was intended to be delivered by APD's IAFD.[87] The FRB and the quality of its work has come under considerable scrutiny in past Monitor reports.

APD conducted its FRB training on July 30 and 31, 2019 for personnel who are expected to be members of the FRB. The monitoring team reviewed records from the training, including sign in sheets, pre/post test results and an Academy "Close Out Memo."[88] Special Order 19-55 scheduled 27 enlisted personnel to attend, but only 20 commanders were able to attend and successfully complete the course. We requested and reviewed videotapes of the training to assess the quality of the instruction in the classroom. Quality reviews of in-classroom instruction from past APD training revealed serious deficiencies that required remediation efforts and caused significant delays in compliance efforts.[89] We found similar issues during the FRB training, which were immediately brought to the attention of APD's Academy Director. However, those issues did not involve any member of SOD.

In fact, we found the instructors from SOD to be exceptional. Their tone and demeanor were exactly what the monitoring team expects at this point in the reform process. They stayed on point and guided the class participants through the training while constantly providing personal perspective and guidance on how the FRB should assess SOD cases that come before it. Frankly, in terms of compliance determinations, the high quality of the training offered by SOD (and IAFD) was necessary to overcome the deficiencies we noted elsewhere in training plans and outlined processes. We believe SOD demonstrated credibility and provided valuable guidance to the class, and we noted good interaction between the class and the instructors during the SOD sections of the course. The class was engaged and interested in learning.

PMU SOD deployments are documented through their Activation Data Reports, which were reviewed by the monitoring team. PMU, in its August 2018 SWAT Audit Report, gave notice of identified tracking errors and made specific recommendations to remediate those issues. When we met with SOD in May of 2019, they committed to making modifications to their tracking methods to ensure they are responsive to the PMU report. We will request information from

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[87] Following meetings between the monitoring team and discussion among the parties, APD received monitor approval for their new Force Review Board SOP 2-58 on July 25, 2019.

[88] The "Close Out" memoranda was dated August 30, 2019 and was apparently completed in response to a monitoring team request. These memoranda, if completed routinely after training, will constitute course of business documentation that can be considered for assessment purposes. These are a valuable piece of any training process, such as the 7-Step Cycle adopted by APD.

[89] After three years, APD has finally remediated all the deficiencies we identified through various "gap training" processes. These efforts are discussed in greater detail in Paragraphs 86-88.

SOD and focus our attention on the response to the PMU recommendations during the next reporting period.

We reviewed Annual Assessment Reports for each SOD unit and also reviewed examples of Performance Work Plans for officers. During IMR-9, we found that SOD completed Annual Assessments for its personnel. We first reviewed a lesson plan entitled, "Introduction to Tactical Capabilities," which is a 24-hour course of instruction meant to address the provisions of Paragraph 101. We reviewed training records for 26 SOD members who had attending the course, which was delivered on February 6-8, 2019. The course is intended to help officers better understand their responsibilities during tactical activations and how they should interact with CNT to effectively resolve a critical incident.

The APD Academy now creates a brief "Close Out" report that captures the overall course outcomes, similar to an AAR. These reports, when created as a matter of routine, are solid course of business documentation that can help APD Divisions track attendance, test scores and compliance rates, all of which support sustainable business systems. We feel SOD would benefit by implementing such a report and believe it would contribute to standardization across the department with respect to training documentation.

APD continues to track K9 deployments and bite ratios consistent with monitor-approved methodologies. We note that PMU also commented about the proper tracking of K9 bite ratios and their inclusion in APD's EIRS and called out discrepancies in data in their May 19, 2019 K9 Audit Report. We know that APD has been unable to establish an organizational-wide EIRS, so SOD began discussions with IAFD to see if the current technology could be leveraged to capture K9 bite ratio data. PMU called out human error as a contributing factor to inaccuracies, since strong automated systems were not in place and those errors were likely attributable to manual calculations rather than relying on pre-established formulas in Excel spreadsheets. PMU recommended better spreadsheet design, monthly data reconciliation processes and automated data feeds to reduce the likelihood of errors. Conversations between PMU, SOD and IA determined that in order for there to be an alert when a K9 handler's bite ratio exceeds 20% for a previous 6-month period, the "K9 Utilization" function would have to be enabled within BlueTeam. SOD told the monitoring team that they expected that function to be operational by the end of the IMR-10 reporting period. Finally, PMU noted instances when a handler's bite ratio exceeded 20% in a given 6-month period, but it was not noted in their performance reviews. We will follow up on this during our next site visit and expect that automation will help resolve the data discrepancies PMU discovered.

The monitoring team reviewed a K9 Bite Ratio report and tracking ledgers documenting SOD K9 handler and K9 bite ratios for this reporting period.

During that period, no K9 handler had a bite ratio that exceeded 20%. APD continues to track data consistent with the CASA. We reviewed two (2) post-bite deployment reviews **(IMR-10-13 and IMR-10-15)** that were prepared by K9 supervisors and determined they contained high quality documentation of facts, tied officer actions to specific APD policy, and assessed the use of force involved in the incidents. We noted that in each report there was insufficient documentation concerning neighborhood canvasses, and a lack of effort to identify independent witnesses and secure statements.[90] This has been a reoccurring issue across all APD use of force investigations, and was brought to the attention of the SOD commander so that the issue can be resolved quickly. He was very receptive to the feedback and ensured the issue would be addressed with his supervisors.

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 now is properly investigating uses of force related to NFDDs and chemical munitions, which previously went unreported. SOD's commitment to CASA compliance continues but will now have to demonstrate competencies in force reporting and investigations related to NFDDs and chemical munitions, since that activity has only been in practice for the past two reporting periods.

Based on our meetings with SOD and review of documentation, we have determined Operational Compliance should be continued for Paragraphs 90 – 98 and 100 - 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**

[90] The monitoring team reviewed Incident #19-0014234, which was a non-serious use of force investigation by the same supervisor as #19-0029434. In the latter, video provided for the case showed the supervisor made attempts to identify potential witnesses, but more effort is needed to elicit information from those witnesses directly related to the use of force incident specifically. Past IMRs provide sufficient guidance in this area, but we will discuss this further with SOD during our next site visit. In the interim period of time, IAFD understands what is reasonable when conducting a neighborhood canvass and is capable of ensuring adequate investigations.

specialized units in a manner that increases the likelihood of safely resolving critical incidents and high-risk situations, prioritizes saving lives in accordance with the totality of the circumstances, provides for effective command-level accountability, and ensures force is used in strict compliance with applicable law, best practices, and this Agreement. To achieve these outcomes, APD shall implement the requirements set out below.

Results

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

4.7.78 Assessing Compliance with Paragraph 91: Composition of Specialized Tactical Units

Paragraph 91 stipulates:

> **"APD's specialized tactical units shall be comprised of law enforcement officers who are selected, trained, and equipped to respond as a coordinated team to resolve critical incidents that exceed the capabilities of first responders or investigative units. The specialized tactical units shall consist of SWAT, Canine, and Bomb Squad/EOD."**

Methodology

During this reporting period (February 2019 through July 2019) SOD continued with extensive training and supplied the monitoring team with data documenting the training delivered and participants receiving it. APD's OD data included training for all active units.

Specialized Weapons and Tactics Unit:

- Tubular Assaults;
- Vehicle Assaults, Barricades, Containment;
- Active Shooter;
- Square Range/House Runs;
- Rural Operations;
- Defensive Tactics;
- Firearms Training; and
- Team Movement.

Bomb Squad;

- X-ray Training;
- Vehicle Borne Improvised Devices;
- Explosive Tools Loading and Hand Grenades Identification;
- Hazardous Device Scenario;
- Homemade Device sensitivity Training;
- Robot Training;
- Bomb Squad Tactical Bomb Tech Training;
- Rigging Scenario Training; and
- Removing IEDs from vehicle Training.

K9 Unit

- Obedience and Building Search Training;
- Obedience and Field Work Training; and
- Noise Flash Diversionary Training;

SOD supplies documentation on monthly reports with detailed aspects of all training received by the units. The monitoring team reviewed the monthly reports to ensure that all requirements of the paragraph were being met. APD has achieved a program that puts a premium on continuous updating, adaptive leadership, shared situational awareness and careful assessments of the type of intervention that is warranted under APD's concept of operations. The monitoring team sees this as a positive example of attention to detail, and a model to be emulated throughout the department.

SOD supplied updated documentation via the "SWAT Officer Field Training and Evaluation Program SWAT Manual" for the three members who tested and passed all requirements to be selected into SOD. As reflected in the previous report, the three members continued to progress with the requirements as reflected in documentation supplied to the monitoring team. All criteria for the process were documented and reviewed by the monitoring team.

Results

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

4.7.79 Assessing Compliance with Paragraph 92: Training of Specialized Tactical Units

Paragraph 92 stipulates:

> **"APD shall ensure that specialized tactical units are sufficiently trained to complete the following basic operational functions: Command and Control; Containment; and Entry, Apprehension, and Rescue."**

Methodology

We reviewed the Special Operations training conducted by APD for the tenth reporting period (February 2019 through July 19) and confirmed that the operational functions included in this paragraph are regularly covered and documented. During the May 2019 site visit the monitoring team was invited to view live tactical training at the SOD facility. The monitoring team reviewed data that included, but was not limited to, forms indicating the date and location of training; instructors; synopsis of training; and approval from a supervisor.

APD provided COB data (contemporaneous Special Operations Division Tactical Section training sheets) for their Swat Unit, Bomb Squad and K9 Unit that displays training by officer, by unit, and by operational function trained. The data correspond to those listed in paragraph 92. See paragraph 91 of this report for various areas of training provided to fulfill the training requirements of the CASA.

Results

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

4.7.80 Assessing Compliance with Paragraph 93: Tactical Unit Missions and Policies

Paragraph 93 stipulates:

> **"Each specialized tactical unit shall have clearly defined missions and duties. Each specialized tactical unit shall develop and implement policies and standard operating procedures that incorporate APD's agency-wide policies on use of force, force reporting, and force investigations."**

Results

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

4.7.81 Assessing Compliance with Paragraph 94: Tactical Units Policy and Procedure

Paragraph 94 stipulates:

"APD policies and procedures on specialized tactical units shall include the following topics:

> **a) Team organization and function, including command relationships with the incident commander, Field Services Bureau, other specialized investigative units, Crisis Negotiation Team, Crisis Intervention Unit, crisis intervention certified responders, and any other joint or support elements to ensure clear lines of responsibility;**
> **b) Coordinating and implementing tactical operations in emergency life-threatening situations, including situations where an officer's view may be obstructed;**
> **c) Personnel selection and retention criteria and mandated physical and tactical competency of team members, team leaders, and unit commanders;**
> **d) Training requirements with minimum time periods to develop and maintain critical skills to include new member initial training, monthly training, special assignment training, and annual training;**
> **e) Equipment appropriation, maintenance, care, and inventory;**
> **f) Activation and deployment protocols, including when to notify and request additional services;**
> **g) Conducting threat assessments to determine the appropriate responses and necessary resources;**
> **h) Command and control issues, including a clearly defined command structure; and**
> **i) Documented after-action reviews and reports."**

Results

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

4.7.82 Assessing Compliance with Paragraph 95: Annual Review of Tactical Policies

Paragraph 95 stipulates:

> **"The policies and standard operating procedures of specialized tactical units shall be reviewed at least annually, and revisions shall be based, at a minimum, on legal developments, training updates, operational evaluations examining actual practice from after-action reviews, and reviews by the Force Review Board or other advisory or oversight entities established by this Agreement."**

Results

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

4.7.83 Assessing Compliance with Paragraph 96: Documentation of Tactical Activities

Paragraph 96 stipulates:

> **"In addition to Use of Force Reports, APD shall require specialized tactical units to document their activities in detail, including written operational plans and after-action reports created after call-outs and deployments to critical situations. After-action reports shall address any areas of concern related to policy, training, equipment, or tactics."**

Methodology

A review of the SOD training conducted by the monitoring team for the period (February 2019 through July 2019) confirmed that the operational functions included in this paragraph are regularly covered and documented. The monitoring team reviewed (21) twenty-one After Action Reports and (1) one Operations report for compliance with this paragraph. SOD prepared detailed synopses of their involvement in the events and analyzed the deployments for implications related to:

- Policy;
- Training;
- Equipment; and
- Tactical Issues/Concerns

Results

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

4.7.84 Assessing Compliance with Paragraph 97: Tactical Mission Briefings

Paragraph 97 stipulates:

> **"APD shall require specialized tactical units to conduct mission briefings before an operation, unless exigent circumstances require an immediate deployment. APD shall also ensure that specialized tactical team members designate**

personnel to develop and implement operational and tactical plans before and during tactical operations. All specialized tactical team members should have an understanding of operational planning."

Methodology

For this report the monitoring team reviewed documentation for the period February 2019 through July 2019, in addition to material reviewed during the May 2019 site visit. This documentation was assessed for Operational Compliance with the requirements of this paragraph. As in the previous reporting period, the monitoring team verified compliance by means of personal inspections, review of policies, and discussions with SOD staff during site visits. The monitoring team will monitor any training affected by changes in future site visits.

Based upon case reviews, the monitoring team verified that Tactical Sectional Commanders, Supervisors and Officers have a working knowledge of operational planning, and routinely applied that understanding and skill to actual operations. Special Operations continues to conduct extensive training at all levels and conforms to best practices nationwide and to the specifics of this paragraph.

Results

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

4.7.85 Assessing Compliance with Paragraph 98: Tactical Uniforms

Paragraph 98 stipulates:

"All specialized tactical units shall wear uniforms that clearly identify them as law enforcement officers."

Results

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

4.7.86 Assessing Compliance with Paragraph 99: Force Review Board Assessments

Paragraph 99 stipulates:

"All specialized tactical unit deployments shall be reviewed by

> **the Force Review Board in order to analyze and critique specialized response protocols and identify any policy, training, equipment, or tactical concerns raised by the action. The Force Review Board shall identify areas of concern or particular successes and implement the appropriate response, including modifications to policy, training, equipment, or tactics."**

Results

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

4.7.87 Assessing Compliance with Paragraph 100: Eligibility Requirements for Tactical Teams

Paragraph 100 stipulates:

> **"APD shall establish eligibility criteria for all team members, team leaders, and supervisors assigned to tactical units and conduct at least annual reviews of unit team members to ensure that they meet delineated criteria."**

Methodology

The monitoring team requested data from SOD for the reporting period February 2019 through July 2019. The monitoring received and reviewed a random sampling for the 2019 APD SWAT Unit Annual Assessments, K9 Unit Annual Assessments, and Bomb Unit Annual Assessments. As in past IMRs, SODs annual reports reflect that members from the tactical units continue to display exemplary work in constitutional policing, integrity, community policing, and critical police functions. These reports show compliance with eligibility criteria for members reviewed for this report. The Special Operations Division, which oversees specialized tactical units, has established policies that set selection criteria for team membership and training requirements for all members. These are listed in the Bureau SOPs that cover Bomb Squad (4-03), K-9 Unit and SWAT (4-04). We find that unit policy is in compliance with the requirements of this paragraph and constitutes, in the monitoring team's assessment, a best practice in the management of tactical units and personnel. APD has incorporated the "unit policies" into its formal policies related to these functions, and thus is compliant with the requirements of this paragraph.

Results

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

Operational: **In Compliance**

4.7.88 Assessing Compliance with Paragraph 101: Tactical Team Training

Paragraph 101 stipulates:

> **"APD shall train specialized tactical units conducting barricaded gunman operations on competencies and procedures that include: threat assessment to determine the appropriate response and resources necessary, mission analysis, determination of criminal offense, determination of mental illness, requirements for search warrant prior to entry, communication procedures, and integration of the Crisis Negotiation Team, the Crisis Intervention Unit, and crisis intervention certified responders."**

Methodology:

Data collected and reviewed by the monitoring team for this reporting period confirm that training by the SOD continues to be conducted on a regular basis, in accordance with national standards (National Tactical Officers Association) for high-risk tactical operations. This training is well documented and covers all subjects required in this paragraph in a wide array of training contexts. The goals and objectives are well defined and trained by all units of SOD. The findings of the monitoring team's review of data for APD tactical teams reveal continuous operational success in 2019.

As reported in previous reports, CNT continues to be an essential operational component in tactical activations. During this reporting period, SOD delivered a (24) twenty-four hour CNT block of instruction to all their units. Course rosters, test scores and evaluations were supplied to the monitoring team for review with the results demonstrating SOD's commitment for success and maintaining compliance with the CASA requirements.

Results

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

4.7.89 Assessing Compliance with Paragraph 102: K-9 Post Deployment Reviews

Paragraph 102 stipulates:

> **"APD shall continue to require the Canine Unit to complete thorough post- deployment reviews of all canine deployments."**

Results

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

4.7.90 Assessing Compliance with Paragraph 103: Tracking K-9 Deployments

Paragraph 103 stipulates:

> **"APD shall continue to track canine deployments and canine apprehensions, and to calculate and track canine bite ratios on a monthly basis to assess its Canine Unit and individual Canine teams."**

Results

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

4.7.91 Assessing Compliance with Paragraph 104: Tracking K-9 Bite Ratios

Paragraph 104 stipulates:

> **"APD shall include canine bite ratios as an element of the Early Intervention System and shall provide for the review, pursuant to the protocol for that system, of the performance of any handler whose bite ratio exceeds 20 percent during a six-month period, or the entire unit if the unit's bite ratio exceeds that threshold and require interventions as appropriate. Canine data and analysis shall be included in APD Use of Force Annual Report."**

Results

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

4.7.92 Assessing Compliance with Paragraph 105: Analyzing Tactical Deployments

Paragraph 105 stipulates:

> **"APD agrees to track and analyze the number of specialized**

tactical unit deployments. The analysis shall include the reason for each tactical deployment and the result of each deployment, to include: (a) the location; (b) the number of arrests; (c) whether a forcible entry was required; (d) whether a weapon was discharged by a specialized tactical unit member; (e) whether a person or domestic animal was injured or killed; and (f) the type of tactical equipment deployed. This data analysis shall be entered into the Early Intervention System and included in APD's annual reports."

Methodology

The monitoring team reviewed the 2019 SWAT Activation Data for the time period of February 1, 2019 through July 31, 2019. During this period, the monitoring team reviewed (15) fifteen activations for reporting period in 2019. Training of Specialized Tactical Units is well covered and documented in several paragraphs of this report. APD continues to monitor and analyze the number, type, and characteristics of deployments, and states a clear reason for each tactical deployment and outcome, as well as the number of arrestees in each deployment. The data reviewed by the monitoring team yielded evidence of the success, oversight and accountability norms within the APD's specialized units. The monitoring team will continue to monitor SOD's operation in future site visits.

Results

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

Monitor's Suggestions:

SOD may want to document its uses of force related to NFDDs and chemical munitions to ensure they meet all CASA paragraphs related to reporting and supervisory investigations

SOD may want to consider continued work with the Academy to develop lesson plan templates and "Close Out" reports to contribute to standardization across the department.

SOD may want to implement reports and systems that better capture K9 bite ratio data and regularly assess the quality of its reporting information.

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; and
Paragraph 109: Tracking Specialized Unit Responses.

APD's Special Investigation Division (SID) personnel continue to be extraordinarily receptive to feedback, and the overall professionalism we encounter with SID supervisors and civilian staff typically outpaces other operational units. During this reporting period we met with the Commander and civilian support staff responsible for the tasks associated with SID compliance and were met with similar positive attitudes. SID comes prepared for meetings with exemplars of compliance and demonstrate an enthusiasm to share their ideas to not only meet, but exceed, CASA compliance standards. During this reporting period we found that SID continues to self-reflect on their overall operation by routinely calling out areas of improvement, and documenting steps they will take to resolve potential problems. We saw evidence of outstanding administrative systems, oversight of key division responsibilities relating to CASA compliance, a healthy interaction with SOD regarding RAM audits and an instance where the SID made a required IA referral for a FSB officer for not having his primary weapon during a high-risk motor vehicle stop.[91] The following represent our findings related to Paragraphs 106-109.

We were provided documentation to demonstrate that the business processes that helped establish Operational Compliance continue to exist. Specifically, we reviewed the following documentation taken from this monitoring period:

1. SID 2018 Annual Review;
2. Draft SOP 1-90 "Special Investigation Division";[92]
3. SID Unit Handbooks (Updated April 2019);
4. SID Orientation and Proficiency Training Records;
5. SID Inspection Forms;
6. Operational Plans / After Action Reports;
7. SharePoint Records;
8. Internal Memorandums and Department Circulars; and

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[91] We see such activity, when required, as a positive and are encouraged since we have seen reluctance to initiate disciplinary procedures in other areas of the organization.

[92] SID SOP 5-1 is the standing Administrative Order, but it was due for review in October 2018.The monitoring team was provided with draft SOP 1-90 that is intended to replace SOP 5-1, since APD has reorganized its SOPs. We were told that draft SOP 1-90 is working its way through the approval process, but this demonstrated that SID continues to meet its policy requirements. Likewise, each Unit Handbook gives generic direction that department SOPs related to use of force shall be followed, thereby negating the need to adjust any handbook language as the use of force suite of policies are being revised.

9. Risk Assessment Matrix (RAM) forms and Ledgers, as well as SOD Audit Memorandums

SID submitted their 2018 Annual Review for our consideration. We found the document to be well organized, easy to digest and that it contained meaningful information to alert APD's leadership of their current CASA related activities and key accomplishments. In their summary, SID stated, "SID is committed to maintaining operational compliance and will continue to monitor, evaluate, and revise all policies and procedures with a 'clear and unobstructed vision' of the future direction of our division and our police department. In conclusion, accountability on every level within SID served as the guiding principle for SID during 2018. This guiding principle will guide SID not only into 2019, but into the future." This closing statement is symbolic of the attitudes and supervisory approaches we observe each time we meet with SID personnel. However, we recognize these are not just words within SID, since we see evidence that they are putting this statement into practice. The Annual Review key points include:

1. Methodology for its content and documentation of quarterly meetings with stakeholders;
2. Policy Development Process Flow Chart – The simplicity of their view of policy development and approval could well be modeled by other elements of APD;
3. Sections for each CASA-related paragraph and activities they have engaged in to retain Operational Compliance;
4. Major SID accomplishments; and
5. Potential issues of concern and remedies.[93]

Within the Annual Report, SID documented they created the "SID Transfer In and Transfer Out" form. On its face this may seem like a rudimentary report; however, it was done in direct response to issues they identified that pertain to CASA compliance. SID reported they were encountering difficulty retrieving property from personnel who transferred out of SID, and this report was designed to alleviate the problem.

The monitoring team was provided a "GangNet" procedures handbook. "GangNet" is a statewide gang intelligence database that APD will be using in the future. We mention this specifically since within the handbook there is a reference to the investigation of misconduct that may occur associated with the

[93] SID self-identified an issue that could have had operational compliance implications, by asking "what constitutes an investigative response (by definition)?" We are pleased that SID is thinking through their responsibilities, and not waiting for the monitoring team to find issues. To date, and all too often, the monitoring team is highlighting issues for other units in APD. SID processes indicate this is evidence of a more sophisticated problem identification than is usually applied elsewhere at APD. Other key units at APD would do well to consider emulating these SID policy development processes.

use of "GangNet." We recommend that SID be explicit that, despite the "GangNet" recommendations, misconduct reporting and investigations must follow Internal Affairs SOP 3-41. We believe that the handbook section entitled "System Misuse" is intended to demonstrate a commitment to accountability, but the language within that section must outlive the people who wrote it and be properly interpreted by supervisors that may be assigned to SID in the future.

SID previously developed and implemented unit-level handbooks that set forth the unique standards, missions and duties for each of its subordinate units. These were updated in April 2019 across all SID units. SID recently ensured that a handbook was created for the Financial Crimes Unit. The person assigned to that unit has been there for many years and if lost from the Department, he would take a great deal of institutional knowledge with him. The handbooks from each unit serve several purposes, including SID incorporating and reinforcing APD's use of force policies, and including relevant provisions of the CASA. We saw that SID standardized the format of the handbooks which gives the entire Division's submission a professional appearance. Each unit explicitly stated that investigative units will consult SOD in accordance with search warrant requirements, which is an essential component of their operational compliance.

The monitoring team was provided course of business documentation that made easy the task of tracking an initial Department Circular from announcing an opening in SID through to an officer's assignment and orientation training. We specifically looked at records of seven officers who were transferred into SID in March 2019, and found all documentation to be in order, including new forms SID put into operation during the IMR-10 reporting period.

SID is required to consult with SOD for specific types of search warrants and to fill out a Risk Assessment Matrix (RAM)[94] to determine if they are required to call out SOD. In its normal course of business, SOD audited the RAM records for SID and in an internal memorandum found they assembled the correct documentation for one particular case, but incorrectly the event. The score in this case was inconsequential since the disagreement was between scores of 7 and 11, which did not approach the required call out score of 25. However, APD has unearthed an important issue that requires resolution. When SOD documented the discrepancy, a separate memorandum was issued by the SID commander disagreeing with the SOD opinion of the score. We recognize this interaction as healthy, but had the incident involved a scoring discrepancy that would have made the difference between a SOD call out, or not, we are unclear

[94] 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).

how the issue is resolved beyond dueling memos. This as an outstanding opportunity for APD to stay in front of a potential problem and engage higher levels of management for a clear standard, before a more serious event is encountered. We believe this only occurred because two APD units are on top of their responsibilities, so we will follow up with SID and SOD during our next site visit so see how this was resolved.

The monitoring team reviewed 14 separate SharePoint tracker records related to SID operations between February 1 and April 30, 2019, and other SID reports related to SharePoint. Following an internal review of SharePoint records, an SID supervisor prepared a May 10, 2019, memorandum wherein he self-identified the following discrepancies: 1) The need to define "investigative response" within their procedures, and 2) A recommendation that, moving forward, all SID personnel should be required to document more fully the specifics underlying an external agency's request for their assistance. We see this oversight of SharePoint accuracy to be a positive example of supervision and it demonstrated how proper oversight by supervisors can positively impact business processes, thus avoiding non-compliance findings from the monitoring team. A May 13, 2019, memorandum from a SOD supervisor documented a self-audit of SID RAM records, in which SID was found to have all the required documentation. SOD RAM audit reports are now routine, so they constitute course of business documentation, and will be relied upon to make compliance determinations for both SOD and SID. Based on our review of the SharePoint data, we determined they captured each of the data points required by the CASA to maintain its current Operational Compliance status.

In IMR-9 we commented that SID Operational Plans showed areas in need of improvement. We reviewed 26 Operational Plans between the dates of February 1 and April 30, 2019. Operational Plans are meant to connect planned activities and policy provisions for organizational units during field investigations. They hold wide-ranging relevance to SID, so properly documenting planning activities and expectations of personnel is essential. APD experienced a critical situation a few years ago in which an undercover officer was shot and wounded during an operation by an APD supervisor. The importance of pre-planning efforts and the importance of documentation in Operations Plans cannot be overstated. We continue to see a variation of quality within the reports we reviewed and saw several instances where relevant information was not included in the Operational Plans. With all else SID has achieved, we caution and encourage SID to treat Operational Plans as essential tools for compliance and safety. We have confidence that APD will take steps to correct deficiencies in this area.

The monitoring team continues to be impressed with SID and their efforts to meet CASA requirements and light the way for other operational units. SID has shown consistency through several reporting periods in adhering to their CASA related requirements, which demonstrates internal business processes have taken hold. 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 Effective Date, APD shall conduct an inspection of specialized investigative units to determine whether weapons and equipment assigned or accessible to**

specialized investigative units are consistent with the units' mission and training. APD shall conduct re-inspections on at least an annual basis."

Methodology:

During this reporting period the same documentation that resulted in SID compliance in IMR 9 is maintained. APD is in compliance with the requirements of the paragraph. Individual inspection forms indicated that there was proper documentation of all weapons and equipment assigned to or made accessible to SID. An Interoffice Memorandum was submitted in January 2019 to document SID's yearly inspection. The Memorandum, completed during the normal course of daily business, stated in part that all sworn personnel were involved, and no issues of concern were located; additionally, all personnel were rated as satisfactory. Weapons that are currently assigned to SID personnel were also inspected to ensure serial numbers of equipment corresponds with documentation on inventory lists provided to the monitoring team.

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

The monitoring of these inspections is set to continue on at least an annual basis.

Results

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

4.7.96 Assessing Compliance with Paragraph 109: Tracking Specialized Unit Responses

Paragraph 109 stipulates:

"APD agrees to track and analyze the number of specialized investigative unit responses. The analysis shall include the reason for each investigative response, the legal authority, type of warrant (if applicable), and the result of each investigative response, to include: (a) the location; (b) the number of arrests; (c) the type of evidence or property seized; (d) whether a forcible entry was required; (e) whether a weapon was discharged by a specialized investigative unit member; (f) whether the person attempted to flee from officers; and (g) whether a person or domestic animal was injured or killed. This data analysis shall be entered into the

Early Intervention System and included in APD's annual reports."

Results

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

Monitor's notes for Paragraphs 106 - 109:

Although in Operational Compliance, the monitor notes the following recommendations for consideration.

Recommendation 4.7.96a: SID should continue to monitor the adoption of use of force policies.

Recommendation 4.7.96b: SID should continue to review the quality of Operational Plans to ensure they are completed properly and used as a tool to safety and compliance.

Recommendation 4.7.96c: SID and SOD should continue to work with senior management to codify how scoring discrepancies or disagreements will be resolved.

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

Paragraph 110 stipulates:

> **"To maintain high-level, quality service; to ensure officer safety and accountability; and to promote constitutional, effective policing, APD agrees to minimize the necessity for the use of force against individuals in crisis due to mental illness or a diagnosed behavioral disorder and, where appropriate, assist in facilitating access to community-based treatment, supports, and services to improve outcomes for the individuals. APD agrees to develop, implement and support more integrated, specialized responses to individuals in mental health crisis through collaborative partnerships with community stakeholders, specialized training, and improved communication and coordination with mental health professionals. To achieve these outcomes, APD agrees to implement the requirements below."**

This overarching paragraph refers to the paragraphs 111-137, below. As such, this paragraph will not be in compliance until such time that other related required paragraphs are found to be fully in compliance. The monitoring team assessed data

from the relevant policies, which guide the requirements of the Crisis Intervention section of the CASA, as noted in the table below.

Results

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

Table 4.7.97 Policy Renewal Status for Behavioral Health Policies

Policy	Policy Name (Relevance to 110)
SOP 1-11	BEHAVIORAL SCIENCES SECTION – DUE; Effective August 31, 2018; due for Review August 31, 2019, outside this reporting period.

SOP 1-37	CRISIS INTERVENTION SECTION AND PROGRAM -- Effective April 4, 2019; due for Review April 4, 2020.
SOP 2-19	RESPONSE TO BEHAVIORAL HEALTH ISSUES--Effective April 4, 2019; due for Review April 4, 2020.
SOP 2-20	HOSTAGE SITUATIONS, BARRICADED INDIVIDUALS, AND TACTICAL THREAT ASSESSMENTS--Effective August 5, 2019; due for Review August 5, 2020.
SOP 2-08	USE OF ON-BODY RECORDING DEVICES (contains reference to "subjects in crisis") Past Due: Effective June 2, 2017; due for Review June 2, 2018—Past Due.

Results

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

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

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

Data available to the monitoring team show regular monthly meetings of the community's Mental Health Response Advisory Committee (MHRAC), involving at times highly detailed discussions of problems, issues, needs, and solutions. MHRAC continues to be one of the success stories in APD's community engagement processes. MHRAC's reports, recommendations, communications, and assessment processes during this reporting period continue to be a source of valuable insight for APD's mental health/crisis intervention strategies. A broad spectrum of community mental health leaders, APD command staff, APD's Crisis Outreach and Support Team members (COAST) and mental health professionals attend and participate in MHRAC meetings.

Our reviews of MHRAC's agendas and meeting minutes indicate broad-based input from community mental health experts, advocates, and providers.

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

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

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

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

Paragraph 111 stipulates:

> **"Within six months of the Effective Date, APD and the City shall establish a Mental Health Response Advisory Committee (Advisory Committee) with subject matter expertise and experience that will assist in identifying and developing solutions and interventions that are designed to lead to improved outcomes for individuals perceived to be or actually suffering from mental illness or experiencing a mental health crisis. The Advisory Committee shall analyze and recommend appropriate changes to policies, procedures, and training methods regarding police contact with individuals with mental illness."**

Methodology

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

- MHRAC's reports, recommendations, communications, and processes during this reporting period;
- Meeting agendas and minutes for MHRAC meetings;
- Meeting minutes for subcommittee meetings; and
- Various communications regarding policy reviews between APD and MHRAC.

The monitor is encouraged by the new members of MHRAC and the first-time guests who attended meetings during this reporting period. We believe the MHRAC is on the

right path to being sustainable, stable, and able to withstand changes in leadership should they occur. The MHRAC continues to address issues within sub-committees, which include the Training Subcommittee and the Information Sharing/Resources Subcommittee (which merged in April 2019, given the overlapping subject areas).

MHRAC meetings occurred regularly during this reporting period, along with some subcommittee meetings. MHRAC did not meet in February, due to weather, nor did they meet in July. Table 4.7.98a, on the following page, briefly describes major topics covered during the MHRAC meetings and subcommittee meetings. In addition to the topics discussed during MHRAC meetings, a review of emails and other communications demonstrate that MHRAC members also addressed a variety of other issues during this reporting period, including: Certificates of Evaluation and APD processes, which included a discussion of HIPAA; confidentiality issues; jail diversion; Law Enforcement Assisted Diversion (LEAD); and APD CIU's on-the-job training program for MCT officers and clinicians.

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

Reporting period month	Meeting date	Issues discussed
February 2019	*No Meeting*	
March 2019	3/19/19	APD's new Priority System for Calls for Service; Cadet Training; Law Enforcement Assisted Diversion (LEAD); CET Referrals; Homeless Initiative; APD Reports; Subcommittee Reports
April 2019	4/16/19	Homeless Initiative Draft Ordinance; CET Referrals; Mental Health Awareness Month; Medicaid and Home Visits; APD Reports; Subcommittee Reports
May 2019	5/21/19	Public concerns about homelessness; Process Map for MHRAC Feedback Map regarding Policy Revisions; IMR-9; APD Reports; Subcommittee Reports. *IMT attended this meeting.*
June 2019	6/18/19	Homeless Encampment Update from FCS; APD Reports; Subcommittee Reports
July 2019	*No Meeting*	

Table 4.7.98b: MHRAC Subcommittee Meeting Topics

Subcommittee	Issues discussed
Resources 2/12/19	Outreach Court; Resource needs of APD; APD behavioral health teams
Training 2/25/19	Updated 1-hour block on suicide prevention
Information Sharing 2/27/19	Certificates of Evaluation processes
Information Sharing 5/14/19	Resource Card/Website; Certificate of Evaluations; MHRAC Policy Feedback Map
Training 6/24/19	CNT Training Collaboration / Coordination Update; CIT and ECIT training updates; Curricula Review of proposed changes to MCT OJT program; ECIT change to PowerPoint on barricaded subjects

Results

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

4.7.99 Assessing Compliance with Paragraph 112

Paragraph 112 stipulates:

> **"The Advisory Committee shall include representation from APD command staff, crisis intervention certified responders, Crisis Intervention Unit (CIU), Crisis Outreach and Support Team (COAST), and City-contracted mental health professionals. APD shall also seek representation from the Department of Family and Community Services, the University of New Mexico Psychiatric Department, community mental health professionals, advocacy groups for consumers of mental health services (such as the National Alliance on Mental Illness and Disability Rights New Mexico), mental health service providers, homeless service providers, interested community members designated by the Forensic Intervention Consortium, and other similar groups."**

Methodology

The monitoring team reviewed MHRAC's membership rosters, agendas and meeting minutes for monthly meetings that occurred during this reporting period.

Results

All specified groups named in this paragraph regularly participated in MHRAC meetings during this reporting period, and minutes reflected discussions of agenda items designed to facilitate the goals of MHRAC.

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

4.7.100 Assessing Compliance with Paragraph 113

Paragraph 113 stipulates:

> **"The Advisory Committee shall provide guidance to assist the City in developing and expanding the number of crisis intervention certified responders, CIU, and COAST. The Advisory Committee shall also be responsible for considering new and current response strategies for dealing with chronically homeless individuals or individuals perceived to be or actually suffering from a mental illness, identifying training needs, and providing guidance on effective responses to a behavioral crisis event."**

Methodology

The monitoring team reviewed MHRAC's reports, recommendations, communications, and processes, and conducted interviews with specific members of the MHRAC. In addition, we reviewed MHRAC monthly meeting agendas and minutes, and MHRAC subcommittee meeting minutes, various email communications, and memos.

Results

The MHRAC continued to provide guidance to the City and APD regarding developing and expanding the number of CIT-certified responders, as well as response strategies for interacting effectively with homeless individuals and people with mental illness. During this reporting period, the MHRAC considered and provided feedback on APD's policies, responses to homelessness, and trends reflected in CIU data and analysis. At the June MHRAC meeting, a co-chair shared a COAST success story.

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

4.7.101 Assessing Compliance with Paragraph 114:

Paragraph 114 stipulates:

> **"APD, with guidance from the Advisory Committee, shall develop protocols that govern the release and exchange of information about individuals with known mental illness to facilitate necessary and appropriate communication while protecting their confidentiality."**

Methodology

The monitoring team reviewed a 100% sample of MHRAC's reports, recommendations, communications, and processes during the reporting period, assessing these documents for compliance with Paragraph 114. The MOU between APD's CIU and the University of New Mexico Health Sciences Center/UNM Health Systems remains in place and has not been updated since the monitoring team's previous reviews (signed and dated October 10, 2019).

Results

APD's existing mental health training courses contain content regarding the MOU between APD and the University of New Mexico. Training on these modules has begun; however, as of the end of this reporting period, not all members of APD have been trained. The CIU presented the details of a plan for mandatory training on the MOU for all sworn members beginning in September 2019.

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

Recommendation for Paragraph 114:

4.7.101a: Continue to provide training to, at minimum, CIU staff and certified CIT responders on this MOU.

4.7.102 Assessing Compliance with Paragraph 115

Paragraph 115 stipulates:

> **"Within nine months of the Effective Dates, APD shall provide the Advisory Committee with data collected by crisis intervention certified responders, CIU, and COAST pursuant to Paragraphs 129 and 137 of this Agreement for the sole purpose of facilitating program guidance. Also, within nine months of the Effective Date, the Advisory Committee shall review the behavioral health training curriculum; identify mental health resources that may be available to APD; network and build more relationships; and provide guidance on scenario-based training involving typical situations that occur when mental illness is a factor.**

Methodology

The monitoring team reviewed a 100% sample of data provided to MHRAC by APD relating to provisions of Paragraph 115, including data analysis in the form of PowerPoint slides; and MHRAC and subcommittee meeting agendas and minutes.

Results

APD continued to work with staff to produce meaningful data analyses of the data elements specified in paragraphs 129 and 137. APD has presented these data regularly to the MHRAC in past reporting periods, but since the departure of key analytic personnel, APD did not present updated data to MHRAC consistently during this reporting period. The monitor is concerned because past practice had been to update the data book at least quarterly and it was only updated once during this monitoring period.

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

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

4.7.103 Assessing Compliance with Paragraph 116

Paragraph 116 stipulates:

> **"The Advisory Committee shall seek to enhance coordination with local behavioral health systems, with the goal of connecting chronically homeless individuals and individuals experiencing mental health crisis with available services."**

Methodology

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

Results

The MHRAC continued its work to enhance coordination of services for chronically homeless individuals and people experiencing mental health crises. APD and MHRAC regularly provided updated lists of resources to APD officers for them to provide to

people with whom they interact while on patrol. The monitoring team's review shows a substantial and tangible degree of interaction and cooperation between local behavioral health systems and the APD on these issues, as well as tangible results in systems improvement recommendations. Further, during this reporting period, several new members joined the MHRAC and several new community members began attending MHRAC meetings.

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

4.7.104 Assessing Compliance with Paragraph 117

Paragraph 117 stipulates:

> **"Within 12 months of the Effective Date, and annually thereafter, the Advisory Committee will provide a public report to APD that will be made available on APD's website, which shall include recommendations for improvement, training priorities, changes in policies and procedures, and identifying available mental health resources."**

Methodology

This monitoring period covers February-July. The MHRAC did not produce an annual report during this monitoring period. The MHRAC has, however, produced reports annually in past years, which have been made available on APD's website. This paragraph remains in compliance based on past results.

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 the end of 2015."**

Methodology

The monitoring team reviewed training records of APD relating to basic behavioral health training, including pre-tests and post-tests of training participants and certificates of training completion.

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

Results

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

4.7.107 Assessing Compliance with Paragraph 120

Paragraph 120 stipulates:

> **"The behavioral health and crisis intervention training provided to all officers will continue to address field assessment and identification, suicide intervention, crisis de-escalation, scenario-based exercises, and community mental health resources. APD training shall include interaction with individuals with a mental illness and coordination with advocacy groups that protect the rights of individuals with disabilities or those who are chronically homeless. Additionally, the behavioral health and crisis intervention training will provide clear guidance as to when an officer may**

detain an individual solely because of his or her crisis and refer them for further services when needed."

Methodology

The monitoring team reviewed APD's training curricula relating to behavioral health. APD continues to utilize training curricula that address field assessment and identification, suicide intervention, crisis de-escalation, community mental health participation, scenario-based exercises, and role-play exercises. All training emphasizes the importance of community partnerships and appropriate referrals to services. APD also continues to update their behavioral health curricula appropriately, for example, by updating scenarios in which professional actors interact with training participants.

Results

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

4.7.108 Assessing Compliance with Paragraph 121

Paragraph 121 stipulates:

> **"APD shall ensure that new tele-communicators receive 20 hours of behavioral health training. This training shall include: telephonic suicide intervention; crisis management and de-escalation; interactions with individuals with mental illness; descriptive information that should be gathered when tele-communicators suspect that a call involves someone with mental illness; the roles and functions of COAST, crisis intervention certified responders, and CIU; the types of calls that should be directed to particular officers or teams; and recording information in the dispatch database about calls in which mental illness may be a factor."**

Methodology

The monitoring team reviewed training records of APD relating to basic behavioral health training for tele-communicators and noted that behavioral health training for tele-communicators took place in April 3-5, 2019. During this training, 27 tele-communicators participated, with 26 completing the training. During the April training, public safety professionals from other agencies participated as well (eight total), allowing robust class discussions.

Results

APD's 20 hours of behavioral health training for tele-communicators includes all topics noted in paragraph 12, as well as role-play scenarios drawn from actual 911 calls fielded by APD tele-communicator personnel.

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

4.7.109 Assessing Compliance with Paragraph 122

Paragraph 122 stipulates:

> **"APD shall provide two hours of in-service training to all existing officers and tele-communicators on behavioral health-related topics biannually."**

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

Results

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

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

4.7.110 Assessing Compliance with Paragraph 123: Crisis Intervention Certified Responders and Crisis Intervention Unit

Paragraph 123 stipulates:

> **"APD shall maintain a sufficient number of crisis intervention certified responders who are specially trained officers across the Department who retain their normal duties and responsibilities and also respond to calls involving those in mental health crisis. APD shall also maintain a Crisis Intervention Unit ("CIU") composed of specially trained detectives housed at the Family Advocacy Center whose primary responsibilities are to respond to mental health crisis calls and maintain contact with mentally ill individuals who have posed a danger to themselves or others in the past or are likely to do so in the future. APD agrees to expand both the number of crisis intervention certified responders and CIU."**

Methodology

The monitoring team reviewed training and assignment records for CIU officers for the reporting period. According to APD records, 202 field officers are ECIT trained, making them "certified responders" per this paragraph.

APD maintains a Crisis Intervention Unit staffed with detectives housed at the Family Advocacy Center. While the number of detectives varied slightly throughout this reporting period (due to promotions mostly), the number of detectives in the CIU overall held steady at 12, meeting the recommended number of detectives noted in the "Albuquerque Police Department Comprehensive Staffing Assessment and Resources Study" conducted by Alexander Weiss Consulting, (Final Draft Report, December 11, 2015). We note here, as we have elsewhere in this report, that staffing studies such as that conducted by Weiss Consulting have relatively short "half-lives," thus the reliability of those numbers wane as time passes.

During this reporting period, APD made significant strides in their work toward compliance with the requirements of this paragraph with regard to determining what "sufficient number" means to APD. APD's CIU worked diligently on its ECIT workload analysis. Members of APD created an ECIT workload analysis and staffing model "to ensure a sufficient number of Enhanced Crisis Intervention Team (ECIT) officers city-wide."

The model considers: number of behavioral health calls for service by shift and area command; the number of Field Services Officers by shift and area command; the average length of a behavioral health call for service; the yearly shift bid; and the APD requirement for 70% minimum staffing (which considers vacation time, sick time, other circumstances that may affect staffing on any given day). The model assumes that since 40% of Field Services Officers are required to be ECIT trained (per paragraph 124), then 40% of behavioral health calls should be answered by ECIT trained officers. The analysis concludes that the required 40% ECIT certification rate leads to 68% of behavioral health calls for service being responded to by ECIT officers.

While the model is certainly a work in progress and will likely be refined over time, as the CIU continues to revisit and recalculate it monthly, we are encouraged by this work. At this time, the monitoring team is uncertain, however, that the ECIT workload analysis and staffing model has been embraced by APD leadership and is actively being used to guide staffing decisions. We will revisit this issue during our next reporting period.

Results

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

Recommendation for Paragraph 123:

4.7.110a: Implement the data-driven, methodologically appropriate workload, staffing planning and analysis protocol developed by CIU that ensures that reliable "staffing levels" for ECIT officers are regularly calculated, reported, set as staffing goals, and attained.

4.7.111 Assessing Compliance with Paragraph 124

Paragraph 124 stipulates:

> **"The number of crisis intervention certified responders will be driven by the demand for crisis intervention services, with an initial goal of 40% of Field Services officers who volunteer to take on specialized crisis intervention duties in the field. Within one year of the Effective Date, APD shall reassess the number of crisis intervention certified responders, following the staffing assessment and resource study required by Paragraph 204 of this Agreement."**

Methodology

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

Results

The current staffing levels of crisis intervention "certified responders" consistently met the 40% goal during this reporting period, varying from 46.3% to 49.3 percent. Table 4.7.111 below notes the percentages by month. Please see above comments related to paragraph 123 for further information about APD CIU's reassessment of the number of ECIT certified responders and their assessment of compliance with the 40% requirement.

See Table 4.7.111, below. The CIU held both Enhanced CIT courses as well as ECIT Refresher courses during this reporting period (see paragraph 4.7.112 below).

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

Table 4.7.111 Staffing Level of Enhanced CIT- Certified Responders

Percentage of APD Enhanced CIT Certified Responders	
February 2019	48.4
March 2019	49.3
April 2019	48.2
May 2019	47.7
June 2019	46.3
July 2019	49.3

4.7.112 Assessing Compliance with Paragraph 125

Paragraph 125 stipulates:

> **"During basic crisis intervention training for field officers provided to new and current officers, training facilitators shall recommend officers with apparent or demonstrated skills and abilities in crisis de-escalation and interacting with individuals with mental illness to serve as crisis intervention certified responders."**

Methodology

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

Results

The APD CIU instructors routinely identify and recommend field officers well suited for the Enhanced CIT (ECIT) course. Members of the CIU reach out to those officers 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 Effective Date, APD shall require crisis intervention certified responders and CIU to undergo at least eight hours of in-service crisis intervention training biannually."**

Methodology

The monitoring team reviewed training records for CIU and field services personnel.

Results

APD provided 8-hours of "re-certification" to its certified responders refresher training during this reporting period, and APD CIU instructors trained 59 ECIT certified responders during four sessions held in 2019.

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 Effective Date, APD will ensure that there is sufficient coverage of crisis intervention certified responders to maximize the availability of specialized responses to incidents and calls for service involving individuals in mental health crisis; and warrant service, tactical deployments, and welfare checks involving individuals with known mental illness."**

Methodology

During this reporting period, the APD CIU accomplished significant work toward determining whether the initial goal of 40% is "sufficient" for Albuquerque, including internal discussions and memorandum about how to define and measure "sufficient coverage." Please see our relevant discussion in paragraphs 123 and 124, above.

Results

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

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

4.7.115 Assessing Compliance with Paragraph 128

Paragraph 128 stipulates:

> **"APD will ensure that crisis intervention certified responders or CIU will take the lead, once on scene and when appropriate, in interacting with individuals in crisis. If a supervisor has assumed responsibility for the scene, the supervisor will seek input of the crisis intervention certified responder or CIU on strategies for resolving the crisis when it is practical to do so."**

Methodology

The monitoring team conducted ride-alongs with a field sergeant in the Southeast Area Command on May 22, and with a Mobile Crisis Team on May 24 during this monitoring period.

Results

We observed that the requirements of this paragraph were routinely met in the field. In fact, we observed a "teachable moment" in the field as lieutenants on-scene huddled with sergeants, officers, and an MCT unit after a behavioral health call for service was resolved. They discussed their approach, positioning, strategy, tactics and conversations with the subject and their decision to leave the scene without taking action beyond a discussion with the subject. All members of APD made good decisions on this particular call, used sound tactics, and displayed concern and professionalism in their handling of this particular situation. We see these types of self-assessments as indicators that APD is transitioning into a "self-correcting" organization, which is, after all, the overarching goal of any well-run change process.

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

4.7.116 – 4.7.124 Assessing Compliance with Paragraphs 129-137

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

As part of the monitoring process, the monitoring team:

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

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

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

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

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

6. Assessed staffing at the Crisis Intervention Unit;

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

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

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

The data and processes we reviewed indicate that APD's outreach and support efforts to those in the communities served by CIT processes are resilient, effective, and problem-oriented. Data collection, analysis and reporting processes and protocols have been updated with much improved accuracy and reliability, and training remains a strong point of this effort. APD's services in this area are so strong that they have been consistently featured in national conferences and publications such as the International Association of Chiefs of Police e-newsletter (on August 15, 2019), as well as local news outlets, including an article in the *Albuquerque Journal* entitled "Police Learn to Deal With Mentally Ill Residents" published on February 4, 2019.

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

The monitoring team is concerned about APD's data collection and analysis with regard to this paragraph. APD has not completed meaningful updates to its "CIU Data Book," since their data scientist left the agency in March 2019. The "Data Book" has been a frequently updated and is an evolving document. Updated data have not been presented to the MHRAC, or to APD leadership, since the most recent Data Book, dated "Spring, 2019" was prepared prior to the unit's data scientist's departure. APD remains in compliance based on past reporting; however, this is an issue that must be resolved prior to Spring, 2020. Failure to do so will put compliance levels in jeopardy.

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

4.7.117 Assessing Compliance with Paragraph 130

Paragraph 130 stipulates:

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

Results

APD's behavioral health units continue to innovate and address the majority of the requirements of this paragraph, including utilizing actual encounters to inform training. APD has analyzed the most recent data available during this reporting period. They regularly collected data during this reporting period, and the next report was due in Summer of 2019. This analysis is critically important to the agency's decision making. It

is used to "develop new response strategies for repeat calls for service" nor can they "identify systemic issues that impede APD's ability to provide an appropriate response." Mechanisms to address Paragraph 129 are scheduled to be updated and carefully documented prior to our Spring, 2020 site visit. At this point, APD remains in compliance based on past performance, as the required analysis is not yet due.

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

4.7.118 Assessing Compliance with Paragraph 131

Paragraph 131 stipulates:

> **"Working in collaboration with the Advisory Committee, the City shall develop and implement a protocol that addresses situations involving barricaded, suicidal subjects who are not posing an imminent risk of harm to anyone except themselves. The protocol will have the goal of protecting the safety of officers and suicidal subjects while providing suicidal subjects with access to mental health services."**

Results

APD updated this policy in August 2019, which is just after the close of this reporting period. The monitoring team will assess the new version of this policy (Effective August 5, 2019), along with training and implementation of this policy, in IMR-11.

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

Recommendation for Paragraph 131:

4.7.118a: Work with advisory committee to ensure the protocols are updated and congruent with related policy and protocols. Develop appropriate training strategies, deliver training, and implement the policy.

4.7.119 Assessing Compliance with Paragraph 132 Crisis Prevention

Paragraph 132 stipulates:

> **"APD shall continue to utilize COAST and CIU to follow up with chronically homeless individuals and individuals with a known mental illness who have a history of law enforcement encounters and to proactively work to connect these individuals with mental health service providers."**

Results

Based on our review of program documentation, it is apparent from in-field reports, data analysis and real-time response to identified issues, that APD's COAST and CIU routinely follow up with critical elements of the population who would benefit from COAST and CIU services. During this reporting period, the MHRAC congratulated COAST's work by sharing a success story during a public meeting, and COAST members continued to use creativity and solid problem-solving approaches to address persistent issues. CIU and COAST members worked together to explore getting a therapy animal for a member of the community, help an individual navigate the social security system, obtain rental assistance to keep someone housed, and assisting an individual visit their doctor to get critical medication. The monitoring team spent six hours riding along with COAST and CIU as they conducted home visits on May 21, 2019 and found each interaction observed to be professionally and compassionately executed.

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

4.7.120 Assessing Compliance with Paragraph 133

Paragraph 133 stipulates:

> **"COAST and CIU shall provide crisis prevention services and disposition and treatment options to chronically homeless individuals and individuals with a known mental illness who are at risk of experiencing a mental health crisis and assist with follow-up calls or visits."**

Results

Based on our review of program documentation, it is apparent from in-field reports, data analysis and real-time response to identified issues that APD's COAST and CIU routinely follow up with critical elements of the population who would benefit from COAST and CIU services. The monitoring team's ride-along with COAST during this reporting period underscored the compassionate and creative work of the CIU and COAST team members. Some of the work done by these units is, quite simply, excellent.

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

4.7.121 Assessing Compliance with Paragraph 134

Paragraph 134 stipulates:

> **"APD shall continue to utilize protocols for when officers should make referrals to and coordinate with COAST and CIU to provide prevention services and disposition and treatment options."**

Results

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

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

4.7.122 Assessing Compliance with Paragraph 135

Paragraph 135 stipulates:

> **"APD shall maintain a sufficient number of trained and qualified mental health professionals in COAST and full-time detectives in CIU to satisfy its obligations under this Agreement. Within three months of completing the staffing assessment and resource study required by Paragraph 204 of this Agreement, APD shall develop a recruitment, selection, and training plan to assign, within 24 months of the study, 12 full-time detectives to the CIU, or the target number of detectives identified by the study, whichever is less."**

Results

APD provided the monitoring team with a detailed tracking report for all COAST members and detectives within the CIU. Throughout the reporting period, the number of detectives in the CIU held steady at 12, but due to the promotion of one detective, at the end of the reporting period CIU had 11 detectives. The number of COAST clinicians held steady at five. APD reports that a sixth COAST position is in the budget but has not yet been hired. The monitoring team also notes that having two sergeants in this unit seems to be working nicely in terms of supervision, division of labor, and morale.

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

We note parenthetically that the use of a data-driven, methodologically appropriate workload and staffing planning and analysis to ensure expansion (or contraction) of CIU staffing based on workload and other factors could positively affect the COAST and the MCTs. This would ensure reliable staffing levels for mental health professionals in COAST and in the MCTs are attained. At this point, the data exist to support this analysis, and such an analysis is something that APD should consider carefully.

4.7.123 Assessing Compliance with Paragraph 136

Paragraph 136 stipulates:

> **"COAST and CIU shall continue to look for opportunities to coordinate in developing initiatives to improve outreach, service delivery, crisis prevention, and referrals to community health resources**."

Results

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

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

4.7.124 Assessing Compliance with Paragraph 137

Paragraph 137 stipulates:

> **"APD shall collect and analyze data to demonstrate the impact of and inform modifications to crisis prevention services. This data will be collected for management purposes only and shall not include personal identifying information of subjects or complainants. APD shall collect the following data:**
> **a) number of individuals in the COAST and CIU caseloads;**
> **b) number of individuals receiving crisis prevention services;**
> **c) date, shift, and area command of incidents or follow up encounters;**
> **d) subject's age, race/ethnicity, and gender;**
> **e) whether the subject claims to be a U.S. military veteran;**
> **f) techniques or equipment used;**
> **g) any injuries to officers, subjects, or others;**
> **h) disposition of the encounter (e.g., arrest, citation, referral); and**
> **i) a brief narrative of the event (if not included in any other document)."**

Results

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

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

4.7.125 Assessing Compliance with Paragraph 139[95]

Paragraph 139 stipulates that:

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

APD continues to produce effective policy and procedures that are compliant with the CASA. The monitor continues to be intensively and extensively involved with policy development and review at APD and continues to make recommendations for improvement in the process.

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

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[95] 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.

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

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

4.7.127 Assessing Compliance with Paragraph 141

Paragraph 141 stipulates:

> **"Within three months of the Effective Date, APD shall provide officers from varying ranks and units with a meaningful opportunity to review and comment on new or existing policies and procedures."**

Methodology

APD remains in compliance with this paragraph based on internal practice. Policies are provided to all sworn members of APD via intra-net and are available to the public via the internet.

Results

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

4.7.128 Assessing Compliance with Paragraph 142

Paragraph 142 stipulates:

> **"Within three months of the Effective Date, APD shall ensure that the Policy and Procedures Review Board is functional and its members are notified of the Board's duties and responsibilities. The Policy and Procedures Review Board shall include a representative of the Technology Services Division in addition to members currently required under Administrative Order 3-65-2 (2014)."**

Methodology

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

Results

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

4.7.129 Assessing Compliance with Paragraph 143

Paragraph 143 stipulates:

> **"Within nine months of the Effective Date, the Policy and Procedures Review Board shall review, develop, and revise policies and procedures that are necessary to implement this Agreement. The Policy and Procedures Review Board shall submit its formal recommendations to the Chief through the Planning and Policy Division."**

Methodology

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

Results

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

4.7.130 Assessing Compliance with Paragraph 144

Paragraph 144 stipulates:

> **"Unless otherwise noted, all new and revised policies and procedures that are necessary to implement this Agreement shall be approved and issued within one year of the Effective Date. APD shall continue to post approved policies, procedures, and administrative orders on the City website to ensure public accessibility. There shall be reasonable exceptions for policies, procedures, and administrative orders that are law enforcement sensitive, such as procedures on**

undercover officers or operations."

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

Results

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

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

4.7.131 Assessing Compliance with Paragraph 145

Paragraph 145 stipulates:

> **"The Policy and Procedures Review Board shall review each policy or procedure six months after it is implemented and annually thereafter, to ensure that the policy or procedure provides effective direction to APD personnel and remains consistent with this Agreement, best practices, and current law. The Policy and Procedures Review Board shall review and revise policies and procedures as necessary upon notice of a significant policy deficiency during audits or reviews."**

Methodology

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

Results

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

4.7.132 Assessing Compliance with Paragraph 146

Paragraph 146 stipulates:

> **"APD shall apply policies uniformly and hold officers accountable for complying with APD policy and procedure."**

Methodology

Over the last four years, members of the monitoring team have continually reviewed the processes designed to implement this paragraph. Two issues have proven consistently problematic with APD's organizationally crafted practices responsive to this paragraph:

Over the years, APD's use of "Additional Concerns Memoranda," and the extended timeline established by APD relating to effective discipline contemporaneously affected, have seriously retrograded APD's ability and willingness to take specific, tangible, and administratively appropriate actions regarding policy violations. Both of these factors have seriously affected policy application, first by diverting disciplinary issues "out of the system" through the use of "Additional Concerns Memos," a quasi-procedural method of "noting" a procedural violation, but not entering it into the official system, and often taking little or no corrective action. Secondly, the system has been applied in some cases, particularly in late 2017 and 2018 in a manner that prevented adequate and appropriate discipline. While ACMs are no longer in use by APD, it will take some time to bring clear understanding to the impacts of this procedure.

The monitor asserts that the City is correct in that issues "not related to the use of force" could be dealt with via alternative methods such as ACMs; however, in the monitor's opinion, when those "additional concerns" are directly related to a use of force, or affect APD's ability to investigate a central use of force concern, the ACMs were directly problematic to the enforcement of the CASA. For example, incidents of use of force have occurred on a reasonably routine basis, under circumstances that cloud APD's ability to determine exactly what happened during a use of force event, e.g., OBRDs were not activated as required during a use of force event under circumstances that directly affect the APD's ability to determine the propriety of the actual use of force. See for example, the monitor's treatment of APD use-of-force events in paragraphs 24-31 & 34-38; 41-59; and 60-77.

Results

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

4.7.133 Assessing Compliance with Paragraph 147

Paragraph 147 stipulates

> **"APD shall submit all policies, procedures, manuals, and other administrative orders or directives related to this Agreement to the Monitor and DOJ for review and comment before publication and implementation."**

Methodology

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

Results

APD routinely complies with the requirements of this paragraph.

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

4.7.134 Assessing Compliance with Paragraph 148

Paragraph 148 stipulates:

> **"APD shall have 15 days to resolve any objections to new or revised policies, procedures, manuals, or directives implementing the specified provisions. If, after this 15-day period has run, the DOJ maintains its objection, then the Monitor shall have an additional 15 days to resolve the objection. If either party disagrees with the Monitor's resolution of the objection, either party may ask the Court to resolve the matter. The Monitor shall determine whether in some instances an additional amount of time is necessary to ensure full and proper review of policies. Factors to consider in making this determination include: 1) complexity of the policy; 2) extent of disagreement regarding the policy; 3) number of policies provided simultaneously; and 4) extraordinary circumstances delaying review by DOJ or the Monitor. In determining whether these factors warrant additional time for review, the Monitor shall fully consider the importance of prompt implementation of policies and shall allow additional time for policy review only where it is clear that additional time is necessary to ensure a full and proper review. Any extension to the above timelines by the Monitor shall also toll APD's deadline for policy completion."**

Methodology

The provisions of this paragraph seldom need to be invoked. The Parties have tended to be mutually supportive in getting policies moved through the approval process.

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 Effective Date, APD shall ensure that all officers are briefed and presented the terms of the Agreement, together with the goals and implementation process of the Agreement."**

Methodology

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

The monitoring team reviewed records for all new APD employees to ensure that they are briefed and presented the terms of the Agreement. During this reporting period, the monitoring team reviewed PowerDMS entries to ensure all personnel signed off in acknowledgment that the material was received and reviewed. Documentation for this IMR was received by the monitoring team via an Interoffice Memorandum reflecting a CASA update for Cadet Class #121 (19 Cadets) and Lateral Class #22 (4 Cadets) indicating that these new members were briefed and presented the terms of the Agreement. PowerDMS entries were also supplied. The City remains in compliance with this paragraph based on earlier performance.

Results

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

4.7.136 Assessing Compliance with Paragraph 150

Paragraph 150 stipulates:

> **"Within three months of issuing a policy or procedure pursuant to this Agreement, APD agrees to ensure that all relevant APD personnel have received and read their responsibilities pursuant to the policy or procedure, including the requirement that each officer or employee report violations of policy; that supervisors of all ranks shall be held accountable for identifying and responding to policy or procedure violations by personnel under their command; and**

> **that personnel will be held accountable for policy and procedure violations. APD agrees to document that each relevant APD officer or other employee has received and read the policy. Training beyond roll-call or similar training will be necessary for many new policies to ensure officers understand and can perform their duties pursuant to the policy."**

Methodology

APD remains in compliance with this paragraph based on earlier performance. In future reporting periods, the monitoring team will continue to monitor new policies and changes to policy that are pending approval to ensure that the requirements of this paragraph are maintained. We do note some concerns with APD's current modalities for holding personnel accountable for policy and procedures violations. Specifically, we have concerns with APD's current compliance with the requirement of this paragraph to ensure that "supervisors at all ranks shall be held accountable for identifying and responding to policy or procedures violations by personnel under their command." We will continue to monitor these issues. As internal process stands, as of this report, we see periodic, serious "bypasses" to this paragraph (as noted in the Summary and in the body of this report). These concerns need to be addressed effectively and expeditiously, or APD's compliance levels will be adversely affected.

Results

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

4.7.137 Assessing Compliance with Paragraph 151

Paragraph 151 stipulates:

> **"Unless otherwise noted, the training required under this Agreement shall be delivered within 18 months of the Effective Date, and annually thereafter. Within six months of the Effective Date, APD shall set out a schedule for delivering all training required by this Agreement."**

Methodology

The City remains in compliance with this paragraph based on earlier performance and maintains a current training schedule fulfilling the requirements of this paragraph. The monitoring team will continue to monitor new policies and changes to policy that are pending approval in future reporting periods to ensure that the requirements of this paragraph are addressed, and that appropriate training is delivered and followed.

Results

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

4.7.138 Assessing Compliance with Paragraph 152

Paragraph 152 stipulates:

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

Methodology

The monitoring team requested and received for review from APD copies of COB documentation related to this paragraph. Documents reviewed by the monitoring team reflect laterals received APD specific training in the 22nd Lateral Police Academy (May 13, 2019 through June 21, 2019) and all laterals are certified law enforcement officers. The monitoring team will continue to monitor the selection and assessment practices to ensure compliance with this paragraph. To date, no policy outliers in this process have been noted.

Results

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

4.7.139 Assessing Compliance with Paragraph 153

Paragraph 153 stipulates:

> **"APD shall maintain complete and accurate records of all training provided to sworn APD officers during pre-service and in-service training programs, including curricula, course materials, lesson plans, classroom presentations, handouts, videos, slides, recordings, and attendance records. APD shall also maintain complete and accurate records of any audit, review, assessment, or evaluation of the sufficiency or effectiveness of its training programs. APD shall make these records available for inspection by the Monitor and DOJ."**

Methodology

The monitoring team's requests for, and subsequent review of, records responsive to Paragraph153 produce ample evidence that the requirements of the paragraph are being met by APD. The material reviewed for this reporting period (February 2019

through July 2019) included but was not limited to:

- 2019 Acting Sergeant Training (Schedule, Rosters, RBT Folders, Pre and Post Tests, Critiques);
- Risk Assessment Matrix (RAM);
- Field Training and Evaluation Program (FTO Course);
- Aviation Training; and
- 22nd Lateral Training

APD continues to maintain compliance by making records available for inspection by the monitoring team during site visits.

Results

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

4.7.140 Assessing Compliance with Paragraph 154

Paragraph 154 stipulates:

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

Methodology

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

Results

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

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

During this reporting period (February 2019 through July 2019), the monitoring team reviewed and examined the data required for APD to maintain compliance with these paragraphs in the forms of policy, programs, and results. APD remains in Operational Compliance with the paragraphs in the CASA that relate to the Field Training and

Evaluation Program, except for paragraph 161.

Members of the monitoring team met with the APD Academy personnel responsible for maintaining the program development and implementation as per SOP 6-1 "Training Division." No known applicable changes to case law, core principles, or values had taken place, but revisions to SOP 1-46 Field Training and Evaluation Program (FTEP) had been submitted. The monitoring team has received a draft copy of submitted revisions to the Field Training and Evaluation Program. Those revisions are currently under review in the chain of command and will be assessed for compliance by the monitoring team.

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

Field Service Bureau Special orders for this reporting period

- 21st Lateral Class SO 19-18, 22, 29, 30 and 31
- 22nd Lateral Class SO 19-37 and 42
- 121st Cadet Class SO 19-17, 21, 26, 27, 28 and 34

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

The number of officers serving as FTOs for the FTO program during this monitoring period is 45 available FTOs with 12 members considered inactive due to various administrative reasons within the APD. The monitoring team reviewed the vetting process for the applications and backgrounds of six FTOs. This review indicated that all requirements of the CASA were met. APD submits backgrounds and applications (on an on-going basis) to the monitoring team for review to ensure compliance. In addition to the six new members, all current FTO personnel received and completed the annual FTEP/FTO In-Service Course as required by the CASA.

In order to assess compliance with the CASA, all Special Orders for the FTO program were reviewed. During that process, we reviewed:

Field Service Bureau Special orders

- 21st Lateral Class SO 19-18, 22, 29, 30 and 31;
- 22nd Lateral Class SO 19-37 and 42; and
- 121 Cadet Class SO 19-17, 21, 26, 27, 28 and 34.

The following CASA requirements were attained during this period:

1) Recruits are trained in multiple Area Commands;
2) Recruits are trained in different shifts; and

3) Recruits are exposed to different Field Training Officers.

As reflected in the supporting documentation supplied to the monitoring team, APD maintains compliance with these requirements.

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

1) A mechanism for confidential feedback regarding quality of field training;
2) Consistency between instructional processes developed in field training and at the training academy; and
3) APD's consideration of feedback, and what, if any, changes are made as a result of a given recruit's feedback.

As documented in previous monitoring periods, we reviewed the anonymous survey utilized by APD to comply with the requirements of the CASA. The 120th Cadet Class, like previous classes, maintained a high degree of participation. The monitoring team paid particular attention during this reporting period to the following areas:

- Use of Technology (working with Tech Services);
- Investigations/Knowledge of traffic Codes/Criminal Codes;
- Geographic Orientation;
- Radio Communication;
- Ride-Alongs;
- Report Writing;
- Juvenile Calls;
- Court Processes;
- Use of Force policy and practice; and
- Patrol Procedures/SOP.

The APD Academy continues to monitor the surveys and submit course-of-business memoranda covering these areas. An Interoffice Memorandum dated August 15, 2019 addresses: "Suggestions for changes to academy training based upon your experience in the Field Training and Evaluation Program."

During future site visits, the monitoring team will follow-up on actions or non-actions taken by the academy as it relates to suggestions submitted.

During the May 2019 monitoring team site visit, the monitoring team discussed the current status of the FTO program staffing levels with the academy staff. For this reporting period, documentation was submitted for the FTO program, and APD documentation shows the current enrollment for the program at 76 members. That includes FTOs, sergeants, lieutenants and members currently inactive due to other APD administrative matters. The documentation for this reporting period (Feb 2019 through July 2019) shows 57 FTOs (12 inactive), 13 sergeants and 6 lieutenants. APD had 25

recruits in the program during this period, with 45 FTOs available. This is still well below any recommended ratio as it relates to law enforcement best practices, but it demonstrates an improved ratio versus the prior reporting period. The monitoring team had offered as a suggestion that APD reach out to other law enforcement agencies throughout the country, and the staff advised that it has reached out to agencies with comparable staffing levels to assist in their staffing level dilemmas. The academy staff continues to work closely with the executive staff of APD. Concerns over the organization, process, and compensation for the current FTOs are in the process of being reviewed, and a solution to the issues is pending. In July of 2019, APD posted a lieutenant position for the FTO program and filled it. APD feels this new position will allow the program to better recruit field training officers by identifying qualified personnel to help promote the program. The monitoring team will follow up on the progress of the program in future reports.

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 CPOA-related CASA requirements. As such it requires no direct evaluation but is subsumed by the 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 "Bureau for review and investigation. Where alleged misconduct is reported to a supervisor, the supervisor shall immediately document and report this information to the Internal Affairs Bureau. Failure to report or document alleged misconduct or criminal behavior shall be grounds for discipline, up to and including termination of employment."**

Methodology

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 misconduct of subordinates and to report same to IA. It also requires failure to comply to be grounds for discipline.

During the monitoring period and the 10th site visit, members of the monitoring reviewed nine investigations completed by IAD Misconduct [IMR-10-16, IMR-10-17, IMR-10-18, IMR-10-19 (linked to and also opened as IMR-10-20), IMR-10-21, IMR-10-22, IMR-10-23, IMR-10-24, and IMR-10-25 (initiated by CPOA but transferred to IAD)], and 12 completed by CPOA [IMR-10-26, IMR-10-27, IMR-10-28, IMR-10-29, IMR-10-30, IMR-10-31, IMR-10-32, IMR-10-33, IMR-10-34, IMR-10-35, IMR-10-36, and IMR-10-37]. The monitoring team also identified and reviewed one non-concurrence letter issued by the Chief in response to disciplinary recommendations in IMR-10-41, reviewed APD regulations and had meetings with IAD Misconduct Commander and staff and the CPOA Director and staff.

Results

The findings related to Paragraph163 indicate the following CASA-related outcomes.

This monitoring period we found that 8 of 9 IAD misconduct cases [IMR-10-17, IMR-10-18, IMR-10-19, IMR-10-21, IMR-10-38, IMR-10-24, and IMR-10-23] met CASA requirements.

Each of the cases we reviewed had all components of the requirements of Paragraph 163. Given the different ways misconduct comes to the attention of a supervisor and considering the fact that reporting cases to IAD Misconduct is often times done in memorandum form, "immediately document and report" is interpreted in context of the case. In all of the cases noted above, except [IMR-10-18], we found the referral to be adequate. [IMR-10-18] was a referral from a Use of Force backlog review, as such the required referral was not executed at an earlier time.

The final two IAD investigations [IMR-10-16 and IMR-10-25] were referred to IAD by CPOA and therefore did not implicate paragraph 163. Thus, the compliance rate for this paragraph is 100 percent.

This is a prime example of the improvement we are seeing at APD: many violations of policy and practice are being noted, assessed, and "called" prior to any need for the monitoring team to bring these issues to APD's attention. This is a marked and laudable change to past practices at APD.

The monitor continues to see issues pertaining to the timeliness of referrals to IAD Misconduct regarding cases now being completed that were originally referred to IAD by CIRT. These timeliness of referral issues are linked to the Use of Force backlog reduction initiative, and an ongoing interpretation issue of when a referral to IAD should be made during a Use of Force review (when the review is complete or when reasonable indications of misconduct first arise).

The backlog and interpretive issues arising out of Use of Force reviews are more fully discussed in regard to paragraphs 60-77 of this IMR. We note that CIRT reportedly will be replaced in the IA process with the more carefully constructed and supervised IA-Force Division. Nonetheless, the non-compliant practices engaged in by the old CIRT unit have left a residual of force cases that were remarkably poorly investigated and documented. IA-FD has completed investigation of all the backlogged cases.

Results

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

4.7.150 – 4.7.154 Assessing Compliance with Paragraphs 164-168: Public Information on Civilian Complaints

Paragraphs 164 through 168 of the CASA pertain to the informational program required of APD and CPOA to make the public aware of the procedures for making civilian complaints against APD personnel. These paragraphs also direct that APD and CPOA provide to the public information, in Spanish and English, and in different informational forums that increase the public's accessibility to complaint forms and facilitate the reporting of misconduct. These paragraphs also require the acceptance of civilian complaints and require that officers identify themselves upon request.

Members of the monitoring team reviewed the APD and CPOA websites, in addition to APD headquarters, the CPOA office, and City Hall, during the 10th site visit and made eight visits to substations and to City libraries and community centers for the purpose of determining whether informational brochures and Complaint and Commendation forms were available. They also had meetings with IAD and CPOA personnel.

The findings related to Paragraphs164 through 168 indicate the following outcomes, related to requirements of the CASA:

1. APD, CPOA and the City in general continue to excel at, and be in full compliance with, the requirements of these paragraphs.

2. In all of its visits to APD, CPOA and City properties, the monitoring team found the informational brochures and Civilian and Commendation forms to be available, as well as visibly displayed for easy public access. Moreover, the monitoring team continues to find the informational program to be effective. Information on complaint filing is available on the APD and CPOA websites, and in informational materials, brochures, and posters. The information and complaint forms were available online (in English and Spanish) on both the APD and CPOA websites. CPOA has implemented the use of a new brochure, which provides a tear-off of a postage pre-paid complaint and commendation form, thereby making it easier for the public to engage the agency.

3. 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 otherwise readily accessible in hard copy at APD, CPOA, City buildings, and also from individual patrol vehicles. The information, both on the website and hard copy, is in Spanish and English. The information does not discourage the filing of complaints and makes clear that complaints can be filed anonymously or by third parties.

Further, based on our review of a stratified random sample of IA and CPOA investigations, we found no instances of allegations of refusal to provide name and badge numbers when requested.

4.7.150 Assessing Compliance with Paragraph 164: Public Information on Civilian Complaints

Paragraph 164 stipulates:

> **"Within six months of the Effective Date, APD and the Civilian Police Oversight Agency shall develop and implement a program to ensure the Albuquerque community is aware of the procedures to make civilian complaints against APD personnel and the availability of effective mechanisms for making civilian complaints."**

Results

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

4.7.151 Assessing Compliance with Paragraph 165: Availability of Complaint Forms

Paragraph 165 stipulates:

> **"APD and the Civilian Police Oversight Agency shall make complaint forms and informational materials, including brochures and posters, available at appropriate government properties, including APD headquarters, Area stations, APD and City websites, City Hall, public libraries, community centers, and the office of the Civilian Police Oversight Agency. Individuals shall be able to submit civilian complaints through the APD and City websites and these websites shall include, in an identifiable and accessible form, complaint forms and information regarding how to file civilian complaints. Complaint forms, informational materials, and the APD and City websites shall specify that complaints may be submitted anonymously or on behalf of another person. Nothing in this Agreement prohibits APD from soliciting officer commendations or other feedback through the same process and methods as above."**

Results

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

Operational: **In Compliance**

4.7.152 Assessing Compliance with Paragraph 166: Public Information on Complaint Process

Paragraph 166 stipulates:

> **"APD shall post and maintain a permanent placard describing the civilian complaint process that includes relevant contact information, such as telephone numbers, email addresses, and Internet sites. The placard shall specify that complaints may be submitted anonymously or on behalf of another person. APD shall require all officers to carry complaint forms, containing basic complaint information, in their Department vehicles. Officers shall also provide the officer's name, officer's identification number, and, if applicable, badge number upon request. If an individual indicates that he or she would like to make a misconduct complaint or requests a complaint form for alleged misconduct, the officer shall immediately inform his or her supervisor who, if available, will respond to the scene to assist the individual in providing and accepting appropriate forms and/or other available mechanisms for filing a misconduct complaint."**

Results

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

4.7.153 Assessing Compliance with Paragraph 167: Duty to Accept Citizen Complaints

Paragraph 167 stipulates:

> **"APD agrees to accept all civilian complaints and shall revise any forms and instructions on the civilian complaint process that could be construed as discouraging civilians from submitting complaints."**

Results

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

4.7.154 Assessing Compliance with Paragraph 168: Multi-Lingual Complaint Forms

Paragraph 168 stipulates:

> **"Complaint forms and related informational materials shall be made available and posted in English and Spanish."**

Results

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

4.7.155 – 4.7.168 Assessing Compliance with Paragraphs 169-182: Training Regarding Complaint Intake

Paragraphs 169 through 182 of the CASA pertain to the necessary steps in the receipt, acceptance and processing of complaints. These paragraphs require APD and CPOA to receive all complaints, regardless of whether they are made internally or externally, and regardless of whether they are made in a timely manner. They require an effective and uniform system that is allegation-based for classifying complaints, and internally referring and appropriately assigning complaints for investigation.

During the monitoring period and the 10th site visit, members of the monitoring team held meetings with the IAD Misconduct Commander and members of his staff, CPOA Executive Director and members of his staff, reviewed complaint log-in and classification records, selected (by way of a stratified random sample) and reviewed 9 IA and 12 CPOA investigations completed during the monitoring period. The monitoring team also reviewed the APD and CPOA websites and POB minutes relative to approval of investigations

The findings related to Paragraph169 through 182 indicate the following outcomes, related to requirements of the CASA.

Based on our present reviews, and consistent with prior IMR findings, internal and civilian (external) complaints continue to be accepted, reviewed, classified and assigned for investigation according to CASA requirements and approved policy.

Regarding acceptance of complaints, we found no instances in which the documentation of internal process reviewed by the monitoring team this reporting period indicated a refusal by APD or CPOA to accept a citizen's complaint. Further, we are not aware of any information either formally, through our report review processes, or informally, through our contacts with *amici* and other interested persons, that suggest this is an issue. It is a long-standing policy among APD personnel that refusing to accept a complaint, or the discouraging of a complaint, are grounds for discipline. Although timely complaints are encouraged, untimely complaints are accepted, as well

as anonymous and third-party complaints. The monitoring team has seen written requests from APD to relevant judicial officials requesting that APD be made aware of all allegations of officer misconduct made by judicial officials.

Of the total cases reviewed, we found one [IMR-10-32] during this IMR period that was initiated by an online anonymous complaint. That case was properly accepted and investigated. Based on this case as well as the past, operational compliance in regard to this task, APD and CPOA continue to be in full compliance with paragraph 172.

APD has developed, and continues to use, a centralized numbering and tracking systems that continues to assign unique identification numbers to all received complaints. Complaints are received and classified according to allegations and not potential outcomes. The systems note and track allegations of misconduct involving individuals who are homeless or have a mental illness.

We found no instances of complaints being improperly classified. The tracking system is being used correctly, and appears to maintain accurate data, based on our comparisons with "known data." APD's Blue Team management software enables the tracking of allegations of misconduct by homeless or those who have a mental illness. Our review of the relevant log and investigations continues to show that all complaints referred or made to APD IA, that are within the jurisdiction of the CPOA, are referred to CPOA within 3 business days.

In regard to paragraph 173, of the total investigations reviewed by the monitoring team this monitoring period, we found one in which APD personnel received a complaint from a third party, [IMR-10-17]. In this case an undercover criminal investigation was initiated based on information from a confidential informant. This in turn engendered the IA investigation once the undercover investigation had ceased. In this context we considered the timeliness of the referral to IA to be adequate. We continue to find no cases in which APD received a civilian complaint of misconduct and failed to inform either supervisors or IAD.

Although our stratified random sample of investigations showed no investigations involving a citizen request for a supervisor to come to the scene of an incident, we reviewed one matter where a supervisor came to the scene and interceded by trying to defuse the encounter between the subject officer and son of the complainant (explaining the reason for the necessity of signing a motor vehicle citation) [IMR-10-33]. Based on this and past performance, APD retains operational compliance with paragraph 178.

Our stratified random sample identified one case [IMR-10-39] in which a supervisor was involved in a use of force incident and also conducted the initial use-of-force review. This represents a compliance rate of 89 percent. Therefore, operational compliance is not attained by APD for paragraph 182.

4.7.155 Assessing Compliance with Paragraph 169: Training on Complaint Intake

Paragraph 169 stipulates:

> **"Within six months of the Operational Date, APD shall train all personnel in handling civilian complaint intake."**

Results

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

4.7.156 Assessing Compliance with Paragraph 170: Complaint Receipt Process

Paragraph 170 stipulates:

> **"APD shall accept complaints regardless of when they are filed. The City shall encourage civilians to promptly report police misconduct so that full investigations can be made expeditiously, and the full range of disciplinary and corrective action be made available."**

Results

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

4.7.157 Assessing Compliance with Paragraph 171: Prohibition of Refusal to Take Complaints

Paragraph 171 stipulates

> **"The refusal to accept a misconduct complaint, discouraging the filing of a misconduct complaint, or providing false or misleading information about filing a misconduct complaint shall be grounds for discipline."**

Results

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

4.7.158 Assessing Compliance with Paragraph 172: Acceptance of Anonymous Complaints

Paragraph 172 stipulates:

> **"APD and the Civilian Police Oversight Agency shall accept all misconduct complaints, including anonymous and third-party complaints, for review and investigation. Complaints may be made in writing or verbally, in person or by mail, telephone (or TDD), facsimile, or electronic mail. Any Spanish-speaking individual with limited English proficiency who wishes to file a complaint about APD personnel shall be provided with a complaint form in Spanish to ensure that the individual is able to make a complaint. Such complaints will be investigated in accordance with this Agreement."**

Results

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

4.7.159 Assessing Compliance with Paragraph 173: Inform Supervisors of Citizen Complaints

Paragraph 173 stipulates:

> **"All APD personnel who receive a misconduct complaint shall immediately inform a supervisor of the misconduct complaint so that the supervisor can ensure proper intake of the misconduct complaint. All misconduct complaints shall be submitted to the Internal Affairs Bureau by the end of the shift following the shift in which it was received."**

Results

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

4.7.160 Assessing Compliance with Paragraph 174: Allegation by Judicial Officers

Paragraph 174 stipulates:

> **"APD and the Civilian Police Oversight Agency shall develop a system to ensure that allegations by a judicial officer of officer misconduct made during a civil or criminal proceeding**

are identified and assessed for further investigation. Any decision to decline investigation shall be documented."

Results

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

4.7.161 Assessing Compliance with Paragraph 175: Allegations Made by the Homeless or the Mentally Ill

Paragraph 175 stipulates:

> **"APD and the Civilian Police Oversight Agency shall track allegations regarding misconduct involving individuals who are known to be homeless or have a mental illness, even if the complainant does not specifically label the misconduct as such."**

Results

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

4.7.162 Assessing Compliance with Paragraph 176: Centralized Complaint Numbering System

Paragraph 176 stipulates that:

> **"Within six months of the Operational Date, the Internal Affairs Bureau, in coordination with the Civilian Police Oversight Agency, shall develop and implement a centralized numbering and tracking system for all misconduct complaints. Upon the receipt of a complaint, the Internal Affairs Bureau shall promptly assign a unique numerical identifier to the complaint, which shall be provided to the complainant at the time the numerical identifier is assigned when contact information is available for the complainant."**

Results

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

4.7.163 Assessing Compliance with Paragraph 177: IAB Complaint Data Management

Paragraph 177 stipulates:

> **The Internal Affairs Bureau's tracking system shall maintain accurate and reliable data regarding the number, nature, and status of all misconduct complaints, from initial intake to final disposition, including investigation timeliness and notification to the complainant of the interim status and final disposition of the investigation. This system shall be used to determine the status of complaints and to confirm that a complaint was received, as well as for periodic assessment of compliance with APD policies and procedures and this Agreement, including requirements on the timeliness of administrative investigations.**

Results

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

4.7.164 Assessing Compliance with Paragraph 178: Supervisors to Provide Complaint Information

Paragraph 178 stipulates:

> **"Where a supervisor receives a complaint alleging that misconduct has just occurred, the supervisor shall gather all relevant information and evidence and provide the information and evidence to the Internal Affairs Bureau. All information should be referred to the Internal Affairs Bureau by the end of the shift following the shift in which the misconduct complaint was received, absent exceptional circumstances."**

Results

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

4.7.165 Assessing Compliance with Paragraph 179: Referral of Complaints to CPOA

Paragraph 179 stipulates:

> **"Within three business days of the receipt of a misconduct complaint from a civilian, the Internal Affairs Bureau shall refer the complaint to the Civilian Police Oversight Agency."**

Results

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

4.7.166 Assessing Compliance with Paragraph 180: Handling of Internal Complaints by IAB

Paragraph 180 stipulates:

> **"Internal misconduct complaints submitted by APD personnel shall remain with the Internal Affairs Bureau for review and classification. The Internal Affairs Bureau shall determine whether the internal complaint will be assigned to a supervisor for investigation or retained by the Internal Affairs Bureau for investigation. In consultation with the Chief, the commanding officer of the Internal Affairs Bureau shall also determine whether a civilian or internal complaint will be investigated criminally by the Internal Affairs Bureau, the Multi- Agency Task Force, and/or referred to the appropriate federal law enforcement agency."**

Results

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

4.7.167 Assessing Compliance with Paragraph 181: IAB Classification Protocol

Paragraph 181 stipulates:

> **"APD shall continue to maintain an internal complaint classification protocol that is allegation-based rather than anticipated-outcome-based to guide the Internal Affairs Bureau in determining where an internal complaint should be assigned."**

Results

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

Operational: **In Compliance**

4.7.168 Assessing Compliance with Paragraph 182: Prohibition from Self-Investigation

Paragraph 182 stipulates:

> **"An internal complaint investigation may not be conducted by any supervisor who used force during the incident; whose conduct led to the injury of a person; who authorized the conduct that led to the reported incident or complaint; or who witnessed or was involved in the incident leading to the allegation of misconduct."**

Results

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

Recommendation for Paragraph 182

4.7.168a: ***Although the monitoring team agrees with the use of the administrative closure disposition in cases in which a preliminary investigation reveals the allegations cannot be minimally sustained, and show no other potential areas of misconduct (not based on the original complaint), we caution APD and CPOA not to utilize this disposition for the sake of expediency to counter the effect of an increased workload and present staffing levels.***

4.7.169--4.7.180 Assessing Compliance with Paragraphs 183-194: Investigation of Complaints

Paragraphs 183 through 194 of the CASA pertain to requirements for best practices in the investigation of misconduct complaints. They require that all relevant evidence be considered and that investigations be fair and impartial and reach reliable findings. They also require time limits for completion of investigations, designated 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 where there may be simultaneous criminal and administrative investigations of the same subject matter.

In regard to paragraphs 183 through 194, during the 10th monitoring period members of the monitoring reviewed a stratified random sampling of 9 investigations completed by IAD and 12 completed by CPOA. The monitoring team also met with the chief and the

city attorney, the CPOA director and members of CPOA, IAD Misconduct Commander, attended a POB meeting and reviewed CPOA/POB meetings, agenda, minutes and findings on the CPOA website.

The findings related to Paragraphs 183 through 194 address the following requirements of the CASA.

APD personnel are required by policy and practice to cooperate with the internal affairs system. This cooperation is required by regulation and practice. We continue to find no instances in which APD personnel refused to cooperate with an investigation.

Investigations conducted by IAD Misconduct and by CPOA generally are of good quality, although this monitoring period revealed several deficient investigations as more fully detailed below. Absent extraordinary circumstances, statements are taken from complainants and relevant witnesses. Where statements are not taken or, are taken telephonically instead of in-person, adequate explanations are contained in the investigation report. Interviews are recorded, accurately assessed and given appropriate evidentiary weight. Investigations are documented in writing and reflect salient training and policy assessments. The appropriate case dispositions are generally made with findings based on the appropriate quantum of proof.

This review revealed 6 investigations that were administratively closed or had allegations that were partially administratively closed [IMR-10-23, IMR-10-26, IMR-10-28, IMR-10-30, IMR-10-40, and IMR-10-34]. Two of the six were not proper administrative closures. As also discussed in regard to paragraphs 201 and 202 of this report, in [IMR-10-23], non-disciplinary action (counseling) was imposed in lieu of disciplinary action and the investigation was administratively closed. In light of the subject officer's history, as reflected on the relevant retention card, which included seven prior sustained violations and 2 instances of major discipline (suspensions of sixteen hours), this matter should have proceeded to a full investigation with a finding other than an administrative closure. We view this as an extremely serious lapse in the tenant of progressive discipline that should reviewed at the highest levels of the department as there appear, at the surface, no reasonable causes for an "investigative" process resulting in a mere "counseling." More seriously, it was the monitoring team who noted this violation of policy, not APD executive personnel, who should be constantly monitoring the area of discipline.

In [IMR-10-30] the allegation involved inappropriate behavior by an officer, alleged to have had sex while in uniform, in a vehicle that was parked in the parking lot of a restaurant on a Saturday evening, allegedly witnessed by a patron (complainant) who had her children with her. The complainant was unavailable for a follow-up interview. The restaurant was unable to produce video footage of the parking lot during the time of the alleged incident. The officer's unit history, however, showed he was at the restaurant on the date and at the same general time alleged by the complainant. In light

of the partial corroboration of the complaint as contained in the officer's unit history (date, location and general time matching the complaint) the officer should have been interviewed and the investigation completed with a finding other than an administrative closure. This did not occur.

In addition to the CASA criteria for administratively closing cases, IAD and CPOA may also use an administrative closure disposition in cases in which a preliminary investigation reveals the allegations cannot be minimally sustained. We note from a review of the CPOA Board meeting minutes that the number of investigations administratively closed by CPOA has been steadily rising. Although the monitoring team agrees with the use of the administrative closure disposition in cases in which a preliminary investigation reveals the allegations cannot be minimally sustained, and show no other potential areas of misconduct (not based on the original complaint), we caution CPOA not to utilize this disposition for the sake of expediency to counter the effect of an increased workload and present staffing levels.

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 commonplace, they do occur, as evidenced by the minutes of the CPOA Board meetings. We have found recently the first case in which someone complained of not being able to have a meaningful appeal to the CPOA Board of the Executive Director's findings. That matter is still pending fact- finding and occurred outside the reporting dates for this IMR.

Simultaneous criminal and administrative investigations of the same subject matter are kept separate, and proper steps are followed regarding the protection of an officer's constitutional rights in an administrative investigation while a criminal investigation is pending. Coordination and consultation with prosecutorial authorities are properly conducted.

In the cases reviewed by the monitoring team this reporting period, we found three cases that had preliminary indications of criminal conduct. [IMR-10-16, IMR-10-17 and IMR-10-25]. These cases all showed evidence of proper coordination with prosecutorial authorities.

We continue to emphasize that paragraphs 186 through 188 of the CASA do not allow for *carte blanche* delays of administrative investigations *in toto* during the investigation of a related criminal investigation. In such cases, all aspects of the administrative investigation are to continue, except the taking of statements from witnesses who may incriminate themselves. When that situation occurs, a timely request to the relevant prosecutorial authority must be made before the taking of statements from witnesses who IAD believes may incriminate themselves. We found no cases where this principle was violated.

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 four reporting periods, the monitor continues to find APD in compliance for the requirements of Paragraph 189.

We found five cases in which complainants or logical witnesses were not interviewed [IMR-10-30, IMR-10-31, IMR-10-33, IMR-10-32, IMR-10-37]. Two [IMR-10-30 and IMR-10-32] were anonymous complaints that were clearly noted. In [IMR-10-31, IMR-10-33 and IMR-10-37] adequate explanations were given for the absence of logical interviews (e.g. complainant or relevant witness did not respond to repeated requests for an interview). Reasonable explanations for the absence of logical interviews (e.g., anonymous complaints, complainant did not respond to requests for interviews, witnesses did not respond to repeated requests for interviews, etc.) were articulated.

Notwithstanding the generally good quality of investigations conducted by IAD Misconduct and CPOA, the monitoring team have noted some issues with cases related to paragraphs 183 through 194 of the CASA. These findings by the monitoring team indicate four deficient investigations of the total 21 cases (9 IAD and 12 CPOA) cases we reviewed by way of a stratified random sample. This yields a collective 81 percent compliance rate relative to the requirements set forth in paragraphs 183 and 190 of the CASA, less than the 95% required for operational compliance.

As we stated previously, we found that the use of administrative closures in [IMR-10-23 and IMR-10-30], along with failure to interview the subject officers, rendered them deficient in our compliance analysis. A third case [IMR-10-39] also involved the failure to interview witnesses as well as other investigative deficiencies. That matter involved an investigation of a use of force incident regarding the reasonableness of a Taser use on an individual (male) who had his arms around a disorderly female. The issue was whether the male was trying to hold back the female (restrain her from her disorderly conduct) or whether it was an "apparent hostage situation" (as reported in the use-of force review). With the benefit of reviewing all relevant video of the incident, it appeared to be more a case of the male trying to hold back the female as opposed to a hostage situation. There was also another female at the scene whose interaction and statements did not indicate a hostage situation. These three fact witnesses should have been interviewed in determining whether the use of a Taser was a reasonable use of force under the circumstances. There was also an issue regarding a secondary use-of-force incident (whether the tased individual, who was kneeling prior to being handcuffed, threw himself to the ground or was forced to the ground by the officers). This lack of clarity should have resulted in an interview of the involved individuals. We also note in the same investigation that several additional areas of concern were not raised and considered: first, the initial use of force review was conducted by a sergeant who participated in the use-of-force incident. This is contrary to regulation. Second,

regarding the secondary use-of-force issue, the issue of truthfulness in describing the encounter in the incident reports should have been addressed and was not.

Another case [IMR-10-37], involved allegations of a cover-up or less than robust investigation of a city councilman's son. A finding of "unfounded" was indicated, which requires a "clear and convincing evidence" standard of proof. In this regard, there were indications in the investigation that a Lieutenant had received calls from "higher-ups." This Lieutenant was not interviewed in the IA investigation. Although the preponderance of evidence does not indicate the allegation should have been sustained, the unfounded standard is a higher standard of proof, which in our view, required an interview of the lieutenant before determining that the allegation was unsustainable.

In regard to the time requirements contained in Paragraph 191, the track record of IAD and CPOA has been consistent in terms of timely completion of investigations once they are assigned. However, timely assignments, i.e., assignment to an investigator within 7 days of receipt of a complaint, continue to be problematic. We note that in two cases**,** [IMR-10-30 and IMR-10-36] assignment was made after seven working days from receipt of the complaint.

In addition to those two matters involving untimely assignments, during this IMR review period we found four investigations that exceeded established timelines [IMR-10-27, IMR-10-28, IMR-10-31, and IMR-10-33], and one matter that violated the provision within paragraph 191 requiring the review and final approval of the investigation and the determination and imposition of the appropriate discipline (notice of intent to discipline letter), to be completed within 30 days of the completion of the investigation [IMR-10-16]. We also found a matter in which, during the review and final approval of the investigation, reviews extended beyond limitations on the length of investigations, and discipline could not be imposed "due to time" [IMR-10-18].

This equals a compliance rate of only 62 percent with the time requirements of the CASA, down from the 81percent compliance rate exhibited in IMR 9. Even more concerning is that this current review has turned up investigations and review periods that were untimely, as opposed to only the untimely assignments noted in IMR 9. The ability, capacity and demonstrated performance to investigate in a timely manner allegations of misconduct, and to review completed investigations in a timely and effective manner determine whether discipline is permitted. Exact timelines are not only required under, paragraphs 191 and 281 of the CASA but are also required by virtue of the application of the Collective Bargaining Agreement. They directly impact on APD's obligation to provide consistent progressive discipline on sustained charges, as required by paragraphs 201 and 202 of the CASA. APD and CPOA performance, from taking a complaint of alleged misconduct, to the imposition of discipline (when warranted), in a timeframe that is not barred by the CBA, will be an area of scrutiny by the monitoring team in future IMRs.

4.7.169 Compliance with Paragraph 183: Investigations Reach Reliable Conclusions

Paragraph 183 stipulates:

> **"APD and the Civilian Police Oversight Agency shall ensure that investigations of officer misconduct complaints shall be as thorough as necessary to reach reliable and complete findings. The misconduct complaint investigator shall interview each complainant in person, absent exceptional circumstances, and this interview shall be recorded in its entirety, absent specific, documented objection by the complainant. All officers in a position to observe an incident or involved in any significant event before or after the original incident, shall provide a written statement regarding their observations, even to state that they did not observe anything.**

Results

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

Recommendations for Paragraph 183:

4.7.169a: The practice of utilizing ACMs for CASA-related issues was prohibited by Special Order in April of 2019; however, this prohibition must be supported by assiduously careful internal processes to ensure that the prohibition is followed by supervisors and command personnel, and that those who do not adhere to these requirements are noted, and corrective action is taken.

4.7.169b: The City should appoint a review and approval authority for all external APD IA investigations that are conducted by an independent investigator. The appropriateness of selection of this external authority should be documented in writing.

4.7.170 Assessing Compliance with Paragraph 184: Investigations Documented in Writing

Paragraph 184 stipulates:

> **"APD and the Civilian Police Oversight Agency shall investigate all misconduct complaints and document the investigation, its findings, and its conclusions in writing. APD and the Civilian Police Oversight Agency shall develop and**

implement a policy that specifies those complaints other than misconduct that may be resolved informally or through mediation. Administrative closing or inactivation of a complaint investigation shall be used for the most minor policy violations that do not constitute a pattern of misconduct, duplicate allegations, or allegations that even if true would not constitute misconduct."

Results

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

4.7.171 Assessing Compliance with Paragraph 185: Required Cooperation with IAB/CPOA

Paragraph 185 stipulates:

"APD shall require personnel to cooperate with Internal Affairs Bureau and Civilian Police Oversight Agency investigations, including appearing for an interview when requested by an APD or Civilian Police Oversight Agency investigator and providing all requested documents and evidence under the person's custody and control. Supervisors shall be notified when a person under their supervision is summoned as part of a misconduct complaint or internal investigation and shall facilitate the person's appearance, absent extraordinary and documented circumstances."

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 Bureau or the Civilian Police Oversight Agency to APD personnel of their Fifth Amendment rights shall only be given where there is a reasonable likelihood of a criminal investigation or prosecution of the subject employee**."

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 Bureau commanding officer. If the complaint is being investigated by the Civilian Police Oversight Agency, the investigator shall transfer the administrative investigation to the Internal Affairs Bureau. The Internal Affairs Bureau commanding officer shall immediately notify the Chief. The Chief shall consult with the relevant prosecuting agency or federal law enforcement agency regarding the initiation of a criminal investigation. Where an allegation is investigated criminally, the Internal Affairs Bureau shall continue with the administrative investigation of the allegation. Consistent with Paragraph 186, the Internal Affairs Bureau may delay or decline to conduct an interview of the subject personnel or other witnesses until completion of the criminal investigation unless, after consultation with the prosecuting agency and**

the Chief, the Internal Affairs Bureau deems such interviews appropriate."

Results

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

4.7.175 Assessing Compliance with Paragraph 189: Provision of Public Safety Statements

Paragraph 189 stipulates:

> **"Nothing in this Agreement or APD policy shall hamper APD personnel's obligation to provide a public safety statement regarding a work-related incident or activity, including Use of Force Reports and incident reports. APD shall make clear that all statements by personnel in incident reports, arrest reports, Use of Force Reports and similar documents, and statements made in interviews such as those conducted in conjunction with APD's routine use of force investigation process, are part of each employee's routine professional duties and are not compelled statements. Where an employee believes that providing a verbal or written statement will be self-incriminating, the employee shall affirmatively state this and shall not be compelled to provide a statement without prior consultation with the prosecuting agency (e.g., District Attorney's Office or USAO), and approval by the Chief**."

Results

No instances of officers refusing to provide a public safety statement were noted during, this reporting or in previous reporting periods.

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

4.7.176 Assessing Compliance with Paragraph 190: Considering All Relevant Evidence

Paragraph 190 stipulates:

> **"In each investigation, APD and the Civilian Police Oversight Agency shall consider all relevant evidence, including circumstantial, direct, and physical evidence. There will be no automatic preference for an officer's statement over a non-**

officer's statement, nor will APD or the Civilian Police Oversight Agency disregard a witness's statement merely because the witness has some connection to the complainant or because of any criminal history. During their investigation, APD and the Civilian Police Oversight Agency shall take into any convictions for crimes of dishonesty of the complainant or any witness. APD and the Civilian Police Oversight Agency shall also take into account the record of any involved officers who have been determined to be deceptive or untruthful in any legal proceeding, misconduct investigation, or other investigation. APD and the Civilian Police Oversight Agency shall make efforts to resolve material inconsistencies between witness statements."

Results

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

Recommendation for Paragraph 190:

4.7.176a: For case numbers [IMR-10-23 and IMR-10-30, IMR-10-18, IMR-10-33, and IMR-10-37] follow up on any deficiencies noted by this IMR, and analyze, discuss and use teaching points and policies to further refine investigative quality.

4.7.177 Assessing Compliance with Paragraph 191: 90 Days to Complete Administrative Investigations

Paragraph 191 stipulates:

"All administrative investigations conducted by the Internal Affairs Bureau or the Civilian Police Oversight Agency shall be completed within 90 days of the initiation of the complaint investigation. The 90-day period shall not include time for review. An extension of the investigation of up to 30 days may be granted but only if the request for an extension is in writing and is approved by the Chief. Review and final approval of the investigation, and the determination and imposition of the appropriate discipline, shall be completed within 30 days of the completion of the investigation. To the extent permitted by state and city law, extensions may also be granted in extenuating circumstances, such as military deployments, hospitalizations of the officer, and extended absences."

Results

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

Recommendations for Paragraph 191

4.7.177a: APD should refocus its 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.

4.7.178 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**

4.7.179 Assessing Compliance with Paragraph 193: Reopening Administrative Investigations

Paragraph 193 stipulates:

> **"All administratively closed complaints may be re-opened if additional information becomes available. The deadlines contained in Paragraph 191 shall run from when the complaint is re-opened."**

Results

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

4.7.180 Assessing Compliance with Paragraph 194: Training and Legal Standards

Paragraph 194 stipulates:

> **"In addition to determining whether APD personnel committed the alleged misconduct, administrative investigations shall assess and document whether the action was in compliance with training and legal standards and whether the incident suggests the need for a change in policy, procedure, or training. In reviewing completed administrative investigations, APD shall also assess and document whether: (a) the incident suggests that APD should revise strategies and tactics; and (b) the incident indicates a need for additional training, counseling, or other non-disciplinary corrective measures. This information shall be shared with the relevant commander(s)."**

Results

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

Monitor's Note:

The parties and the monitor have discussed potential issues related to the requirement in paragraph 188 of the CASA that the IAD Misconduct Commander coordinate with the chief when consulting with the relevant prosecuting agency in instances where a

misconduct complaint intake or investigation reveals "there may have been criminal conduct by any APD personnel."

The practical problem with a strict interpretation of this language is that prosecutors are reluctant to discuss cases where there is less than probable cause or less than at least reasonable suspicion that a crime has been committed, whereas the phrase "may have been" alludes to a mere suspicion standard. This is a tension that needs to be addressed and resolved either by a revision to the CASA, or by procedural changes at APD.

Absent final written confirmation, the parties have reached a negotiated solution agreeable to the monitor that will allow a preliminary or continued administrative investigation to take place and a determination of probable cause that a crime was committed to be developed before the coordination with relevant prosecuting agency is required under paragraph 188. Despite our urging in IMR 9, this refinement of process has still not been agreed to in writing. We would again expect the same before the next site visit.

As noted in the Civilian Police Oversight section of this report, CPOA has utilized the Administratively Closed disposition in situations where a preliminary investigation cannot minimally sustain the allegations contained in a complaint. In such cases, based on this initial evidence, the investigation is cut short and administratively closed without necessarily interviewing all relevant witnesses or even the complainant in some instances. The monitor realizes the need to wisely and economically deploy resources, and thus does not specifically disapprove of this practice in theory. However, we again caution that in following this practice, other policy violations that are not contained in the initial complaint could be missed. As noted earlier, the number of administrative closures has risen steadily since the agreement of the monitor and the parties that administrative closures may also be used where a preliminary investigation cannot minimally sustain the allegations contained in a complaint. Therefore, we put the parties on notice that this practice should only be utilized where the preliminary investigation's developed evidence substantially "closes the door" on the alleged policy violation and any reasonably foreseeable-related violations.

4.7.181 – 4.7.183 Assessing Compliance with Paragraphs 195-197: Preventing Retaliation

Paragraphs 195 through 197 of the CASA pertain to the City's requirement to prevent retaliation against anyone who reports misconduct or cooperates in a misconduct investigation, by any employee of the City, including of course APD members, and making it a ground for discipline.

Members of the monitoring team have reviewed both City and APD policies, and a stratified random sample of IA and CPOA cases completed during the

review period. They also met with members of IAD and CPOA during the site visit and received updates in the practices of each agency.

Retaliation is clearly prohibited both as a matter of City and APD policy. The Albuquerque Code of Ordinances prohibits retaliation for reporting improper governmental action and APD policy prohibiting retaliation and/or making it grounds for discipline is found in SOP (AO 3-41-4-A, GO 1-1-E-10, GO1-4-3-C-2, and GO 1-5-3-B-4).

The monitoring team has received an attestation showing that the annual meeting requirement between CPOA and IAD, in which APD's anti-retaliation policy is reviewed, occurred on June 5, 2019. During that meeting the Commander of IA Misconduct and the Executive Director of CPOA concurred that the anti-retaliation policy in its present form met the needs of the APD and CPOA. They also confirmed that there were no allegations involving allegations of retaliation during the monitoring period.

In review of the random sample of investigations members of the monitoring team found no complaints of retaliation. Although this aspect was non-observable again this monitoring period, in light of APD's clear policy and mindful of the IAD investigative performance with past retaliation complaints, APD remains in compliance with paragraphs 195-197. All data reviewed by, and observations made by, the monitoring team for this reporting period clearly indicate 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 Effective Date, and annually thereafter, the Internal Affairs Bureau and the Civilian Police Oversight Agency shall review APD's anti-retaliation policy and its implementation. This review shall consider the alleged incidents of retaliation that occurred or were investigated during the reporting period, the discipline imposed for retaliation, and supervisors' performance in addressing and preventing retaliation. Following such review, the City shall modify its policy and practice, as necessary, to protect individuals, including other APD personnel, from retaliation for reporting misconduct."**

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 (APD and CPOA and the CPOA Board), and also require that APD personnel who conduct misconduct investigations and CPOA investigators to receive a baseline amount of initial annual training.

Consistent with past site visits the monitoring team met with IAD Misconduct and CPOA on several occasions including visits to their respective offices and inspection of physical space. The monitoring team discussed staffing needs and training, also reviewed staffing charts and training records and assessed the timelines of processing

complaints and information of potential misconduct in investigations that were randomly selected.

The findings related to Paragraphs 198 through 200 indicate the following outcomes, related to requirements of the CASA. IAD staffing appears to be sufficient at this time to meet its responsibilities. Due to the staffing required to complete thorough investigations under the Collective Bargaining Agreement (CBA) additional staff may be required. The CBA and the CASA utilize the same timeline (90 days or 120 days with an extension approved by the Chief). The CASA specifies the investigative timeline begins with "the initiation of the complaint investigation" (paragraph 191), whereas the CBA is silent on when the timeline begins. Compliance with the CBA time constraints obviously impacts the APD's ability to impose discipline on sustained charges (compliance with paragraphs CASA 201 and 202). IAD and CPOA must be staffed sufficiently to meet their timeline responsibilities so that discipline for sustained charges is not “time-barred.” Compliance with the CBA, that is, discipline barred by the CBA (finding of "failure to impose discipline on sustained charges due to time considerations"), does not absolve the City of its failure to comply with the progressive discipline requirements of CASA.

The CPOA Ordinance and the CASA require that CPOA and the CPOA Board be given staff sufficient to carry out the agency functions contained in the Ordinance. By virtue of the Albuquerque Police Oversight Ordinance, CPOA provided a dedicated and independent source of funding equal to, at a minimum, ½ of 1% of the APD annual operational budget. This funding was adequate in the past; however, the requirement of ½ of 1% has since been removed. Although we cannot determine that the present CPOA budget was less than adequate during the IMR 10 period (as set forth more fully in this IMR relative to paragraphs 278 and 279) we are beginning to observe indications of understaffing at CPOA. The CPOA budget and staffing, and the correlation with CPOA’s ability to comply with its CASA requirements, will be a focus of the monitoring team in future review periods.

We note that CPOA was contracting with the Institute for Social Research, University of New Mexico, for data and trend analysis tasks in order to meet its public reporting responsibilities. We have been informed that this contract has expired at the end of the IMR 10 review period, and that CPOA has been given approval to hire a data analyst. Once this occurs, the data and trend analysis reportedly will again be conducted internally. The monitoring team notes that this must be a seamless transition that should not adversely impact CPOA’s timeline in meeting its public information responsibilities.

As we have pointed out since IMR 8, we have found that work processes of those APD units charged with conducting misconduct investigations exhibited issues with elements related to paragraph 199 of the CASA. We are satisfied that the training requirement is met for those members of IAD who are doing the bulk of the investigations and the investigations involving serious misconduct. Both the 24-hour preliminary and the 8-

hour in-service training address the requirements of this paragraph. However, the paragraph requires annual training of at least 8 hours not only for IAD personnel, but also for members of the area commands who may be assigned internal affairs investigations to conduct. There is a practice of assigning IA investigations to members of an area command, at the rank of sergeant, to conduct investigations alleging minor misconduct against an APD member of the same command.

In the 9th IMR, we put IAD on notice that a satisfactory training policy must be developed by the next site visit or APD risks a finding of "willful indifference" to this task contained within paragraph 199. We have seen preliminary indications that APD has developed annual training plan that would meet the 8-hour annual requirement for these personnel. Although that policy was not finalized by the end of the 10th monitoring period, we are informed that the policy is near completion and that IAD has focused enough attention on this issue that a finding of "willful indifference" is not warranted. The monitoring team expects the training policy to be completed during the eleventh monitoring review period and will scrutinize the content of the annual training scheduled for the next IMR reporting period. This would ensure that the training contains adequate instruction on the content mandated by paragraph 199 ("policies and protocols on taking compelled statements and conducting parallel administrative and criminal investigations").

Also, in regard the CPOA training requirements, since IMR 8 we have noted that the initial training provided by CPOA's legal counsel was well organized and delivered. It addresses all salient points of the CASA and of internal complaint investigations. The annual training for the past years for CPOA investigators involved the annual NACOLE (National Association of Civilian Oversight of Law Enforcement) conference. The agenda for the NACOLE training can be found online. Although we found it generally relevant to the CPOA mission, testing measures and results could not be evaluated.

In response to our observations in IMR 8 and 9, CPOA has diversified its annual training beyond the annual NACOLE. conference. CPOA Board members as well as CPOA staff have attended Force Review Board training that included a pre and post-test to gauge whether training objectives have been met. Counsel for the CPOA also provided training to the Board regarding the Police Oversight Ordinance updates and revisions. In addition, CPOA investigators are now attending the Use of Force Summit conducted by the Daigle Law Group, a law firm that specializes "in management consulting services in support and development of effective and constitutional practices." Investigators have now attended the P.E.A.C.E. investigative Interviewing course. The Executive Director is checking with the Daigle Law Group as well as P.E.A.C.E. to determine if any objective measure of training effectiveness can be shared with the Executive Director as he develops post course testing objectives for all external training. These course measurements have not been finalized and have not been presented to the monitoring team during this site visit. The monitoring team expects that the issue of measuring the effectiveness of external training would be resolved during the 11th monitoring period.

4.7.184 Assessing Compliance with Paragraph 198: CPOA Staffing

Paragraph 198 stipulates:

> **"The City shall ensure that APD and the Civilian Police Oversight Agency have a sufficient number of well-trained staff assigned and available to complete and review thorough and timely misconduct investigations in accordance with the requirements of this Agreement. The City shall re-assess the staffing of the Internal Affairs Bureau after the completion of the staffing study to be conducted pursuant to Paragraph 204. The City further shall ensure sufficient resources and equipment to conduct thorough and timely investigations."**

Results

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

4.7.185 Assessing Compliance with Paragraph 199: IA Initial and Annual Training

Paragraph 199 stipulates:

> **"All APD personnel conducting misconduct investigations, whether assigned to the Internal Affairs Bureau, an Area Command, or elsewhere, shall receive at least 24 hours of initial training in conducting misconduct investigations within one year of the Operational Date, and shall receive at least eight hours of training each year. The training shall include instruction on APD's policies and protocols on taking compelled statements and conducting parallel administrative and criminal investigations."**

Results

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

4.7.186 Assessing Compliance with Paragraph 200: CPOA Training

Paragraph 200 stipulates:

> **"Investigators from the Civilian Police Oversight Agency shall receive at least 40 hours of initial training in conducting misconduct investigations within one year of the Effective Date and shall receive at least eight hours of training each year. The training shall include instruction on APD's policies and protocols on taking compelled statements and conducting parallel administrative and criminal investigations."**

Results

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

Recommendations for Paragraphs 199 and 200:

4.7.185-186a: Identify the cadre of area command sergeants who may be assigned misconduct investigation and develop an annual IA training program for them and have them complete same on an annual basis.

4.7.185-186b: Do not assign a misconduct investigation to any APD personnel who have not met the annual training requirement.

4.7.185-186c: CPOA should develop an assessment mechanism to measure the effectiveness of outside training such as the NACOLE conference. That can easily be done by "testing" by CPOA once the CPOA investigators have completed the NACOLE training.

4.7.187 – 4.7.188 Assessing Compliance with Paragraphs 201- 202: Discipline and Transparency

Paragraphs 201-202 require that discipline imposed for sustained violations be fair and consistent, with 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 and commensurate with a balancing of the aggravating and mitigating factors.

The monitoring team reviewed a stratified random sample of cases investigated during this review period. We also met with the Chief of Police, the City Attorney, the CPOA Director and IA Misconduct Commander and reviewed APD discipline processes.

As we commented in IMR-8 and IMR-9, marked improvements have been made in the APD disciplinary system. These changes provide the supervisory chain and the chief with the information necessary to facilitate the accurate calculation of the appropriate

level of discipline. The continued use of the "Disciplinary Action Packet" (DAP) is an enhancement in the disciplinary process. The DAP serves as a guideline by giving the subject officer's supervisory chain and the chief of police information regarding each disciplinary matter in which discipline can be imposed. The following information elements are included in the DAP:

a. Recommendations regarding the class designation of the policy violations under consideration;

b. An accurate "snapshot" of the subject's disciplinary record and prior offenses; and

c. A recommended or preliminary disciplinary calculation, based on the appropriate elements in the disciplinary matrix, setting forth the range (minimum and maximum) of discipline.

In addition, retention cards are being updated to provide the classification of any prior sustained offenses and dates of imposition of discipline. This greatly facilitates the calculation of applicable prior offenses.

SOP AO 3-46 ("Discipline System") with its Appended Chart of Sanctions (Discipline Matrix) is still under review. As written, it requires that any deviation from the presumptive range of discipline (appropriate range as established by the Chart of Sanctions) must be justified in writing (3-46-5B4). Other past recommendations of the monitor regarding AO 3-46 are under consideration by APD, and continued improvements in the Chart of Sanctions are currently being developed. Since IMR-6, we have noted that a discrepancy exists between paragraphs 5c2 and 5c4 of AO 3-46, that allows for different interpretations of what constitutes a prior offense, based on whether the prior offense is, or is not, in the same class as the present offense. We have also noted that SOP 3-46-5G allows for the imposition of non-disciplinary corrective action in addition to applicable discipline, but it does not contain notice that non-disciplinary corrective action should not be the only disposition if the matrix calls for the imposition of discipline. We have learned that these past recommendations are being addressed in the current review and revision of the "Discipline System" policy.

Notwithstanding the recent improvements in the disciplinary process, our review continues to note issues with elements related to the imposition of discipline. Not all of the packets of the cases selected and reviewed by the monitoring team initially contained a DAP and retention card of the individuals against whom sustained findings were made. These were provided upon follow-up request. Without retention cards, the monitor (and we presume the chief of police) will not be able to gauge, from primary source data, whether there is prior discipline that would render the present offense a second or third offense. We note that occasionally the prior disciplinary record is

summarized in a memorandum by a member of the reviewing chain of command; however, although commendable, this process does not suffice as primary source data.

The monitoring team reviewed a stratified random sample of cases completed during the review period. In that review we identified ten cases in which discipline was imposed or should have been imposed [IMR-10-16, IMR-10-17, IMR-10-18, IMR-10-19, IMR-10-39, IMR-10-38, IMR-10-24, IMR-10-23, IMR-10-31, and IMR-10-33].

Of those ten cases we found six in which discipline was deficient either because discipline was not imposed, either due to the restrictions of CBA time requirements, the tenets of the discipline regulation (AO 3-46) or the Chart of Sanctions (Disciplinary Matrix) were not followed, or the level of discipline was otherwise inappropriate. This equals a compliance rate of only 40% with the requirements of paragraphs 201 and 202, showing a decrease in performance in comparison to the 57% compliance rate set forth in IMR 9.

These cases are discussed below.

In three investigations in which findings were sustained, discipline was not imposed "due to time limitations." [IMR-10-16, IMR-10-18, and IMR-10-35]. This is simply a matter of not completing an investigation, or the review process resulting in a Notice to Impose Discipline, within the time requirements of the CBA.

Another case of deficient discipline involved an administrative closure with non-disciplinary corrective action [IMR-10-23]. The allegation was an improper classification of a felony as a misdemeanor, thus affecting the follow up investigation. The matter was addressed by a supervisor with the officer, who admitted making a mistake. Given the facts of this case a non- disciplinary counseling may have been appropriate; however, the officer's retention card shows seven prior sustained violations, two of which resulted in suspensions of 16 hours and the remaining violations resulting in counseling, verbal reprimands and letters of reprimands. In light of this history, administrative closure without an investigation but with counseling, i.e. non-disciplinary corrective action in lieu of discipline, was grossly inappropriate. The matter should have proceeded to an investigation and if a violation were sustained, then discipline commensurate with the appropriate sanction level/ prior offense calculation should have been imposed. Barring that, a valid explanation given for deviating from the disciplinary matrix was needed. We found neither in the record.

Another case of deficient discipline involved the failure to consider, or to properly calculate, a prior history recorded on a retention card [IMR-10-39]. That case involved sustained charges against a Sergeant for Supervisory Force Investigations Procedures (Class 5), and a separate sustained charge for a different subparagraph of the Supervisory Force Investigation Procedure regulation (Class 6). A 32-hour suspension was imposed on the Class 5 violation (apparently calculated as a first offense) and an 8-

hour suspension on the Class 6 violation (apparently calculated as a second offense). The total 40-hour suspension was then held in abeyance pending completion of a 5-component corrective action plan. The Sergeant's retention card showed 2 prior offenses in which major discipline was imposed, and 2 prior instances of minor discipline, all imposed more than 10 years before the offense in the subject case. The retention card does not show the classifications of the prior offenses where major discipline was imposed, but if they were Class 4 or less, then the present offense calculation should have been enhanced. Regardless, the reason for the corrective action plan in lieu of actual suspension should have been articulated in writing and appended to the sergeant's file. The sergeant conducted himself very well during the PDH, sincerely, accepting responsibility. Conversely, the retention card shows two instances of prior major discipline, albeit imposed more than 10 years ago. It appears that some real suspension was in order, and if not, then a better articulation of the mitigating factors that would justify the corrective action plan should have been set forth.

The final case of deficient discipline involved the improper calculation of prior offense without an explanation for deviating from the chart of sanctions [IMR-10-19]. A verbal reprimand was imposed on a Class 7 violation. The retention card shows prior major discipline of 30 hours suspension. Although the retention card fails to show the classification of the prior offenses, by virtue of the discipline imposed, the sanction classes of the prior offenses were a level 5 or below. Thus, the discipline imposed in this matter should have been a Class 7 second offense, a written reprimand. A verbal reprimand in lieu of a written reprimand is acceptable if a valid reason is articulated, however none was given for the deviation.

As we noted in regard to paragraphs 198 through 200 of this report, compliance with the CBA, that is, discipline that is "time-barred" by the CBA, does not relieve APD of its responsibilities under paragraphs 201 and 202 of the CASA to impose appropriate discipline on sustained charges. The monitoring team expects APD and CPOA to be staffed sufficiently to meet its investigative responsibilities in a timely manner, to operate efficiently, and to bring sustained charges to the Command review process in time for the review process to run its normal course. We also expect that the Command review will take place in an efficient manner such that when discipline is appropriate, the Notice of Intent to Discipline letter will be issued within the requisite time period. Investigations ending with "failure to impose discipline on sustained charges due to time considerations" will be marked as deficient for purposes of paragraph 201 and 202 compliance, absent careful articulation to the contrary by APD.

4.7.187 Assessing Compliance with Paragraph 201: Fact Based Discipline

Paragraph 201 stipulates:

> **"APD shall ensure that discipline for sustained allegations of misconduct is consistently applied, fair, and based on the**

nature of the allegation, and that mitigating and aggravating factors are set out and applied consistently."

Results

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

Recommendations for Paragraph 201:

4.7.187a: Ensure that all disciplinary decisions address the presumptive range of the disciplinary matrix, unless written reasons for departure from the matrix recommendations accompany the decision.

4.7.187b: Ensure that adequate explanation is given for the selection of a classification level where there is more than one level of classification associated with a regulation for which a sustained finding is made.

4.7.187c: APD should designate the Commander of IAD or a Deputy Chief as the only person in the organization who has the authority to determine that discipline cannot be imposed due to time violations, and that designation should not be made without the approval of the City Attorney.

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.

4.7.188 Assessing Compliance with Paragraph 202: Discipline Matrix

Paragraph 202 stipulates:

"APD shall establish a disciplinary matrix that:

a) establishes a presumptive range of discipline for each type of rule violation;
b) increases the presumptive discipline based on an officer's prior violations of the same or other rules;
c) sets out defined mitigating or aggravating factors;
d) requires that any departure from the presumptive range of discipline must be justified in writing;

e) provides that APD shall not take only non-disciplinary corrective action in cases in which the disciplinary matrix calls for the imposition of discipline; and
f) provides that APD shall consider whether non-disciplinary corrective action also is appropriate in a case where discipline has been imposed."

Results

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

Recommendations for Paragraph 202:

4.7.188a: Ensure that all disciplinary decisions either conform to the recommended ranges included in APD's disciplinary matrix or that they are accompanied by written explanations for the departure from the recommendations of the disciplinary matrix.

4.7.188b: Ensure that all disciplinary decisions related to actions (or inactions) that are reasonably on the "critical path" regarding compliance with the CASA reflect a resolve to foster behaviors required by the CASA.

4.7.188c: Ensure that all disciplinary packets are complete and self-explanatory, including documentation that all steps in the investigation and disciplinary processes were completed as required by policy.

4.7.188d: Ensure a more exact calculation of prior offenses for purposes of calculating the presumptive range of the disciplinary matrix.

4.7188e Ensure that all disciplinary decisions address the presumptive range of the disciplinary matrix, unless cogent, written reasons for departure from the matrix recommendations accompany the decision

4.7.189 Assessing Compliance with Paragraph 203

Paragraph 203 stipulates:

"To maintain high-level, quality service; to ensure officer safety and accountability; and to promote constitutional, effective policing, the City shall ensure that APD has the staffing necessary to implement the terms of this

Agreement. APD shall also deploy a sufficient number of first-line supervisors to respond to scenes of uses of force; investigate thoroughly each use of force to identify, correct, and prevent misconduct; and provide close and effective supervision necessary for officers to improve and develop professionally. APD shall revise and implement policies for supervision that set out clear requirements for supervision and comport with best practices."

Methodology

Members of the monitoring team are aware of past external staffing study work at APD by the Weiss Group that articulated staffing goals. Despite that work, no "magic number" exists to identify the exact number of officers APD needs to meet its workload. Based on the monitor's experience, these numbers tend to change almost annually. During 2018, APD has received an increased number of applications for entry-level patrol positions—along with a substantial increase in applications for lateral-entry positions. The agency has also made a palpable and commendable shift from "traditional" policing methods to community-oriented policing methods. These have yet to be reflected in APD's fielded police staffing practices, nor has any assessment of changes to staffing models etc. been documented.

Results

Given the apparent new pool of individuals interested in careers at APD, it seems appropriate for APD to develop clearly articulated goals and objectives for its recruiting and hiring processes. Outcome variables are available, such as calls for service per officer, specific response time goals, etc. The static numbers generated over four years ago become invalid after as little as a year, in the monitor's experience. Outcome variable-based staffing levels can and should be updated and assessed annually.

APD remains in secondary compliance with this paragraph based on current staffing, efforts to improve outreach, and current numbers of recruits and lateral transfers who have expressed interest. Over the last year, APD has moved from a sparse recruiting environment to a reasonably abundant recruiting environment. Whether the change is due to the new leadership at APD, the shift in focus at APD from pure enforcement to service delivery and community-oriented policing, or improvements in APD's salary structure is unclear. What is clear is that interest in APD careers has elevated recently.

Operational compliance will depend on meeting established recruiting goals, based on the calculated number of officers needed to meet the policing objectives of the City of Albuquerque's neighborhoods. These new goals should be based on detailed analysis of calls-for-service rates, new community-oriented goals, quantitative workload analyses, and detailed historical "perspective" information.

Primary: **In Compliance**
Secondary: **In Compliance (based on Weiss Study)**
Operational: **Not In Compliance**

Recommendations for Paragraph 203:

4.7.189a: Review the available literature and process on staffing goals. Where practicable make staffing goals contingent upon desired outcome goals, e.g., average response times; committed hours per officer, by patrol shift; available non-committed time to pursue community-oriented policing goals, etc.

4.7.189b: Consult with other police agencies who have incorporated community-oriented policing into their service delivery functions to determine how they collect, track, calculate and analyze staffing needs viz a viz community policing goals.

4.7.190 Assessing Compliance with Paragraph 204: Comprehensive Staffing Study

Paragraph 204 requires:

> **"In order to successfully implement the provisions of this Agreement, APD shall assess the appropriate number of sworn and civilian personnel to perform the different Department functions necessary to fulfill its mission. APD therefore shall conduct a comprehensive staffing assessment and resource study. The study shall be the predicate for determining appropriate staffing and resource levels that are consistent with community-oriented policing principles and support the systematic use of partnerships and problem-solving techniques. The study shall also consider the distribution of officers to patrol functions as opposed to specialized units, as well as the distribution of officers with less than three years of experience across shifts and Area Commands. This staffing assessment and resource study shall be completed within one year of the Effective Date. Within six months of the completion of the staffing assessment and resource study, the Parties shall assess its results and jointly develop a staffing plan to ensure that APD can meet its obligations under this Agreement."**

Methodology

Alexander Weiss and Associates completed an APD staffing study in 2015, and specific staffing standards were identified. Since 2015 APD has encountered difficulties meeting those standards. In IMR-6 we found APD in compliance with the requirements of Paragraph 204. Staffing standards were articulated by APD. Historically, APD has

had difficulty generating the number of recruits and lateral transfers called for by the results of its staffing studies. That issue seems to have changed markedly recently, with APD experiencing substantial increases in applicants. The staffing plan developed by APD during the last year meets the standards articulated by Paragraph 204. We note in our analysis in Paragraph 203 above that "traditional" staffing analyses often poorly translate into community policing staffing analyses. Our recommendations for Paragraph 203 also apply to paragraph 204. We note the staffing analysis for community-oriented policing is a newly identified need, necessitated by APD's recent successes in transitioning to processes supportive of community-oriented policing. As we have observed in other agencies moving to community-oriented policing, staffing decisions often can only be made after careful study of the time requirements of intensive community-oriented policing efforts.

APD maintains its past status on this paragraph; however, the juxtaposition of APD's old staffing calculation methods are somewhat archaic when confronted by the needs of community-oriented policing. In order to maintain current compliance levels, APD needs to plan, develop, and move forward (with some alacrity) in developing a working model of calculating staffing needs for its new community-oriented style of policing. The somewhat archaic Weiss calculations will be less and less effective as APD moves from a "call response model" to a community policing model and may well need to be revisited and revised.

Results

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

4.7.191 – 4.7.194 Assessing Compliance with Paragraphs 205- 208: Supervision and Related Paragraphs

Paragraphs 205 through 208 of the CASA address supervision requirements for first line supervisors to properly supervise the use-of-force supervision within the chain of command, span of control and levels of supervision, and lieutenants and commanders maintain close supervision of officers under their command.

The monitoring team met APD staff tasked with these paragraphs during the May 2019 site visit and made data requests for any and all progress from the last reporting period. During the last reporting period, APD embarked in a process to better position their organization to achieve the requirements of the CASA as it relates to these paragraphs. This is the kind of data-driven, analytic approach to management that APD must pursue to work towards compliance with CASA requirements.

In February 2019, APD's Performance Metrics Unit embarked on a pilot project to conduct quantitative evaluations and audits on particular areas on the CASA and policy as it relates to the supervision aspects of the related paragraphs. APD advised the monitoring team that audits originally were conducted to verify if officers were abiding to policy at the Area Command level. It became apparent to APD that these audits were directly related to supervision. The monitoring team received detailed Inspection Pilot Status Reports for each month in this reporting period. These reports are detailed reports encompassing various areas of the CASA and give a full picture of the audit process. The main focus areas for this report were ECW, OBRD, Firearms, Complaint Form and the 72-Hour Extension. The report documents the CASA Paragraphs pertaining to the subject inspected as well as the documentation from which the data are retrieved. For each topic covered in the report a detailed scorecard is maintained indicating compliance levels for each Area Command participating in the program on every subject reviewed.

The monitoring team, in reviewing the reports submitted by APD, could clearly see improvement in compliance levels between February 2019 and July 2019. The process that APD has embarked on also demonstrates more accuracy in documenting and addressing supervisory issues on monthly activity reports and will help APD reach secondary and operational compliance once the entire department begins to utilize the program. Additionally, APD will better position itself to attain compliance once all supervisors receive the new supervisory training course and complete all tiers of the use of force curriculum currently underway. The commander in charge of these paragraphs for this reporting period has developed a methodical approach in order to reach secondary and operational compliance once everyone is on board.

The monitoring team will review larger data samples to determine if APD is meeting short-term goals set for this reporting period and are moving in the right direction to meet the requirements of the CASA.

As in previous reporting periods the monitoring team visited each of APD's six area commands during the May 2019 site visit. The monitoring team inspected daily line-ups at each Command to ensure that staffing levels were met, and that a first-line supervisor was assigned to the field officers on patrol. Course-of-business staffing reports and data requested by the monitoring team and provided by APD, indicate that the staffing levels reflect operational compliance. We noted that first line-supervisors were on duty at all locations at the time of the site visit. The normal day-to-day operations of the APD patrol units are supported and supervised at numeric levels required by the settlement agreement. Adequate supervisory personnel are in place at ratios required by the CASA. The monitoring will continue to monitor the levels and effects in future site visits.

As in previous IMRs, the area of assessment of use-of-force incidents as required by Section IV of the CASA is of concern to the monitoring team.

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**

Recommendation for Paragraph 205:

4.7.191: Conduct both quantitative and qualitative reviews of supervisory effectiveness in the conduct of their reviews of officer performance, and ensure officers are appropriately focused on all applicable goals of the agency related to patrol operations.

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**

Recommendations for Paragraph 206:

4.7.192a: Using existing documentation processes, e.g., routine supervisory reporting of CASA-related process (such as reviews of use of force reports, reviews of OBRD footage of critical incidents such as uses of force, etc.) identify the most resistant contributors to poor compliance outcomes at APD and remediate their resistance.

4.7.192b: Engage in counseling, re-training, and, if necessary, discipline or transfer, to remediate or remove CASA-resistant personnel from supervisory positions in areas critical to the CASA.

4.7.193 Assessing Compliance with Paragraph 207

Paragraph 207 stipulates:

> **"First-line supervisors shall ordinarily be assigned as a primary supervisor to no more than eight officers. Task complexity will also play a significant role in determining the span of control and whether an increase in the level of supervision is necessary."**

Results

During our site visits at APD's Area Commands this reporting period, we found no unit, shift, or operational command that failed to meet this articulated span of control.

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

4.7.194 Assessing Compliance with Paragraph 208

Paragraph 208 stipulates:

> **"APD Commanders and lieutenants shall be responsible for close and effective supervision of officers under their command. APD Commanders and lieutenants shall ensure that all officers under their direct command comply with APD policy, federal, state and municipal law, and the requirements of this Agreement."**

Results

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

4.7.195 - 4.7.197 Assessing Compliance with Paragraphs 209 -211: Review of Sergeants' Training

Paragraphs 209 and 210 address various supervisory training requirements APD must meet for the CASA. "Every sergeant shall receive 40 hours of mandatory supervisory, management, leadership, and command accountability training before assuming supervisory responsibilities." As in other monitoring periods, data requested and received by the monitoring team indicate that these portions of the requirement have been addressed by APD in the supervisory training course delivered during this reporting period. Department Special Order SO 19-61 reflects that the newly promoted sergeants received eighty (80) hours of the current supervisory training curriculum. Secondary compliance has not been attained this reporting period, as the majority of APD sergeants have not yet received the new supervisory training class; however, APD expects to accomplish the delivery of the training during the next reporting period for IMR 11.

APD's process of gathering training needs from the field and ensuring that training objectives and curricula are "mapped," are essential to affect specific performance changes required by the CASA, and to ensure that field implementation can be assessed and measured. APD is currently in the process of implementing a new system for supervisory monthly reports that will report results designed to measure the impact of the training received under paragraphs 209 and 210.

The use of force training, as mentioned in IMR 9, will extend until the next reporting period, well into 2020. This prevents APD from attaining Secondary compliance for these paragraphs.

As noted in IMR-9 the impact of training recently delivered by APD and what remains to be delivered 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: **Not 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

Secondary compliance has not been attained this reporting period, as the newly revised supervisory training developed by APD has not yet been fully delivered to the field.

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

Recommendations for Paragraphs 209 – 210:

4.7.195-6a: Complete training as planned, and evaluate learning achieved.

4.7.197 Assessing Compliance with Paragraph 211

Paragraph 211 stipulates:

> **"All sworn supervisors shall also receive a minimum of 32 hours of in-service management training, which may include updates and lessons learned related to the topics covered in the sergeant training and other areas covered by this Agreement."**

Methodology

During this reporting period APD has delivered in-service management training in Ethical Policing Is Courageous (EPIC) and Data Driven Approach to Crime & Traffic Safety (DDACTS) as part of the 32 hours of in-service training requirement of this paragraph. COB documentation delivered to and reviewed by the monitoring team shows that for the EPIC training 114 supervisors were scheduled to attend training and 114 supervisors (100 percent) attended. For the DDACTS training 190 supervisors were scheduled to attend and 187 (98 percent) supervisors attended. APD currently has 273 supervisory personnel. Because this training is distributed throughout the year, the training scheduled during the next IMR time frame will be reviewed by the monitoring team. APD has scheduled training for the remainder of supervisors who have not yet attended the training for the next reporting period. Use of Force Tier 3 Supervisor training as well as IA Supervisory training will be delivered in the fall of 2019, as well as EPIC and DDACT training, these training courses will fulfill the 32 hours of in-service management training as required by this paragraph.

During the next reporting period, the monitoring team will assess wither APD has maintained the 95 percent threshold to retain secondary compliance. As stated in other sections of this report Operational Compliance is not measurable at this time until all supervisors receive their training and field personnel either perform tasks as required by the CASA, or, when they fail, supervisory personnel note and correct in-field behavior that is not compliant with the requirements of the CASA.

The monitoring team will closely monitor this paragraph in future reporting periods.

Results

Operational compliance has not been attained this reporting period.

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

Recommendations for Paragraph 211:

4.7.197a: Deliver and evaluate the revised supervisory training blocks to all required APD supervisors.

4.7.197b: Develop a response plan for sections of supervisory training that indicate, through poor performance on testing or field implementation, a need for clarification, explanation, or remediation of points "trained" but not understood (as measured by evaluative processes).

4.7.198 – 4.7.205 Assessing Compliance with Paragraphs 212-219 EIS/EIRS/PMEDS

During the May 2019 site visit, the Performance Evaluation and Management System (PEMS) policy 3-33 was still making its way through the review process, which continues through the writing of this report. During prior site visits, members of the monitoring team attended demonstrations by vendors interested in providing new system capabilities to APD. APD was again reminded of the technical assistance provided by the monitor relating to systems development, implementation, training, and support for hardware/software purchases. The monitoring team reviewed a 91-page RFP developed by APD for the acquisition of PEMS and supporting systems integration. It appears that APD has learned valuable lessons from prior purchases made without on-going technical support, and from the monitoring team's technical assistance to enable crafting a document that should have them safely acquiring the next generation of personnel management tools and moving forward toward compliance.

While APD is currently utilizing the existing system (IAPro) to attempt to identify officers who exceed current thresholds and may require intervention, they have provided the monitoring team with draft versions of policy, SOPs and plans to move forward with a system that has the capability to meet or exceed CASA requirements. It is proposed to be a data-driven system with thresholds supported by data analysis and research, using either standard deviation or another statistical process based on an 80/20 percentage principle to establish thresholds rather than arbitrarily assigned incident numbers (as we have long-recommended). The monitoring team will closely examine the methodology APD is considering during the November 2019 site visit. APD is pilot testing both systems at several Area Commands and should have enough data to determine which system will work for them and conform to national standards and practices.

Training and supervision are the next major objectives that need to be addressed by APD once policy has been approved. During the November 2019 site visit, the monitoring team will conduct a thorough review of the trial data being captured at two Area Commands with respect to the system's ability to identify deficient behavior via standard deviations or a proposed 80/20 percentage-based system. We continue to work with the APD and the City to craft acceptable policies, curricula and supervisory procedures that conform to national standards for these paragraphs.

APD envisions the entire process as a 24-month project based upon policy approval, system selection, training and implementation. The monitoring team believes this to be an appropriate estimate, based on prior experience with Early Intervention Systems in Pittsburgh and New Jersey. While this timeline is problematic with regards to attaining compliance with the requirements of the CASA, the monitoring team believes that APD has finally grasped the importance of an Early Intervention System. While approved policy guidance exists, it is highly probable that, when new systems are developed, policies will need to change. Nonetheless, APD is currently in primary compliance, pending new policy development and approval, as existing policies have been promulgated and approved.

4.7.198 Assessing Compliance with Paragraph 212

Paragraph 212 stipulates:

> **"Within nine months of the Effective Date, APD shall revise and update its Early Intervention System to enhance its effectiveness as a management tool that promotes supervisory awareness and proactive identification of both potentially problematic as well as commendable behavior among officers. APD supervisors shall be trained to proficiency in the interpretation of Early Intervention System data and the range of non-punitive corrective action to modify behavior and improve performance; manage risk and liability; and address underlying stressors to promote officer well-being."**

Results

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

4.7.199 Assessing Compliance with Paragraph 213

Paragraph 213 stipulates:

> **"APD shall review and adjust, where appropriate, the threshold levels for each Early Identification System indicator to allow for peer-group comparisons between officers with similar assignments and duties."**

Results

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

4.7.200 Assessing Compliance Paragraph 214

Paragraph 214 stipulates:

> **"APD shall implement rolling thresholds so that an officer who has received an intervention of use of force should not be permitted to engage in additional uses of force before again triggering a review."**

Results

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

4.7.201 Assessing Compliance Paragraph 215

Paragraph 215 stipulates:

> **"The Early Intervention System shall be a component of an integrated employee management system and shall include a computerized relational database, which shall be used to collect, maintain, integrate, and retrieve data department-wide and for each officer regarding, at a minimum:**
> **a) uses of force;**
> **b) injuries and deaths to persons in custody;**
> **c) failures to record incidents with on-body recording systems that are required to be recorded under APD policy, whether or not corrective action was taken, and cited violations of the APD's on-body recording policy;**
> **d) all civilian or administrative complaints and their dispositions;**
> **e) all judicial proceedings where an officer is the subject of a protective or restraining order;**
> **f) all vehicle pursuits and traffic collisions involving APD equipment;**
> **g) all instances in which APD is informed by a prosecuting authority that a declination to prosecute any crime occurred, in whole or in part, because the officer failed to activate his or her on-body recording system;**
> **h) all disciplinary action taken against employees;**
> **i) all non-punitive corrective action required of employees;**
> **j) all awards and commendations received by employees, including those received from civilians, as well as special acts performed by employees;**
> **k) demographic category for each civilian involved in a use of force or search and seizure incident sufficient to assess bias;**
> **l) all criminal proceedings initiated against an officer, as well as all civil or administrative claims filed with, and all civil**

lawsuits served upon, the City and/or its officers or agents, allegedly resulting from APD operations or the actions of APD personnel; and
m) all offense reports in which an officer is a suspect or offender."

Results

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

4.7.202 Assessing Compliance Paragraph 216

Paragraph 216 stipulates:

> **"APD shall develop and implement a protocol for using the updated Early Intervention System and information obtained from it. The protocol for using the Early Intervention System shall address data storage, data retrieval, reporting, data analysis, pattern identification, supervisory use, supervisory/departmental intervention, documentation and audits, access to the system, and confidentiality of personally identifiable information. The protocol shall also require unit supervisors to periodically review Early Intervention System data for officers under their command."**

Results

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

4.7.203 Assessing Compliance Paragraph 217

Paragraph 217 stipulates:

> **"APD shall maintain all personally identifying information about an officer included in the Early Intervention System for at least five years following the officer's separation from the agency except where prohibited by law. Information necessary for aggregate statistical analysis will be maintained indefinitely in the Early Intervention System. On an ongoing basis, APD will enter information into the Early Intervention System in a timely, accurate, and complete manner and shall maintain the data in a secure and confidential manner."**

Results

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

4.7.204 Assessing Compliance Paragraph 218

Paragraph 218 stipulates:

> **"APD shall provide in-service training to all employees, including officers, supervisors, and commanders, regarding the updated Early Intervention System protocols within six months of the system improvements specified in Paragraphs 212-215 to ensure proper understanding and use of the system. APD supervisors shall be trained to use the Early Intervention System as designed and to help improve the performance of officers under their command. Commanders and supervisors shall be trained in evaluating and making appropriate comparisons in order to identify any significant individual or group patterns of behavior."**

Results

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

4.7.205 Assessing Compliance Paragraph 219

Paragraph 219 stipulates:

> **"Following the initial implementation of the updated Early Intervention System, and as experience and the availability of new technology may warrant, the City may add, subtract, or modify thresholds, data tables and fields; modify the list of documents scanned or electronically attached; and add, subtract, or modify standardized reports and queries as appropriate. The Parties shall jointly review all proposals that limit the functions of the Early Intervention System that are required by this Agreement before such proposals are implemented to ensure they continue to comply with the intent of this Agreement."**

Results

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

Recommendations for Paragraph 212 - 219:

4.7.198-205a: Document the curriculum for OBRD training for supervisors and ensure that that the new PEMS system addresses all required components of paragraph 219 and the additional requirements of Paragraph 23 (Firearm discharges), Paragraph 38 (ECW data) and Paragraph 105 (Tactical Unit data).

4.7.198-205b: Document and demonstrate that the proposed "Pareto Principle" or 80/20 principle as a statistical tool works effectively and can be used as a way to demonstrate both acceptable and unacceptable behavior from officers as required by the CASA.

4.7.198-205c: Document learning assessment processes for the training provided for supervisors.

4.7.198-205d: Design and document audit protocols for supervisory review and reporting of OBRD processes.

4.7.206 – 4.7.217 Assessing Compliance with Paragraphs 220-231

During this reporting period, APD submitted an OBRD Curriculum to the monitoring team. The curriculum and its accompanying Power Point presentation was reviewed by the monitoring team, returned with comments, revised, and finally approved by the Monitor. This training was immediately implemented and provided to current supervisors, newly promoted supervisors and acting sergeants. The team did not observe any "close out memo" report to know if all supervisors completed the training prior to the end of the monitoring period. Well-trained supervisors are the lynchpin to making this entire process function properly.

During the team site visit in May 2019, the OBRD policy 2-8 was pending as "in review" and remains in review as of the writing of this report. Members of the monitoring team visited several Area Commands and other duty locations and had supervisors explain their understanding of the policy requirements and asked the supervisors to demonstrate that they in fact had completed the required video reviews. All supervisors contacted were aware of the policy requirements, fluent in their use of the system, and had documented their completed video reviews. This is a marked improvement over past performance in this area and a direct result of OBRD refresher training conducted during the last reporting period, with more than 97% of APD personnel completing the refresher via Power DMS.

During this monitoring period (February 1-July 31, 2019) APD has been actively engaged in auditing some Area Commands for OBRD-related activities. The findings so far illustrate how poorly developed policy, poorly developed training and poorly

executed supervision have affected the level of compliance with the requirements of the CASA related to OBRD.

While these audits are not yet citywide, they yielded enough information to conclude there is much work to be done with respect to APD's execution, training, and supervisory processes related to their OBRD requirements. Very few areas of the internal audit process showed a compliance rate of 95% or higher. The actual take away from these processes are more than positive. APD has matured in management oversight of critical processes and has begun addressing known problems without first querying the monitoring team for assistance. This is the type of indicator of self-reliance that will lead, eventually, to full compliance. The final step in this process, internalizing lessons learned while the monitoring team is engaged almost daily with APD, will begin in earnest with the release of the internal audit of OBRD activity, and APD's response to the release of that internal audit. This will be an important test of APD's ability to self-manage.

Also on-going during this monitoring period was the Force Backlog Review. While the backlog of Internal Affairs cases has been finally closed out, the findings of those investigations also indicate there is much work to be completed with regards to OBRD requirements. In cases reviewed for IMR-10, OBRD violations had originally been identified in 55 cases. Upon review, the Backlog team has identified an additional 52 violations. The most common trends noted to date include:

- Failure to Record;
- Muting;
- Failure to Upload Recordings;
- Supervisory Failure to Identify Violations; and
- Supervisory Failure to take Corrective Action.

APD has begun to develop systems and processes and to outline methods of conducting internal inspections and audits with regards to several requirements of the CASA relating to OBRD. Spreadsheet data has been presented to the monitoring team regarding OBRD infractions during this reporting period, involving officers and sergeants. Several cases related to OBRD policies have been sustained, with other cases still in progress. Responses for this period included both Verbal and Written Reprimands. These spreadsheets, however, do not distinguish how these policy violations were discovered, whether they were referred to Internal Affairs, or the final disposition of the cases. Members of the monitoring team will work with Internal Affairs and OBRD-focused personnel during the next site visit to address the requirements and explore methods to capture and report this data.

The significant take-away from our analysis, however, is highly positive: APD is developing robust self-monitoring and self-correcting processes in this area. These

types of interventions are the type of oversight processes that can lead the department into the future.

4.7.206 Assessing Compliance Paragraph 220

Paragraph 220 stipulates:

> **"To maintain high-level, quality service; to ensure officer safety and accountability; and to promote constitutional, effective policing, APD is committed to the consistent and effective use of on-body recording systems. Within six months of the Effective Date, APD agrees to revise and update its policies and procedures regarding on-body recording systems to require:**
> **a) specific and clear guidance when on-body recording systems are used, including who will be assigned to wear the cameras and where on the body the cameras are authorized to be placed;**
> **b) officers to ensure that their on-body recording systems are working properly during police action;**
> **c) officers to notify their supervisors when they learn that their on-body recording systems are not functioning;**
> **d) officers are required to inform arrestees when they are recording, unless doing so would be unsafe, impractical, or impossible;**
> **e) activation of on-body recording systems before all encounters with individuals who are the subject of a stop based on reasonable suspicion or probable cause, arrest, or vehicle search, as well as police action involving subjects known to have mental illness;**
> **f) supervisors to review recordings of all officers listed in any misconduct complaints made directly to the supervisor or APD report regarding any incident involving injuries to an officer, uses of force, or foot pursuits;**
> **g) supervisors to review recordings regularly and to incorporate the knowledge gained from this review into their ongoing evaluation and supervision of officers; and**
> **h) APD to retain and preserve non-evidentiary recordings for at least 60 days and consistent with state disclosure laws, and evidentiary recordings for at least one year, or, if a case remains in investigation or litigation, until the case is resolved."**

Results

APD has developed compliant policy for OBRD operation and has trained all appropriate personnel in the operation of OBRD units with respect to those policies. To date, we have noted that the pilot audits at several Area Commands illustrated compliance levels of in-field operations of OBRDs well below the 95 percent level. Based on our knowledge and experience, this is attributable to inadequate processes of

supervision and review by first-line supervisors. The important information, however, is that these audits were conducted internally by APD, not externally by the monitor. Operational compliance will require demonstrable and effective internal responses to the issues noted by these internal (to APD) findings.

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

Recommendations for Paragraph 220:

4.7.206a: Prepare, quarterly, a written assessment of the results of the inspections and audit outcomes, identifying the top five areas of non-compliance with the requirements of OBRD field processes.

4.7.206b: Based on the quarterly audits, identify the top three reasons for non-compliance with OBRD policies and procedures, and develop specific, targeted responses to address and remediate each of the top three non-compliance areas.

4.7.206c: Repeat steps a and b until field OBRD error rates are below five percent.

4.7.207 Assessing Compliance with Paragraph 221

Paragraph 221 stipulates:

> **"APD shall submit all new or revised on-body recording system policies and procedures to the Monitor and DOJ for review, comment, and approval prior to publication and implementation. Upon approval by the Monitor and DOJ, policies shall be implemented within two months."**

Results

Policies responsive to paragraph 221 have been developed and trained. As of the end of this reporting period, those policy and training initiatives have not had the desired effect on in-field operations of OBRDs *viz a viz* policy and performance gaps. We continue to note violations of OBRD policies that are not noted by supervisory or mid-management levels at the individual Area Commands.

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

Recommendations for Paragraph 221:

4.7.207a: Develop, implement, and assess supervisory protocols to ensure violations of applicable policy are identified by supervisors and are addressed and remediated, many of which have already been recommended to APD by the monitoring team.

4.7.207b: Publish quarterly "OBRD Failure" reports identifying the top five reasons for OBRD failure in the field, and identifying the Area Command, shift, and supervisors associated with those failures.

4.7.207c: Retrain, counsel or discipline supervisors with repeated failures in noting, assessing, and correcting officers with repeated OBRD operations failures.

4.7.207d: Repeat until error rates on OBRD operation fall below five percent.

4.7.208 Assessing Compliance with Paragraph 222

Paragraph 222 stipulates:

> **"The Parties recognize that training regarding on-body recording systems is necessary and critical. APD shall develop and provide training regarding on-body recording systems for all patrol officers, supervisors, and command staff. APD will develop a training curriculum, with input from the Monitor and DOJ that relies on national guidelines, standards, and best practices."**

Results

Monitor-approved supervisory training for OBRD operations in the field has been implemented during this monitoring period. However, it is too soon to assess the rates of compliance. Failure rates related to OBRD operations in the field are still unacceptably high. These failure rates, it appears to the monitoring team, are not related to problems with policy, but are directly related to problems with supervision. The majority of OBRD errors noted by the monitoring team (and APD's Force Backlog Review) indicate a failure of supervisors to review, assess, and act upon OBRD failures exhibited by line personnel. In effect, it appears that in most Area Commands, in-field OBRD performance is not viewed as important. This is a critical compliance issue. Until supervisors are fully engaged in insisting on proper performance in the field, operational compliance will be elusive. Until lieutenants and commanders note and remedy these lapses in policy, compliance levels will be adversely affected.

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

Recommendations for Paragraph 222:

4.7.208a: Reinforce the established clear, concise, and reasonable requirements for supervisory review of in-field activations of OBRDs, requiring field supervisors to review OBRD activations and recordings for compliance to established policy.

4.7.208b: Establish a routinized process for command oversight of the OBRD review process, requiring lieutenants to assess, in a methodical way, the OBRD review processes of sergeants under their command, and commanders to assess the OBRD review performance of lieutenants under their command, to ensure compliance with reasonable assessments of actions in the field.

4.7.208c: Establish a routine administrative review, via Compliance Bureau Personnel, of Area Command OBRD review efficiency, including performance metrics such as overall review rates, error rates, and remediation protocols. This review process should be on-going and assigned to the Performance Metrics Unit.

4.7.209 Assessing Compliance with Paragraph 223

Paragraph 223 stipulates:

> **"APD agrees to develop and implement a schedule for testing on-body recording systems to confirm that they are in proper working order. Officers shall be responsible for ensuring that on-body recording systems assigned to them are functioning properly at the beginning and end of each shift according to the guidance of their system's manufacturer and shall report immediately any improperly functioning equipment to a supervisor."**

Results

The requirements of this paragraph of the CASA are actualized in policy and training. Supervisory oversight for this paragraph has proven to be poor, at best. We do note that APD has been creative enough to turn to an equipment solution for testing, having made the decision to upgrade OBRD devices to a model that will not operate unless nominal functioning is detected by the charging systems. Data submitted regarding the pilot audits of OBRD requirements at several Area Commands still indicate that supervisors simply are not conducting equipment checks at an acceptable level. Again, supervision is the key to compliance, and to date, supervision in this area has been haphazard and poorly documented at times.

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

Operational: **Not In Compliance**

4.7.210 Assessing Compliance with Paragraph 224

Paragraph 224 stipulates:

> **"Supervisors shall be responsible for ensuring that officers under their command use on-body recording systems as required by APD policy. Supervisors shall report equipment problems and seek to have equipment repaired as needed. Supervisors shall refer for investigation any officer who intentionally fails to activate his or her on-body recording system before incidents required to be recorded by APD policy."**

Results

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

Recommendations for Paragraphs 223 – 224:

4.7.209-210a: Ensure that supervisors who fail to note errors in OBRD operation are counseled, or for multiple offenders, retrained and/or disciplined for ineffective OBRD review processes. If, after counseling or retraining, supervisors continue to miss OBRD activation or usage violations, ensure appropriate discipline is imposed.

4.7.209-210b: Identify the top 20 supervisors who have substandard performance on OBRD activation review and retrain them in the process. Place these individuals "on notice" that their performance on this task will be routinely reviewed, and continued failures will result in discipline.

4.7.211 Assessing Compliance with Paragraph 225

Paragraph 225 stipulates:

> **"At least on a monthly basis, APD shall review on-body recording system videos to ensure that the equipment is operating properly and that officers are using the systems appropriately and in accordance with APD policy and to identify areas in which additional training or guidance is needed."**

Results

Data assessed regarding OBRD reviews for this reporting period indicated compliance for this paragraph. Monthly assessments are stipulated by the CASA. Again, we note that the new models of OBRD devices will have a "handshake" protocol with the charging systems that will diagnose on-board systems in individual OBRD units. Units found to fail the on-board diagnoses will not charge, and "error messages" will be sent to ensure the units are inspected. While our compliance findings for this paragraph of the CASA seem to run counter to the OBRD paragraphs found above, the reader should note that this paragraph is not simply "equipment" related. It is a question of will. The problematic paragraphs above relate to implementation in the field almost all fall at the feet of Field Operations supervisors, mid-level managers, and Field Operations command-level personnel.

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**

4.7.215 Assessing Compliance with Paragraph 229

Paragraph 229 stipulates:

> **"APD shall ensure that on-body recording systems are only used in conjunction with official law enforcement duties. On-body recording systems shall not be used to record encounters with known undercover officers or confidential informants; when officers are engaged in personal activities; when officers are having conversations with other Department personnel that involve case strategy or tactics; and in any location where individuals have a reasonable expectation of privacy (e.g., restroom or locker room)."**

Results

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

Monitor's Note: The majority of OBRD errors noted by the monitoring team (and APD's Force Backlog Review) indicate a failure of supervisors to review, assess, and act upon OBRD failures exhibited by line personnel. Again, these are not policy or training errors, but errors in implementation of approved policy, e.g., supervision and management.

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 Effective Date, APD shall consult with community stakeholders, officers, the police officer's union, and community residents to gather input on APD's on-body recording system policy and to revise the policy, as necessary, to ensure it complies with applicable law, this Agreement, and best practices."**

Results

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

Recommendations for Paragraphs 228, 229, and 231:

4.7.217a: Conduct detailed failure analyses designed to identify the causes of incidents of "failure to record," and identify the true cause of these failures: equipment, training, supervision, or "other."

4.7.217b: Rank order the failure rates and develop action plans to eliminate the causes of failure, beginning with the most frequent and working to least frequent.

4.7.217c: Identify a frequency-based list of supervisors who fail to enforce OBRD requirements, and schedule these supervisors for retraining, counseling, or discipline, as appropriate.

4.7.218 – 4.7.226 Assessing Compliance with Paragraphs 232-240 (Recruiting)

Members of the monitoring team continue to examine and review 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.

Members of the monitoring team met with Training Academy personnel responsible for the development and implementation of a strategic recruitment plan. The APD Training Academy has provided the monitoring team with the "2018 Annual Report & 2019 Strategic Recruitment Plan." APD continues to promote the agency via web-based applications, with expanded emphasis on minority group sites. Additionally, APD continues to provide documentation of attendance at many diverse community group events including military, faith-based, educational, and sports-related events. APD showed a 28% increase in attendance at recruiting events this year. State and national events were also targeted by APD recruiters, including the NM State Fair, the Balloon Fiesta and the NRA National Shooting Competition. In addition to contacting prospective recruits, APD has been able to collect valuable information from its recruiters regarding hiring strategies. APD has accepted applications from several law enforcement officers employed at other agencies who were contacted at these events. APD discovered that interested individuals were sometimes unable to connect with APD via the internet and has begun working to resolve this and other technology related issues. The PD is working to make the application process available to applicants who rely on their mobile devices and has added a "scan code" to its recruiting brochure that will take an applicant directly to the APD online registration website (this is another example of implementation of a suggestion received at a CPC meeting). The "blind" online application process, wherein applicants can remain completely anonymous until they arrive for testing, is a laudable and effective process.

The University of New Mexico worked with the APD to develop a comprehensive recruiting plan, and the partnership continues. APD recruiting staff have met with the UNM athletic recruiters to learn their tactics of attracting highly qualified individuals, and secondly to establish access to athletes who may be interested in an APD career. The Central College of New Mexico has begun a police academy program[96]. APD has begun to accept recruits who have completed 16 weeks of police training by CNM and then complete APD training.

The "2019 Strategic Recruitment Plan" lists a review of past strategies and enumerates goals/objectives and activities to attract a diverse pool of applicants for 2019. Recruiting officers attended the NAACP conference and set up a booth that addressed

[96] https://catalog.cnm.edu/preview_program.php?catoid=41&poid=10104

both recruiting and police questions. APD has expanded its web-based advertising with more emphasis on minority group sites (Native People Recruits, The Cause, and *Saludos* websites) in addition to the military and university communities. APD continues regular contact with board members of the Southern Christian Leadership Conference. Feedback received from a recruiting summit was a determining factor in the reduction of the college credit requirements. APD has expanded its efforts with the high school "Career Enrichment Center," designed to recruit students into the Public Service Aide (PSA) program, and foster processes to facilitate the transition from PSA to police officer. This process has been so successful that all PSA positions have been filled. APD is considering adding more PSA positions so that applicants well-suited to advance to police officer are not lost.

APD has provided documentation that demonstrates changes to recruiting process based on community feedback. During 2019, APD recruiters continue to attend meetings with all six Community Policing Councils (CPCs). CPCs recommended that APD post Albuquerque demographic data on its website, and that was effectuated this reporting period. Additionally, the CPCs recommended an instructional video to demonstrate the testing and hiring process, and that video was completed, posted on *APDonline*, and is emailed to each applicant. Another CPC meeting process proposed that videos of current officers discussing their reasons for joining APD would be helpful. These are currently in the planning stages. Finally, monthly tutoring sessions have been implemented, and while they have encountered some staffing issues, APD continues to facilitate these tutoring sessions. APD also added additional testing dates during the week rather than just weekends to enable those working weekend shifts to test.

Acknowledging that APD has reached most applicants via the internet, APD has begun a relationship with Loka Creative, a digital marketing agency. This relationship is being used by APD in order to "brand" a positive image of APD and increase their social media presence. Plans include advertising recruiting events and promoting testing dates.

A recruit class was seated during this monitoring period. The monitoring team conducted a random audit of the CASA requirements for that recruit class during the May 2019 site visit. Files of five of the 23 recruits seated were reviewed (a 22% sample). As illustrated in the figures below, 100% of the CASA requirements were met.

Members of the monitoring team requested COB data related to training for CASA requirements and reviewed a random sample of two lateral hires (a 28% sample of the 7 laterals hired). All lateral applicants were screened by psychological testing, completed a medical examination, and were subjected to polygraph screening, and drug testing. Results of APD's screening process for the 22nd Lateral class are included in Tables 4.7.218a, b and c below.

In addition to the initial APD test with related skills questions, the background questionnaires for both a candidate's former employers and personal references contain questions related to employment, criminal and credit history, and questions regarding controlled substance use and abilities to work with diverse communities. A random audit (five of 23 seated, or 22%) of applicant files found each one to contain the relevant questionnaires with answers to the specific questions related to the requirements of this paragraph. The results of that review are included in Table 4.7.218b below and indicate 100 percent compliance for this task.

For the requirement of drug-testing current officers, APD submitted Course of Business documentation of random drug testing for current APD officers during this monitoring period. The results of that review indicate 100 percent compliance for this task.

APD has met or exceeded all established requirements for Paragraphs 232-240 (See Table 4.7.218a-c, below).

Table 4.7.218a
Screening Points for Recruits and Lateral Hires

	New recruits and lateral hires to undergo a psychological examination to determine their fitness	New recruits and lateral hires, to undergo a medical examination to determine their fitness	New recruits and lateral hires, to undergo a polygraph examination to determine their fitness	Reliable and valid pre-service Drug testing for new officers and random testing for existing officers.	Detect the use of banned or illegal substances, including steroids.
Recruit 1	1	1	1	1	1
Recruit 2	1	1	1	1	1
Recruit 3	1	1	1	1	1
Recruit 4	1	1	1	1	1
Recruit 5	1	1	1	1	1
Total	**5**	**5**	**5**	**5**	**5**
Number in Compliance Total all Incidents	**5**	**5**	**5**	**5**	**5**
% in Compliance Total by Category	**100%**	**100%**	**100%**	**100%**	**100%**

Table 4.7.218b

Screening Points for Recruits and Lateral Hires

Case No.	Assessing a candidate's credit history	Assessing a candidate's criminal history	Assessing a candidate's employment history	Assessing a candidate's use of controlled substances	Assessing a candidate's ability to work with diverse communities
Recruit 1	1	1	1	1	1
Recruit 2	1	1	1	1	1
Recruit 3	1	1	1	1	1
Recruit 4	1	1	1	1	1
Recruit 5	1	1	1	1	1
Number in Compliance Total all Incidents	**5**	**5**	**5**	**5**	**5**
% in Compliance Total by Category	**100%**	**100%**	**100%**	**100%**	**100%**

Table 4.7.218c

Additional Screening Points for Lateral Hires

Case No.	History of using lethal and less lethal force	Named in a civil or criminal action	Assessing a lateral's use of force training records	Assessing a lateral's complaint history	Providing training in APD policies, procedures and the CASA
Lateral 1	1	1	1	1	1
Lateral 2	1	1	1	1	1
Number in Compliance Total all Incidents	**2**	**2**	**2**	**2**	**2**
% 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

The monitoring team conducted a random audit of the promotions made by APD on January 4, 2019. APD promoted ten officers to the rank of Sergeant and eight Sergeants to the rank of Lieutenant. The monitoring team reviewed three of the ten Sergeants (a 30% sample) and two of the eight Lieutenants (a 25% sample) and found APD to be in full compliance with the requirements of these paragraphs for all five promotions we reviewed. Records were checked in Human Resources, Internal Affairs and the Training Academy.

APD provided members of the monitoring team a new Promotional Practices Policy (dated January 31, 2019). The new policy promulgated by APD was adopted after approval by the Court. Based on the monitoring team's review of promotions recently made by APD, the agency has promoted individuals who meet applicable standards and existing policy.

Additional promotions were made after the May 2019 site visit. During the next reporting period, the monitoring team will conduct another random audit of those promoted and review their records to ensure all were within the policy approved by the Court during.

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 Effective Date, APD shall develop and implement procedures that govern the removal of officers from consideration from promotion for pending or final disciplinary action related to misconduct that has resulted or may result in a suspension greater than 24 hours."**

Results

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

4.7.230 – 4.7.232 Assessing Compliance with CASA Paragraphs 244-246 (Performance Evaluations and Promotional Policies)

APD has completed and promulgated policy regarding performance evaluations. The policy provides guidance on use of the system, listing criteria to be used to assess achievement of performance goals, and outlining corrective action required if performance goals are not met. During prior site visits, members of the monitoring team attended the Talent Management training and found it to be well thought out and professionally executed. As the system has been in use over the past two years, however, deficiencies in its ability to conform to all CASA requirements have become apparent.

During the May 2019 site visit, members of the monitoring team visited several Area Commands and several other duty locations including the *Sunport* and Investigations Divisions. We had supervisors demonstrate the Talent Management System. All supervisors were fluent in their use of the system, were able to show examples of work plans and achievements of subordinates, and had completed the requirements of the policy, the CASA and the system on-time. We did note a few issues; however.

APD is currently planning to revise the existing Performance Evaluation policy to include specific sanctions for missed checkpoints and failure to make notifications regarding incorrect personnel assignments. Those planned revisions will enhance the performance evaluation system. Additionally, APD has found that the existing Talent Management system is not fully capable of conducting evaluations of supervisors, especially with respect to CASA requirements as outlined in Paragraph 47. There is currently no method of evaluating a supervisor's use of force investigations within the system. Completed Staff Work (CSW) documentation has been presented to the monitoring team recognizing all the shortcomings of the existing system and providing recommendations for corrections. It is especially noteworthy that APD is discovering its own weaknesses/errors and developing solutions rather than the monitoring team. This is a remarkably positive outcome for APD as it works toward compliance.

The monitoring team was provided with course of business documentation, generated through the automated system that showed compliance rates below 95% for the immediate supervisors completing the March 28, 2019 evaluation checkpoint. The APD Lead Commander responsible for the Performance Evaluation requirements referred approximately 44 supervisors to Internal Affairs for administrative investigations regarding the failure to complete their checkpoints in a timely manner. Additionally, the monitoring team was provided with data related to upcoming checkpoint reminders, failures to meet the requirements, and the responses to the reasons for those failures. The reasons for failing to meet the checkpoint requirements included administrative errors of failing to assign an officer appropriately, military leave, FMLA and other medical leaves. Other reasons for failures have been noted by APD, as training issues and plans for additional training are under development. All checkpoint requirements were met prior to the end of the reporting period. A total of 96% of supervisors completed the requirements (749 of 781). The lead Commander again referred six supervisors to IA for failing to complete their tasks on time. Software issues may have

caused the evaluations to not pass from initial supervisor to second line supervisor in two of the cases. Nonetheless, this is another example of APD self-correcting without monitor involvement.

4.7.230 Assessing Compliance with Paragraph 244

Paragraph 244 stipulates:

> **"APD shall develop and implement fair and consistent practices to accurately evaluate the performance of all APD officers in areas related to constitutional policing, integrity, community policing, and critical police functions on both an ongoing and annual basis. APD shall develop objective criteria to assess whether officers meet performance goals. The evaluation system shall provide for appropriate corrective action, if such action is necessary."**

Results

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

4.7.231 Assessing Compliance with Paragraph 245

Paragraph 245 stipulates:

> **"As part of this system, APD shall maintain a formalized system documenting annual performance evaluations of each officer by the officer's direct supervisor. APD shall hold supervisors accountable for submitting timely, accurate, and complete performance evaluations of their subordinates."**

Results

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

4.7.232 Assessing Compliance with Paragraph 246

Paragraph 246 stipulates:

> **"As part of the annual performance review process, supervisors shall meet with the employee whose performance is being evaluated to discuss the evaluation and develop work plans that address performance expectations, areas in which**

performance needs improvement, and areas of particular growth and achievement during the rating period."

Results

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

4.7.233 – 4.7.239 Assessing Compliance with CASA Paragraphs 247-253: Officer Assistance and Support

During the May 2019 site visit, the monitoring team reviewed the Behavioral Sciences Section (BSS) Program for the Albuquerque Police Department to ensure that officers and employees of the department were provided ready access to mental health and support resources as required by the CASA. The monitoring team also requested and received data from the BSS Director for the entire reporting period (February 2019 through July 2019) for review. The program continues to provide Critical Incident Service, Therapy Service, and training processes to the APD.

This program is run by a Medical Director, supported by certified clinicians, a policy analyst, a public information officer, and quality assurance auditors. BSS maintains a current listing and documentation supporting the program's functions and supplied the monitoring team with the most current version of that documentation.

The monitoring team met with BSS personnel responsible for maintaining the program's development, revisions, and upgrades during the May 2019 site visit. Documentation outlining the program's functions was supplied to the monitoring team.

The BSS handbook continues to be the guide for the program and all of the program requirements as articulated by the CASA. Revisions to BSS process are on-going and reviewed at these meetings as well as after receiving documentation from data requests. BSS is currently exploring and working on areas to improve the program.

These areas include, but are not limited to:

- Self-Care Interactive Online Network;
- Behavioral Health Services Handbook;
- Expansion of unit and hiring of an additional provider;
- Academic research on various interventions to support LE; and
- Updating SOP.

The Cadet Class Schedule for the 121st Cadet Class was reviewed by the monitoring team, and training material for management and supervisors was also reviewed for compliance with the CASA requirements.

As stated in previous IMRs, the nature of the documentation is highly confidential and again, as in previous site visits, aggregate data were 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.

As in previous site visits, during the May 2019 site visit, on-site inspections of the BSS facilities were conducted to ensure security and confidentiality in the program and that only BSS staff have access to confidential records maintained within the program.

Members of the monitoring team also reviewed COB documents for the Peer Support Services dated February 1, 2019 through August 1, 2019. Documentation for this period included the following: Peer Support Services Data; Training on self-care management; behavioral health services; Peer Support Board activities; and Peer Support Survey Results. BSS activities for this reporting period indicate positive growth in use of the program.

Material viewed by the monitoring team, as it relates to this program, are highly confidential and operational compliance assessment is difficult. In the monitoring team's opinion, APD's BSS programs continue to be industry-standard and compliant with the relevant paragraphs of the CASA.

The data reviewed by the monitoring team for BSS paragraphs during this reporting period indicate that there is a mindset that confidentiality of the program is more protected than in the past. BSS will conduct an anonymous survey during the next reporting period. Previous surveys conducted indicate a positive trend for the program.

As of the site visit in May 2019, BSS continues to maintain updated Excel spreadsheets of available health professionals and flyers that were reviewed during the site visits at all of APD's Area Commands. BSS implemented a new phone system during this reporting period and continues to expand marketing and providers in order to move the program forward. Material for the BSS programs is documented on their "Daily 49" system in APD briefing rooms throughout the department.

APD maintains compliance with the CASA requirements for these paragraphs.

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."**

Paragraph 255 requires APD to develop policy guidance and mission statements reflecting its commitment to community and problem-oriented policing and supporting administrative systems. APD has revised its mission statement, reflecting its commitment to community-oriented policing.

During the previous reporting period, an APD working group produced a mission and vision statement reflecting the agency's commitment to community policing principles. These were provided to the monitoring team during this reporting period. The product identified APD's vision as "an Albuquerque where citizens and the police department work together through mutual trust to build a thriving community." The mission statement identified by APD was "to reduce crime, increase safety, and build relationships through community policing."

During this reporting period, APD continues to make progress integrating community policing principles into its management practices (policies, procedures, recruitment, training, deployment, tactics, and accountability systems) with a special emphasis on community outreach and at-risk youth. During this reporting period, APD reported the following activities:

- Developed and administered a culture survey to officers establishing a baseline to measure progress moving forward;
- Expanded collaborative efforts with CPCs and other community-based groups, and hosted community classroom forums;
- Continued actions with a Youth Education unit and conducted five "camps" during this reporting period for children 9-14 years old;

- Established a Youth Suicide Prevention and Response team that includes members form other disciplines; and
- Restructured the School Resource Officer Unit.

The culture survey is an important addition, allowing APD to assess evolving impacts of training and supervision on officer attitudinal change and field practices and make mid-course corrections as required. We recommend that the results of the survey be shared with APD's senior staff. APD continued its youth community outreach efforts, completing an impressive 5 sessions of a program modeled from the DEFY (Drug Education for Youth) program that brought law enforcement officers together with groups of at-risk youth in a summer camp experience, where life skills were also taught. APD is building on these experiences and is considering ways to collaborate with other city agencies and community partners to engage larger numbers of at-risk youth in a range of activities and facilitate even greater non-enforcement contacts with APD officers.

The youth suicide prevention team addresses the growing challenge of suicides among adolescent populations and does so in a collaborative and problem-solving manner. The restructuring of the of the school resource officer unit may be a first step in enhancing their role in mentoring, classroom instruction, and school safety planning. We recommend that APD consider providing specialized training to the SRO unit that is offered by the National Association of School Resource Officers (NASRO) to enhance effectiveness in deferring youth from the juvenile and criminal justice system.

APD command staff, during this reporting period, stepped up departmental transformation efforts in many areas, especially community outreach, encouraging and tracking officers' non-enforcement contacts, and the deployment of more officers engaging in proactive policing in the area commands. The "culture change" will not be realized without the completion of the overhaul and delivery of the Community Oriented Policing training and the internalization of those principles by officers and their supervisors and commanders. This process involves the integration of community policing principles throughout the organization. APD is putting in place the building blocks to drive the "culture change" required for department transformation.

We find APD still working towards implementing verifiable changes in the field-based delivery of processes and services that affect a sea-change in the way APD relates to the communities it serves. Once these changes become a normal part of the way APD does business, the APD will be in full compliance for this paragraph.

Results

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

Recommendations for Paragraph 255:

4.7.240a: Conduct a quarterly review including culture change survey of progress made across the department in achieving "culture change" and the integration of community policing principles throughout APD operations, and share findings both internally and with other community stakeholders;

4.7.240b: Provide training that meets national standards for School Resource Officer Unit;

4.7.240c: Work with USAO and other community partners to expand community-based initiatives targeting high risk youth.

4.7.241 Assessing Compliance with Paragraph 256: APD Response to Staffing Plan

Paragraph 256 stipulates:

> **"As part of the Parties' staffing plan described in Paragraph 204, APD shall realign its staffing allocations and deployment, as indicated, and review its recruitment and hiring goals to ensure they support community and problem-oriented policing."**

Paragraph 256 requires APD to realign its staffing allocations and deployment, as indicated, and review its recruitment and hiring goals to ensure they support community and problem-oriented policing. APD's PACT (Police and Community Together) plan was approved on December 27, 2016, and staff re-alignment responsive to the plan was continued during the seventh reporting period. Implementation of the PACT plan was terminated during the eighth reporting period and replaced with deployment of Problem Response Teams (PRT) to all the six command areas. We find the new PRTs to be a marked improvement to the old PACT process, with strong goals related to problem-solving policing processes, as opposed to PACT's enforcement-based processes.

During this reporting period APD expanded their deployment of PRTs to all six command areas, with all but one staffed with a Sergeant and at least two officers. A policy was developed for the PRTs during this reporting period (SOP1-81 Problem Response Teams) and submitted to the Policy and Procedure Review Board for final approval. APD reports that, once approved, the policy will be sent to the training academy to develop curriculum teaching the entire department about the functioning of PRTs.

PRT is beginning to shift staffing resources to command areas and engaging in more non-enforcement contacts. Officers are sometimes assigned to micro beats or blocks and tasked to get acquainted with community members through increased non-enforcement contacts. Officers are assigned to support community events and are deployed to crime hot spots for enforcement activity.

During this reporting period, APD collected data on PRT activity. The data focused primarily on enforcement activity including "suspicious person contacts "and "disturbance "contacts. There was minimal data covering the range of non-enforcement activity, or any associated efforts to more closely assess operational impact and effectiveness of these new deployment strategies. The assessment plan still lacks specific measurable goals and objectives to assess effectiveness and does not yet articulate an ongoing set of metrics to measure ongoing activities and impact.

APD needs to complete its full deployment, conduct training as required, and develop more specific measures and analytic methods to determine effectiveness and guide program revision and adaptation, if they are to have complete implementation of these processes.

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 take the necessary steps to gain important input and support from settlement partners and community stakeholders including CPCs;***

4.7.241b: Ensure the staffing plan has clearly articulated and defined goals, objectives and outcome measures, and consider a partnership with a local university criminal justice department to assist in developing more specific performance metrics and how to use as an effective management tool.

4.7.241b: Ensure that PRT activity is expanded as needed, fielding adequate numbers of specifically trained PRT officers who are guided by specific, tangible, and quantitative goals and objectives.

4.7.242 Assessing Compliance with Paragraph 257: Geographic Familiarity of Officers

Paragraph 257 stipulates:

> **"APD shall ensure that officers are familiar with the geographic areas they serve, including their issues, problems, and community leaders, engage in problem identification and solving activities with the community members around the community's priorities; and work proactively with other city departments to address quality of life issues."**

Methodology

The monitoring team reviewed documentation from APD outlining a bold plan to "digitize" the bid packet process (information about areas assigned to police officers) and to create better utility, tracking, and accountability within the department. This new process will not only house important information about the area assigned to an officer but also will create a beat discussion forum providing officers assigned to an area opportunities to share information with one another about trends or emerging problems. Officers will also be able to download information about the communities they serve including community leaders, neighborhood associations etc. Officers will also be tested on their knowledge of bid packet information, which will now be updated quarterly.

APD is developing instructional videos for all officers receiving and updating bid packets so that they will fully understand the new process. APD plans to have this new digitized system fully implemented before the end of the next reporting period. Information has been, and continues to be, provided to officers about neighborhoods served during the transition to the digitized system.

APD is taking a huge leap forward with the investment in this digital structure for its bid packets. Successful implementation will create easy access to up-to-date information for officers, and track emerging trends, and problem-solving efforts as well. For this reporting period, APD also documented POP projects in each of the six command areas with improved detail and tracking information. The monitoring team will continue to confirm issuance of bid packets to APD staff and will assess how that information is being utilized to advance APD's community policing goals. We anticipate a comprehensive review of the completed digitized bid process in the next reporting period. Operational compliance requires these processes to become routine.

Results

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

4.7.243 Assessing Compliance with Paragraph 258: Officer Outreach Training

Paragraph 258 stipulates:

"Within 12 months of the Effective Date, APD agrees to provide 16 hours of initial structured training on community and problem oriented policing methods and skills for all officers, including supervisors, commanders, and executives this training shall include:

a) Methods and strategies to improve public safety and crime prevention through community engagement;
b) Leadership, ethics, and interpersonal skills;
c) Community engagement, including how to establish formal partnerships, and actively engage community organizations, including youth, homeless, and mental health communities;
d) Problem-oriented policing tactics, including a review of the principles behind the problem-solving framework developed under the "SARA Model", which promotes a collaborative, systematic process to address issues of the community. Safety, and the quality of life;
e) Conflict resolution and verbal de-escalation of conflict and;
f) Cultural awareness and sensitivity training.

These topics should be included in APD annual in-service training."

Methodology

During this reporting period, APD decided to restructure the 16 hours of Community Oriented Policing (COP) training to better reflect the department's 21st century community policing philosophy, incorporate into training new and changing departmental policies and orders, and better align with COP training requirements. APD provided the monitoring team with an outline and timeline for development for the proposed training, which includes mindsets in policing, procedural justice, conflict resolution and de-escalation, community partnerships, problem-oriented policing, and implicit bias. A required topic area missing from this outline is cultural awareness and sensitivity training. This element of COP training is a critical element that is needed to better prepare officers to police in increasingly diverse environments. APD still needs to apply the seven-step process to its training elements of the 16 hours of required training. APD's current timeline for completing development of this training is for the 122nd Cadet class and for the remainder of the department in the first quarter of 2020.

APD's decision to overhaul the required 16 hours of COP training was initially necessitated by a paradigm shift in the department's policing philosophy, placing a much greater emphasis on community policing and engagement. The outline provided to the monitoring team in this reporting period continues to reflect this shifting philosophy and is part of a broader effort to effectuate organizational culture change. The process intends to have officers internalize a different way to perceive their relationship with the community members they serve, and to assess alternative ways of interacting with the community. This allows APD to bring "change" to the forefront of its community policing processes. The monitoring team believes that the updating and

delivery of the COP training curriculum is key to achieving some of the most important elements of the CASA agreement, and that these further investments in improving the quality and relevance of this training will be instrumental in driving culture change throughout APD.

Results

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

Recommendations for Paragraph 258:

4.7.243a: ***Add a cultural awareness and sensitivity module to the COP training curriculum.***

4.7.243b: ***Ensure that supervisory processes are oriented with the COP training and new COP goals and objectives.***

4.7.244 Assessing Compliance with Paragraph 259: Measuring Officer Outreach

Paragraph 259 stipulates:

> **"Within six months of the Effective Date, APD agrees to develop and implement mechanisms to measure officer outreach to a broad cross-section of community members, with an emphasis on mental health, to establish extensive problem-solving partnerships and develop and implement cooperative strategies that build mutual respect and trusting relationships with this broader cross section of stakeholders."**

Methodology

APD made considerable progress during this reporting period in its capability to track officer community engagement and outreach activity goals. APD standardized and simplified the collection of non-enforcement contact data by revising the non-enforcement contact form in the TRaCS system (which tracks officer activity), and creating standardized tracking spread sheets for all area commands. The new form also requires documentation of APD follow-up on community concerns that surface during these contacts. APD was able, during this reporting period, to provide some aggregate data about officer participation in community events and other non-enforcement contacts. APD acknowledges a need to further refine and improve its tracking processes, report generating capabilities, and to develop performance metrics and reporting protocols.

During this reporting period, APD provided a list of businesses and organizations they have worked with "in partnership" in the recent past. The list was very much event-driven, and does not differentiate in terms of information provided between on-going relationships involving referral agreements or understandings; information sharing protocols, etc.; and those focused on a singular event such as "coffee with a cop." Future reporting should capture in more detail the significant on-going partnerships with community entities that serve at-risk populations who often come into contact with the police. While there are often informal relationships in place, formalizing and documenting these processes are important in order to develop, implement and sustain the required cooperative strategies.

Results

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

Recommendations for Paragraph 259:

4.7.244a: Continue development of TRaCS and integrating non- enforcement engagement and contacts into the tracking system and meaningful outcomes; and;

4.7.244b Identify community service organizations and advocacy groups that serve and represent high risk populations, and better document those partnerships including background, referral arrangements, if any, resource sharing if any, decision-making, roles and responsibilities of parties.

Assessing Compliance with Paragraph 260: PIO Programs in Area Commands

Paragraph 260 stipulates:

> **"APD shall develop a Community Outreach and Public Information program in each area command."**

Methodology

During this reporting period, APD provided extensive data on city-wide social media activity. They also provided for the first time an outreach analysis for each command area and the beginnings of customized outreach strategies. The information provided needs to be more fully developed including development of a plan or program as required by this paragraph. Each command area also maintains its own website which currently capture crime information, agendas for upcoming CPC meetings, schedules of upcoming events, other news items, information on how to report crimes, information regarding how to file complaints, and recommendations for officer commendations.

They do not contain or reflect a community outreach plan or activities. APD continues to fail to meet the outreach requirement, and needs to build on identified command area outreach needs and approaches and to develop coordinated and focused area command-based public information plans and programs that include community outreach, messaging, reaching marginalized audiences, and better communication tools, such as using social media, to enhance community engagement.

The websites do provide information about upcoming CPC meetings. APD Command area communications with area residents are now routinely using social media tools to reach a broader audience.

Results

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

Recommendations for Paragraph 260:

4.7.245: ***Further develop and document Area Command public information strategies and programing by developing planning template and providing assistance to command areas in formulating customized approaches for each command area.***

4.7.246 Assessing Compliance with Paragraph 261: Community Outreach in Area Commands

Paragraph 261 stipulates:

> **"The Community Outreach and Public Information program shall require at least one semi-annual meeting in each Area Command that is open to the public. During the meetings, APD officers from the Area command and the APD compliance coordinator or his or her designee shall inform the public about the requirements of this Agreement, update the public on APD's progress meeting these requirements, and address areas of community concern. At least one week before such meetings, APD shall widely publicize the meetings."**

Methodology

In this reporting period, APD effectively utilized CPCs as a platform to share information about implementation of CASA requirements. There were nine presentations covering CASA topics or providing updates with at least one in each of the six command areas.

APD has in place six functioning CPCs that meet once a month and provide on-going opportunities for APD to directly interface with residents and brief them on progress in compliance with the settlement agreement. The CPCs are beginning to be utilized as a conduit for updates on policy change, new training, policing strategies and tactics, and addressing residents' community safety concerns. The monitoring team suggests that APD may want to continue to refine use of CPC processes to provide a public forum to discuss broader policy, training, and deployment issues.

Results

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

4.7.247 Assessing Compliance with Paragraph 262: Community Outreach Meetings

Paragraph 262 stipulates:

> **"The Community Outreach and Public Information meeting shall, with appropriate safeguards to protect sensitive information, include summaries, of all audits and reports pursuant to this Agreement and any policy changes and other significant action taken as a result of this Agreement. The meetings shall include public information on an individual's right and responsibilities during a police encounter."**

Methodology

We note that all CASA-related reports are posted on the APD website. Further, APD has information on an individual's rights and responsibilities during a police encounter.

Results

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

4.7.248 Assessing Compliance with Paragraph 263: APD Attendance at Community Meetings

Paragraph 263 stipulates:

> **"For at least the first two years of this Agreement, every APD officer and supervisor assigned to an Area command shall attend at least two community meetings or other meetings**

> **with residential, business, religious, civic or other community-based groups per year in the geographic area to which the officer is assigned."**

Methodology

For this reporting period, APD reports that commanders are currently submitting all non-enforcement contact information in a standardized format on a spreadsheet to command staff for tracking purposes. The TRaCS forms are also being modified to capture APD follow-up requests and actions and allow for easier query. We note that APD previously established, through SOP-3-02-1, the requirement and tracking mechanisms to implement this task. APD has submitted to the monitoring team a detailed flow chart outlining a process for capturing community events information, officer participation, and outcomes. APD also previously submitted a TraCS worksheet that reported the number of events and reported participation rates by command area, and units within each command area.

APD is investing in enhanced data management structuring and tracking capabilities that will better inform managers and guide targeted adjustments in operations as required. These measures will allow for detailed capturing, tracking and reporting on non-law enforcement contacts and community engagement activities across the department. The monitoring team looks forward to completion and full operationalization of TRaCS with its new improvements and the capacity to document implementation of this paragraph's requirements.

Results

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

Recommendation for Paragraph 263:

4.7.248a: Seek assistance, if necessary, to complete the tracking data base (TraCS) and develop standard reporting formats for command staff and an ability to query the database for special reports and information requests.

Assessing Compliance with Paragraph 264: Crime Statistics Dissemination

Paragraph 264 stipulates:

> **"APD shall continue to maintain and publicly disseminate accurate and updated crime statistics on a monthly basis."**

Methodology

During this reporting period, APD maintained its contract with a service that provides up-to-date crime mapping services based on "calls for service" that can be accessed on APD's website. This has proven to be a very useful tool to members of the CPCs. APD posts year-to-date crime numbers and comparisons with the previous year. The reporting meets industry standards in format and timeliness.

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 the APD and the City. Further, APD has developed guidelines for determining any reasonable exceptions to posting audits and reports relating to the CASA. During this reporting period, APD also posted monitoring team reports on the APD website in a timely fashion.

Results

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

4.7.251 Assessing Compliance with Paragraph 266: CPCs in Each Area Command

Paragraph 266 stipulates:

> **"The City shall establish Community Policing Councils in each of the six Area Commands with volunteers from the community to facilitate regular communication and cooperation between APD and community leaders at the local**

level. The Community Policing Councils shall meet, at a minimum, every six months."

Methodology

CPCs have been established in each of the six Area Commands since November 2014. During this and prior reporting periods, each of the six Councils tended to meet once a month, far exceeding the once every six-month requirement. During this reporting period, they were generally able to maintain their levels of participation, and overall increased the number of voting members reflecting greater diversity. CPCs are now focused on sustainment and broadened community participation. APD has, during this reporting period, increased its support and assistance to CPCs and are helping to facilitate outreach efforts. During this reporting period, APD continued its timely documentation and posting of CPC meeting agenda and minutes.

APD has consistently exceeded CASA requirements with CPCs meeting monthly since their inception. CPCs recently are beginning to increase voting membership diversification and continue to make further improvements. Most CPCs have matured over the last several years, institutionalizing practice, building a following, and generating meaningful recommendations to APD. In a typical month, there are more than 150 residents and up to 20 police officers meeting across the six CPCs. These police advisory and collaborative councils provide a means for community members to directly communicate with area commanders and their staff, and together address community safety issues. During this reporting period, CPCs broadened their reach by hosting heavily attended sessions covering topics such as restorative justice practices in schools, specialty courts, and addressing needs of the homeless population.

CPCs represent a strong success for APD compliance efforts with the CASA, providing what is becoming a national "best practice" for providing opportunity for meaningful community input in police operations, fostering relationships, and building trust among police and community members. The monitoring team expects APD to continue to support the maturation of this program, seek to strengthen sustainment efforts, and be prepared to export its practices and concepts to other law enforcement agencies, as APD is rapidly becoming a "best practices" agency in these processes.

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

Each CPC establishes their own selection criteria within the parameters of CASA, including background check requirements. These requirements have excluding factors limited to current warrants and/or violent felonies in the last three years. The requirement to complete a 12-week course for the Citizen Police Academy was modified during an earlier reporting period, with APD developing and providing an option for CPC members to complete a two weekend (four day) version of the course. In this reporting period, APD re-negotiated with CPC representatives regarding enforcement of the CPC voting membership requirement to complete the citizens' police academy training, and to re-institute the 12-week curriculum. The 12-week course requirement, according to CPC members, can deter membership interest because of the time requirements, so APD is working with CPC members to create opportunities for some aspects of the 12-week training to be completed online or through means other than attendance for the full duration at the academy. As required by the CASA, APD is expected to, in conjunction with CPC members, make final decisions concerning membership criteria.

APD continues to post CPC membership criteria for each of the six area commands on their websites. APD also continued providing support to CPCs in helping to recruit a more representative cross-section of community members as CPC voting members. Diversification of membership continued to improve during this reporting period. APD has indicated new outreach efforts to community-based and advocacy organizations to support, and have persons connected with their organizations to participate in, CPC meetings and apply to join CPCs as voting members, where there is an interest.

CPCs are in some instances, making greater use of social media tools to help reach young people and other hard-to-reach population groups. A more supported and organized effort with appropriate messaging and targeting approaches could lead to expanded interest and an even more diverse CPC voting membership.

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

In this reporting period, APD re-organized its efforts in providing support to CPCs and to include more direct support from uniformed command staff and other uniformed personnel. The CPC outreach director and the administrative assistant remain involved with CPCs as well. This new structure has led to more direct involvement by CPC uniformed staff and to consistently delivering targeted levels of support. During this reporting period, APD staff, in conjunction with federal partners and the monitoring team, conducted a Saturday CPC training session and supported a CPC summit leadership meeting.

Also, during this reporting period, APD continued its support of monthly meetings for each of the six CPCs, including notetaking, minutes, posting of minutes and agenda, and tracking recommendation development and responses. APD outreach staff have made marked improvements in the timeliness of their posting of information updates, including annual reports and meeting minutes. Staff is still engaged in problem-solving activities involving CPC members, providing on-going coaching and guidance to new CPC members and leadership. The APD outreach staff continues to work to sustain CPC participation, and support its activities. APD staff and CPC membership are beginning to explore CPC authorization and governance post settlement agreement.

We note that the CASA requires a collaborative process between APD and CPC leaders in the determining the mechanisms for CPC operations, including selection criteria for voting members. On-going dialogue between APD and CPC leadership is greatly encouraged to facilitate the required collaborative decision-making process.

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

The CPCs, during this reporting period, broadened their reach into the communities they serve by hosting several well publicized and highly attended events covering community safety topics of great interest such as the role of law enforcement in schools and the expanding use of restorative justice to address youth issues, the role of specialty courts, presentations by local prosecutors and judges about their roles and challenges, and discussions concerning system and community response to homelessness. CPCs are also now being regularly used as platforms for APD briefings on CASA implementation efforts and monitoring outcomes. The agenda items and CPC recommendations at most CPCs often closely align with the issues and topics identified in the CASA. APD leadership including area commanders often attended CPC meetings during this reporting period.

Agenda items also continued to address neighborhood community safety concerns and included presentations on crime prevention and CASA updates. APD also continues to make progress in the tracking, reporting, and feedback on CPC recommendations. They have introduced new formats for reporting out recommendations and developed status charts indicating submission and review status that are now posted on the APD/ CPC website.

CPCs continued their maturation process during this reporting period with the direct support of APD and city leadership, and the infusion of additional staff resources. There remain ongoing challenges with sustaining and enhancing CPC activities including holding regularly scheduled meetings, addressing basic requirements of information sharing, and engaging in community safety and problem-solving activities. APD's continued assistance remains vital in helping to ensure the permanence and ongoing viability of this critical community input vehicle for APD operations.

Results

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

4.7.255 Assessing Compliance with Paragraph 270: CPC Annual Reports

Paragraph 270 stipulates:

> **"The Community Policing Councils shall memorialize their recommendations in annual public report that shall be posted on the City website. The report shall include appropriate safeguards not to disclose information that is legally exempt or protected from disclosure."**

Methodology

During the prior reporting period APD posted the 2018 CPC annual reports for all six CPCs. The annual reports for the first time were presented in a standard format, and often captured CPC annual activities and achievements. APD held training during the previous reporting period, which helped to promote standardization in annual reports among CPCs. As a result, the 2018 annual reports demonstrated more reporting consistency. APD remains compliant with this paragraph.

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) including its Board, previously known as the Police Oversight Board, now renamed the POB board. These paragraphs require an independent, impartial,

effective, and transparent civilian oversight process, one that not only investigates civilian complaints but also renders disciplinary and policy recommendations, trend analysis, and community outreach including the publishing of reports.

During the monitoring period and the May 2019 site visit, members of the monitoring team held meetings with the CPOA Executive Director and members of his staff at the CPOA office, attended a CPOA Board public monthly meeting, reviewed CPOA training records, and selected (by way of a stratified random sample) and reviewed, 12 CPOA investigations completed during the monitoring period. We found that one case—IMR-10-25 --was referred back to IA for investigative purposes and is covered as an IA investigation in this report). The monitoring team also reviewed the CPOA website, including but not limited to CPOA Board agenda and minutes, community activities, public reports, and Board meetings. We also identified and reviewed one non-concurrence letter in the Chief's response to disciplinary recommendations of CPOA and the Board in IMR-10-41.

The findings related to Paragraphs 271 through 292 indicate the following outcomes, related to requirements of the CASA.

The CPOA and its Board have, in the past, been an impartial and productive agency that provides effective civilian oversight of APD. (We discuss more fully below issues that have arisen with the Board that prevent a finding of Operational Compliance). It is an independent agency whose appointed members (the Board) are dedicated individuals of diverse backgrounds drawn from a cross-section of the community. They are committed to the goals of the CASA, as are all members of the CPOA.

The initial and annual training requirements for the Board members continue to be met. Regarding annual training requirements under paragraphs 275 and 276 of the CASA, Board members have attended the annual National Association for Civilian Oversight of Law Enforcement (NACOLE) conferences, have received Force Review Board Training, had changes to the CPOA Ordinance addressed by legal counsel to the CPOA, and are current with their annual ride-a-long requirements.

As we noted in the past several IMRs, the investigations produced by CPOA, once complaints are assigned, are generally thorough. (We discuss in more detail the quality of investigations in the Investigation of Complaints section of this report). The Executive Director has the authority to recommend disciplinary action in the cases CPOA investigates, as well as the cases that are reviewed by CPOA (Serious Use of Force and Officer-Involved Shootings), and the Board has a mechanism for approving the recommendations of the Executive Director. The Chief or his designee retains the discretion to impose discipline.

There was a temporary issue in the Board's role during the monitoring period in which the Board's Complaint Review Committee (CRC) did not review cases due to a legal

interpretation of revisions to the CPOA Ordinance. This was remedied by a special meeting of the entire Board to review findings and disciplinary recommendations of the Executive Director. This was further remedied by an additional revision to the Ordinance that made it clear the work of the CRC was not prohibited by the Ordinance. Thus, the practice of utilizing CRCs to enable the Board to comply with its obligation to review the findings and recommendations of the Executive Director was both discontinued and then restored during this review period.

Cooperation between CPOA and IAD continues to be satisfactory. In general, both agencies continue to respect each other's role, and realize it is in their best interests, and that of the CASA, to cooperate and facilitate their intertwined missions and related areas of responsibility. CPOA has the necessary access to information and facilities reasonably necessary to investigate complaints and review serious use of force and officer-involved shootings.

CPOA and the Board continue to have adequate time to provide input on the policy-making process. Due to changes in the policy review procedures, the Board now has enough time to view and debate policies and policy changes as an entire body. This will enhance not only the Board's policy role, but the entire APD policy making and policy revision processes as well.

During this monitoring period, we identified and reviewed one non-concurrence letter in which the Chief disagreed with the disciplinary recommendations of the CPOA and the Board. [IMR-10-41]. This matter involved a very thorough and well-articulated investigation involving excessive overtime. The Chief's non-concurrence letter was equally in-depth and comprehensively set forth his reasons for disagreeing with the disciplinary recommendations. We find that the system worked as it was intended: the Chief seriously considered the disciplinary recommendations and, having considered them, he transparently articulated his disciplinary decision. His letter is consistent with the non-concurrence letters the monitoring team has reviewed the last several monitoring periods. When the Chief's decision differs from the recommendations of the CPOA and the Board, the non-concurrence letters are such that the public, CPOA, the Board, and the APD are now well aware of the Chief's reasons and thought processes in reaching his decisions regarding the level of discipline imposed.

CPOA continues to have an active community outreach program, which also utilizes social media, in addition to other media. The Executive Director and representatives of CPOA continue to have quarterly meetings with City Council, and they also attend the quarterly meetings of the collective CPCs. In addition, they often attend the individual CPC meetings, and estimate having representation at 50% or more of the individual CPC meetings. In addition to more closely identifying the needs and goals of the different communities that make up Albuquerque, the CPOA engagement with the CPCs allows for coordination of efforts, particularly with regard to policy recommendations. Although individual CPCs are free to make their own

recommendations, where there is commonality of interests, unity in making recommendations may carry greater import.

The Executive Director and/or designees have addressed the APD Cadet class as well as the APD Lateral Hire class, and also addressed community groups upon request. It is also worth noting that during this monitoring period CPOA has implemented the use of a new brochure, which has a complaint and commendation form with a tear-off, pre-paid postage complaint and commendation form. This facilitates the process for the public to engage the agency.

Notwithstanding the progress made to date, in the overall oversight process, the monitoring team found the current process exhibited issues with elements related to CASA paragraphs specific requirements of the CASA.

As we noted in IMR 9, the CPOA Board needs to be at full strength. Previously there were 3 openings and the Executive Director was without a working contract. We were encouraged to learn that this monitoring period 2 of the 3 vacancies were filled and the Executive Director now is working under a renewed contract.

The Board consists of nine members, all of whom are needed to keep current with the challenging workload and sub-committee assignments. The aforementioned three vacancies occurred in March, June, and September of 2018, with one vacancy still outstanding. City Council attempted to fill that vacancy, but the applicant was a corrections officer who was ineligible for appointment as an active member of law enforcement. This disqualification for Board membership should have been noted in the screening process, and the fact that the Board is still laboring at less than full strength indicates a less than robust screening and appointment process by City Council. If the Board vacancy is not filled before the end of the 11th monitoring period, the City faces a finding of "non-compliance" with the CASA requirement of effective civilian oversight**.**

Not only does the Board need to be at full strength, under paragraphs 278 and 279 of the CASA, the CPOA must have adequate budget and staff (non-appointed members of the agency) to perform its roles. During the monitoring period, CPOA had requested four new investigative positions, and this request was denied. Given the increase in sworn members of the APD, the CPOA workload, and CPOA's ability to meet the time requirements for investigations as set forth in the CASA and CBA, we would expect this request to be given serious consideration in the next fiscal year. We are also concerned and will focus on CPOA's budget in the next fiscal year. Previously the CPOA budget was required by Ordinance to be ½ of 1% of the APD budget. This requirement has since been removed, and the ordinance now states:

> "The CPOA shall recommend and propose its budget to the Mayor and City Council during the city's budget process to carry out the powers and duties under §§ 9-4-1-1 through 9-4-1-14, including itemized listings for the funding for staff

and all necessary operating expenses." Revised Ordinances of Albuquerque, New Mexico, 1994, Section 9-4-1-4(A)(2)."

Although we cannot say the present CPOA budget is insufficient for its needs during the IMR 10 period, there are indications in our review of the CPOA work performance that more staffing may be required. The CPOA budget and staffing, and hence its ability to comply with the CASA requirements applicable to CPOA and the Board, will be a focus of the monitoring team in future review periods.

In our last IMR we pointed out two cases of deficient work by the Board, which we thought were linked to the vacancies of the Board and its demanding workload. In this monitoring review we have observed an
unnecessary controversy, which raises concerns about the impartiality of a Board member and the overall effectiveness and public perception of the civilian oversight of APD.

In a June 21, 2019 letter addressed to the Chair of the CPOA Board, the APOA publicly lodged a complaint against a Board member and called for her resignation. The APOA challenged her impartiality, citing several tweets from her Twitter profile. One tweet that was cited was particularly relevant to a claim of impartiality. In response to a communication regarding the United States House of Representatives passing a bill supporting Blue Lives Matter by enhancing penalties for assaults on police, she tweeted "Fuck this."

The APOA's challenge engendered a response from the American Civil Liberties Union (ACLU) of New Mexico, which defended the Board member in a letter to the Board Chair on June 25, 2019. The ACLU found the APOA's conduct in the matter "troubling". It raised concerns about free speech rights and what it viewed as an APOA attempt to undermine civilian oversight and dictate the makeup of the Board.

As a result of the controversy, the Board addressed the issue during its July 11, 2019 meeting. The Board first considered, and quickly rejected, whether it should implement a social media policy. The Board then had a broader discussion regarding bias, the need for Board members to be impartial and to be viewed as impartial in carrying out its duties. The Board appropriately sought advice from its legal counsel in this difficult area of law that calls into question the extent of First Amendment rights and how they intertwine with the Board's requirement to be objective. After a well-presented recounting of Federal and New Mexico law by its counsel, reflecting the fact-specific balancing test, gray area and complexity of the law in this area, the Board continued its conversation on the need to be impartial. The subject Board member also defended herself during the meeting, stating that her public comments were not evidence of bias. Although the Board had a robust conversation on the issue of impartiality, it ended the conversation without any resolution or conclusion other than the rejection of a social

media policy. It appeared that the Board did not go beyond a discussion due to the complexity of the legal issues as relayed by its legal counsel.

The matter received more public attention with a July 22, 2019 Editorial in the Albuquerque Journal entitled: “Police oversight member’s tweets undercut mission”. This Editorial correctly pointed out that the nature of the position of a POB member requires impartiality. It further urged a resignation of the subject member or removal action by City Council.

On August 5, 2019, the issue once again resurfaced, this time raised by the subject Board member in a Guest Column letter to the Albuquerque Journal, criticizing the Journal’s Editorial and defending her actions in the matter. In her defense she made the following statement, among others:” I offer no apology for my words. Blue Lives Matter is not a true cause; it is an anti-Black Lives Matter sloganeering that serves only to detract from the latter’s success in bringing the disproportionate use of lethal force against black bodies to the forefront of the national conversation”. The direct implication of this message is that the cause of Blue Lives Matter is not a valid cause and negatively impacts the cause of Black Lives Matter. Another implication that can be drawn from the message is that the cause of Black Lives Matter is of no or of little concern to those who support Blue Lives Matter, a broad-brush accusation of law enforcement and supporters of law enforcement. As such the Guest Column letter cannot be said to allay any public concerns about the Board member’s impartiality.

CPOA Board members are tasked with approving or rejecting the findings and recommendations of the CPOA Executive Director in internal affairs investigations where civilian complaints are made against APD personnel. In that respect it is a quasi-judicial role; one that requires impartiality and a dedication to the principle of constitutional and effective policing. It is a role that requires one to value the lives of all in the community – including police - and not to default to support one side or the other in a complaint investigation (civilian vs. police officer), but rather to keep an open mind as to each individual case. Like judicial officers, it is a role that requires Board members to refrain from publicly commenting on matters or making public statements that would reasonably call into question their impartiality.

Regardless of whether the subject comments are cloaked in the right of free speech, and regardless of whether the law permits a social media policy for the Board. or for the sanction or removal of the subject member in this instance, the Monitor must assess the effectiveness and impartiality of the Civilian Oversight of the APD. As such the Monitor may identify incidents that call into question the objectivity of the civilian oversight system and/or the public perception thereof, and the impact of the incidents on the effectiveness of the oversight. The Monitor may comment on these incidents and consider them in assessing compliance in an IMR.

First Amendment rights are not unfettered in our society, and the First Amendment is not a license to undermine public confidence in the fairness of civilian oversight of police and in a police disciplinary system. Notwithstanding the subject Board member's demonstrated past diligence in carrying out her POB duties, apparent dedication to the principles of constitutional and effective policing, and apparent sincerity of her beliefs, we - and common sense - find that the tweet about the Blue Lives Matter bill, together with the further statement that Blue Lives Matter is not a true cause but is anti-Black Lives Matter sloganeering, either demonstrates anti-police bias or reasonably gives rise to a public perception thereof, or both.

For the foregoing reasons, the monitoring team continues to find the CPOA Board to be out of compliance with paragraph 271 and revokes Operational Compliance for paragraph 273. "Meaningful oversight" by the Board means effective oversight, which is difficult if not impossible to achieve when an unnecessary controversy of this sort is publicly raging, resulting in the impartiality of a Board member reasonably being called into question. The monitoring team expects the Board to move on from this unfortunate controversy, to take a lesson from our judicial courts in the United States and not undermine public perception of its objectivity and impartiality, to stay above "the political fray", to stay focused on its mission, to conduct its business impartially, and to recognize and stress the importance not only of being a fair deliberative body but also of the need for public perception of it being a fair deliberative body.

As we pointed out in IMR 8 and IMR 9, a new mediation policy was agreed upon by the parties and approved by the monitor and the Court. That policy was a marked improvement that was expected to enable CPOA to make greater use of this effective complaint remedy and disposition tool. It was also expected that this in turn would enable CPOA to further improve its efforts for timely disposition of complaints. Unfortunately, this monitoring review has shown that complainants have not taken advantage of the mediation program and have, for the most part, opted not to pursue mediation. The agreement to allow mediation expired. The parties are negotiating a new agreement that must be filed with the Court. CPOA continues to assess different modes of delivering an effective mediation program. It is important to the overall civilian oversight process that a viable mediation program for complainants be adopted and offered to the public.

As the monitoring team also noted in IMRs 8 and 9, when reviewing a stratified random sample of investigations, regarding the requirement of "expeditiously as possible" processing of complaints contained in paragraph 281 of the CASA, and the time requirement for completing investigations contained in paragraph 191, we look for and determine the following dates: complaint received, complaint assigned for investigation, initiation of investigation after assignment, completion of investigation, and notification of intent to impose discipline (where applicable).

During the 6th site visit, the monitoring team discussed with the parties the issue of delay between the date a complaint is received and the date it is assigned for investigation. Although the CASA does not deal directly with the issue of time to assign, the parties and the monitor agreed that a delay of more than 7 working days for assignment is unreasonable and would affect the "expeditious" requirement of paragraph 281 and the time requirement of paragraph 191. We agreed this timeline requirement would be assessed in IMR 8, and in all following IMRs.

We sampled 12 CPOA investigations completed this monitoring period. All of them had evidence of "as soon as possible" initiation of investigation after assignment. However, we note that in two cases, [IMR-10-30 and IMR-10-36] assignment was made after seven working days of having received the complaint. In addition, we found four investigations that were untimely in length [IMR-10-27, IMR-10-28, IMR-10-31, and IMR-10-33]. This is a compliance rate of only 50% with the "expeditious" time requirements of the CASA.

Regarding CPOA's ability to meet its investigative responsibilities under the CASA, including the timeliness obligations under paragraphs 191 and 281, based on our observations and interaction with CPOA staff, we believe that the CPOA is operating efficiently within the confines of its present workload and staffing. However, the ability of the CPOA to meet its investigative responsibilities is impacted by the availability of necessary staff. As we stated previously in this report, during the monitoring period CPOA had requested four new investigative positions, and this request was denied. Failure to adequately staff CPOA is a violation of the CASA. At the same time, we are cognizant of the fact that funding is always a central issue. Nonetheless, either funding needs to be increased, or new efficiencies need to be found in the CPOA process. To do otherwise will result in loss of compliance at CPOA.

We also note that CPOA has initiated a new internal tracking system of complaints received, which should pay dividends in the assignment of investigations and tracking of same once the investigation is initiated.

In our review of the public information requirement for CPOA and the Board, we found that issues we have had in the past with the timeliness of release of public reports are improving. In regard to paragraph 292 of the CASA requiring the CPOA to file semi-annual reports with the City Council, CPOA previously attempted to meet this requirement by filing one semi-annual and one annual report per year, and quarterly reports verbally with City Council. They have now implemented a process of filing two semi-annual reports per year. Currently both semi-annual reports for 2018 have been completed, have been approved by the CPOA Board, and are pending approval by City Council. We note that reports completed by CPOA must be approved by the Board and are not published until they have been reviewed and approved by City Council. That process notwithstanding, in order to meet its obligation of informing the public in a

meaningful way, it is expected that in the future CPOA will issue a semi-annual report every six months within 120 days of the completion of the report period

During this monitoring period the contract for data analysis, which was outsourced to the Institute for Social Research at the University of New Mexico, expired and was not renewed. However, we have learned that CPOA's request to hire a data analyst was approved during the monitoring period and interviews of applicants are currently pending. The monitoring team notes that it is important that this transition to internal data analysis will not slow the CPOA public information process.

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**

Recommendation for Paragraph 271:

4.7.256a: CPOA Board vacancies must be promptly filled. City Council must implement an ongoing and serious screening process that considers CPOA and Board input regarding the qualifications of applicants for vacant Board positions.

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: **Not In Compliance**

Recommendations for Paragraph 273:

4.7258a: The CPOA Board must 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 the impartial, transparent and objective adjudication of civilian complaints, as well as the importance of public perception of impartiality by CPOA Board members.

4.7.258b: City Council must ensure that appointments and reappointments of CPOA Board members meet the requirements of sections § 9-4-1-5 (B) (4) and (5) of the Albuquerque Police Oversight Ordinance and paragraph 273 of the CASA, and take appropriate action if Council determines that sitting members have not met those standards.

4.7.259 Assessing Compliance with Paragraph 274: CPOA Pre-Service Training

Paragraph 274 stipulates:

> **"Within six months of their appointment, the City shall provide 24 hours of training to each individual appointed to serve on the agency that covers, at a minimum, the following topics:**
>
> **a) This Agreement and the United States' Findings Letter of April 10, 2014;**
> **b) The City ordinance under which the agency is created;**
> **c) State and local laws regarding public meetings and the conduct of public officials;**
> **d) Civil rights, including the Fourth Amendment right to be free from unreasonable searches and seizures, including unreasonable uses of force;**
> **e) All APD policies related to use of force, including policies related to APD's internal review of force incidents; and**
> **f) Training provided to APD officers on use of force."**

Results

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

4.7.260 Assessing Compliance with Paragraph 275: CPOA Annual Training

Paragraph 275 stipulates:

> **"The City shall provide eight hours of training annually to those appointed to serve on the agency on any changes in law, policy, or training in the above areas, as well as developments in the implementation of this Agreement."**

Results

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

4.7.261 Assessing Compliance with Paragraph 276: CPOA Ride-alongs

Paragraph 276 stipulates:

> **"The City shall require those appointed to the agency to perform at least two ride-alongs with APD officers every six months."**

Results

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

4.7.262 Assessing Compliance with Paragraph 277: CPOA Authority and Resources to Make Recommendations

Paragraph 277 stipulates:

> **"The City shall provide the agency sufficient resources and support to assess and make recommendations regarding APD's civilian complaints, serious uses of force, and officer-involved shootings; and to review and make recommendations about changes to APD policy and long-term trends in APD's use of force."**

Results

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

4.7.263 Assessing Compliance with Paragraph 278: CPOA Budget and Authority

Paragraph 278 stipulates:

> **"The City shall provide the agency a dedicated budget and grant the agency the authority to administer its budget in compliance with state and local laws. The agency shall have the authority to hire staff and retain independent legal counsel as necessary."**

Results

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

4.7.264 Assessing Compliance with Paragraph 279: Full-Time CPOA Investigative Staff

Paragraph 279 stipulates:

> **"The agency shall retain a full-time, qualified investigative staff to conduct thorough, independent investigations of APD's civilian complaints and review of serious uses of force**

> **and officer-involved shootings. The investigative staff shall be selected by and placed under the supervision of the Executive Director. The Executive Director will be selected by and work under the supervision of the agency. The City shall provide the agency with adequate funding to ensure that the agency's investigative staff is sufficient to investigate civilian complaints and review serious uses of force and officer-involved shootings in a timely manner."**

Results

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

4.7.265 Assessing Compliance with Paragraph 280: Receipt and Review of Complaints by CPOA

Paragraph 280 stipulates:

> **"The Executive Director will receive all APD civilian complaints, reports of serious uses of force, and reports of officer-involved shootings. The Executive Director will review these materials and assign them for investigation or review to those on the investigative staff. The Executive Director will oversee, monitor, and review all such investigations or reviews and make findings for each. All findings will be forwarded to the agency through reports that will be made available to the public on the agency's website."**

Results

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

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.ra: Continue to develop and refine an internal tacking system or other process that ensures all complaints are either assigned for investigation, referred to mediation, or administratively closed within 7 working days of receipt of complaint.

4.7.266b: Ensure that tardy assignments of investigations and tardy investigations are noted and discussed with the involved CPOA personnel.

4.7.267 Assessing Compliance with Paragraph 282: CPOA Access to Files

Paragraph 282 stipulates:

> **"The City shall ensure that the agency, including its investigative staff and the Executive Director, have access to all APD documents, reports, and other materials that are reasonably necessary for the agency to perform thorough, independent investigations of civilian complaints and reviews of serious uses of force and officer-involved shootings. At a minimum, the City shall provide the agency, its investigative staff, and the Executive Director access to:**
>
> **a) all civilian complaints, including those submitted anonymously or by a third party;**
> **b) the identities of officers involved in incidents under review;**
> **c) the complete disciplinary history of the officers involved in incidents under review;**
> **d) if requested, documents, reports, and other materials for incidents related to those under review, such as incidents involving the same officer(s);**
> **e) all APD policies and training; and**

> **f) if requested, documents, reports, and other materials for incidents that may evince an overall trend in APD's use of force, internal accountability, policies, or training."**

Results

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

4.7.268 Assessing Compliance with Paragraph 283: Access to Premises by CPOA

Paragraph 283 stipulates:

> **"The City shall provide reasonable access to APD premises, files, documents, reports, and other materials for inspection by those appointed to the agency, its investigative staff, and the Executive Director upon reasonable notice. The City shall grant the agency the authority to subpoena such documents and witnesses as may be necessary to carry out the agency functions identified in this Agreement**."

Results

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

4.7.269 Assessing Compliance with Paragraph 284: Ensuring Confidentiality of Investigative Files

Paragraph 284 stipulates:

> **"The City, APD, and the agency shall develop protocols to ensure the confidentiality of internal investigation files and to ensure that materials protected from disclosure remain within the custody and control of APD at all times."**

Results

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

4.7.270 Assessing Compliance with Paragraph 285: Authority to Recommend Discipline

Paragraph 285 stipulates:

> **"The Executive Director, with approval of the agency, shall have the authority to recommend disciplinary action against officers involved in the incidents it reviews. The Chief shall retain discretion over whether to impose discipline and the level of discipline to be imposed. If the Chief decides to impose discipline other than what the agency recommends, the Chief must provide a written report to the agency articulating the reasons its recommendations were not followed."**

Results

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

4.7.271 Assessing Compliance with Paragraph 286: Documenting Executive Director's Findings

Paragraph 286 stipulates:

> **"Findings of the Executive Director shall be documented by APD's Internal Affairs Bureau 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 Notes: 287:

The CPOA Board must respect and follow the appeals process set forth in its Ordinance and apply it equally to all members of the public. The functional equivalent of allowing an appeal before the end of an investigation should be avoided.

When the CPOA Board grants an appeal and sustains violations that were not found by CPOA or otherwise alters CPOA findings, an articulation of why the Board differs from CPOA should be provided to better enable the Chief to reach an appropriate decision.

When the CPOA Board grants an appeal and sustains violations that were not found by CPOA or otherwise alters CPOA findings, disciplinary recommendations should be made, and training/policy issues addressed, to better enable the Chief to reach an appropriate decision.

4.7.273 Assessing Compliance with Paragraph 288: CPOA Recommendations Regarding APD Policies

Paragraph 288 stipulates:

> **"The agency shall make recommendations to the Chief regarding APD policy and training. APD shall submit all changes to policy related to this Agreement (i.e., use of force, specialized units, crisis intervention, civilian complaints, supervision, discipline, and community engagement) to the agency for review, and the agency shall report any concerns it may have to the Chief regarding policy changes."**

Results

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

4.7.274 Assessing Compliance with Paragraph 289: Explanation for not Following CPOA Recommendations

> **"For any of the agency's policy recommendations that the Chief decides not to follow, or any concerns that the agency has regarding changes to policy that Chief finds unfounded, the Chief shall provide a written report to the agency explaining any reasons why such policy recommendations will not be followed or why the agency's concerns are unfounded."**

Results

Primary: **In Compliance**

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

4.7.275 Assessing Compliance with Paragraph 290: Regular Public Meetings

Paragraph 290 stipulates:

> **"The agency shall conduct regular public meetings in compliance with state and local law. The City shall make agendas of these meetings available in advance on websites of the City, the City Council, the agency, and APD."**

Results

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

4.7.276 Assessing Compliance with Paragraph 291: Community Outreach for the CPOA

Paragraph 291 stipulates:

> **"The City shall require the agency and the Executive Director to implement a program of community outreach aimed at soliciting public input from broad segments of the community in terms of geography, race, ethnicity, and socio-economic status."**

Results

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

4.7.277 Assessing Compliance with Paragraph 292: Semi Annual Reports to Council

Paragraph 292 stipulates:

> **"The City shall require the agency to submit semi-annual reports to the City Council on its activities, including:**
>
> **a) number and type of complaints received and considered, including any dispositions by the Executive Director, the agency, and the Chief;**
> **b) demographic category of complainants;**

c) number and type of serious force incidents received and considered, including any dispositions by the Executive Director, the agency, and the Chief;
d) number of officer-involved shootings received and considered, including any dispositions by the Executive Director, the agency, and the Chief;
e) policy changes submitted by APD, including any dispositions by the Executive Director, the agency, and the Chief;
f) policy changes recommended by the agency, including any dispositions by the Chief;
g) public outreach efforts undertaken by the agency and/or Executive Director; and
h) trends or issues with APD's use of force, policies, or training."

Results

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

Recommendations for Paragraph 292:

4.7.277a: CPOA should specifically identify the points causing non-compliance with this paragraph and work with APD and the monitoring team to decide upon processes that will move it back into compliance.

4.7.278 Assessing Compliance with Paragraph 320: Notice to Monitor of Officer Involved Shootings

Paragraph 320 stipulates:

"To facilitate its work, the Monitor may conduct on-site visits and assessments without prior notice to the City. The Monitor shall have access to all necessary individuals, facilities, and documents, which shall include access to Agreement-related trainings, meetings, and reviews such as critical incident review and disciplinary hearings. APD shall notify the Monitor as soon as practicable, and in any case within 12 hours, of any critical firearms discharge, in-custody death, or arrest of any officer."

Methodology

An Assistant City attorney has taken responsibility for providing notice to the monitoring team regarding all APD critical firearm discharges. Based on the new system's results, the monitor now receives expeditious notification, via e-mail exchanges, of all officer-

involved shootings. The City's 320 notifications now match the "known data" contemporaneously maintained by the monitoring team, which is tallied from news reports, contemporaneous reviews of use of force reports, and spot checks of information reviewed from IA "course of business" data.

Results

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

5.0 Summary

For this reporting period, we have summarized APD's performance using a well-known strategic planning rubric of Strengths-Weaknesses-Opportunities-Threats, which is a widely adapted tool for assessing where an organization is in its current developmental processes, and where it needs to be. This analysis is outlined below.

During the tenth reporting period, APD has made substantial progress in the areas of policy and training development. This progress has led to meaningful improvements over past practices. These prefatory tasks of CASA compliance have been completed and are now in compliance with the requirements of the CASA. The monitoring team notes other specific strengths, weaknesses, opportunities and threats related to compliance efforts during this reporting period. These are outlined below and should be used as a mapping process by executive and command staff at APD, as the organization moves forward over the coming months. We note one particular fact moving forward. The "prefatory" tasks of CASA compliance have been completed and are now considered compliant. APD's compliance processes, as they stand at this time exhibit specific strengths, weaknesses, opportunities and threats. We note the more salient aspects of APD's compliance status in the following pages.

Strengths

This monitor's report has identified several salient organizational strengths related to compliance with mandated provisions of the CASA. These include the following:

1. Internal Affairs Force Division (IAFD) has created a new APD standard of professional review, classification, investigation and findings development for APD's more serious use of force investigations. The lessons learned from developing these processes are being applied to critical IA review functions moving forward.

2. IAFD has completed its review of backlogged use of force cases, cases improperly delayed or processed by the previous administration.

3. FRB reconstitution has been assigned to a newly formed team. The team's members are receptive to monitor guidance, enthusiastic about their responsibilities, and have begun leveraging their understanding of issues confronting APD into meaningful proposals for moving forward with FRB processes. The process underway includes convening focus groups regarding past FRB issues and concerns and developing learning tools to gain insight and understanding concerning FRB processes from other similarly situated policy departments. The FRB team is also leveraging other APD teams who have proven successful in meeting their mandate, e.g., IAFD and SOD.

4. APD met 100 percent of CASA-established primary compliance requirements during this reporting period, a major accomplishment. This means, in effect, that policy requiring compliance actions and processes are complete, and are reasonably designed to achieve the articulated goals of the CASA. Secondary compliance rates (training) currently stand at 81 percent, and overall compliance rates stand at 63 percent.

5. APD has selected, trained and fielded a data analysis group that is, in the judgment of the monitor, a remarkably talented and focused group of individuals who are capable of producing "actionable intelligence" on compliance efforts' outcome results.

6. APD's Compliance Bureau continues its strong process- and outcome-related oversight of APD operations. It is a process that APD should consider replicating (on a smaller scale) and building into each Area Command's compliance efforts.

Weaknesses

A serious and significant tendency exists among a large percentage of field supervisors—and some in the mid-management and command ranks—to continue to routinely supersede or discount executive authority by delaying reports of officer behavior requiring action until discipline can no longer be applied due to union contract restrictions.

Key elements of supervision and command are either not cognizant of the need for focused, detailed, and careful review of field practices, or they are deliberately non-compliant regarding these issues. This is particularly true of the requirement that APD officers activate their OBRDs, as required by policy and training. We have noted a significant number of supervisors who ignore failures to activate OBRDs as required by policy, or if they do happen to note these failures, they tend to rationalize the causes of those failures. Few if any such failures result in meaningful interventions. In one case in which multiple officers failed to activate their OBRDs when required by policy, the

monitoring team was the only oversight element that noticed this obviously "knowable" deviation.

Sergeants and lieutenants, at times, go to extreme lengths to excuse officer behaviors that clearly violate established and trained APD policy, using excuses, deflective verbiage, *de minimis* comments and unsupported assertions to avoid calling out subordinates' failures to adhere to established policies and expected practice.

Supervisors (sergeants) and mid-level managers (lieutenants) routinely ignore serious violations, fail to note minor infractions, and instead, consider a given case "complete," without taking remedial action, or take remedial action on only the most minor of the noted violations. Few command personnel take note of these failures by supervisory and mid-management personnel.

Command-level personnel have also been observed to participate in this inappropriate winnowing process by extending timelines beyond the length of time requested by supervisors, thus ensuring that any negative consequences of a review are neutralized, and the errant behavior is no longer addressable due to conflicts with the union contract.

Some command personnel are often equally involved in direct and willful actions or inactions that contravene the CASA, and protect officers who have, in some cases, willfully committed actions in violation of, or failures to act in accordance with, the CASA.

Opportunities

APD has begun an infusion of new command-level personnel committed to CASA compliance, and there is evidence of a maturing of in-house process documentation, data collection and data analysis that is an essential element of successful compliance efforts. APD has, for the most part, a focused executive-level leadership supporting CASA-congruent processes and has created an environment of CASA-supportive oversight among most executive-level APD personnel. Further, there are supportive funding levels from the City of ABQ related to CASA compliance efforts.

Threats

Some members of APD continue to resist actively APD's reform efforts, including using deliberate counter-CASA processes. For example:

- Sergeants assessed during this reporting period were "0 for 5" in some routine aspects of CASA-required field inspections;
- Collective Bargaining Agreement (CBA) disciplinary timelines, appear at times to be manipulated by supervisory, management and command levels at the area

commands, letting known violations lie dormant until timelines for discipline cannot be met; and

- Spin up of “new” FRB processes will require persistent and candid review, assessment, oversight and support at the field level.