

Monitor's 17th Report

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

No. 14-CV-1025-JB-JFR

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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 17th reporting period, which covers August 1, 2022, through January 31, 2023.

2.0 Executive Summary

APD has made substantial progress this reporting period. We note that several of the more difficult compliance processes have moved into operational compliance this reporting period. These include paragraphs related to the timely completion of Level 1 use of force investigations within the 90-day timeline required by the CASA. APD's training processes continue to be professionally planned, documented, and delivered. We note that all training requirements articulated in the CASA are now in compliance. Force investigations continue to be professionally and timely completed and are well-documented. IAFD and EFIT continue to generate industry-standard force investigations, and the rate of uses of force has remained relatively stable over the last three reporting periods, with these levels significantly lower than three years ago. We also note that all IAPS and area command investigations were consistently completed in accordance with CASA requirements. Further, all CIU paragraphs were found in compliance during this reporting period.

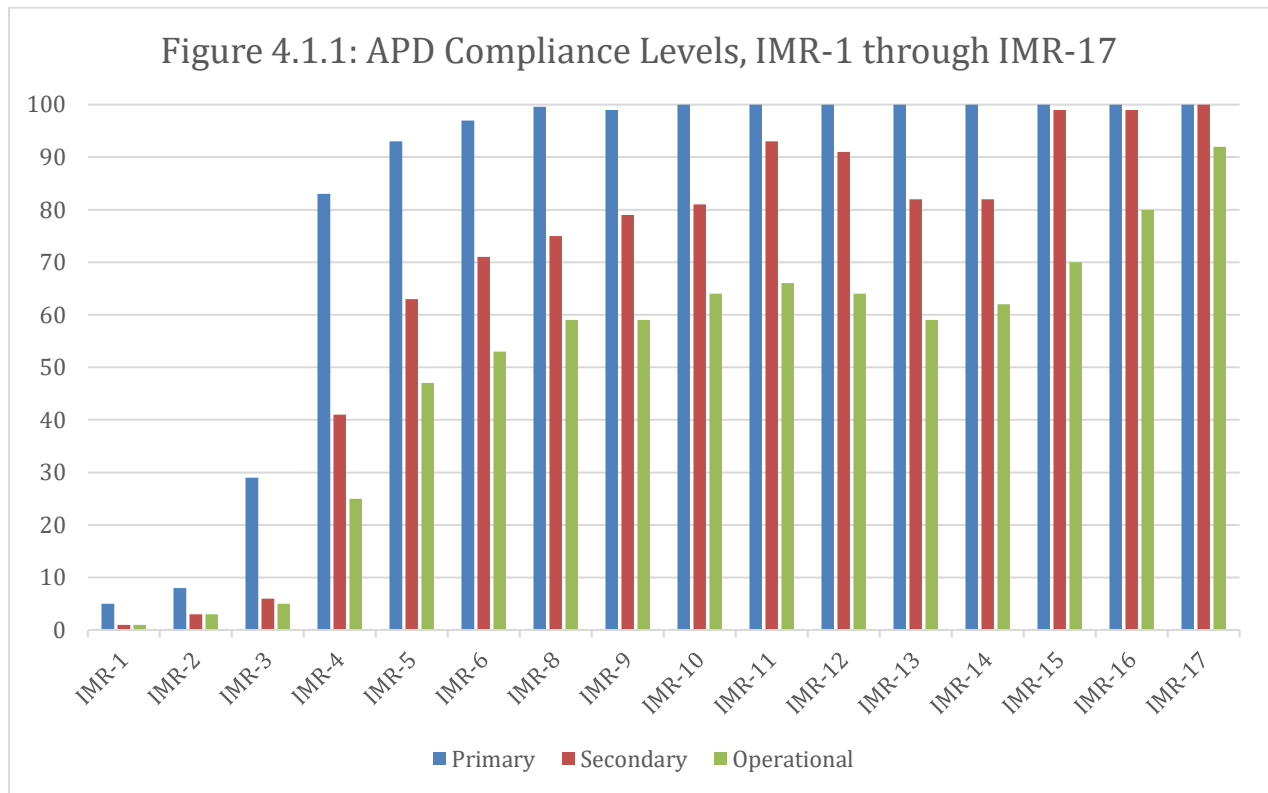
Leadership at APD is currently engaged in the process of planning the transition of force investigations back to IAFD in order to field internal processes that are CASA-congruent. This will allow APD to demonstrate its willingness and ability to field industry-standard force-investigation processes without external assistance—an important capability to come into compliance with the force-investigation requirements of the CASA.

There remains work to be done, however. For example, some supervisors occasionally continue to misclassify uses of force, such as Level 1 use of force misclassified as Low-Level Control Tactics or Level 2 use of force misclassified as Level 1, thus yielding cursory reviews or no reviews of critical incidents. In addition, we noted a degradation in the quality of case reviews and assessments by some members of the FRB during this reporting period. We note this had been a problem

in the past and was corrected; however, this issue reappeared during IMR-17. We do note that APD has already moved to address these issues.

This report details some difficulties at CPOA, most likely attributable to staffing and oversight. We make specific recommendations on the paragraphs implicated in this report.

These issues notwithstanding, APD’s Operational Compliance is at 92 percent this reporting period. APD is approaching the 95 percent Operational Compliance levels required for full compliance with the CASA. APD was in 80 percent Operational Compliance for IMR-16. It is at 92 percent Operational Compliance for IMR-17. In the monitor’s opinion, we consider this change to be significant. We reiterate our long-standing advice to APD: the key to compliance is leadership and supervision. Those two processes will be the key to CASA compliance moving forward. Long-term compliance rates exhibited by APD from IMR-1 through IMR-17 are depicted in Figure 4.1.1.



3.0 Synopsis of Findings for the 17th Reporting Period

As of the end of the IMR-17 reporting period, APD’s compliance levels are as follows:

Primary Compliance 100%

Secondary Compliance	100% and
Operational Compliance	92%

4.0 Current Compliance Assessments

As part of the monitoring team's normal course of business, it established a baseline assessment of all paragraphs of the CASA for the Independent Monitor's first report (IMR-1)¹. This was an attempt to provide the Parties with a snapshot of existing compliance levels and, more importantly, to identify issues confronting compliance as APD continues to work toward full compliance. As such, the baseline analysis was considered critical to future performance in APD's reform effort, as it clearly depicts the issues standing between the APD and full compliance. This report, IMR-17, 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

APD remained consistent with its Primary Compliance findings at 100 percent. Secondary Compliance increased this reporting period, moving from 99 percent to 100 percent. During this reporting period, APD's Operational Compliance rose significantly for this reporting period, to 92 percent.

4.2 Project Deliverables

The 3rd Amended Court-Approved Settlement Agreement defines the project deliverables of the CASA. Each deliverable is identified in detail in section 4.7 on the following page.

4.3 Format for Compliance Assessment

There are 169 paragraphs monitored in this report. Three paragraphs in the 3rd Amended CASA were intentionally left blank, and two were updated to indicate they were non-rated introductory paragraphs. One-hundred-two paragraphs are in self-monitoring by APD. We note that some of the CASA's paragraphs have been moved to APD self-monitoring based on the agreement of the Parties and the concurrence of the monitor².

The monitor's reports are structured into nine major sections, following the structure of the CASA:

- I. Use of Force;
- II. Specialized Units;

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

² "Final 3rd Amended CASA, paragraph302.

- 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;

The seventeenth monitor's report does not address in detail item VII, Recruitment, Selection, and Promotions, as APD is in full compliance with the requirements of that section of the CASA. This report addresses the remaining eight 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 Monitoring Assessment Process

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

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

Under no circumstances were data selected by the monitoring team based on provision of records of preference by personnel from the City or APD. In every selection of random samples, APD personnel were provided lists of specific items, date ranges, and other specific selection rules. The samples were drawn throughout the monitoring period and on-site by the monitor or his staff. The same process continues 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 providing acceptable training related to supervisory, managerial, and executive practices designed to (and effective in) implementing the policy as written, e.g., sergeants routinely enforce the policies among field personnel and are held accountable by managerial and executive levels of the department for doing so. By definition, there should be operational artifacts such as reports, disciplinary records, remands to retraining, follow-up, and even revisions to policies if necessary, indicating that the policies developed in the first stage of compliance are known to, followed by, and important to supervisory and managerial levels of the department.
- **Operational Compliance:** Operational compliance is attained at the point that the adherence to policies is apparent in the day-to-day operation of the agency, e.g., line personnel are routinely held accountable for compliance, not by the monitoring staff, but by their sergeants, and sergeants are routinely held accountable for compliance by their lieutenants and command staff. In other words, the APD “owns” and enforces its policies.

4.6 Operational Assessment

APD and the City (including the CPOA and CPOA Board) have agreed to comply with each articulated element of the CASA. The monitoring team provided the Parties with copies of the team’s monitoring methodology (a 299-page document), asking for comment. That document was then revised based on comments by the Parties. This document reflects the monitor’s decisions relative to the Parties’ comments and suggestions on the proposed methodology and is congruent with the final methodology included in Appendix One of the monitor’s first report³. The first operational paragraph, under this rubric, is paragraph 14, as paragraph 13 is subsumed under paragraph 14’s requirements. We note that some paragraphs have changed in the 3rd Amended CASA.

³ Available at: <https://www.justice.gov/usao-nm/file/796891/download>

4.6.1 Methodology

The monitor assessed the City and APD's compliance efforts during the 17th reporting period using the *Monitor's Manual*, included as Appendix A in the monitor's first report (see footnote 2 for a link to that methodology). We note that the original methodology was sometimes revised based on the availability of records (or lack thereof) and related organizational processes. The manual identifies each task required by the CASA and stipulates the methodology used to assess compliance. The reader will note that, as of IMR-17, some CASA Paragraphs are monitored by APD, as provided for by the CASA, once long-term compliance is established by APD, as per monitor's findings.

4.7 Assessing Compliance with Individual Tasks

APD's compliance with individual tasks for the 17th reporting is described in the following sections.

4.7.1- 4.7.3 Assessing Compliance with Paragraphs 14-16

4.7.1 Assessing Compliance with Paragraph 14

Paragraph 14 stipulates:

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

- a) Officers shall use advisements, warnings, and verbal persuasion, when possible, before resorting to force;**
- b) Force shall be de-escalated immediately as resistance decreases;**
- c) Officers shall allow individuals time to submit to arrest before force is used whenever possible;**
- d) APD shall explicitly prohibit neck holds, except where lethal force is authorized;**
- e) APD shall explicitly prohibit using leg sweeps or prone restraints, except as objectively reasonable to prevent imminent bodily harm to the officer or individual; to overcome active resistance; or as objectively reasonable where physical removal is necessary to overcome passive resistance and handcuff the individual;**
- f) APD shall explicitly prohibit using force against individuals in handcuffs, except as objectively reasonable to prevent imminent bodily harm to the officer or another individual; 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 an individual shall be reported as a Level 1 Use of Force, and shall be done only as**

- objectively reasonable to accomplish a lawful police objective; and**
- i) once a scene is secure following a use of force, officers, and, upon arrival, a supervisor, shall immediately inspect and observe individuals subjected to 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 consistent with their training until professional medical care providers arrive on scene.”**

Methodology

APD’s use of force policies integrates a three-level reporting system, which was first enacted in January 2020. The implementation of the policies in the field is overseen by APD supervisors and chains of command across the department, with higher levels of force investigated principally by the Internal Affairs Force Division (IAFD).⁴ Department-level oversight of APD force policies is provided by its internal affairs function and the Force Review Board (FRB). Throughout 2022 APD worked to revise its force policies, and on January 26, 2023, they issued monitor-approved policies to the department. Over the course of the IMR-16 and IMR-17 monitoring periods, APD developed and delivered training commensurate with the requirements of this paragraph. As we note later, Paragraphs 86-88 are now in Operational Compliance as of the close of IMR-17. Parenthetically, following the close of this monitoring period, APD submitted training materials for twenty (20) hours of classroom and reality-based training (RBT) which incorporates the changes in the new use of force policies.⁵ The monitoring team will audit that training during the next monitoring period to assess the quality of the in-person training.⁶

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. The past three monitor reports detailed the progress APD has made in force training, and the quality and timeliness of force investigations at each level have also trended positively. During the past three monitoring periods, significant advances have occurred, chiefly attributable to APD providing resources to CASA-centric units, implementing various processes, and leveraging the experience of people

⁴ Currently, EFIT maintains a place of importance in the process of supervising IAFD investigations of Levels 2 & 3 uses of force, while Level 1 uses of force are investigated in the field by supervisors. In select Field Service Bureau Area Commands, APD has piloted a response unit to investigate Level 1 uses of force that we expect will be expanded in 2023.

⁵ These training programs are meant to address APD’s 2023 use of force training requirements as well as address the implementation needs of any policy changes.

⁶ Training compliance is assessed on two levels: (1) The quality and content of training materials and (2) The quality of delivery of those training materials. Both must be met to achieve and sustain Secondary and Operational Compliance respectively.

from outside the organization. Currently, field supervisors make initial assessments and classifications to determine the appropriate type of response to instances where officers use force. These initial field assessments are essential to CASA compliance, and as we note later in this report, there are still instances where errors are made, though at a lesser rate than in years past. APD Level 1 uses of force are investigated by field supervisors. However, a pilot program was implemented (detailed later in this report) in select area commands, where a team of investigators responds to take over those investigations. The goal is to reduce the burden on field supervisors and leverage the lessons learned with IAFD to standardize the work product across the commands.⁷ The Internal Affairs Force Division (IAFD) responds to investigatory responsibilities associated with all Levels 2 and 3 uses of force.

In February 2021, the City of Albuquerque and the DOJ entered into a Stipulated Agreement to implement an External Force Investigation Team (EFIT) that commenced operations on July 16, 2021, shortly before the close of the IMR-14 monitoring period. The EFIT investigators are involved from the initial response to Level 2 and Level 3 uses of force. They take part in interviews of officers and witnesses and provide instruction during the completion of reports. All investigations are overseen, reviewed, and tracked by EFIT, and if there is a disagreement in the use of force findings, EFIT documents their perspective and notifies the parties. A Process Narrative was developed and is currently being used to assess all IAFD investigations to ensure they meet CASA investigative standards. Graduated phases have been established to transition detectives and investigators to a position where they can investigate force cases independent of EFIT involvement.⁸ Individual detectives/investigators and their work product are evaluated against the Process Narrative standards, and APD collaborates with EFIT when deciding on an investigator's potential to move along. The goal is to transition all investigations of Level 2 and Level 3 uses of force back to IAFD without any EFIT involvement. Still, the movement has been slow over the past 18 months through to the end of this monitoring period.

The project with EFIT has been very successful, influencing the quality and timeliness of use of force investigations at APD. The IAFD Commander who took over last year has also made a noticeable impact. The monitoring team reviewed a random sample of cases submitted by IAFD during this monitoring period, and the quality of the writing and the accuracy of the investigative findings remained good relative to monitoring periods in years past. The additional benefit is that the Force Review Board (FRB) can have better confidence in cases it is reviewing and the findings investigators make. FRB members move more quickly during case reviews, and meetings are more streamlined. There has been significant

⁷ The monitoring team discussed with APD for years that disparity in the application of standards and assessment of use of force across area commands was inhibiting their compliance efforts. Centralizing this work will likely produce policy- and CASA-compliance benefits.

⁸ So far, the instances of IAFD detectives and investigators reaching this level of independence are limited. However, EFIT still maintains a level of oversight of the cases but not during the stages through the investigations unless specifically requested.

progress with the FRB's movement of cases, but as we comment in Paragraph 78, we observed areas of concern.

As previously noted, EFIT will eventually pass oversight responsibilities back to APD, which will test its ability to sustain the obvious progress made with day-to-day external oversight. With the progress APD has made over the past two years, now is the time for the highest-level executives at APD to become hyper-focused in its CASA compliance efforts and not allow any degree of complacency to seep into its daily business practices. As APD progresses through 2023, we encourage all supervisors and commanders to appreciate the current standards that are in place, reflect on the past, and consider the technical assistance they have received from the monitoring team over the years. The lessons learned will help inform future decisions that help sustain and build upon the progress of reform. In IMR-16, we called attention to key areas we felt were important for long-term sustainability. The following are monitoring team thoughts from this monitoring period:

1. Staffing – Building and sustaining a sufficient cadre of detectives/investigators with the core competencies necessary to effectively investigate uses of force is essential. Progress has been made, and the movement of detectives/investigators through the transition phases has occurred, but the existing situation has taken considerably longer than expected.⁹ Long-term sustainability of detective/investigator competencies within IAFD will require close oversight by IAFD supervisors and commanders. Top echelon executives must account for and address the movement and attrition of IAFD personnel through proper forecasting.
2. Timeliness of use of force investigations has increased significantly from historical levels, which we reported in IMR-16. The average time to complete Level 2 and Level 3 investigations is between 51-56 days, and the oversight through the entire chain of command remained above 80 days throughout this monitoring period. By historical standards, these times are significantly better. Still, we continue to encourage APD to seek ways to maintain standards and reduce timelines, which we believe will benefit APD in the long run.
3. EFIT's Process Narrative was put into place to establish standards and a system by which all use of force investigations will follow. The Process Narrative is the foundation upon which sustainability of conducting quality force investigations will be built after EFIT is completed with their work at APD. At the close of the IMR-16 monitoring period, we reported that IAFD failed to follow the Process Narrative 34.04% of the time. That

⁹ At the close of this monitoring period, three (3) detectives were released to investigate Level 2 & 3 uses of force without EFIT. Eleven detectives/investigators were in the transition Phases as follows: Two in Phase 1, three in Phase 2, four in Phase 3 and two in Phase 4. (EFIT Weekly Status Report, dated January 28, 2023)

compliance trend has completely reversed during IMR-17, with nearly all IAFD investigations adhering to the Process Narrative.¹⁰ As we previously commented, since failure rates can be viewed as a predictor of IAFD's ability to self-sustain current CASA compliance after EFIT's work is done, this positive trend is commendable and should be closely monitored by APD.

4. EFIT previously expressed their opinion that basic supervision and command-level oversight needed to improve. Like the monitoring team, they noted a general lack of urgency to complete tasks and implement measures that would benefit IAFD. Toward the close of IMR-16 and throughout IMR-17, APD improved significantly in these areas, as evidenced in elevated Process Narrative compliance and a decrease in the number of days a force case takes to move through the chain of command.

Results

In assessing compliance with Paragraph 14, the monitoring team reviewed data from several areas of APD, including training academy records and a random sample of Level 1, 2, and 3 use of force cases prepared by supervisors in the field and IAFD. We report our findings in detail in later paragraphs related to ECW uses of force, supervisory reviews of use of force, and force investigations conducted by the IAFD. We document in Paragraphs 86-88 that APD completed its compliance requirements for Paragraphs 86-88, and compliance efforts related to the Force Review Board (FRB) are outlined in Paragraph 78. Meeting the requirements in each of these areas contribute in some way to the compliance level of Paragraph 14. The monitoring team remains committed to continuing its technical assistance to help guide APD toward success.

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

¹⁰ EFIT reported that IAFD's compliance with the Process Narrative for the 4th Quarter of 2022 was above 90%, and in the last month of the IMR-17 monitoring period the compliance at 96%. (EFIT Weekly Status Report, dated January 28, 2023)

technologies, and weapons, both lethal and less lethal, that are available to APD officers, including authorized weapons, and weapons that are made available only to specialized units. The use of force policy shall clearly define and describe each force option and the factors officers should consider in determining which use of such force is appropriate. The use of force policy will incorporate the use of force principles and factors articulated above and shall specify that the use of unreasonable force will subject officers to discipline, possible criminal prosecution, and/or civil liability.”

Methodology

APD’s use of force policies integrate a three-level reporting system, first enacted in January 2020. The implementation of the policies in the field is overseen by APD supervisors and chains of command across the department, with higher levels of force investigated principally by the Internal Affairs Force Division (IAFD).¹¹ Department-level oversight of APD force policies is provided by its internal affairs function and the Force Review Board. Throughout 2022 APD worked to revise its force policies, and on January 26, 2023, they issued monitor- approved policies to the department.

Results

Over the course of the IMR-16 and IMR-17 monitoring periods, APD developed and delivered training commensurate with the requirements of this paragraph. As we note later, Paragraphs 86-88 are now in Operational Compliance as of the close of IMR-17. 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. To sustain its compliance standing with this paragraph, APD must maintain its force policies in accordance with Paragraph 15, provide training on those policies, and ensure those policies are implemented.

Primary: **In Compliance**

Secondary: **In Compliance**

Operational: **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

¹¹ Currently, EFIT maintains a place of importance in the process of supervising IAFD investigations of Levels 2 & 3 uses of force, while Level 1 uses of force are investigated in the field.

principles in Paragraph 14 and the overarching use of force policy.”

Results

APD has met the requirements of Paragraph 16.

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

4.7.4 – 4.7.10 Assessing Compliance with Paragraphs 17 - 20

The 2022 Firearms Training cycle was completed, and APD provided course-of-business (COB) documentation that 98.4 percent of sworn personnel (854 of 864) and 100 percent of active-duty personnel completed firearms qualification. Officers returning from leave (currently ten individuals) are first assigned to the Training Academy for firearms qualification and any other training updates as required.

While visiting each area command during this monitoring period, sergeants were asked if the lieutenants were conducting these checks. All sergeants answered in the affirmative, explaining that the lieutenant conducts two monthly inspections per squad (except in one location where the lieutenant checked all officers). Four lieutenants were asked if they conducted the inspections, and all were able to document their actions. The records we reviewed supported this contention. Ongoing tracking of the inspection process through Monthly Scorecards is provided by the Performance Management Unit (PMU).

Based on the completed requirement for annual training, APD remains in operational compliance for these paragraphs.

4.7.4 Assessing Compliance with Paragraphs 17

Paragraph 17 stipulates:

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

Results

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

Operational: **In Compliance**

4.7.5 Assessing Compliance with Paragraph 18: On-duty Weapons

Paragraph 18 is self-monitored by APD.

4.7.5--4.7.6 Assessing Compliance with Paragraph 19: On Duty Weapons

Paragraph 19 stipulates:

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

Results

Primary: **In Compliance**

Secondary: **In Compliance**

Operational: **In Compliance**

4.7.7 Assessing Compliance with Paragraph 20: Weapons Qualifications

Paragraph 20 is self-monitored by APD.

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

Throughout the past two monitoring periods, APD revised its use of force suite of policies, which were approved by the monitor and went into effect on January 26, 2023.

As reported in IMR-16, the monitoring team reviewed training records for APD’s annual firearms training. On February 16, 2022, Special Order 22-20 was issued requiring all APD personnel to attend the “2022 Day and Low Light Firearms Qualifications and ECW Recertification” course, which was held between the dates of April 4 and May 19, 2022. As part of those training programs, officers were trained on the proper techniques of unholstering, drawing, and exhibiting a

firearm. A review of attendance and scoring records, and a closeout memo dated June 1, 2022, showed that APD had a 98% attendance and passing rate for the training.¹²

During the last reporting period, the monitoring team also reviewed training materials for APD's 2022 RBT training and observed the training while on-site in May 2022. Special Order 22-48 was issued requiring all officers to attend the training between the dates of June 8 to September 29, 2022. We reviewed a December 14, 2022, Close Out Memo indicating that of 825 total available APD officers, 815 attended the training for a 99% attendance rate.¹³ As part of the training, officers are assessed in active scenarios using video and real-life actors, during which they must demonstrate their proficiency with their handgun and ECW. The training outcomes are discussed in greater detail in Paragraphs 86-88.

Results

The monitoring team has determined that APD has sustained Operational Compliance with Paragraph 21 during this monitoring period. We will compile final records of training at the close of the next monitoring period and continue to monitor performance in the field through use of force case reviews.

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

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

Paragraph 22 stipulates:

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

¹² There was a percentage of officers who were remediated from non-passing scores to passing scores by instructors while at training.

¹³ There were twenty-two officers on extended and approved leaves of absence (i.e. Military and FMLA leave), and thirty officers received training as members of an academy class in 2022. At the close of the monitoring period there were 10 active and available officers who had not attended the training. The closeout memo reviewed captured additional statistics from two remedial training sessions that occurred on December 7 & 8, 2022. An additional make-up date for the remaining ten officers was scheduled for February 3, 2023, after the close of this monitoring period.

themselves in the path of, or reach inside, a moving vehicle.”

Methodology

As noted in Paragraph 21, APD substantially advanced training relative to firearms usage throughout 2022 and through the close of IMR-17.

Results

As we have noted in the past, although use of force incidents related to Paragraph 22 are rare, we encourage APD to regularly assess its policies and training to ensure they keep up to date with legal standards and best practices. Low frequency-high risk events should be of particular concern to APD executive staff. We highly recommend all future use of force training programs include components that reinforce the CASA and policy requirements related to weapons discharges and officer interactions with suspects in vehicles.

We have determined that Paragraph 22 remains in Operational Compliance for this reporting period.

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

4.7.10 Assessing Compliance with Paragraph 23: Tracking Firearm Discharges

Paragraph 23 stipulates:

“APD shall track all critical firearm discharges.

Results

APD currently tracks firearm discharges in its IAPro system.

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

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.

The monitoring team continued its analysis of APD's use of force cases involving the use of Electronic Control Weapons (ECWs). Over the past several monitoring periods, operational compliance has fluctuated due to varying degrees of in-field ECW compliance.

During this monitoring period, APD case ledgers revealed 28 distinct cases in which an ECW was utilized, inclusive of eight Level 1 ECW Shows of Force where no higher level of force was utilized.¹⁴ This means that these eight cases consisted of just an ECW show of force that was not accompanied by an ECW application or miss, or any other higher-level use of force. There were 20 cases in which an ECW was utilized that were investigated as a Level 2 or Level 3 use of force.

During IMR-16, the monitoring team noted that all ECW cases investigated by area commands had been completed within specified timeframes. The same is true during this monitoring period: All of the Level 1 ECW cases reviewed by the area commands (as well as the pilot group reviewing Level 1 cases) were completed within 30 days.¹⁵ These data are set forth below in Table 4.7.11 on the following page.

¹⁴ In IMR-16, nine of the 36 ECW (25%) cases included only ECW Shows of Force (cases in which an actual ECW application did not occur). In IMR-15, four of the 20 ECW cases (20%) included only ECW Shows of Force. In IMR-14, nineteen of the 40 ECW cases (48%) included only ECW Shows of Force. In IMR-13, 29 of the 67 ECW cases (43%) included only ECW Show of Forces. In IMR-12, sixty-four of the 99 ECW cases (65%) included only ECW Show of Forces. In IMR-11, ten of the 53 ECW cases (19%) included only ECW Show of Forces.

¹⁵ One Level 1 ECW case occurred on the last day of the monitoring period but was still completed within 30 days.

Table 4.7.11a

Monitoring Period (MP)	ECW Cases Opened during the Monitoring Period	ECW Cases Opened <u>AND</u> Completed During the Same Monitoring Period	% of ECW Cases Opened and Completed During the Same Monitoring Period
IMR-11	53	33	62%
IMR-12	99	30	30%
IMR-13	67	3	4%
IMR-14	40	11	28%
IMR-15	20	11	55%
IMR-16	36	21	58%
IMR-17	28	19	68%

Table (4.7.11b) on the following page contains the results of the monitoring team's review of five ECW cases (three Level 1 cases, one Level 2 case, and one Level 3 case). The Level 1 cases are further examined within Paragraphs 41-59 for Supervisory Review of Use of Force Reporting. The Level 2 and Level 3 cases are further examined within Paragraphs 60-77 which address Force Investigations by the Internal Affairs Division (IAFD).

Observations and Comments

No discernible problematic ECW trends have been noted during this monitoring period.

Table 4.7.11b

Para.	Paragraph Provision	IMR-17-01	IMR-17-02	IMR-17-23	IMR-17-32	IMR-17-35
24	ECW - shall not be used solely as a compliance technique	Y	Y	Y	Y	Y
24	ECW - shall not be used to overcome passive resistance	Y	Y	Y	Y ¹⁶	Y
24	ECW - protect officer, subject, 3 rd party from physical harm	Y	Y	Y	Y	Y
24	ECW - consider less intrusive means based on threat/resistance	Y	Y	Y	Y	Y
24	ECW - control actively resistant person based on safety/effective	Y	Y	Y	Y	Y
25	ECW - verbal warning prior to discharge	N/A	N/A	N/A	Y	N ¹⁷
25	ECW - defer reasonable time to allow compliance with warning	Y	Y	Y	Y	N ¹⁸
27	ECW - continuous cycling only under exceptional circumstances	N/A	N/A	N/A	Y	N/A
27	Officers shall independently justify each cycle of 5 seconds	N/A	N/A	N/A	Y	N/A
29	Determine the reasonableness of ECW use based on circumstances	Y	Y	Y	Y	Y

4.7.11 Assessing Compliance with Paragraph 24

Paragraph 24 stipulates:

“ECWs shall not be discharged solely as a compliance technique or to overcome passive resistance. Officers may use ECWs only when such force is necessary to protect the officer or any other individual 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 individual when attempts to subdue the individual 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 individual within contact range.”

Results

¹⁶ APD appropriately determined that one of the ECW deployment cycles was when a subject was passively resistant. Since APD oversight processes noted this error, systems worked and APD is in compliance.

¹⁷ No appropriate verbal warning was provided.

¹⁸ No appropriate verbal warning was provided to accommodate compliance.

APD was in compliance with all provisions of this paragraph 100% of the time in the cases reviewed by the monitoring team during this monitoring period.

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

4.7.12 Assessing Compliance with Paragraph 25: ECW Verbal Warnings

Paragraph 25 stipulates:

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

Results

Primary: **In Compliance**
Secondary: **In Compliance**
Operational: **In Compliance**¹⁹

4.7.13 Assessing Compliance with Paragraph 26: ECW Limitations

Paragraph 26 is being self-monitored by APD.

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 an individual under power. Officers shall be trained to attempt hands-on control tactics during ECW discharges, including handcuffing the individual during ECW discharge (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 discharges 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

¹⁹ We note that APD has reduced its ECW usage to the point that even one instance of failing to issue a verbal warning and not allowing time to defer for compliance (in the same case) would hold them out of compliance. Therefore, we find them in compliance due to the reduction of ECW events.

options. Officers shall independently justify each cycle or continuous cycle of five seconds against the individual in Use of Force Reports

Results

APD was in compliance with the provisions of this paragraph in 100% of the cases reviewed.

Primary: **In Compliance**

Secondary: **In Compliance**

Operational: **In Compliance**

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

Paragraph 28 is being self-monitored by APD.

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 individual’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

APD was in compliance with the provisions of this paragraph in 100% of the cases reviewed.

Primary: **In Compliance**

Secondary: **In Compliance**

Operational: **In Compliance**

4.7.17 – 4.7.24 Assessing Compliance with Paragraphs 30 – 37

Paragraphs 30 – 37 are self-monitored by APD.

4.7.25 Paragraph 38:

[THIS PARAGRAPH INTENTIONALLY LEFT BLANK.]

4.7.26– 4.7.27 Assessing Compliance with Paragraphs 38-40: Crowd Control Policies and After-Action Reviews.

Paragraphs 39-40 of the CASA address requirements that APD must meet related to crowd control policies and the management and supervision of APD responses to events involving mass demonstrations, civil disturbances, and other crowd situations. Previously, ERT achieved Operational Compliance with the successful delivery of three stages of training that have been discussed in prior monitor reports.

As in the past, members of the monitoring team met with ERT command personnel during our November 2022 site visit to discuss ERT-centric issues. ERT came prepared to the meeting and provided a PowerPoint presentation outlining its work to address its compliance efforts. Similar to interactions we have had with ERT over the past few monitoring periods, we found the ERT representatives to be conversant with their responsibilities and receptive to feedback.

A data request was made to obtain training records, the current ERT policy, and Event/Incident Action Plans (E/IAP) and After-Action Reports (AAR) completed during the monitoring period. As noted in IMR-16, the ERT SOP 2-35 was approved by the monitor, became effective June 20, 2022, and is due for review on June 20, 2023.

The following represents our findings related to Paragraphs 39-40 for this monitoring period:

During the IMR-16 monitoring period, we were provided a lesson plan, "Incident Management Supervisor Training," developed by the APD Academy. This in-person, 4-hour training was designed to help APD supervisors manage their on-scene responsibilities when a SOD response was not warranted. The materials we reviewed were well organized, thoughtful, and addressed to the needs of a wide array of APD supervisors who may be called upon to manage a critical incident. On April 28, 2022, Special Order 22-52 was issued, requiring all APD supervisors to attend the training, which would be held between July 13 and September 9, 2022. At the time of our November 2022 site visit, APD was well on its way to completing this training. Following the close of the IMR-17 reporting period, the monitoring team collected and reviewed a January 4, 2023, closeout memorandum indicating that of 331 active APD supervisors, 315 (95.2%) attended the training. Nine APD supervisors were on authorized and extended leaves of absence (i.e., Military, FMLA). If those nine supervisors are not considered in the calculation, APD trained 97.83% of available supervisors before the close of this monitoring period. As we noted in IMR-16, the completion of this training also fulfilled APD's 2022 requirement to train APD supervisors in "incident" management as per Paragraph 88c of the CASA.

ERT continued the practice of issuing monthly Newsletters to communicate information to its members on a routine basis to supplement training initiatives. The Newsletters contain general information relevant to routine operations, encourage ERT members to recruit officers to the team, and are used to disseminate lessons learned from deployments more rapidly.

We previously commented that routine training may be too cumbersome to run through the 7-Step Training Cycle since units like ERT need more nimble environments to get training to its members. We continue to encourage ERT to apply the basic tenets of APD training development when building and tracking routine training programs, in particular, quarterly training sessions. We reviewed “lesson plans” submitted for two quarterly training sessions and one remedial session²⁰ that resembled agendas, not lesson plans. Of note, The Quarter 4 training included an instructor from another police agency, and the Remedial training “lesson plan” indicated that because that same Quarter 4 instructor was not present for the Remedial training, “This will not certify the officers as the instructor from quarter four will not be present...”. The combined Quarter 4 and Remedial training documentation is unclear what “certification” was achieved in the Quarter 4 training. As such, it is unclear what activities the attendees of the Remedial training are not certified to perform.

The monitoring team requested that APD provide documentation for any mobilizations to mass gatherings during the IMR-17 monitoring period and were provided Emergency Action Plans and After-Action Reports for three separate and distinct activations that occurred on October 25, 2022, November 3, 2022, and January 27, 2023. We found the reports to be well organized, detailed, and appropriate for compliance with Paragraph 40. The key element of ongoing compliance with Paragraph 40 is that After-Action reviews “ensure compliance with applicable laws, best practices, and APD policies and procedures.” During our November 2022 site-visit, like meetings the monitoring team has attended in the past, we reiterated the importance of connecting these elements to ERT operations. We encouraged ERT representatives to seek information and lessons learned from events encountered by similar agencies to apply best practices in their own ERT responses.

We have determined that APD remains in Operational Compliance for Paragraphs 39 through 40. We continue to recommend that ERT develop and deliver ongoing ERT training in conjunction with the Academy, since the coordination of the ERT training will benefit Academy-centric responsibilities in Paragraphs 86-88 as well. The ERT requirement for these paragraphs for policy maintenance, training, and after-action reviews is an ongoing requirement, so now that Operational Compliance has been achieved, it is important for ERT to be diligent to retain that compliance level.

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

²⁰ Quarter 3 training occurred on August 16, 2022 (Cross-training with SOD and other APD units); Quarter 4 training occurred on October 17 & 18, 2022 (Provided by an instructor from an allied police agency); and a Remedial training occurred on December 5, 2022.

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.”

Results

Primary: **In Compliance**

Secondary: **In Compliance**

Operational: **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: **In Compliance**

Operational: **In Compliance**

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

The related Paragraphs (41 through 59) encompass requirements for reporting, classifying, investigating, and reviewing Level 1 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 sub-groups: Use of Force Reporting – Paragraphs 41-45; Force Reviews and Investigations – Paragraphs 46-49; and Supervisory Force Reviews – Paragraphs 50-59. The following represents our findings relative to this series of paragraphs.

The CASA requirements stipulate that the use of force and reviews/investigations of force shall comply with applicable laws and comport with best practices. Central to these reviews and investigations shall be an assessment and determination of each involved officer's conduct to determine if the conduct was legally justified and compliant with APD policy. We have commented extensively in the past that APD's reporting and investigation of uses of force have demonstrated serious deficiencies that have hindered compliance efforts. As with other reporting periods, the monitoring team spent time during the IMR-17 reporting period in consultative processes providing perspective, feedback, and technical assistance to APD personnel regarding force investigations.

Over the past two monitoring periods, APD has seen improved results in its reviews of Level 1 uses of force. During this monitoring period, the reviews generally continued to improve, and the investigations were being conducted in a more timely manner. Requests for extensions to complete the reviews have continued to decline. While the pilot program APD put into place (to more effectively and efficiently review these uses of force) has contributed to this overall decline in cases exceeding their timelines, the Area Commands that are still conducting their own reviews have also reduced both the number of cases that need an extension to complete the cases as well as the number of reviews that have exceeded their respective deadlines. Despite these gains in efficiency, the monitoring team occasionally finds cases that are misclassified in the field that result in compliance issues related to a number of CASA paragraphs. Additionally, gaps in supervisory oversight also occasionally thwart CASA compliance.

Case reviews and random checks of use of force reviews and investigations by the monitoring team continue to reflect numerous examples of personnel requesting IA investigations related to policy violations. These requests have historically been referred to as an Internal Affairs Request (IAR). A number of use of force cases (Levels 1, 2, and 3) reviewed during this reporting period contained requests for IARs for alleged policy violations. These IARs continue to be examined by the monitoring team to the point of their logical conclusions in order to determine if APD is properly administering its IA oversight functions. During IMR-17, APD's tracking data indicated that IAFD issued 199 requests for IA review of alleged policy violations associated with use of force reviews and investigations.²¹

Table 4.7.28a illustrates the trend of IARs originating from use of force cases.

²¹ The IARs are for cases that occurred during IMR-17 as well as for cases occurring in previous monitoring periods.

Table 4.7.28a

Comparison of Use of Force Cases with Internal Affairs Requests (IARs)

Reporting Period (RP)	Level 1 UoF	Level 2 UoF	Level 3 UoF	Total UoF	Internal Affairs Requests (IARs)
IMR-12	173	232	79	484	534
IMR-13	111	244	54	409	424
IMR-14	116	216	91	423	199
IMR-15	79	169	43	291	90 ²²
IMR-16	83	161	51	295	154
IMR-17	52 ²³	185	47	284	153

Since APD has changed the way it records requests for misconduct investigations associated with use of force reviews and investigations, more details are available for internal analysis. Since all potential policy violations observed during use of force incidents have been reported to IAPS via IARs, this aggregate data provides a rich resource for APD to analyze to determine alleged misconduct trends. Much of the training conducted by the APD Academy now utilizes these data as contextually appropriate for the course being designed as part of its needs assessment phase of curriculum development.

During this reporting period, APD opened 52 Level 1 use of force cases for supervisory review. In contrast, APD opened 83 Level 1 use of force cases for supervisory review during IMR-16, 79 Level 1 use of force cases for supervisory review during IMR-15, 116 during IMR-14, 111 new cases during IMR-13, and 173 supervisory use of force reviews during IMR-12.

In previous monitoring periods, APD had numerous cases that exceeded their timelines for completing case reviews. These cases ranged from 60 days to complete the reviews to more than 150 days. The number of cases exceeding their deadlines has steadily declined for the past two monitoring periods.

In IMR-12, IMR-13, and IMR-14, APD had several cases in each reporting period which took more than 60 days to complete. In fact, in IMR-14, there were ten cases exceeding 100 days (six of which exceeded 150 days). In IMR-15, only one of the 51 completed cases²⁴ exceeded 60 days. However, a few Level 1 Use of Force cases that were completed during IMR-15 (but actually occurred prior to IMR-15) exceeded 60 days for

²² The 90 IARs for IMR-15 reflect IARs between the period of August 1, 2021, and December 31, 2021.

²³ The 52 Level 1 UoF cases opened during IMR-17 represent a 37% decrease from the 83 Level 1 UoF cases opened during IMR-16. This is the largest percentage decrease in Level 1 cases since the category of Level 1 cases was created in January 2020.

²⁴ The 51 cases noted here are cases that involve a use of force that occurred during the 15th reporting period, and the cases were completed during the IMR-15 reporting period.

the investigations. In IMR-16, the amount of time it took APD to complete the 83 Level 1 use of force cases opened for supervisory review ranged between 13 and 87 days. Ten of the cases completed exceeded 30 days, with four of these cases exceeding 80 days. Seventy of the 83 cases were completed within 30 days, although four of these 70 cases were at the 30-day mark. During IMR-17, APD completed all but two of the 52 Level 1 cases opened during IMR-17 within 30 days, and the two cases that exceeded the 30-day deadline exceeded it by one day and three days, respectively.²⁵ As noted in Table 4.7.28b, 96% of the Level 1 cases opened during IMR-17 were completed within 30 days. This is the highest 30-day case completion rate the monitoring team has observed.

During IMR-16, APD also completed cases that originated during the IMR-15 reporting period.²⁶ The same was true during IMR-17, as APD completed a total of 63 Level 1 cases when including cases carried over from previous monitoring periods. One of the 63 cases APD completed during IMR-17 was from IMR-15. This case took 300 days to complete due to the assigned reviewer retiring and no other APD member being assigned to complete the review by an APD supervisor or executive.

As noted in the last monitoring report, the monitoring team provided requested technical assistance (with feedback from DOJ) to APD in their development of a proposal for a pilot program to change the way it handles Level 1 use of force cases. This initiative, which commenced in August 2022, utilizes a dedicated group of APD personnel to conduct Level 1 reviews. The monitoring team has performed a preliminary review of the smaller number of cases reviewed by this group. No major shortcomings were found in this review. The monitoring team noted a rather significant increase in efficiency in the completion of these cases. However, due to the smaller number of cases reviewed by this group, APD has extended the period of the pilot program to facilitate a more robust sample of Level 1 cases to review. The monitoring team will report our review of this pilot program in the next monitoring report.

As the table below indicates, during the first three months (August through October) of the reporting period, 31 supervisory reviews were initiated, and 94% (29 cases) were completed within 30 days. This is the highest 30-day case completion rate for cases initiated during the first three months of a monitoring period that the monitoring team has observed to date. This is obviously very encouraging data in terms of completion rates.

This analysis provides a snapshot of how APD continues to improve in completing these investigations in a more timely manner. See Table 4.7.28b.

²⁵ Some of these cases were completed during the 18th reporting period because they occurred in the last month of IMR-17. None of the cases completed in IMR-18 exceeded 30 days.

²⁶ Four of these cases exceeded 100 days.

Table 4.7.28b: Timely Investigations of Supervisory Level 1 Use of Force Investigations for IMR-16

Reporting Period	# of Sup. UoF Cases Initiated (Months 1-3) of the Rep. Period	# of Sup. UoF Cases (Months 1-3) Completed within 30 days	Total # of Sup. UoF Cases Initiated during the Rep. Period	Total # of Sup. UoF Cases Completed within 30 days
IMR-17	31	29 (94%)	52	50 (96%)
IMR-16	44	39 (89%)	83	70 (84%)
IMR-15	42	38 (90%)	79	46 (58%)
IMR-14	49	34 (69%)	116	66 (57%)
IMR-13	52	41 (79%)	111	67 (60%)
IMR-12	99	76 (77%)	173	117 (68%)

The monitoring team conducted a review of Level 1 uses of force drawn from samples taken throughout the reporting period. Level 1 uses of force often occur with Level 2 and Level 3 uses of force. Therefore, some Level 1 uses of force are also assessed in the next section of this report which focuses on Level 2 and Level 3 uses of force.

See Appendix A for data related to the monitoring team's review of 12 Level 1 use of force cases.

Observations and Comments

As noted in the data presented in Paragraphs 60-77, Field Services supervisors continue on occasion to initially misclassify Level 2 uses of force as Level 1 uses of force. This ultimately impedes IAFD's mandated goal of completing cases assigned to them within 90 days. Thus, while IAFD may complete cases within 90 days of receiving the cases (after the misclassification is noticed by upper levels of Field Services supervisors and referred to IAFD), the resultant impact is that the cases are completed after 90 days of the date of the use of force.²⁷

Similar to the adverse impact of having Field Services supervisors initially misclassify Level 2 uses of force as Level 1 uses of force is the action of supervisors incorrectly assessing Level 1 uses of force as low-level control tactics (or officers not notifying supervisors of their use of what they perceive to be low-level control tactics (LLCT).

The monitoring team requested data regarding APD officers' reporting of the use of low-level control tactics when taking people into custody. We have long recommended that APD focus attention on officer actions at the lower end of their force reporting

²⁷ We note that the 2nd Amended CASA allowed for a 90-day investigation with a 30 extension. The 3rd Amended CASA allows for a 120-day investigation with no extensions.

responsibilities since, in those instances, there is a greater reliance on an officer's self-assessment of their actions, and specifically, whether those actions rise to the level of a reportable use of force. In December 2022, we requested incident case numbers in which officers reported using low-level control tactics during an arrest, but there was no accompanying reported use of force.²⁸ Officers are required to document the use of LLCTs in their reports but not notify the chain of command following the use of LLCTs during an arrest. Therefore, an officer's actions are not routinely supervised as closely as incidents in which Level 1 Use of Force (or above) is reported.

We learned that current APD systems do not flag cases or allow for easy queries to identify all instances when LLCTs are used. APD had to conduct a free-text search in their systems, during which they located approximately 200 individual instances (for this monitoring period) where the term "low-level control tactics" or "LLCT" was used by officers in their reports. A more refined search identified 16 separate and distinct instances where the term LLCT was used and was also associated with an arrest.²⁹ We see this as a significant gap in APD's force oversight processes and have communicated our perspective to those responsible for administrating APD's reform efforts. APD agreed that something had to be implemented to close this supervisory gap.

The monitoring team randomly selected four LLCT cases from the 16 cases APD provided, representing a 25% sample of this group of LLCTs. We were provided reports and relevant OBRDs for those cases and conducted reviews to confirm the officers' reported actions were LLCTs, and not a higher level of force.

Of the four (4) cases reviewed, the monitoring team determined that in one case, two officers failed to report Level 1 uses of force.³⁰ We note, however, that this is a small sample, and based on the sample size of only four of sixteen cases, do not find APD out of compliance and instead suggest a renewed focus on this issue by supervisory, command, and administrative staff. We do recommend, however, that APD self-assess a larger sample of LLCT cases for a critical internal review in order to assess whether there are issues with LLCTs.

In a December 2022 communication to APD, the monitoring team provided technical assistance to help APD aggregate data regarding reported uses of LLCTs. While a long-

²⁸ Based on previous technical assistance, PMU began to pilot audits of such cases in which an arrest occurs for resisting arrest or assault of a police officer, since these types of events would have a higher probability of force being used. This is not to say they can't occur without force being applied, but some measure of audit of these cases would mitigate the risk of force not being properly reported.

²⁹ The number 200 does not mean there are 200 events or uses of LLCTs, since the term may occur multiple times and/or by multiple officers in the same event.

³⁰ LLCT Case #1 (IMR-17-42) - The reporting of the event was deficient by two officers, and a proper supervisory response and review did not occur. A third officer assisted but did not appear to use force. A supervisor responded to the scene and reportedly reviewed officer OBRDs but failed to properly categorize the actions of the officers as uses of force. Likewise, actual LLCTs when walking the handcuffed subject to a patrol vehicle were not documented in the reports we were provided. That said, the officers were professional, and the force used by both officers was objectively reasonable, proportional, and the minimum amount necessary. The only errors we noted with this event were in reporting requirements related to use of force.

term technological solution is considered to capture and audit instances of LLCTs properly, we recommended a short-term solution. Specifically, for any Field Services or Investigations division with officers who report using LLCTs, the agency should mandate that event (e.g., incident number) be communicated to the APD compliance office regularly (e.g., weekly/bi-monthly/monthly). APD could implement additional or different short-term solutions, but we recommended they be instituted as quickly as practicable, and alerted APD that moving forward we would be asking for similar LLCT cases for review. We recommend APD institute its own auditing schedule of reported LLCTs to avoid additional unreported uses of force. In a similar vein, we suggest that APD implement a detailed review to determine current issues with LLCTs, and change policy, training and practice as appropriate.

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

Paragraph 41 stipulates:

“Uses of force will be divided into three levels for reporting, investigating, and reviewing purposes. APD shall develop and implement a use of force reporting policy and Use of Force Report Form that comply with applicable law and comport with best practices. The use of force reporting policy will require officers, once the scene is secure, 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 an unreported use of force by another officer will immediately report the incident to an on-duty supervisor. This reporting requirement also applies to off-duty officers engaged in enforcement action. “

Results

Primary: **In Compliance**
Secondary: **In Compliance**
Operational: **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 force reviewer or investigator. 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 individual’s behavior; (d) the level of resistance

encountered; and (e) a description of each type of force used and justification for each use of force. Officers shall not merely use boilerplate or conclusory language but must include specific facts and circumstances that led to the use of force. ”

Results

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

4.7.30 Assessing Compliance with Paragraph 43

Paragraph 43 stipulates:

“APD officers’ failure to report incidents involving use of force or prisoner injury shall subject officers to disciplinary action.”

Results

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

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

Paragraph 44 stipulates:

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

Results

Primary: **In Compliance**
Secondary: **In Compliance**
Operational: **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. During this monitoring period, APD has revised SOP 3-46 regarding discipline. They have made a distinction between attendance, misconduct, and performance violations. Violations must be of the same category to be considered in progressive discipline procedures. An example of this would be that a failure to record a mandatory recording incident is considered a misconduct violation. Failing to upload OBRD footage within the required timeline is a performance violation. Based on APD practice, these distinct OBRD violations would not be compounded when factoring in progressive discipline, according to APD policy.

During IMR-17, 137 cases were referred for investigation, with a potential 116 violations of SOP 2-8. Of the 137 cases, 100 were closed. Seventy-six were sustained, and three incidents resulted in recommendations for suspension³¹.

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

4.7.33 Assessing Compliance with Paragraph 46: Force Investigations

Paragraph 46 stipulates:

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

Results

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

³¹ Records may contain more than one allegation, or more than one officer involved.

Operational: **In Compliance**

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

Paragraph 47 stipulates:

“The quality of force reviews shall be taken into account in the performance evaluations of personnel performing such reviews.”

Results

APD has created a Performance Review Unit (PRU) compliance review process for supervisors' Level 1 Use of Force investigations pilot project. This is a 5-page comprehensive review of all aspects of the supervisory requirements for use of force investigations. Should the review highlight any inconsistencies in the investigation, the commander of the supervisor will be notified.

The Performance Metrics Unit has implemented a pilot program regarding the requirement to hold supervisors accountable for the quality of Use of Force Investigations during their performance evaluations. An audit determined that supervisors were not properly documenting failures to conduct force investigations in their performance evaluations. APD submitted a supervisory training program to ensure all requirements were met, which was approved by the monitor and completed during the IMR-17 monitoring period. The Performance Evaluation Metric System (PEMS) unit developed an audit process to analyze the number of deficient use of force investigations compared to the number of investigations completed by the supervisor. Since the training has been provided, and supervisors who fail to meet the requirements of the SOP's are beginning to be identified and referred for investigation, the requirements for Secondary Compliance have been reached. Once this becomes a routine/automated process with appropriate responses by supervisory and command responses to performance issues, the monitoring team will reassess Operational Compliance for Paragraph 47.

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

Recommendation for Paragraph 47:

4.7.34a: Continue to document the audit process through PEMS and ensure that assessments and corrective actions are timely, accurate, reliable, and appropriate.

4.7.35 Assessing Compliance with Paragraph 48: Force Classification Procedures

Paragraph 48 stipulates:

“APD agrees to develop and implement force classification procedures that include at least three categories of types of force that will determine the force review or investigation required. The categories or types of force shall be based on the level of force used and the risk of injury or actual injury from the use of force. The goal is to promote greater efficiency and reduce burdens on first-line supervisors, while optimizing critical investigative resources on higher-risk uses of force. The levels of force are defined as follow:

- a. Level 1 is force that is likely to cause only temporary pain, disorientation, or discomfort during its application as a means of gaining compliance. This includes techniques which are not reasonably expected to cause injury, do not result in actual injury, and are not likely to result in a complaint of injury (i.e., pain compliance techniques and resisted handcuffing). Empty-hand takedowns that do not result in injury or complaint of injury are reportable as Level 1 force. Pointing a firearm, beanbag shotgun, or 40 millimeter launcher, or ECW at an individual as a show of force are reportable as Level 1 force. Level 1 force does not include interaction meant to guide, assist, or control an individual who is offering minimal resistance.**
- b. Level 2 is force that causes injury, could reasonably be expected to cause injury, or results in a complaint of injury greater than temporary pain. Level 2 force includes: discharge of an ECW, including where an ECW is fired at an individual but misses; use of a beanbag shotgun or 40 millimeter launcher, including where it is fired at an individual but misses; OC Spray application; takedowns that result in injury or complaint of injury; other empty-hand techniques (i.e., strikes, kicks, or leg sweeps); and strikes with impact weapons, except strikes to the head, neck, or throat, which would be considered a Level 3 use of force.**
- c. Level 3 is force that results in, or could reasonably result in, serious physical injury, hospitalization, or death. Level 3 force includes all lethal force; critical firearms discharges; all head, neck, and throat strikes with an object; neck holds; canine bites; three or more uses of an ECW on an individual during a single interaction regardless of mode or duration or an ECW discharge for longer than 15 seconds, whether continuous or consecutive; four or more strikes with a baton; any strike, blow, kick, ECW discharge, or similar use of force against a handcuffed individual; and uses of force resulting in a loss of consciousness.”**

Results

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

4.7.36 Assessing Compliance with Paragraph 49

Paragraph 49 stipulates:

“Level 1 uses of force that do not indicate apparent criminal conduct by an officer will be reviewed by the chain of command of the officer using force or by personnel assigned to conduct those reviews. Level 2 and 3 uses of force shall be investigated by the Internal Affairs Division, as described below. In cases where there are indications of apparent criminal conduct, the reviewer or investigator shall refer the use of force to the Multi-Agency Task Force to conduct a criminal investigation. When a use of force or other incident is under criminal investigation by the Multi-Agency Task Force, APD’s Internal Affairs Division will conduct the administrative investigation. Pursuant to its Memorandum of Understanding, the Multi-Agency Task Force shall periodically share information and coordinate with the Internal Affairs Division, as appropriate and in accordance with applicable laws, to ensure timely and thorough administrative investigations of uses of force.”

Results

Primary: **In Compliance**
Secondary: **In Compliance**
Operational: **In Compliance**³²

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

Paragraph 50 stipulates:

“The supervisor of an officer using force shall respond to the scene of all Level 1, 2, and 3 uses of force to ensure that the use of force is classified according to APD’s force classification procedures. For Level 2 and Level 3 uses of force, the supervisor shall ensure that the Force Investigation Section of the Internal Affairs Division is immediately notified and dispatched to the scene of the incident to initiate the force investigation. The supervisor shall also provide a written order instructing involved and

³² Of the 12 cases reviewed, one improperly supervised case did not drop to the level required for non-compliance.

witness officer(s) to the use of force that they are not to speak about the force incident with other officers until they are interviewed and/or provide a statement about the force incident.

Results

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

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

Paragraph 51 stipulates:

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

Results

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

4.7.39 Assessing Compliance with Paragraph 52: Supervisory Force Review

Paragraph 52 stipulates:

“For all reviews of Level 1 uses of force, the supervisor or reviewer shall:

a) respond to the scene and immediately identify the officer(s) involved in Level 1 use of force;

b) review the involved officer’s OBRD video to verify that the incident involves a Level 1 use of force;

c) review the OBRD video of other officers on-scene where uncertainty remains about whether the incident rises to a Level 2 or Level 3 use of force;

d) examine personnel and the individual for injuries and request medical attention where appropriate.;

e) contact the Internal Affairs Division to conduct a Level 2 or Level 3 use of force investigation if OBRD video does not affirm a Level 1 use of force;

- f) gather any evidence located at the scene of the Level 1 use of force;
- g) capture photographs of the officer(s) and individual involved in the Level 1 use of force;
- h) require the submission of a Use of Force Report from the involved officer by the end of shift; and
- i) conduct any other fact-gathering activities while on-scene, as necessary, to reach reliable conclusions regarding the officer's use of Level 1 force."

Results

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

4.7.40 Assessing Compliance with Paragraph 53: Force Review Timelines

Paragraph 53 stipulates:

The Level 1 Use of Force reviews will be completed within one week after the day the use of force occurred. Any extension of this deadline must be authorized by a Commander or their designee prior to the expiration of the deadline. This review shall include:

- a) all written or recorded use of force narratives or statements provided by personnel or others;
- b) viewing available on-body recording device video of the initial contact with the individual against whom force was used up to the point at which the individual is in custody on-scene. If an officer used force after an individual was in custody, the reviewer shall also review available OBRD video of any in-custody uses of force. The reviewer shall have discretion not to review video that is irrelevant to the determination of whether the use of force complied with APD policy. This provision does not preclude the reviewer from looking at additional video if necessary;
- c) 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;

- d) the names of all other APD employees witnessing the use of force;
- e) the reviewer's evaluation and analysis of 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 the use of de-escalation techniques; and
- f) documentation of any policy, training, equipment, or tactical concerns.

Results

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

4.7.41 Assessing Compliance with Paragraph 54: Command Review of Force

Paragraph stipulates:

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

Results

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

4.7.41 Recommendations for Paragraph 54

4.7.41a: Enhance command oversight to ensure additional review is ordered when needed.

4.7.41b: Ensure command oversight to avoid dropped cases.

4.7.42 Assessing Compliance with Paragraph 55: Force Review Evidence Standard

Paragraph 55 stipulates:

“Unit supervisors or Commanders shall be responsible for the accuracy and completeness of Level 1 force reviews.

Results

Primary: **In Compliance**
Secondary: **In Compliance**
Operational: **In Compliance**³³

4.7.43 Assessing Compliance with Paragraph 56: Force Review Quality

Paragraph 56 stipulates:

“Where a reviewer repeatedly conducts deficient force reviews, the reviewer shall receive the appropriate corrective and/or disciplinary action, including training, demotion, and/or reassignment, 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 reviewer, unit supervisor, or Commander finds evidence of a use of force indicating apparent criminal conduct by an officer, the reviewer, unit supervisor, or Commander shall suspend the supervisory force review immediately and notify the Internal Affairs Division and the Chief. The Force Investigation Section of the Internal Affairs Division shall immediately initiate the administrative and criminal investigation.”

Results

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

³³ Of the 12 cases reviewed, one improperly supervised case did not drop to the level required for non-compliance.

4.7.44 Assessing Compliance with Paragraph 57

Paragraph 57 stipulates that:

“When the Commander or the reviewer’s supervisor finds that the force review is complete and the findings are supported by the evidence, the file shall be forwarded to the Compliance and Oversight Division. APD shall periodically conduct audits of Level 1 force reviews. These audits shall assess adherence to APD policy, training, equipment, or tactical concerns. APD shall refer any policy, training, equipment, or tactical concerns to the appropriate unit within APD to ensure that the concerns are resolved.”

Results

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

4.7.45 Assessing Compliance with Paragraph 58: Reassignment of Force Review

Paragraph 58 stipulates that:

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

Results

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

4.7.46 Assessing Compliance with Paragraph 59: Abuse of Force Discipline

Paragraph 59 stipulates:

“Where, after a force review, a use of force is found to violate policy, the Bureau of Police Reform shall direct and ensure appropriate discipline and/or corrective action. Where the use of force indicates policy, training, tactical, or equipment concerns, the Bureau of Police Reform or Chief shall also ensure that necessary training is delivered

and that policy, tactical, or equipment concerns are resolved.

Results

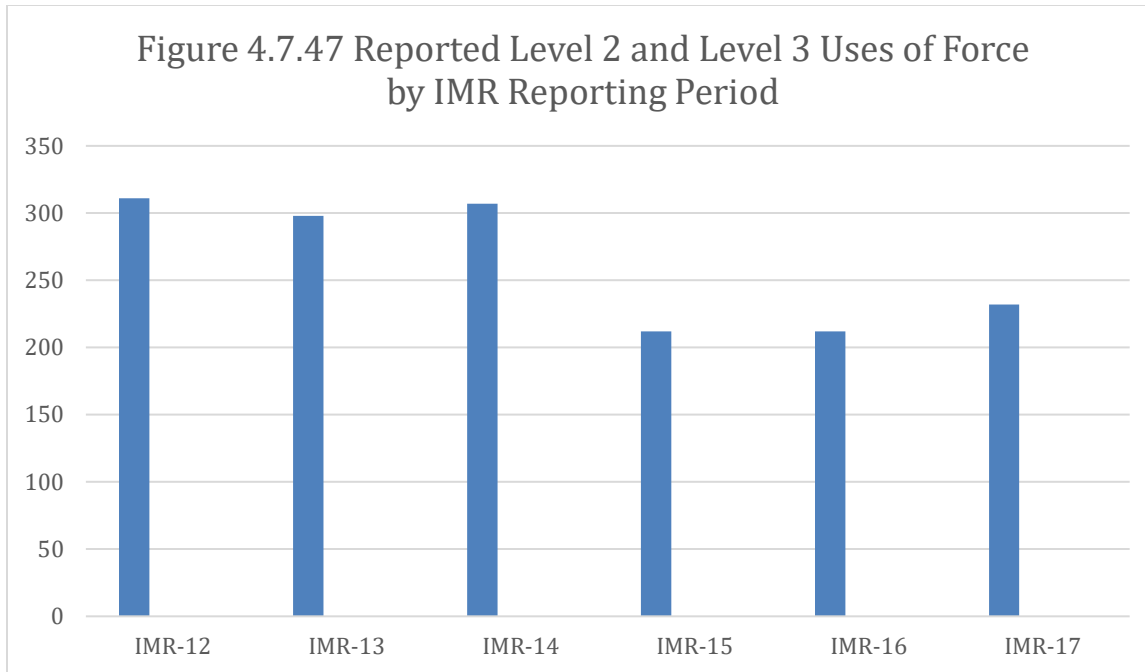
Primary: **In Compliance**
 Secondary: **In Compliance**
 Operational: **In Compliance**

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

Since July 2021, the external force investigation team (EFIT) has been working with members of APD's Internal Affairs Force Division (IAFD) in conducting Level 2 and Level 3 force investigations involving APD personnel. Under the Stipulated Order approved by the Court in 2021, EFIT may conduct these force investigations along with or independent of APD personnel. EFIT began responding to Level 2 and Level 3 force investigations on July 16, 2021³⁴. The monitoring team met with and worked closely with members of the EFIT executive team during their preliminary processes. While the latter part of this section will critically examine the cases investigated by IAFD/EFIT during this monitoring period, the monitoring team takes cognizance of the significantly improved progress (in both punctuality and quality) achieved by EFIT and APD in investigating and managing Level 2 and Level 3 use of force cases.

During the IMR-17 reporting period (data current through March 2023), APD recorded a combined 232 Level 2 and Level 3 use of force cases: an increase of 20 cases from IMR-16. During IMR-16, APD recorded a combined 212 Level 2 and Level 3 use of force cases: the same number of cases as in IMR-15. Figure 4.7.47 below depicts the numbers of Level 2 and Level 3 cases generated by APD during the IMR-12 through IMR-17 reporting periods. These data indicate a significant reduction in the levels of more serious uses of force by APD over a multi-year period. Data for this multi-year period indicate that for the IMR 12-14 reporting periods, the number of uses of force held relatively steady between 298-311 uses of force. The number of reported uses of force by APD personnel decreased dramatically, dropping by 95 cases to 212 uses of force in the 15th and 16th reporting periods, compared to 307 uses of force in the 14th reporting period. This continues to be a welcome change to the earlier data which held steady in the 300+ range. These data are depicted in Figure 4.7.47.

³⁴ The fourteenth monitoring period ended on July 31, 2021.



We consider these numbers significant. Reported Level 2 and Level 3 uses of force for IMR-17 are down 25 percent since the monitor's 12th report.

One of the CASA implementation requirements to reach an operational compliance finding is that use of force cases must be completed within 90 days. While APD has always struggled to complete cases within 90 days, the past three monitoring periods generated excellent completed case timelines.

During this monitoring period, APD and the External Force Investigation Team (EFIT) have maintained their reversal of the previous problematic long-term trend of being unable to complete Level 2 and Level 3 UoF cases within 90 days. IAFD, working alongside the EFIT, completed 180 Level 2 cases, with 177 of the cases completed within 90 days of the use of force.³⁵ The three cases not completed within 90 days were misclassified initially by Field Services personnel, which contributed to the case not being completed within 90 days of the occurrence of the use of force.³⁶

At the close of the 17th monitoring period, IAFD completed 101 of the 185 Level 2 use of force cases opened during the 17th monitoring period. There were still 84 cases opened during the monitoring period that had not been completed. These cases will be

³⁵ During IMR-16, IAFD completed 151 Level 2 cases, with 148 of the cases being completed within 90 days of the use of force. The three cases not completed within 90 days were misclassified initially by Field Services personnel, which contributed to the case not being completed within 90 days of the occurrence of the use of force.

³⁶ IAFD closed the cases within 90 days of receiving them, but the classification errors made by Field Services personnel contributed to the cases not being completed within 90 days of the occurrence of the use of force.

examined during the 18th reporting period. It should be noted that at the close of IMR-16, there were still 80 open Level 2 cases (cases that were opened during IMR-16 and not completed during that monitoring period). The monitoring team reviewed those 80 open cases during IMR-17 and noted that 77 of the cases were closed within 90 days. The cases that were not closed within 90 days were closed at 100, 102, and 106 days. While IAFD closed the cases within 90 days of receiving them, classification errors made by Field Services personnel contributed to the case not being completed within 90 days of the occurrence of the use of force.

The same holds true for Level 3 UoF cases. During this 17th monitoring period, EFIT and APD completed 54 Level 3 cases, with 49 of the cases completed within 90 days of the use of force. Three cases were not completed within 90 days of the use of force due to being misclassified initially by Field Services personnel. This is addressed pursuant to Paragraph 50. One case was reopened, elongating the period for which it was open. Thus, this case was finally closed 125 days after the use of force occurred.³⁷ Finally, the last of these five cases was a complex investigation that was granted an appropriate extension by the Department of Justice (DOJ) as well as the monitoring team, thus accounting for the 121 days to complete the investigation. We note that at the close of the 17th monitoring period, IAFD completed 28 of the 47 Level 3 use of force cases opened during the 17th monitoring period. There were still 19 cases that were opened during the monitoring period that had not been completed. These cases will be examined during the 18th reporting period. It should be noted that at the close of IMR-16, there were still 25 Level 3 cases that were still open (cases that were opened during IMR-16 and not completed during that monitoring period). The monitoring team reviewed those 25 open cases during IMR-17 and noted that 23 of the cases were closed within 90 days. IAFD closed the cases within 90 days of receiving them, but classification errors made by Field Services personnel contributed to the case not being completed within 90 days of the occurrence of the use of force.

These data are shown in tabular form in Table 4.7.47a.

³⁷ This case was originally closed within 90 days by IAFD, but was reopened, which resulted in its actual completion date extending to 125 days after the use of force occurred.

Table 4.7.47a Investigations of
Level 2 Use of Force Investigations: IMR-12 – IMR-17

Reporting period	# of Level 2 UoF Cases Initiated (Months 1-3) of the Rep. Period	# of Level 2 UoF Cases (Months 1-3) Completed within 90 days	Total # of Level 2 UoF Cases Initiated during the Rep. Period	Total # of Level 2 UoF Cases Opened, Investigated, and Completed within 90 days
IMR-17	96	96 (100%)	185	101 (55%) ³⁸
IMR-16	79	79 (100%) ³⁹	161	81 (50%) ⁴⁰
IMR-15	99	97 (98%) ⁴¹	169	101 (60%) ⁴²
IMR-14	117	1 (0.9%)	216	1 (0.5%)
IMR-13	126	3 (2%)	244	3 (1%)
IMR-12	108	97 (90%)	232	106 (46%)

³⁸ IAFD completed a total of 180 cases during IMR-17 (regardless of when the case was opened) and 177 were closed within 90 days. The three cases not completed within 90 days were misclassified initially by Field Services personnel, which contributed to the case not being completed within 90 days of the occurrence of the use of force. IAFD completed the cases within 90 days of receiving the cases. This is addressed pursuant to Paragraph 50.

³⁹ IAFD closed one case within 90 days of receiving the case, but a classification error made by Field Services personnel contributed to the case not being completed within 90 days of the occurrence of the use of force. This is addressed pursuant to Paragraph 50.

⁴⁰ IAFD completed a total of 151 cases during IMR-16 (regardless of when the case was opened) and 148 were closed within 90 days. The three cases not completed within 90 days were misclassified initially by Field Services personnel, which contributed to the case not being completed within 90 days of the occurrence of the use of force. This is addressed pursuant to Paragraph 50.

⁴¹ One case was determined to not be a force case and one case involved a criminal referral handled by IAPS from the onset outside of the purview of IAFD and EFIT.

⁴² Sixty-eight of the seventy-three of the cases still active (not completed) at the end of the monitoring period had not yet reached their respective 90-day threshold.

Table 4.7.47b Investigations of
Level 3 Use of Force Investigations: IMR-12 – IMR-17

Reporting period	# of Level 3 UoF Cases Initiated (Months 1-3) of the Rep. Period	# of Level 3 UoF Cases (Months 1-3) Completed within 90 days	Total # of Level 3 UoF Cases Initiated during the Rep. Period	Total # of Level 3 UoF Cases Opened, Investigated, and Completed within 90 days
IMR-17	27	27 (100%) ⁴³	47	28 (60%) ⁴⁴
IMR-16	26	26 (100%) ⁴⁵	51	26 (49%) ⁴⁶
IMR-15	30	30 (100%)	43	30 (80%) ⁴⁷
IMR-14	42	0 (0%)	91	0 (0%)
IMR-13	37	2 (5%)	54	2 (4%)
IMR-12	25	21 (84%)	79	24 (30%)

As noted, evidence reveals that productivity levels from earlier monitoring periods have completely reversed and continue to stabilize at appropriate levels for case completion. We are aware that this reversal was achieved with external assistance provided by EFIT. Nonetheless, progress made during IMR-15 and IMR-16 has been maintained during this reporting period. The issue that remains a significant concern for the monitor is how APD plans to adapt to workloads, case quality, and case management practices once EFIT is no longer a part of the case workload function. We urge APD to continue to consider this issue, to “think ahead” to the processes that need to be internalized, and to identify the training and oversight necessary to facilitate those processes in preparation for the day when the EFIT engagement is terminated, and the full burden of processing force investigation cases falls once again on APD. As always, the monitoring team is available to assist APD in that process.

The monitoring team conducted a review of Level 2 and Level 3 uses of force drawn from samples taken throughout the reporting period. For cases involving an ECW, those cases are evaluated here as well as in Paragraphs 24-36 of this report. Level 1 uses of

⁴³ IAFD closed two cases within 90 days of receiving them, but the classification errors made by Field Services personnel contributed to one case not being completed within 90 days of the occurrence of the use of force, and the other case was originally closed within 90 days by IAFD, but was reopened, which resulted in its actual completion date extending to 125 days after the use of force occurred.

⁴⁴ IAFD completed a total of 54 Level 3 cases during IMR-17 (regardless of when the case was opened).

⁴⁵ IAFD closed one case within 90 days of receiving the case, but a classification error made by Field Services personnel contributed to the case not being completed within 90 days of the occurrence of the use of force. This is addressed pursuant to Paragraph 50.

⁴⁶ IAFD completed a total of 37 cases during IMR-16 (regardless of when the case was opened).

⁴⁷ One case was delayed due to an involved officer being injured and unable to be interviewed and another case involved a criminal referral handled by IAPS from the onset outside of the purview of IAFD and EFIT. Neither of these cases were counted against IAFD/EFIT.

force often occur with Level 2 and Level 3 uses of force. Therefore, some Level 1 uses of force are also assessed in this section of this report that focuses on Level 2 and Level 3 uses of force.

Appendix B contains the results of the monitoring team's review of 18 Level 2 and Level 3 UoF cases.

In the last reporting period, the monitoring team noted the growth of backlogged Level 2 and Level 3 cases,⁴⁸ and the lack of progress in completing those cases. During IMR-16, the Stipulated Order approved by the Court in 2021 was amended to authorize a secondary EFIT team to address these backlogged Level 2 and Level 3 cases. EFIT-2 (the team designated to handle these cases) was operationalized during the latter part of the 16th monitoring period. At the close of that monitoring period, approximately two percent of the backlogged cases had been closed. Two weeks after the close of IMR-17, EFIT prepared its sixth Quarterly Report to the Court. That report reflected approximately 15% of the backlogged cases had been completed. A number of these closed cases have been presented to the FRB. One of the cases presented from the backlogged cases was an officer-involved shooting (OIS). EFIT-2 had opined that the use of force, in this case, was out of policy. The FRB did not agree with EFIT and ruled the force in policy. This case will be more particularly outlined in Paragraph 78 of this report.

The monitoring team reviewed a sample of twelve backlogged cases reviewed by EFIT-2. This review noted the methodology utilized by EFIT-2 is reflective of the agreement between DOJ and the City. The case reviews by EFIT-2 objectively note problems in cases and consider the totality of the case facts when determining to conduct interviews in these cases. EFIT-2 has found approximately 10% of the cases they reviewed to have an out-of-policy use of force. This is consistent with the monitoring team's review of these legacy cases. Additionally, this is generally consistent with what the monitoring team observed during past monitoring periods when these case investigations were conducted solely by IAFD. One case during our review, highlighted extremely well by the EFIT review of the case, causes alarm for the monitoring team because of the scope of the case and the number of officers implicated in alleged policy violations that were never appropriately disciplined.

This case (Case #37) involves a Level 2 UoF (Empty Hand Takedown) of a female operating a vehicle near a scheduled candlelight vigil in May 2020. Officers heard what they believed to be shots fired, and officers believed the shots came from this woman's vehicle. No information was uncovered that indicated this was accurate. However, upon stopping the vehicle, this woman, and a male occupant accompanying a one-year-old child, exited the vehicle and were verbally non-compliant towards numerous officers who converged on their location. After the male walked away from the scene with the child, an officer executed a takedown of the woman. The officer never reported the use of force, nor did approximately two dozen officers and supervisors who observed the use of force or who were observed in the area of the use of force. When the woman

⁴⁸ The backlogged caseload has been reported to be as high as 667 cases at one time during IMR-15.

complained about being in pain as the result of the force, no APD personnel documented this request, nor did they summon medical assistance. This matter was never reported to IAFD or IAPS.

This use of force was reported by a member of the Video Reporting Unit tasked with screening videos from the protest.

Six months later, when IAFD conducted a telephonic interview as part of their delayed misconduct investigation, the officer stated, "I never wrote a report on this." When asked if he reported the use of force to a supervisor, the officer stated, "I didn't feel the need to go over to 'em and say hey, this is what just happened. They were there, they were present. I could not tell you which ones (supervisors)." During this interview, the officer described himself as an "involved" officer for purposes of use of force reporting.

The IAFD investigation concluded that the use of force was reasonable, necessary, minimal, proportionate, and within APD policy.

The EFIT investigation revealed that during an IAFD interview, the officer was asked if he asked the woman or if he had inspected the woman for injuries. The officer replied, "I did. I asked her if she was hurt at all, and she stated no." EFIT concluded that based on the OBRD reviews, this conversation never occurred. Another officer spoke to the woman after the use of force, and she claimed to have an injury to her legs and arm, but she refused medical attention.

The EFIT supervisor who reviewed this matter determined that there was a complete breakdown in first-line supervision in reporting the use of force, noting that there were four sergeants on the scene who either witnessed the takedown or heard the individual complaining of being injured after the takedown. Despite APD policy stating that all officers must report a use of force incident, the officer who executed the takedown in this matter stated that he believed the sergeants on the scene would handle the reporting of the use of force.

The EFIT supervisor also determined that the investigating IAFD detective reported an attempted canvass of a motel in the area. However, EFIT determined that the reported attempted canvass was only an attempted phone call to the hotel. Furthermore, EFIT determined that the canvass should have been conducted in person and that there was a reasonable chance that persons at the motel witnessed the use of force. Reports had indicated that multiple witnesses were in the area and recording policing actions on their mobile phones.

As a result of this delayed use of force investigation, a misconduct investigation was initiated. A total of 27 APD personnel (4 sergeants and 23 officers) were alleged to have violated various SOPs and CASA provisions. The policy violations were sustained on a majority of the officers. However, at the time of the EFIT review, the case was still listed as "Active" in IAPro.

EFIT made two recommendations in this case. First, EFIT recommended that APD conduct a review of all the misconduct investigations related to this use of force to determine how the misconduct allegations should be closed and why the misconduct cases were not completed within APD policy timelines. Secondly, EFIT reiterated, as it has on prior occasions, that the placement of the OBRD on APD officers' belts makes it very difficult to obtain a clear picture of what occurred in the vast majority of use of force incidents. EFIT opined that OBRDs worn chest-high on the outer carrier would be in a better position to capture a greater percentage of UoF incidents and provide a clearer account of what occurred. It should be noted that this recommendation is in line with best practices that the monitoring team has observed throughout the country. It should be also noted that the monitoring team addressed this with APD staff multiple times in years past.

In August 2022, presumably after the EFIT review of the matter, a deputy commander of IAFD noted that the case had been transferred from one detective to another detective one month after the case was opened. An IAFD sergeant then noted that this detective submitted undated "misconduct addendums" into IAPro eight days after the required deadline for completing the investigation. That sergeant noted that the detective went on Family Medical Leave and that the case was incomplete. This command-level review noted the detective never routed the case to a sergeant or lieutenant for review. This review, after placing much of the blame for the shortcomings of this case on detectives not completing the case, did not examine the role of supervisors or commanders in their deficient oversight of the case involving 27 APD members facing SOP and CASA violations that, as noted in Final Disposition memos, carried up to eight hours of suspension time. The monitor could not evaluate certain paragraphs for compliance based solely on APD's performance because EFIT is still engaged.

Observations and Comments

No discernible trends have been noted this monitoring period in either the review of current cases (as noted in the previous tables) or in the review of backlogged cases.⁴⁹

We note that during this reporting period, APD personnel have not been ensuring compliance alone, since EFIT has been providing close supervision and assessment of line personnel's use of force. However, it is important to note that APD personnel, with EFIT's oversight, have been conducting force investigations that follow the requirements of the CASA.

APD has proven capable of doing effective internal investigations with EFIT's oversight. What remains to be done is for APD to produce industry-standard force investigations without the oversight and assistance of external sources such as EFIT and the monitoring team.⁵⁰

⁴⁹ Backlogged cases were not incorporated into the previous tables.

⁵⁰ We were able to review one case, IMR-17-07, which was completed by an IAFD officer who graduated through EFIT's process.

4.7.47 Assessing Compliance with Paragraph 60: IAFD Force Review

Paragraph 60 stipulates that:

“The Internal Affairs Force Division shall respond to the scene and conduct investigations of Level 2 and Level 3 uses of force, uses of force indicating apparent criminal conduct by an officer, uses of force by APD personnel of a rank higher than sergeant, critical firearms discharges, or uses of force reassigned to the Internal Affairs Force Division by the Bureau of Police Reform. In cases where an investigator in the Internal Affairs Force Division initiates a Level 2 or Level 3 use of force investigation and identifies indications of apparent criminal conduct, the Division shall refer the apparent criminal conduct to the Criminal Investigations Division. The criminal investigation shall remain separate from and independent of any administrative investigation. In instances where the Multi-Agency Task Force is conducting the criminal investigation of a use of force, the Internal Affairs Division shall conduct the administrative investigation.”

Results

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

4.7.48 Assessing Compliance with Paragraph 61

Paragraph 61 stipulates:

“The Internal Affairs Force Division shall include sufficient personnel who are specially trained in administrative investigations.”

Results

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

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

Paragraph 62 stipulates:

“Within six months from the Operational Date, APD shall revise the Internal Affairs Division manual to include the following:

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

Results

Primary: **In Compliance**

Secondary: **In Compliance**

Operational: **In Compliance**

4.7.50 Assessing Compliance with Paragraph 63: Investigating Level 2 and Level 3 Uses of Force

Paragraph 63 stipulates:

“APD shall ensure that all Level 2 and Level 3 uses of force are investigated fully and fairly by individuals with appropriate expertise, independence, and investigative skills so that uses of force that are contrary to law or policy are identified and appropriately resolved; that policy, training, equipment, or tactical deficiencies related to the use of force are identified and corrected; and that investigations of sufficient quality are conducted so that officers can be held accountable, if necessary. At the discretion of the Chief or Bureau of Police Reform, APD may hire and retain personnel, or reassign current APD employees, with sufficient expertise and skills to the Internal Affairs Division.”

Results

There is no question that APD's processes of case management and investigation have improved during the engagement of EFIT with APD force investigations. What remains to be seen, however, is how APD will operate without EFIT coordination and investigative processes. For this paragraph to achieve operational compliance, APD will need to demonstrate the capacity to effectively, impartially, and reasonably execute meaningful force review and investigation capacities to achieve operational compliance with this paragraph without relying on the support of EFIT for investigative and assessment decisions.

Primary: **In Compliance**

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

Recommendations for Paragraph 63:

4.7.50a: IAFD command should carefully review IMR-17 (and previous IMRs as well) for issues related to lack of operational compliance with Paragraph 63; and

4.7.50b: Conduct problem solving processes designed to address and ameliorate identified issues with systems and oversight related to this paragraph using the PINS process.

4.7.50c: Establish problem-solving discussions with involved command elements (and the monitoring team if desired) to clarify, organize, set goals and timelines for actions designed to address the monitoring team's non-compliance findings related to CASA requirements relating to use of force.

4.7.51 Assessing Compliance with Paragraph 64: Training Force Division Personnel

Paragraph 64 stipulates:

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

Results

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

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

Paragraph 65 stipulates:

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

Results

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

4.7.53 Assessing Compliance with Paragraph 66: Assistance to IAFD or the MATF

Paragraph 66 stipulates:

“To ensure that criminal and administrative investigations remain separate, APD’s Violent Crimes Section may support the Internal Affairs Force Division or the Multi-Agency Task Force in the investigation of any Level 2 or Level 3 use of force, as defined by this Agreement, including critical firearm discharges, in-custody deaths, or police-initiated actions in which a death or serious physical injury occurs.

Results

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

4.7.54 Assessing Compliance with Paragraph 67: Notice of Uses of Force Indicating Apparent Criminal Conduct

Paragraph 67 stipulates:

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

Results

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

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

“If APD initiates a criminal investigation, or where APD requests a criminal prosecution, the Internal Affairs Force Division will delay any compelled interview of the target officer(s) pending consultation with the District Attorney’s Office or the USAO, consistent with Paragraph 186. No other part of the administrative investigation shall be held in abeyance unless specifically authorized by the Bureau of Police Reform in consultation with the agency conducting the criminal investigation.”

Results

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

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

Paragraph 69 stipulates:

In conducting its investigations of Level 2 or Level 3 uses of force, as defined in this Agreement, the Internal Affairs Force Division shall:

- a) respond to the scene and consult with the on-scene supervisor to ensure that all personnel and individuals on whom force was used have been examined for injuries, that the use of force has been classified according to APD’s classification procedures, that individuals on whom force was used have been given the opportunity to indicate whether they are in pain or have injuries, and that all officers and/or individuals have received medical attention, if applicable)**

- b) review available on-body recording device video of the initial contact with the individual against whom force was used up to the point at which the individual is in custody on-scene. If an officer used force after an individual was in custody, the reviewer shall also review available OBRD video of any in-custody uses of force. The investigator shall have discretion not to review video that is irrelevant to the determination of whether the use of force complied with APD policy. This provision does not preclude the investigator from looking at additional video if necessary;**

- c) 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;
- d) ensure that a canvass for, and interview of, witnesses is conducted. In addition, witnesses should be requested to provide a video-recorded or signed written statement in their own words;
- e) ensure, consistent with applicable law, that all officers witnessing a Level 2 or Level 3 use of force by another officer provide a use of force narrative of the facts leading to the use of force;
- f) ensure that involved and witness officer(s) to the use of force have completed and signed a written order directing them not to speak about the force incident with other officers until they are interviewed by the investigator of the Internal Affairs Force Division;
- g) conduct only one-on-one interviews with involved and witness officers;
- h) review all Use of Force Reports to ensure that these statements include the information required by this Agreement and APD policy;
- i) 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;
- j) 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;
- k) record all interviews;
- l) consider all relevant evidence, including circumstantial, direct, and physical evidence, as appropriate, and make credibility determinations, if feasible; and
- m) make all reasonable efforts to resolve material inconsistencies among the officer, individual, and witness statements, as well as inconsistencies between the level of force

described by the officer and any injuries to personnel or individuals.

Results

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

Recommendations for Paragraphs 69:

4.7.56a: APD should review carefully the monitor's finding regarding Paragraph 69 of the CASA and ensure that all relevant sections of the Paragraph are included in IAFD practice. Specific revisions to policy should reflect any failure points of policy, practice, supervision or command oversight.

4.7.56b: To date, there is a paucity of evidence that APD force investigators have completed industry-standard IA investigations into serious uses of force by APD personnel without input or oversight by EFIT.

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

Paragraph 70 stipulates:

“The Internal Affairs Force Division shall complete an initial report of the use of force through the chain of command within the Bureau of Police Reform as soon as possible, but in no circumstances later than 24 hours after learning of the use of force.

Methodology

For IMR-17, members of the monitoring team requested a random sample of 21 Level 2 and Level 3 uses of force that were investigated by IAFD with assistance and oversight by EFIT. The monitoring team reviewed those cases to assess the appropriateness of force used by APD officers and assess the quality of investigation into the force. During those assessments, the monitoring team also checked compliance with the terms of Paragraph 70.

APD is required to submit the initial Use of Force Data Report within 24 hours of the event and does so through its BlueTeam system. For the 21 use of force events that the monitoring team reviewed this reporting period, a BlueTeam entry was available for each case. Our review of the BlueTeam entries showed that an entry was made within 24 hours of learning of the force in all 21 cases for a 100% compliance rate based on our random sample.

Based on these data we have determined that for IMR-17 APD has retained Operational Compliance with Paragraph 70

Results

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

4.7.58 Assessing Compliance with Paragraph 71: FIS Investigative Timelines

Paragraph 71 stipulates:

“The Internal Affairs Force Division shall complete Level 2 or Level 3 administrative investigations within the applicable deadlines in the Collective Bargaining Agreement between the City and Intervenor. Any request for an extension to this time limit must be approved by the commanding officer of the Internal Affairs Force Division through consultation within the chain of command of the Bureau of Police Reform. At the conclusion of each use of force investigation, the Internal Affairs Force Division 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 Force Division’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 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 Force Division’s narrative evaluating the use of force, based on the evidence gathered; and an assessment of the incident for tactical and training implications, including 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 officer history in the Internal Affairs Division database for the past five years.

Results

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

Recommendations for Paragraph 71:

4.7.58a: APD should conduct a detailed performance review of IAFD process and practice, and revise policy, training and supervision processes to control IAFD operations until IAFD meets compliance standards for paragraph 71.

4.7.58b: APD should build the capacity to routinely and reliably conduct IAFD investigations without the routine assistance of EFIT.

4.7.59 Assessing Compliance with Paragraph 72: FIS Report Review

Paragraph 72 stipulates:

“Upon completion of the Internal Affairs Force Division investigation report, the Force Investigation Section investigator shall forward the report through his or her chain of command to the commanding officer of the Internal Affairs Division. An Internal Affairs Division supervisor shall determine whether the officer's actions complied with APD policy and state and federal law. An Internal Affairs Division commanding officer shall review the report to ensure that it is complete and that the findings are supported using the preponderance of the evidence standard. An Internal Affairs Division commanding officer shall order additional investigation when it appears that there is additional relevant evidence that may assist in resolving inconsistencies or improve the reliability or credibility of the findings.”

Results

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

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

Paragraph 73 stipulates:

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

Results

Based on our analysis, APD was 82 percent compliant with the requirements of this paragraph (related to assessments of IAFD findings).

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

Recommendations for Paragraph 73:

4.7.60a: Conduct a data-based evaluation of the causes of completed investigations that did not use the “preponderance of the evidence” standard, and determine if the issues are caused by policy, training, or implementation issues.

4.7.60b: Once the problems with compliance are identified, develop planning processes (Goals-Objectives-Measures-Analysis-Plans-Processes) designed to overcome extant problems.

4.7.61 Assessing Compliance with Paragraph 74: IAFD Quality Control

Paragraph 74 stipulates:

“Where a member of the Internal Affairs Force Division repeatedly conducts deficient force investigations, the member shall receive the appropriate corrective and/or disciplinary action, including training or removal from the Internal Affairs Force Division 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: **In Compliance**

4.7.62 Assessing Compliance with Paragraph 75: IAD Quality Control

Paragraph 75 stipulates:

“When the commanding officer of the Internal Affairs Division determines that the force investigation is complete and the findings are supported by the evidence, the investigation file shall be forwarded to the Force Review Board.”

Results

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

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

Paragraph 76 stipulates:

“At the discretion of the Chief or Bureau of Police Reform, a force investigation may be assigned or re-assigned for investigation to the Multi-Agency Task Force or the Federal Bureau of Investigation, or may be returned to the Internal Affairs Force Division for further investigation or analysis. This assignment or re-assignment shall be confirmed in writing.”

Results

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

4.7.64 Assessing Compliance with Paragraph 77: Discipline on Sustained Investigations

Paragraph 77 stipulates:

“Where, after an administrative force investigation, a use of force is found to violate policy, the Bureau of Police Reform shall direct and ensure appropriate discipline and/or corrective action. Where a force investigation indicates apparent criminal conduct by an officer, the Bureau of Police Reform shall ensure that the Internal Affairs Division or the Multi-Agency Task Force consults with the District Attorney’s Office or the USAO, as appropriate. The Bureau of Police Reform 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 or Bureau of Police Reform shall ensure that necessary training is delivered and that policy, tactical, or equipment concerns are resolved.”

Results

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

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 provide management oversight of tactical activations and Level 2 and Level 3 uses of force. The Chief or their designee shall appoint the Force Review Board members. The Force Review Board shall:
- a) review all uses of lethal force, all in-custody deaths, and samples of other Level 3 uses of force, Level 2 uses of force, and tactical activations within 60 days of receiving the completed reports.
 - b) hear the presentation from the Internal Affairs Division or Special Operations Division chain of command and discuss as necessary to gain a full understanding of the facts of the incident.;
 - c) determine whether the incident raises misconduct, policy, training, equipment, or tactical concerns, and refer such incidents to the appropriate unit within APD to ensure the concerns are resolved;

- d) **document its findings and recommendations within 15 business days of the Force Review Board presentation; and**
- e) **review and analyze use of force data, on at least a quarterly basis, to determine significant trends and take management action.**

Methodology

The monitoring team continued to see strong attendance by the Primary Force Review Board (FRB) members. During this reporting period, APD's Secondary Force Review Board became fully operational, and we saw equally strong attendance. Generally, the use of force cases presented to the Primary FRB have been those that occurred since the External Force Investigation Team (EFIT) began assisting and overseeing IAFD activities in July 2021. The convergence of better and more timely investigations with more efficient movement of cases between IAFD and the FRB Unit has resulted in cases being heard more contemporaneously with the event.⁵¹ The Secondary FRB reviews tactical deployments and older use of force cases derived from the backlog of force cases (reported extensively in past monitor reports), which date back as far as 2016.

The process of administratively scheduling cases for the FRB begins with the transmission of closed Level 2 and Level 3 force investigations by IAFD to the FRB administrative staff. The FRB meeting presentation materials are prepared by IAFD personnel, and the FRB unit creates electronic Share files that are made available to FRB voting members in advance of each meeting to give them the necessary time to review the provided materials.

Previously, we documented our concern regarding a backlog of more than 660 IAFD investigations into Level 2 and Level 3 uses of force cases which originated as far back as January 2020. We also discussed the cascading impact it had on the FRB. Likewise, there were additional use of force cases that were not yet heard by the FRB. These were documented in an APD PINS memo. These particular cases date back as far as six years. At the close of the last monitoring period, APD submitted a proposal to establish a Secondary FRB that would focus its reviews of older use of force cases. During this monitoring period, the Secondary FRB was implemented and completed each overdue force investigation contained within APD's PINS memo. While the backlog

⁵¹ On average investigations take between 51-56 days to be completed by investigators/detectives. Supervisor and chain of command reviews finalize the case on average 81-88 days following the event. (EFIT weekly status report, dated, February 4, 2023). The cases are then capable of being transmitted to the FRB Unit to be scheduled. We note that the average time to finalize cases has trended lower since July 2021 but remains above 80 days. This is significant, since part of the FRB's ability to achieve Operational Compliance is contingent on 78c and their ability to refer incidents that raise misconduct issues to ensure the concerns are resolved. To achieve this, FRB actions in this regard must fall within CBA timelines when coordinated with internal affairs. In the 3rd Amended CASA, 78a increased the number of days the FRB has to review a case from 30-60 days, thus increasing the risk of not achieving timeliness with misconduct referrals and resolutions if APD were to increase the time it takes for the FRB to hear a case.

itself and the department's inability to apply discipline for policy violations that came from the investigations (due to timelines) has introduced organizational risk, e.g., the inability to have accurate records of uses of force by officer, squad, shift, etc., the Secondary FRB has reduced the administrative burden on the agency.

In preparation for this report, the monitoring team attended meetings held by both the Primary and Secondary FRB to ensure the meetings were being conducted in a manner that meets the requirements of this paragraph. We also reviewed cases, discussed the FRB with APD personnel responsible for administering the meetings during our November 2022 site visit, and requested additional data which were provided by the department.

The following paragraphs represent additional findings related to Paragraph 78:

In May 2022, APD updated its Force Review Board SOP 2-58 (Formerly 2-56), due for review in May 2023. APD and its academy created a training program for new FRB members, which was reviewed and approved by the monitoring team. This training initiative is meant for new APD personnel who may serve as members of the Primary FRB or Secondary FRB. The monitoring team was provided Department Memorandum 22-93, which advertised the two training program offerings for August 29-30 and October 17-18, 2022. Over these two training courses, 25 APD executives attended and successfully completed the training, making them available to serve on either FRB. We believe this training initiative had a direct impact on the total number of FRB meetings that were held during this reporting period.

On December 23, 2022, APD promulgated Special Order 22-162 entitled, "Amendment to SOP 2-58 Force Review Board (FRB); Case Review". The purpose of the Special Order was to standardize better the process for the FRB administrative staff to receive notifications of Level 2 and Level 3 force cases that are closed by the Internal Affairs Force Division (IAFD). The Special Order includes provisions mandating that FRB administrative support staff ensure that the FRB reviews force cases within 30 days of receiving the case from IAFD.⁵² The deadline for case presentations under this order shall be 30 days from the point that the FRB administrative staff receive a notification from IAFD that a particular force investigation is closed. The Special Order mandated that IAFD administrative staff notify the FRB unit no later than the 5th day of each month of all Level 2 uses of force that have been closed. For Level 3 cases closed by IAFD, the FRB administrative staff will be notified each Monday morning of force cases that were closed the previous calendar week. We believe strict adherence to these

⁵² While the 3rd Amended CASA provides APD 60 days to hear cases once received by the FRB, we encourage the department to maintain its current standards, especially considering the two FRBs have a good cadence, the FRB requirement to make referrals regarding misconduct for resolution, and changes regarding the number of Level 2 & 3 cases that must be reviewed. Historically, APD's adherence to timelines has been problematic, so to reverse course at this point would be unwise. In our opinion, and to the extent possible, the most prudent course would be to view the additional 30 days as a timeframe for one-off extensions for more complex cases and to give additional time for the review of presentations and investigation files.

standards will contribute to the administrative timeliness of scheduling cases in accordance with CASA requirements.

We previously noted that the Performance Metrics Unit (PMU) devised an application to electronically capture FRB votes regarding the appropriateness of force and investigations into that force when cases are presented to them. The platform is a standard practice for casting and analyzing FRB voting, and it was adopted and used in the newly created Secondary FRB throughout this reporting period.

During the IMR-16 monitoring period, we saw a significant increase in the number of meetings that the Primary FRB held, and a significant increase in the number of tactical activation cases and Level 2 and 3 use of force cases that were heard. We commented that these increases, coupled with the launch of the Secondary FRB, should improve APD's efforts to hear all use of force cases. During this monitoring period, tactical activation cases were heard by the Secondary FRB, allowing the Primary FRB to hear an increased number of contemporary Level 2 and 3 cases, as well as EFIT presentations of older cases they investigated from the 2020-2021 backlog. The FRB meetings continue to be very well attended by top executives of the department, representatives of City Legal, the CPOA, DOJ, and relevant subject matter experts and case presenters from different areas of the organization. Our observation of executive attendance should be underscored, because committing top executives to weekly meetings of this nature is not a simple achievement.

For this monitoring period, the Primary FRB held 25 separate and distinct meetings, hearing between 2-5 cases per meeting. The aggregate numbers of cases heard included the following: 61 Level 3 uses of force, including 15 officer-involved shootings; 24 Level 2 uses of force; and 10 EFIT presentations of 2020 and 2021 backlogged use of force cases.

The FRB is required to hear cases within 60 days of being provided the investigation from IAFD. All 85 cases met that standard for this reporting period, translating into 100% compliance. The FRB documented its findings within 15 days of hearing the case in 72 of 85 cases for an 85% compliance rating.

During the last monitoring period, APD submitted a memorandum to the monitoring team, proposing the implementation of a Secondary FRB.⁵³ We believed APD's methodology for selecting cases to be heard by the Secondary FRB was thoughtfully conceived and appropriate under the totality of circumstances. The monitoring team previously noted that specific Deputy Chiefs emerged as leaders of the Primary FRB and how we felt they thoughtfully assessed cases and challenged issues in meetings. Their objective approach to assessing use of force cases was the most significant contributing factor to the FRB moving toward legitimacy in its organizational oversight. APD adopted technical assistance they were provided by taking one of those Deputy Chiefs to serve as the Chair of the Secondary FRB to ensure the tone and tenor of those meetings are

⁵³ The methodology of how cases were initially selected for the Secondary FRB was outlined in IMR-16, so it will not be repeated here.

commensurate with the Primary FRB. We saw the implementation of a Secondary FRB as a step toward Operational Compliance and our observations of meetings and review of data demonstrated that the Secondary FRB has thus far been an effective organizational component.

The Secondary FRB held 25 separate and distinct meetings during the monitoring period, hearing between 2-6 tactical activation or use of force cases during each meeting. The aggregate numbers of cases were as follows: 28 Tactical Activation cases; 51 Level 3 use of force cases (Including ten officer-involved shooting cases); and 8 Level 2 use of force cases.⁵⁴ A monitoring team member attended meetings and found the meetings included the same features as the Primary FRB, and the meeting tone was consistently professional.

The FRB administrator documents referrals that are generated during meetings, assigns deadlines for their completion, and tracks them until they are considered closed by the FRB. Meetings have standard and professional opening comments, discussion over past referrals, and, when necessary, new due dates are assigned for referrals that are still pending. The monitoring team was provided ledgers for Primary and Secondary FRB cases heard between August 1, 2022, and January 31, 2022. The Primary FRB meetings during this monitoring period generated 12 separate referrals sent out for follow-up by the relevant organizational units.⁵⁵ For comparison, the Secondary FRB made 28 separate referrals.⁵⁶ Notwithstanding contemporary tactical cases the Secondary FRB reviews, the force cases they see are currently from years past (when investigations were less reliable and where there is less chance of a misconduct referral from any of their observations). That said, we believe Secondary FRB's diligence when reviewing cases and making meaningful referrals is essential. While many of the cases they review are old, they still carry information that can inform policy and training decisions and provide opportunities for reviews of officers' conduct for potential problematic patterns.⁵⁷

The implementation of this Secondary FRB has significantly impacted APD's ability to address and complete backlogged FRB cases and remain current on tactical activation cases, thus alleviating much of the pressure that was previously placed on the original FRB (now titled the Primary FRB). As noted, the allocation of APD executives to

⁵⁴ It is important to note that lower levels of force, or multiple uses of force, may exist within either a Level 2 or Level 3 event. When APD captures case presentation data, each case instance is based on the highest level of force within a particular event and does not necessarily represent the total uses of force.

⁵⁵ The referrals included ten training referrals, one equipment referral and one policy related referral. No referrals were made for supervisory or disciplinary issues.

⁵⁶ The Secondary FRB made referrals as follows: Four policy, two policy deficiency, 17 supervision, three tactics, one training, and one IAR success for a commendation of an officer. The older cases from the Secondary FRB reviews were likely to generate more referrals due to the timeframe in which they occurred.

⁵⁷ We saw referrals for reviews of officer files during this reporting period. For the next Monitor report, we will collect additional materials related to the referrals and the actions taken by various commands.

address the responsibilities of the two FRBs is commendable, and we highly recommend APD maintain its path into the future. Doing so will contribute substantially to APD sustaining organizational oversight of force events and trends, reducing the administrative burden across the executive staff, and ensuring that relevant APD units quickly identify and address problematic behaviors.

The monitoring team was provided with quarterly trend reports that were presented to the Primary FRB that included 3rd and 4th quarter data. We found the presentations to be professional and inclusive of a significant number of statistics. We also saw requests that were made by the FRB for additional analysis of some information they were provided. Moving forward, for the trend data to be of greater value to the APD executives, the trend reports should include a methodical breakdown of the data to allow the FRB a better understanding of *what the statistics mean*. That will better inform executive-level decisions when allocating resources, mitigating issues, and providing perspective to academy training development efforts.

Additional Observations

In IMR-16, we noted a significant decrease in discussion among Primary FRB members when compared to the robust discussions we previously observed. We felt that this was likely due to higher levels of confidence the FRB has in use of force findings made by IAFD, since EFIT assists with and helps supervise the cases as they move through the process. Consequently, historical issues related to force investigations and misconduct referrals are being addressed before cases reach the FRBs. That said, in IMR-16, we noted the following:

“...we caution the FRB to remain vigilant in its review of cases and continue to embrace its executive role over the accountability system through the FRB. The monitoring team was impressed with the degree of engagement over the past 20 months, and that sustained energy will become more important as IAFD sworn detectives and civilian investigators are released to conduct Level 2 and 3 uses of force without the oversight of an EFIT investigator. Likewise, there will be a time that IAFD assumes all investigations without EFIT’s supervision, at which time the culture established within the FRB will be crucial.”

We are concerned that while the volume of cases continues to increase at IAFD, APD must guard against complacency in its responsibilities with the FRB. In short, the volume of cases to be reviewed cannot increase at the expense of reliability in FRB oversight. Paragraph 78 states, "APD shall develop and implement a Force Review Board to provide management oversight of tactical activations and Level 2 and Level 3 uses of force." The monitoring team has been pointed in its comments regarding the FRB since the inception of the CASA, particularly the importance that the FRB serves in setting an example across the organization concerning use of force oversight. We have previously commented that the responsibility to be successful with the FRB rests squarely with the top echelon of APD. When the transition occurs back to APD supervising IAFD alone, commitment to current standards and the executive level resolve to ensure the sustainability of those standards will be tested.

Meetings we attended during the 17th monitoring period had the same features as reported on in past monitoring periods, with scripted opening remarks and procedures to confirm that meeting procedures are standardized. The Chair of the FRB asks each voting member if they have reviewed the case file materials in preparation of the meeting.⁵⁸ Each member is required to verbally acknowledge they have reviewed the materials. The following relevant observations were made during Primary FRB meetings this monitoring period:

During an August 2022 meeting, an IAFD supervisor provided a case presentation (PowerPoint) of a Level 3 use of force involving a K9 deployment (IMR-17-43). The IAFD investigation found the use of force to be out of policy. Still, the quality of the PowerPoint material and the explanation of the event by the IAFD supervisor were very poor. Specifically, the presentation's content and the tone and explanation of the event by the supervisor left a distinct impression that the use of force was actually in policy. It is surprising that no FRB voting members challenged the findings based on the presentation.

During the meeting, a monitoring team member requested to talk to the IAFD Commander once the meeting was over. It turned out that the IAFD Commander made the same observations. To his credit, immediately following the meeting, the IAFD Commander brought the supervisor in and counseled him. He reported sitting with the supervisor and having him read the contents of the PowerPoint, and when confronted, the supervisor acknowledged the issue. The IAFD Commander indicated to the monitoring team that he used the presentation as an exemplar for his team to avoid such issues in the future.

In the end, the IAFD investigation and FRB findings were consistent, but we still found it curious that no questions were asked related to the out of policy determination.⁵⁹

During an October 2022 meeting, EFIT presented a Level 3 use of force involving a 40mm deployment (IMR-17-44). The investigation into the force resulted in findings that the use of the 40mm deployment was out of policy. When the voting occurred, all voting members of the Board agreed with EFIT's assessment, with the exception of one. This prompted the FRB Chair to question, not change, the vote made and ask what the rationale was for finding the use of force in policy. He was interested if the vote was based on the investigative findings or based on the FRB member's review of the case materials. It was obvious that the FRB member was confused and became flustered when answering and responded that he was basing his opinion on the case materials.⁶⁰ Before moving on to another matter, the issue was not truly resolved, nor was there an

⁵⁸ The monitoring team made this recommendation approximately 3 years ago when it became apparent that members of Board were opining on cases and assessing the appropriateness of force (voting) without having reviewed the case materials, thus undermining the legitimacy of the FRB findings and oversight.

⁵⁹ We believed the most plausible explanation was that the voting members held a pre-meeting (as reported in past Monitor reports). We spoke with a Deputy Chief who advised that pre-meetings were no longer occurring and had not taken place in several months.

⁶⁰ We note that in the discussion portion of the meeting minutes do not capture this exchange.

overt statement by this dissenting FRB member to change their vote from in policy to out of policy. Yet when the meeting minutes were presented at the next meeting, that member's vote had been changed and was then consistent with the other voting members.

During the meeting, a member of the monitoring team accessed Evidence.com and saw that the relevant OBRDs audit reports associated with the use of force were not viewed by the FRB member that voted that the force was in policy. They were also not viewed by one other FRB member. The audit report indicated that an additional voting member of the FRB was accessing one of the relevant OBRD videos during the meeting. When the Evidence.com OBRD audits for three additional use of force cases (being heard that day) were checked, similar results were found. We conducted additional reviews of Evidence.com OBRD audit reports for cases heard in two different October 2022 meetings and found similar results. Reviewing relevant OBRD videos when making a determination of the appropriateness of force is widely accepted as essential and is likely the most objective item of evidence in most cases. We find these failures to be problematic.

During our November 2022 site visit, members of the monitoring team met with an APD Deputy Chief and a member of the City Attorney's Office and discussed different CASA-related topics. During that meeting, they were made aware of these FRB meeting observations to provide them with an opportunity to investigate the issue further. It was repeated in this meeting that pre-meetings were not taking place before a scheduled FRB meeting. Also, while on-site, we attended a Primary FRB meeting, after our meeting with the Deputy Chief and observed two presentations. The level of energy and engagement was noticeably better, and since the November site visit, we have noticed an increased engagement by the FRB members. Following the close of this monitoring period, we followed up with APD and learned that the FRB members were reminded to review OBRD videos and case materials. We are unaware of any additional steps that were taken.

We attended a December 2022 Primary FRB meeting and observed an EFIT presentation of a backlog Level 3 use of force that involved an officer-involved shooting (IMR-17-45). The events captured in the EFIT investigation occurred in April 2021. The general case facts were: APD officers were detailed to a domestic violence call where a female stated that she and her boyfriend were involved in a verbal dispute when he placed a gun to his own head and threatened that he could hurt them both. He fired the weapon into the ceiling, at which time she fled the home. Numerous APD officers set a perimeter and began engaging the subject through public safety announcements. The subject exited his house and was standing in the driveway next to the home's open garage door. Parked in the driveway near the house and by the garage was a pickup truck. Officers maintained protective cover using distance and barriers, including walls and patrol vehicles. During the event, the subject displayed a handgun and, at one point, discharged a round. None of the officers clearly saw the direction the weapon was fired, but some believed it was discharged into the ground or into a tree.

Throughout the encounter, the individual yelled back at the officers, and numerous attempts were made to have him surrender. Up to the point of the shooting, officers on scene attempting to communicate with the individual demonstrated excellent patience. One officer moved to a lone position away from the others at one end of the perimeter, armed with a patrol rifle with an attached scope. While several officers had limited or intermittent views of the subject because of their locations and view obstructions, the events leading up to the officer-involved shooting were viewable only by the one officer who moved away. The house was fitted with external audio/video capability that captured the event from behind the subject, viewing down the driveway toward the road (In the general direction of the officers). That audio/video was made available as part of the force investigation and was an integral part of the EFIT findings.

There came a point when the subject retrieved a handgun from the pickup truck and was yelling towards the officers. He was distraught, and his mannerisms made it appear that he was under the influence of alcohol or drugs. There came a point where he held the weapon pointed upward and was yelling "shoot" several times toward the officers. The subject lowered the weapon to a downward angle toward the open garage (not in the direction of any officer). When in this position, the lone APD officer fired a single shot with his rifle from an estimated 189-foot distance, killing the individual.⁶¹

In our opinion, EFIT completed a comprehensive and objective investigation of the event, with a well-reasoned assessment of the available evidence. The FRB spent a great deal of time during the meeting considering what the other officers on the scene could and could not see, and the primary officer's perception of what the subject did immediately prior to the shooting.⁶² The EFIT Administrator and investigator were available for comment and indicated that the statements by the officer were refuted by the available evidence, including the exterior audio/video recording of the event. By a majority vote,⁶³ the FRB disagreed with the findings of EFIT and found the shooting to be in policy. We reviewed a December 30, 2022, memorandum entitled "Force Review Board Non-Concurrence Addendum #210029185" to the Chief of Police. The memorandum states, in part:

"The EFIT drew the conclusion that there was a discrepancy between what the involved officer had observed and what other on-scene officers observed. The other officers on the scene did not have a visual of the offender at the time of the OIS. The board determined that reliance on witness officers that did not observe the shooting should not result in an out of policy finding on its own."

This memorandum sent to the Chief does not accurately represent the EFIT investigation or the analysis made before reaching its findings. It also ignored the

⁶¹ EFIT reported that this officer was hired by APD in August of 2015, and this was his fourth officer involved shooting. Reportedly, the officer was involved in a fifth officer involved shooting in April 2022.

⁶² The officer reportedly said that the subject bladed his body and pointed the weapon toward the officers.

⁶³ One member of the FRB agreed with EFIT's finding that the lethal force was not objectively reasonable, proportional, the minimum amount of force necessary, or within APD policy.

objective evidence presented to the Board, specifically the external audio/video recording of the subject's actions immediately before the shooting.

We considered the facts and circumstances surrounding the event, and reviewed the investigation conducted by EFIT, as well as the questioning of EFIT by the FRB members. We do not concur with the FRB findings and believe that the force used was not objectively reasonable, proportional, the minimum amount of force necessary, or within APD policy.

We see this as more than mere differences of opinion. In our experience, based on the video we reviewed and the reports we analyzed, this shooting was not within policy.

We also attended a January 2023 Primary FRB meeting and observed an IAFD presentation of a Level 3 use of force investigation that included an officer-involved shooting (IMR-17-46). The investigation occurred within the monitoring period and was investigated by IAFD. The general case facts were as follows. APD officers were investigating a potential commercial burglary, and when they confronted the suspect, he fled on foot. One officer encountered the subject alone in a different parking lot, and when he exited his vehicle, the subject threw a rock at the officer from a distance. The officer pursued the subject on foot, and after a short chase, the subject turned and threw another rock at the officer⁶⁴. Neither of the two rocks struck the officer, and as the subject prepared to throw the second rock, the officer discharged his service weapon.⁶⁵ The subject ran away in the opposite direction from the officer, and from a stationary position, the officer discharged his weapon at the subject an additional nine (9) times.⁶⁶ IAFD found that the first firearm discharge was *in policy*, and the remaining nine were *out of policy*. An internal affairs request was made for the out-of-policy firearm discharges, as well as a failure to use de-escalation (time, distance, cover).⁶⁷ When presented to the FRB, the voting members agreed with the IAFD findings.

The monitoring team reviewed the investigation, relevant OBRDs, and rationale for the findings. While we agree with the FRB findings regarding the nine (9) *out of policy firearms discharges*, we do not concur that by a preponderance of the evidence, the first discharge was objectively reasonable, proportional, or the minimum amount of force necessary. The investigation showed that the officer failed to use cover, time, and distance to his favor, as it was feasible and a reasonable expectation here. Also, in this set of circumstances, it was unconvincing that the first discharge of the firearm at this subject was a reasonable response, considering the threat he posed to the officer.

We noted that during several meetings, the Chair of the Primary FRB questioned the constitutionality of officer actions when force was determined to be out of policy. The

⁶⁴ The IAFD report estimated the distance as 40-60 feet away from the officer.

⁶⁵ Immediately prior to the shooting, and before the second rock was thrown, the officer ordered the subject to stop and threatened the use of his ECW.

⁶⁶ The subject was later apprehended and was found with a gunshot wound to his arm. It could not be determined with round fired by the officer struck the subject.

⁶⁷ The officer has since been terminated from the department.

questions asked by the Chair were insightful and appropriate, but when IAFD attempted to explain its assessment that an out of policy use of force was not also unconstitutional, they were unclear as to their rationale. Based on our observations of answers given by investigators, we will follow up with APD during our next site visit. Finally, during several meetings we attended, we noted that there was no representation by the CPOA. In past years, we found the Director of the CPOA to be a meaningful, objective voice in FRB meetings and that APD benefited by having that perspective.

Results

We continue to believe the FRB is a key organizational feature for influencing and sustaining reform. In terms of administrative movement of cases, APD has excelled in meeting the requirements of Paragraph 78a and 78e.

Based on our review, we have determined Secondary Compliance is continued for Paragraph 78. Central to APD achieving Operation Compliance is that APD reliably provides management oversight of tactical activations and Level 2 and 3 uses of force. We will continue to provide technical assistance to facilitate Operational Compliance as quickly as possible.

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

Recommendations for Paragraph 78:

4.7.65a: FRB should focus attention on uses of force and analyze trend data to inform decisions and ensure policy and training are properly addressing performance in the field.

4.7.65b: APD should maintain enough trained personnel, at the correct level and positions, to serve on the FRB and Secondary FRB. The number of trained personnel should be sufficient to maintain the number of FRB meetings that accommodates the needs of the department in sustaining Secondary Compliance and achieving Operational Compliance.

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

Paragraph 79 states:

“At least annually, APD shall publish a Use of Force Annual Report. At a minimum, the following information should be included in the Annual Use of Force Report:

- a) number of calls for service;**
- b) number of officer-initiated actions;**

- c) number of aggregate uses of force, and uses of force by Level;
- d) number of arrests;
- e) number of 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 ECWs in operation and assigned to officers;
- i) number of incidents involving ECW discharges;
- j) analysis of ECW trends in ECW discharges, ECW shows of force, officer injuries, and injuries to others. Probe deployments, except those described in Paragraph 30, shall not be considered injuries;
- k) critical firearm discharges;
- l) number of individuals armed with weapons;
- m) number of individuals unarmed;
- n) number of individuals injured during arrest, including APD and other law enforcement personnel;
- o) number of individuals requiring hospitalization as a result of use of force, including APD and other law enforcement personnel;
- p) demographic category; and
- q) geographic data, including street, location, or Area Command.”

Methodology

Paragraph 79 of the CASA addresses the requirements APD must meet by publishing a Use of Force Annual Report. The monitoring team requested course of business documentation that demonstrated provisions within the paragraph had been met.

As a matter of context, during the IMR-14 reporting period, APD first published a *Preliminary* Annual Use of Force Report inclusive of 2016-2020 data. We agreed with the approach APD took for a few reasons, including the fact that the aggregation of data (at the time) was more beneficial to informing the executive staff about potential trends and also because of a large backlog of use of force investigations that dated back to early 2020. APD submitted its 2020 Annual Use of Force Report as “preliminary” since

use of force data may change as the backlogged use of force cases are subjected to investigations and chain of command oversight. In the last monitoring period, we requested information to demonstrate that a 2021 Annual Use of Force Report was completed with available data, and at the close of IMR-16, that report was not complete in either a preliminary or final draft. Based on our discussions with APD, we believed that during the IMR-17 monitoring period, APD would provide us with the 2021 Preliminary Use of Force Annual Report. Also of note, EFIT was contracted to address the backlog investigations and began their work at the end of the IMR-16 monitoring period. We were assured by APD that as the pending backlog cases are completed, APD will reassess the 2020 and 2021 Preliminary Annual Use of Force Reports for final status.⁶⁸

As expected, during this monitoring period, APD published its 2021 Preliminary Annual Use of Force Report. We reviewed the report and found it to be very well organized and written, and it contained the relevant data required by Paragraph 79. When APD published its Preliminary 2020 Annual Use of Force Report during the IMR-14 reporting period, it attained Secondary Compliance with Paragraph 79. Due to APD publishing of the 2021 Preliminary Annual Use of Force Report, we have determined that APD has sustained Secondary Compliance status for Paragraph 79.

To achieve Operational Compliance, APD must first finalize the 2020 and 2021 Annual Use of Force Reports with accurate information from the backlogged cases being investigated by EFIT. In the interim period, they must also sustain their Secondary Compliance with submissions of “preliminary” annual reports should they be necessary.

Results

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

Recommendations for Paragraph 79:

Recommendation 4.7.66a: APD’s must ensure the use of force investigation backlog is reconciled, and the complete data required by Paragraph 79 should be incorporated into a final 2020 and 2021 Annual Use of Force Report.

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

⁶⁸ In its normal course of business, APD is collecting and analyzing data taken from EFIT’s investigations of approximately 667 use of force cases. The quality of APD investigations into uses of force was lower during the timeframe of those cases, so statistics gleaned from the EFIT investigations will likely impact overall annual use of force data for the years 2020 and 2021.

Recommendation 4.7.66c: APD should maintain an auditing process for reports of Level 1 uses of force and Low-Level Control Tactics to ensure proper categorization is taking place. Data collected from these audits should feed the Annual Use of Force reports, and when appropriate be referred to IA and the Academy.

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

4.7.67 Assessing Compliance with Paragraph 80

Paragraph 80 states:

“APD shall be responsible for maintaining a reliable and accurate tracking system on all officers’ use of force; all Level 1 use of force reviews; all force investigations carried out by the Internal Affairs Division or Multi-Agency Task Force; and all force reviews conducted by the Compliance and Oversight Division and the Force Review Board. The purpose of the use of force tracking system is to serve as a repository of force data for the Use of Force Annual Report and the Early Intervention System.

Results

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

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

Paragraphs 81 - 85 are self-monitored by APD.

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

During this reporting period, the monitoring team corresponded with APD personnel responsible for the tasks associated with Paragraphs 86-88 and met with them during our November 2022 site visit. In the past two monitor’s reports, we documented the positive strides the Academy has taken toward compliance. As a result, APD achieved Operational Compliance with Paragraphs 86 and 87, but in IMR-16, Paragraph 88 remained at Primary Compliance. However, the academy training programs were trending in a way that gave us confidence that by the close of IMR-17, Paragraph 88 would also be in Operational Compliance. Based on our review of available data, APD has sustained its Operational Compliance level with Paragraphs 86 and 87 and elevated

Paragraph 88 to Operational Compliance. These compliance levels resulted from a coordinated effort by several people within APD. At the close of this reporting period, APD promulgated its new use of force policies.⁶⁹ This event requires the Academy to deliver training that reflects these new policies during its 2023 use of force programs. Parenthetically, following the close of this reporting period, the monitoring team has received and reviewed twenty hours of use of force training that includes the policy changes. We will assess this training in the next report.

APD's Academy continues to be receptive to the monitoring team's feedback, and the technical assistance we share is quickly understood and implemented. As with past site visits, the Academy staff came prepared to the meeting and provided a presentation to communicate their efforts since the end of IMR-16. Among the many items discussed were their specific attempts to address each monitor's recommendation from the last report. The Academy's command and managerial staff remain in place, which provides a great deal of stability with respect to understanding academy expectations and the standards instructors must adhere to when developing and delivering training.

The following represents our findings related to Paragraphs 86-88 for this monitoring period.

Paragraph 87a:

In IMR-16, we noted that the Academy created and disseminated briefing videos through its online learning management system. These videos were entitled "2022 Pat Downs and Search Briefing Video", "Miranda Refresher", and a "2022 Search and Seizure Refresher." While not considered training for compliance purposes, APD believes these types of videos are helpful to disseminate information quickly to address potential needs in the field. At the same time, more in-depth curricula are being developed. Online attendance and completion rates of these videos were reported previously.

The Academy submitted training materials for review and approval by the monitoring team. These included the 2022 Maintenance of Effort (MOE) / Phase II Biennium training. We found the information to be well organized and approved the training for delivery. Special Order 22-49 was promulgated on May 6, 2022, and listed training dates through August 10, 2022. We reviewed a comprehensive Closeout Memorandum dated November 14, 2023, which documented that 96.24% of all APD officers, and 99.15% of available APD officers, attended this mandatory training.⁷⁰

Paragraph 87b:

⁶⁹ The use of force policies (SOPs 2-52 through 2-58) were negotiated among the parties and approved by the Monitor, and then enacted on January 26, 2023.

⁷⁰ APD documented the number of officers who received the curriculum while still in recruit training during 2022, and several officers were on approved, extended leaves of absence (i.e., Military, FMLA).

In April 2022, the Academy submitted its 2022 Reality Based Training (RBT) materials to the monitoring team for review. We found the materials to be well organized and thoughtful, as well as based on the needs of APD officers in the field. We provided feedback to the Academy. The Academy adopted our technical assistance, and in May 2022, the materials were approved for delivery. During our May 2022 site visit, we were invited to attend a *Beta* offering of the course, in which Academy personnel ran a limited number of officers through the training to refine the delivery practices before opening it to the rest of the organization. The scenarios presented in the training were excellent, and the professionalism of the instructors we saw was self-evident. On April 28, 2022, APD promulgated a Special Order 22-48, "2022 Mandatory Reality Based Training", for 10 hours of RBT training that was scheduled to run through September 29, 2022. We reviewed a comprehensive Closeout Memorandum dated December 14, 2022, which documented that 98.8% of APD officers attended and successfully completed the training. This training addressed the requirements of Paragraphs 87b-f.

Paragraph 87c:

APD is completing the requirements with this Paragraph provision through the 2022 RBT, as noted above in Paragraph 87b.

Paragraph 87d:

APD is completing the requirements with this Paragraph provision through the 2022 RBT, as noted above in Paragraph 87b.

Paragraph 87e:

APD is completing the requirements with this Paragraph provision through the 2022 RBT, as noted above in Paragraph 87b.

Paragraph 87f

APD is completing the requirements with this Paragraph provision in part through the 2022 RBT, as noted above in Paragraph 87b.

As noted in IMR-16, on February 16, 2022, APD promulgated Special Order 22-20 for their "2022 Day and Low Light Firearms Qualification and ECW Recertification Course" due to run through May 19, 2022. We reviewed data, a July 25, 2022, status update memorandum demonstrating 99.4% of available and sworn members completed the firearms portion of the training and an August 8, 2022, closeout memorandum that demonstrated 99.3% of all available and sworn members completed the ECW portion of the training.

On April 28, 2022, APD promulgated Special Order 22-52 for "Mandatory Axon Capture/ Incident Management Supervisor Training," which was due to run from July 13 to September 9, 2022. The purpose of the training is to "...provide an overview of the capabilities of the Axon capture program and the roles and responsibilities of a

supervisor when using the program. The incident management course provides related guidance, policy review, and practical exercises involving the allocation and use of resources in response to varying levels of threat priority.” We reviewed a comprehensive November 14, 2022, Closeout Memorandum that documented 95.2 percent of all active APD officers attended and successfully completed the training program.

Paragraph 87g:

As noted in IMR-16, in order to meet the requirements of this subparagraph, APD requested to deliver the same “ERT: Field Service Response to Demonstrations and Civil Disturbances” training course that was developed and delivered at the end of 2021. After discussing the matter with the APD academy, we agreed that the information contained in the training video was acceptable, with the understanding that new materials would be developed for 2023. On March 2, 2022, Special Order 22-19 was promulgated, requiring all sworn personnel to attend the online crowd control training course through their learning management system. We reviewed data and a July 27, 2022, closeout memorandum demonstrating that 100% of available sworn personnel successfully completed the training.

Paragraph 87h

Like Paragraph 87g, to meet the requirements of Paragraph 87h, APD requested to deliver the same “Initiating and Disengaging Foot Pursuits” training as in 2021. Special Order 22-19 was promulgated on March 2, 2022, ordering all sworn personnel to attend the online training through their learning management system. We reviewed data and a May 25, 2022, closeout memorandum demonstrating that 100% of available sworn personnel successfully completed the training. Parenthetically, following the close of this monitoring period, APD submitted training materials that address its 2023 training requirements for Paragraph 87h. Those materials were reviewed and approved by the monitoring team and will include in-person training that we will assess during the next reporting period.

The monitoring team was also provided attendance records and Close Out memos for Use of Force Tiers 1-3, which provided data regarding current organizational attendance rates for those three sessions.⁷¹ These results are reported as follows: 1) Tier 1 – Of current APD personnel available and required to attend the training, 100% have successfully completed the training (Closeout Memo, dated October 18, 2022); 2) Tier 2 - Of current APD personnel required to attend the training, 100% have successfully completed the training (Closeout Memo, dated January 3, 2023); 3) Tier 3 – Of active and sworn APD supervisors available to attend the training, 100% have successfully completed the training (Closeout Memo, dated January 3, 2023). We will report fully on the status of the training and the new use of force policies (Promulgated January 26, 2023) during the next monitoring period. Following the close of the IMR-17 monitoring

⁷¹ Numbers are variable because of officer retirements, other types of separations and new officers entering the organization.

period, our team was provided training materials for that purpose and expect they will be presented during the IMR-18 timeframe.

In August 2022, APD submitted a training course entitled, "Force Investigations for Supervisors Course", which was reviewed and approved by the monitoring team following some technical assistance and modifications. The course was eight hours in length and was geared toward addressing compliance requirements of Paragraphs 87b, 88a, 88b, and 88d. Special Order 22-51 (Amended) was promulgated on August 3, 2022, and APD supervisors were scheduled to attend one of several training dates throughout the Fall 2022. We reviewed a comprehensive Closeout Memorandum, dated February 1, 2023, that documented the course development, delivery, attendance, and takeaways from the course. The Closeout Memorandum indicated that as of January 31, 2023, 295 (98.99%) APD supervisors successfully completed the course. We noted within the Closeout Memorandum that feedback comments were assembled from class participants. We noted exceptional feedback for one instructor and very poor comments for another. We followed up with the Academy Commander to see what was done to address this feedback before it became a recurring theme throughout each training session. We learned that the instructor issue was seen by an Academy supervisor and addressed through a collaborative effort by the Academy and IAFD Commanders. The instructor was ultimately removed from the course and counseled. We note, with approval, the quick response by the Commanders to ensure that the instructor's performance in the classroom was appropriate.

On April 28, 2022, Special Order 22-52, "Mandatory Axon Capture/Incident Management Supervisor Training," was promulgated, which required APD supervisors to attend four (4) hours of additional training related to incident management. The training dates continued through July and August and concluded on September 9, 2022. We reviewed a Closeout Memorandum dated January 4, 2023, which documented that 315 (97.83%) active and sworn APD supervisors attended the training program, which addressed information relevant to Paragraph 88c.

As APD enters 2023 and delivers training on its new use of force policies, it is important to reiterate here that the monitoring team assesses compliance based on two general factors: (1) Content and quality of training materials relative to CASA requirements; and (2) Content and quality of instruction of materials that were reviewed by the monitoring team. We greatly appreciate the candor of the information provided in the Closeout Memorandum and believe such documentation is important to the Academy's success. Moving forward, we encourage the Academy's leadership and supervisors to routinely and randomly audit training courses to protect the integrity of classroom instruction and not jeopardize Operational Compliance.⁷² For the APD Executive Staff, we want to be clear that it is irrelevant to the monitoring team where an instructor's primary assignment is when they are covering CASA-related topics. Therefore, when people from outside the Academy are asked to instruct, the department should only choose qualified people interested in teaching.

⁷² We believe the Academy would be wise to purposefully audit the first offerings of any training class to ensure any issues seen are remediated at the earliest possible moment.

Additional Observations

As noted in prior monitor reports, the monitoring team has encouraged APD's Academy to impanel a Training Committee to draw together stakeholders from across the organization when identifying specific needs from the field. Since the new leadership team took their positions at the Academy, we were assured that the creation of a fully functioning Training Committee was a priority. We saw significant additional progress with APD promulgating SOP 3-34, "Training Committee," on September 29, 2022. The codification of the Training Committee is a significant step to building the foundation and framework we have advocated for over the past several years. While not a requirement of the CASA, the establishment of this committee accomplishes several important tasks, including: (1) Creating training buy-in from APD personnel from across the organization; (2) Quickly identifying emerging trends and training needs that can be built into annual programs; (3) Increasing training competencies across the department. We reviewed records from meetings held in October and December 2022, which were well-attended and represented a good cross-section of APD commands.⁷³ We saw the evolution of the meeting minutes from the October to the December meeting, and it appears that participants' expectations are beginning to take shape. We encourage APD to continue its current path and trajectory with respect to these meetings and to seek ways to overtly document the training takeaways in a manner that can be easily tracked, assessed, and resolved. The ability to translate those takeaways into specific learning objectives for its training curriculum is the next level of success for the Academy and will support its field implementation efforts.

We noted in IMR-16 that the Academy greatly enhanced its Closeout Memorandums at the close of its training programs. The quality of the memorandums remained steady during this reporting period. We believe these documents are an integral part of the Academy's effort to shore up its administrative processes and sustain its 7-Step training system into the future.

As in the last reporting period, we reviewed detailed internal communications prepared by the Academy advocating for additional staff to ensure training requirements remain on a positive trajectory regarding CASA compliance. Of note was the Commander's request for additional support within the Comprehensive Training Unit (CTU), which has been an essential part of the Academy's success over the last few monitoring periods. We cannot underscore the importance of CTU in APD's long-term success. Not unlike the Performance Metrics Unit (PMU), CTU serves as the quality control and oversight mechanism for APD training requirements. The department has the prerogative to determine the proper staffing allotments at the Academy. Still, we continue to encourage APD's executive staff to ensure this vital unit maintains a staffing level commensurate with its responsibilities.⁷⁴

⁷³ We did note that representation was not provided from the Special Operations Division, which is unfortunate because their perspective is important to APD's training successes.

⁷⁴ We understand the balance the department must make with multiple priorities competing for limited staff. The monitoring team made similar recommendations to APD regarding its PMU several years ago.

On October 3, 2022, the Office of the City Attorney sent a letter to the monitor with the subject, "APD Executive Staff Training". The purpose of the letter was to alert the monitor that APD's executive staff has been attending abbreviated versions of training programs in sessions typically held at APD Headquarters. The letter outlined the purpose of holding such training and the fact that these sessions occur before a particular course is delivered to the rest of the organization. They see a benefit to having executive-level perspective at the front of any training course. We acknowledge the perspective of APD and have been assured that these sessions are limited to only the top tier of the organization (Chief, Deputy Chiefs, Chief of Staff) and that this will be strictly adhered to moving forward. We also recognize the practicality of this approach because of the roles the executive staff serves. We recommend that APD keep the executive training sessions to this exclusive group for the purpose articulated in the October 3, 2022, letter.

APD's compliance standing for Paragraphs 86 and 87 has been sustained at Operational Compliance for this reporting period. Based on our review, Paragraph 88 has been elevated to Operational Compliance. The Academy has worked diligently over the past 18-20 months to attain Operational Compliance with these three paragraphs, and they are commended for that effort. Now is the time to become even more vigilant to ensure that the progress made is maintained. As always, the monitoring team remains committed to continuing its technical assistance to help guide APD toward success.

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

Paragraph 86 stipulates:

"Within 36 months of the Operational Date, APD will review all use of force policies and training to ensure they incorporate, and are consistent with, the Constitution and provisions of this Agreement. APD shall also provide all APD officers with 40 hours of use of force training within 12 months of the Operational Date, and 16 hours of use of force training on at least an annual basis thereafter, including, as necessary, training on developments in applicable law and APD policy."

Results

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

The department has supported that unit with staffing, which allows it to operate at a high level. Their work provides meaningful oversight and informs executive decisions. Similarly, the CTU will provide training oversight in a manner that protects the agency's overall training and compliance responsibilities.

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 initiating and disengaging foot pursuits.

Results

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

4.7.75 Assessing Compliance with Paragraph 88: Annual Supervisory In-Service Training

Paragraph 88 stipulates:

“Supervisors of all ranks, including those assigned to the Internal Affairs Division, as part of their initial and annual in-service supervisory training, shall receive additional training that includes:

- a) **conducting use of force reviews or investigations, including evaluating officer, individual, and witness credibility;**
- b) **strategies for effectively directing officers to minimize uses of force and to intervene effectively to prevent or stop unreasonable force;**
- c) **incident management; and**
- d) **supporting officers who report unreasonable or unreported force, or who are retaliated against for using only reasonable force or attempting to prevent unreasonable force. “**

Results

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

Monitor's Notes:

APD should consider implementing its plan to address use of force training requirements for 2023 during the next reporting period, considering agency-wide initiatives to “pilot” new programs, with the goal of sustaining Operational Compliance of Paragraphs 86 and 87. Curriculum developed for annual use of force training should incorporate specific needs of officers and supervisors in the field and address each component of Paragraphs 86-88.

The Academy should be properly staffed to ensure the quality of training curriculum and training systems are not negatively impacted. Staffing should contemplate the Academy's ongoing, annual training responsibilities that have relevance to numerous CASA requirements.

APD personnel assigned to non-academy commands that carry significant training requirements should receive training commensurate with the Academy staff and be observed closely by Academy personnel when instructing. This will ensure continuity in curriculum development and delivery of that curriculum across the organization.

APD's Training Committee meetings should continue to evolve, and departmental liaisons should be encouraged to submit data and specific, tangible needs that will inform learning objectives in Academy curriculum.

Continue to ensure that the Academy is the central point for review and approval of all training development and delivery processes for APD.

APD should continue to scrutinize training that is developed from outside sources before it is delivered to the department, regardless of its origin. Training programs

should be developed based on best practices and APD policy, and must adhere to the requirements of the CASA.

4.7.76 Assessing Compliance with Paragraph 89: Annual Firearms Training

Paragraph 89 stipulates:

“Included in the use of force training set out above, APD shall deliver firearms training that comports with constitutional principles and APD policy to all officers within 12 months of the Operational Date and at least yearly thereafter. APD firearms training shall:

a) require officers to complete and satisfactorily pass firearms training and qualify for regulation and other service firearms as necessary, on an annual basis;

b) require recruits, officers in probationary periods, and officers who return from unarmed status to complete and satisfactorily pass firearm training and qualify for regulation and other service firearms before such personnel are permitted to carry and use firearms;

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

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

Methodology

The methodology outlined in Paragraphs 17-20 serves as the baseline for compliance determinations for paragraph 89.

Results

The Firearms staff should be commended for the continued and expanded use of technology and data-driven decisions observed over the past few reporting periods. The staff continues to revise the Enterprise Learning Management database to capture data related to remedial qualifications, QR codes to track practice session attendance and ammunition distribution, and the Performance Management Unit (PMU) continues to provide ongoing tracking of the supervisory inspection process through Monthly Scorecards. A full-time Service Aid has been added to the staff to aid in data capture and other administrative duties at the range.

Primary: **In Compliance**

Secondary: **In Compliance**

Operational: **In Compliance**

4.7.73 - 4.7.96 Assessing Compliance with Paragraphs 90-109

Paragraphs 90-109 are self-monitored by APD.

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

This paragraph is a Non-Rated Paragraph.

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

Paragraphs 111-128 address how APD and the City are required to respond to calls for service involving mental health, crisis, and homelessness. In determining compliance outcomes for these paragraphs, the monitoring team reviewed normal course-of-business documentation related to the City's responses to individuals in crisis and individuals who are unsheltered. We discuss our findings below.

We note that APD has met, and in many cases far exceeded, the requirements of the CASA as it relates to mental health response planning, crisis intervention, training development and delivery, and service delivery. Our review indicates that APD crisis outreach services personnel have continued to work diligently with MHRAC to assess, improve, and serve affected communities.

We also note that APD's CIT program serves as a national model. Members of the CIU regularly consult with peers in other law enforcement agencies across the country. At the most recent CIT International Conference (held in August 2022), several APD crisis intervention unit members were featured presenters.⁷⁵ APD's crisis intervention system has produced work that consistently demonstrates creativity and community responsiveness.

In assessing the City's compliance with these paragraphs, we reviewed City processes designed to:

- Structure and improve mental health processes in the community;
- Foster close coordination between APD, other City resources, and mental health leaders, including MHRAC; and

⁷⁵ See 2022 CIT International Conference Workshop Schedule at https://www.citinternational.org/resources/CITInternationalConference2022Folder/2022%20Conference/Workshop_Presenter%20Schedule_Website.pdf

- Create meaningful, flexible, and effective mental health services throughout the communities served by the City and APD.

4.7.98 4.7.100 Assessing Compliance with Paragraphs 111 -113

Paragraphs 111- 113 are self-monitored by APD.

4.7.101 Assessing Compliance with Paragraph 114:

Paragraph 114 stipulates:

“APD, with guidance from the Advisory Committee, shall develop protocols that protect the confidentiality of information about individuals with known mental illness.”

Methodology

The monitoring team reviewed MHRAC’s reports, recommendations, communications, processes, and key APD memoranda during the reporting period, assessing these documents for compliance with Paragraph 114.

Results

The memorandum of understanding (MOU) between APD’s CIU and the University of New Mexico Health Sciences Center/UNM Health Systems remains in place. It has not been updated since the monitoring team’s previous reviews (signed and dated October 16, 2017). The MOU is in effect until September 30, 2099, according to the City’s Legal Department. The CIU continues to share information via email with UNM weekly per the MOU.

Throughout this monitoring period, the monitoring team has also tracked information sharing between the City/APD and UNM Hospital, in which CIU clinicians have shared information weekly.

We note that APD’s existing mental health training courses contain content regarding the MOU between APD and the University of New Mexico. Further, the CIU Commander reviewed APD’s internal affairs records to ascertain whether any APD violations of the existing confidentiality processes had been reported. There were no such complaints or requests to investigate violations of confidentiality. Finally, the monitoring team reminds APD that issues of confidentiality should be discussed with the MHRAC’s Policy, Information Sharing & Resources sub-committee, when necessary. As this paragraph constitutes a “high-risk critical task,” we continue our recommendation that APD monitor in-field results of their responses to incidents involving mental illnesses.

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

4.7.102 – 4.7.108 Assessing Compliance with Paragraphs 115 - 121

Paragraphs 115 – 121 are self-monitored by APD.

4.7.109 Assessing Compliance with Paragraph 122

Paragraph 122 stipulates:

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

Methodology

During this reporting period, the monitoring team reviewed the curriculum and all relevant training documents related to attendance for officers and telecommunicators, including the CIU’s Course Development Request Form for the 2-hour 2023 maintenance of effort (MOE) “Mental Health and De-escalation Review.”

Results

Telecommunicators participated in 2-hour training in 2022 and will be due for a 2-hour refresher training in 2024. APD officers participated in the MOE training in 2021 and will be due for a 2-hour refresher training in 2023, which will begin in April. The monitoring team tracked the course’s development throughout this monitoring period, including CIU’s communications to line up appropriate speakers from ACS. We look forward to the delivery of this training during the next reporting period.

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 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 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.”

Methodology

The monitoring team reviewed training and assignment records for crisis intervention certified responder officers (ECIT officers) and the CIU for the reporting period.

Results

During this reporting period, APD data indicated that, on average, ECIT-trained officers respond to about 82 percent of calls for service involving behavioral health elements. The percentage of ECIT responses to these calls for service varied across shifts and area commands during this reporting period. The details by month are detailed below:

4.7.110 Percentage of ECIT Responses to Mental Health Calls for Service

<i>Month</i>	<i>% ECIT responses to mental health calls for service</i>
August	80%
September	83%
October	83%
November	83%
December	79%
January	81%
Average	81.5%

The CIU noted consistent improvement in response rates of ECIT officers responding to mental health-related calls for service, growing from 79 percent on average during the last reporting period to 82 percent during this reporting period.

Also, during this reporting period, the APD Chief issued a Special Order (SO 23-12) regarding the bid process. The SO clarifies that “area commanders shall be responsible for ensuring that ECIT certified officers are assigned to the corresponding beats within their command with a high frequency of CIT-related calls for service as identified by the Crisis Intervention Division.” The monitoring team appreciates the attention to the important issue of ECIT officer coverage in the areas of the city with the most frequent calls for service involving people in mental health crises.

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

4.7.111-4.7.113 Assessing Compliance with Paragraphs 124 – 126

Paragraphs 124 – 126 are self-monitored by APD.

4.7.114 Assessing Compliance with Paragraph 127

[THIS PARAGRAPH INTENTIONALLY LEFT BLANK.]

4.7.115 Assessing Compliance with Paragraph 128

Paragraph 128 stipulates:

“APD will ensure that crisis intervention certified responders or CIU will take the lead, once on scene and when appropriate, in interacting with individuals in crisis. If a supervisor has assumed responsibility for the scene, the supervisor will seek input of the crisis intervention certified responder or CIU on strategies for resolving the crisis when it is practical to do so.”

Methodology

The monitoring team reviewed documentation of APD’s reviews of field interactions between officers and people in crisis citywide, which APD launched in response to our recommendations for this paragraph in IMR-12.⁷⁶ These reviews are designed to understand officers’ interactions with people in crisis on-scene, including which responding officers are certified (ECIT) crisis responders and whether those officers take the lead on scene, as required by APD policy SOP 2-19.⁷⁷ APD CIU personnel conducting these reviews fill out a standard review form (“Crisis Intervention Call Review” form) to capture such information and take appropriate action to refer potential policy violations to the proper accountability channels.

Results

APD CIU has continued to address our recommendation to conduct assessments of a random sample of crisis intervention responses throughout the Field Services Bureau. In all, 23 thorough reviews were conducted by APD during this reporting period, with the reviewers drawing upon CAD data, OBRD video, incident reports, and CIT reports. The reviewers noted four instances in which an ECIT officer did not take the lead on scene

⁷⁶IMR-12, Recommendation 4.7.115a: Conduct a complete assessment of all CIT/CIU responses involving the officer identified in the events outlined above. IMR-12, Recommendation 4.7.115b: Conduct a random sample of all CIT/CIU responses to ensure that the issues identified above have not been replicated in other CIT/CIU responses by other officers. IMR-12, Recommendation 4.7.115c: Provide the monitor the results of the inquiry outlined above for inclusion in IMR-13.

⁷⁷ APD’s SOP 2-19 states in 2-19-6 Response, C.1. “When on scene, ECIT sworn personnel, MCT, or CIU detectives shall take the lead in interacting with individuals in a behavioral health crisis. If a supervisor has assumed responsibility for the scene, the supervisor shall seek input from ECIT, MCT or CIU on strategies for de-escalating, calming and resolving the crisis, when the situation allows such consultation safely. Supervisors are encouraged to become ECIT trained in order to better evaluate the ECIT sworn personnel they oversee or assist in situations where an ECIT officer is unavailable.” APD policies are available at <https://www.cabq.gov/police/standard-operating-procedures>.

because an ECIT officer was not present.⁷⁸ We note that in its recent revision to its *Behavioral Health Division Crisis Intervention Division Handbook (CID Handbook)*, the section entitled “Item 20: CIT Supervisor Call Reviews” details the process by which such reviews shall be conducted.

The monitoring team appreciates this ongoing review focused on sampling field services officers’ interactions with people with mental illness and people in crisis in order to identify deficiencies (if any) and address them promptly. We look forward to APD’s continued reviews in response to our Recommendation 4.7.115b from IMR-12, which calls for a review of randomly selected mental health-related calls for service city-wide.

We note the steps taken by the City to consider (a) the sustainability of this review process (i.e., should it continue, its processes should be formally memorialized in an SOP) and (b) where this type of review process fits into the City’s and APD’s existing oversight and accountability mechanisms. In response, APD has not only included this process in its latest revision of the *CID Handbook* but also in SOP 1-37 *Crisis Intervention Division and Program*, which states, “Each supervisor, regardless of rank, who is assigned to the CIT shall be responsible for completing crisis intervention incident reviews each month.”⁷⁹

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 documentation detailing APD’s current activities related to policing services to people with mental illness and people in behavioral crises (paragraphs 129 through 137). Our observations indicate that, overall, the behavioral health paragraphs of the CASA have received careful and meaningful attention during this reporting period.

The data and processes we reviewed indicate that APD’s outreach and support efforts to those in the communities served by CIT processes are effective and problem-oriented. We will also be tracking any changes to COAST staffing levels. CIU Training remains a strong point of this effort. APD’s capacity to conduct meaningful analysis of the data they collect remains in question. However, we see improvements on the horizon with APD’s increasing capacity for data analytics through the new personnel in its Accountability and Analytics Bureau. We look forward to reviewing the results of the CIU staffing study, which is underway and conducted by a qualified data scientist.

4.7.116 Assessing Compliance with Paragraph 129

⁷⁸ We note that this (74%) is somewhat close to APD’s overall ECIT response rate of 82%. See paragraphs 123 and 124 for additional detail.

⁷⁹ APD SOP 1-37 is available at <https://www.cabq.gov/police/standard-operating-procedures>.

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. APD shall collect the following data:

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

Methodology

The monitoring team reviewed the relevant data and most recent data analysis, which includes data from December 2021 through June 2022 (which is prior to this reporting period). The analysis was completed and made public in October 2022. The analysis was to determine whether APD is collecting all the required elements of this paragraph, as well as documentation about staffing and analytics capabilities to determine whether APD can use the data for “management purposes,” as this paragraph requires.

Results

Our review of the documentation submitted by APD, including some analysis of responses to calls for service by supervisors, ECIT officers, or MCTs, indicates that APD continued to collect appropriate data on all required elements of this paragraph and continued its attempts to analyze it meaningfully. While previous efforts to extract the requisite data from the new records management system (RMS), Mark43, were challenging, APD’s data team has worked diligently during this reporting period to rectify those issues.

While the monitoring team remains concerned about the management and timely analyses of these data, we see improvements on the horizon, with the fixes to Mark43 and APD’s increasing capacity for data analytics through the new personnel in its Accountability and Analytics Bureau, including its Director of Analytics. Moreover, we

have observed the APD using these data in new ways to inform their management approaches. For example, APD is taking steps to carefully analyze which community members on its CIU detective caseloads have experienced APD uses of force against them more than once to explore additional service provision and referrals, if appropriate.

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.”

Methodology

The monitoring team reviewed CIU training curricula, commendations issued, and APD’s work to “develop new response strategies for repeat calls for service.”

Results

APD’s behavioral health units continue to innovate and address the requirements of this paragraph, including utilizing actual, recent encounters to inform training. APD has analyzed the most recent data available during this reporting period. This analysis is important to the agency’s decision-making. It is used to “develop new response strategies for repeat calls for service” and to “identify systemic issues that impede APD’s ability to provide an appropriate response.” Moreover, the CIU continues to make appropriate and timely changes to its behavioral health curricula and thoughtfully considers the feedback it receives from MHRAC.

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 individuals 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 individuals while providing suicidal individuals with access to mental health services.”

Methodology

The monitoring team reviewed the most recent draft of SOP 2-20 *Hostage Situations, Barricaded Individuals, and Tactical Threat Assessments* (Effective 4/13/22, due for review 4/13/23). We also reviewed the training curriculum, which appropriately emphasizes disengagement, and the review processes corresponding to this policy and training.

Results

After the policy had been through proper review channels during the prior reporting period – including MHRAC -- the CIU worked with the Academy to produce a training video. The training video was moved forward during this reporting period and completed. The video script and lesson plan were discussed at the March 2022 MHRAC Training Subcommittee meeting, and the completed 11-minute video features co-teaching from an officer from CIU and an officer from SOD. The monitoring team appreciates this effort to use a holistic approach to teach this important issue.

Moreover, the SOD reported no tactical activations resulting from suicidal, barricaded individuals during this reporting period, keeping with SOP 2-20 and SOP 2-19.

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

4.7.119 - 4.7.121 Assessing Compliance with Paragraphs 132 – 134

Paragraphs 132 -134 are self-monitored by APD.

4.7.122 Assessing Compliance with Paragraph 135

Paragraph 135 stipulates:

“APD shall maintain 12 full-time detectives in the CIU, or the target number of detectives identified by any future staffing study, whichever is fewer.”

Methodology

The monitoring team reviewed CIU rosters and relevant programmatic records related to current caseloads.

Results

The CIU was fully staffed with detectives during this reporting period, maintaining 12 detectives throughout the reporting period. The CIU also maintained its four supervisors (one commander, one lieutenant, and two sergeants). We note that the CIU maintained four officers assigned to its mobile crisis teams. The monitoring team continues to note the significance of a Commander overseeing this important unit.

As we have noted repeatedly, the City's reliance upon a seven-year-old staffing study is more likely than not insufficient to understand the needs of Albuquerque. The CIU has begun work on a thorough staffing study conducted by a qualified independent contractor, and we look forward to reviewing those results.

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

4.7.123 Assessing Compliance with Paragraph 136

Paragraph 136 is self-monitored by APD.

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. APD shall collect data regarding the number of calls for service routed to ACS, the number of calls for service flagged for an ECIT response, and the number of calls for service flagged for an ECIT response that do not receive an ECIT response. APD shall report this data on a regular basis, broken out in various ways, such as by race and ethnicity, location, time of day, and whether force was used. APD shall analyze this data to assess the City's crisis response efforts, including evaluating calls for service that did not receive an ECIT response..”

Methodology

The monitoring team reviewed relevant data and recent data analyses to determine whether APD is collecting all the required elements of this paragraph, as well as documentation about staffing and analytics capabilities to determine whether APD can use the data to “demonstrate the impact of and inform modifications to crisis prevention services” as this paragraph requires.

Results

As we mentioned in Paragraph 129 of this report, the monitoring team is increasingly hopeful about the collection, management, and analyses of these data and APD’s capacity to use them for “management purposes” and to “demonstrate the impact of and inform modifications to crisis prevention services,” as this paragraph requires. Further, we are aware of efforts to fix some of the difficulties extracting crisis intervention-related data from Mark43.

We understand that analyzing data well is a complex task for any police department, but APD’s Accountability and Analytics Bureau has taken steps to move these requirements forward. As we noted in paragraph 129, we see evidence that APD is harnessing these data in new ways to examine force incidents, including shootings, through the lens of crisis intervention unit data.

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

4.7.125 – 131 Assessing Compliance with Paragraphs 139 – 145

Paragraphs 139 – 145 are self-monitored by APD.

4.7.132 Assessing Compliance with Paragraph 146

Paragraph 146 stipulates:

“APD shall apply policies uniformly and hold officers accountable for complying with APD policy and procedure.

Results

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

4.7.133-136 Assessing Compliance with Paragraphs 147-150

Paragraphs 147 – 150 are self-monitored by APD.

4.7.137 Assessing Compliance with Paragraph 151

Paragraph 151 stipulates:

“Unless otherwise noted, the training required under this Agreement shall be delivered within 18 months of the Operational Date, and annually thereafter. Within six months of the Operational Date, APD shall set out a schedule for delivering all training required by this Agreement.”

Methodology

APD added to its training schedule during this reporting period. The Training Academy continues to update its schedule with numerous changes that extend well into the next reporting period. The monitoring team will continue to monitor new policies and changes to the policy that are pending approval, to ensure that the requirements of this paragraph are maintained and that all training required by this agreement is delivered and followed in practice. The academy supplied the monitoring team with documentation of the training conducted during this reporting period (details demonstrated in paragraphs (150, 154, 209 - 211).

- Interoffice Memorandum November 22, 2022 (Update 2019 UoF Tier 1 Training)
- Interoffice Memorandum November 27, 2022 (Update UoF Tier 2 Training)
- Interoffice Memorandum December 5, 2022 (Update UoF Tier 3 Training)
- Interoffice Memorandum December 1, 2022 (Tier 4 UoF MARC Training)
- Interoffice Memorandum December 1, 2022 (Update on 2021 UoF Tier 4 RBT Training)
- Interoffice Memorandum November 8, 2022 (Axon Capture and Incident Management for Supervisors)
- Interoffice Memorandum December 5, 2022 (DISC for Supervisors)
- Interoffice Memorandum December 5, 2022 (IAPS Supervisors Statistics)
- Interoffice Memorandum November 15, 2022 (Miranda Warning Refresher)
- Interoffice Memorandum November 22, 2022 (Search and Seizure Refresher)
- Interoffice Memorandum November 26, 2022 (MOE Phase I)
- Interoffice Memorandum November 28, 2022 (MOE Phase II) and
- Interoffice Memorandum November 10, 2022 (2023 Training Plan).

Upcoming training is well documented on an EXCEL sheet with delivery dates throughout the next reporting period.

Results

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

4.7.138-148 Assessing Compliance with Paragraphs 152-161

Paragraphs 152 – 161 are self-monitored by APD.

4.7.148 Assessing Compliance with Paragraph 162

Paragraph 162 stipulates:

“To maintain high-level, quality service; to ensure officer safety and accountability; and to promote constitutional, effective policing, APD and the Civilian Police Oversight Agency shall ensure that all allegations of officer misconduct are received and are fully and fairly investigated; that all findings in administrative investigations are supported by a preponderance of the evidence; and that all officers who commit misconduct are held accountable pursuant to a fair and consistent disciplinary system. To achieve these outcomes, APD and the Civilian Police Oversight Agency shall implement the requirements below.”

This Paragraph is an introductory paragraph for IAPS (formerly IAPS --Misconduct Division) and CPOA-related CASA requirements. As such, it requires no direct evaluation but is subsumed by the IAPS- and CPOA-related individual requirements below.

4.7.149 Assessing Compliance with Paragraph 163: Duty to Report Misconduct

Paragraph 163 stipulates:

“APD shall require that all officers and employees report misconduct by any APD officer or employee, including themselves, to a supervisor or directly to the Internal Affairs Division for review and investigation. Where alleged misconduct is reported to a supervisor, the supervisor shall immediately document and report this information to the Internal Affairs Division. Failure to report or document alleged misconduct or criminal behavior shall be grounds for discipline, up to and including termination of employment.

Paragraph 163 of the CASA pertains to the duty of all APD officers and employees to report misconduct by APD officers and employees and the duty of supervisors to document information regarding the misconduct of subordinates and to report same to IAPS. It also requires failure to comply to be grounds for discipline.

During the reporting period and the December 2022 site visit, members of the monitoring team reviewed a stratified random sampling of 20 investigations for which IAPS was

responsible.⁸⁰ The monitoring team also reviewed APD regulations and met with the IAPS Commander and staff.

Results

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

During this reporting period, we found that all 20 of the IAPS Misconduct cases handled by APD fulfilled the requirements of paragraph 163. Using 24 hours as a guideline, the monitoring team continues to interpret the term “immediately document and report” in the context of the factual scenario of each case. In the 13 cases investigated by IAPS/IAFD noted above, we found the referral time to IAPS to be satisfactory in all 13 cases. In the seven matters referred to area command for investigations, the monitoring team determined that six cases had a satisfactory referral time. One case file, [IMR-17-52] indicated that a supervisor identified a potential policy violation but failed to compose a request for an internal affairs investigation. During a command-level review, the issue was identified and reported immediately, and the allegation against the supervisor was ultimately sustained. That supervisor was disciplined properly. The recommendation in IMR-14 to require information in Blue Team to indicate when a violation is identified was implemented in November/December of 2021. However, the supervisor, in this case, failed to make the entry into Blue Team, as he stated he did not believe a policy violation occurred. The administrative review acted as required, identified the supervisor’s error, and took action to address the discrepancy; therefore, the agency complied with the requirements of this paragraph.

We find definitive proof of timely referrals in 100 percent of the 20 cases reviewed implicating this paragraph. This is an improvement from IMR-16 and reveals full operational compliance with this paragraph.

Results

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

⁸⁰ These included: eight completed by IAPS [IMR-17-47], [IMR-17-48], [IMR-17-49], [IMR-17-50], [IMR-17-51], [IMR-17-52], [IMR-17-53], and [IMR-17-54], six referred to and completed by the area commands [IMR-17-55], [IMR-17-56], [IMR-17-57], [IMR-17-58], [IMR-17-59], and [IMR-17-60], one case assigned to a Deputy Chief as the allegation was against an area commander [IMR-17-47], and five cases assigned to IAFD, as the allegations were related to Use of Force cases they were investigating [IMR-17-61], [IMR-17-62], [IMR-17-63], [IMR-17-64]), and [IMR-17-65].

4.7.150 – 4.7.154 Assessing Compliance with Paragraphs 164-168: Public Information on Civilian Complaints

Paragraphs 164 – 168 are self-monitored by APD.

4.7.155 – 4.7.168 Assessing Compliance with Paragraphs 169-182: Training Regarding Complaint Intake

Paragraphs 169 through 182 of the CASA pertain to the steps necessary to receive, accept, and process complaints. These paragraphs require APD and CPOA to receive all complaints, regardless of whether they are made internally or externally or made in a timely manner. These paragraphs require an effective and uniform system that is allegation-based for classifying complaints, internal referrals, and appropriate assignment of complaints for investigation.

During the reporting period and the December 2022 site visit, monitoring team members utilized the same methodology as in prior periods, meeting with the IAPS Commander and members of his staff and the CPOA Executive Director and members of her staff. We reviewed complaint log-in and classification records, selected (through a stratified random sample), and reviewed eight IAPS investigations, six Area Command investigations, five IAFD investigations, one investigation by a Deputy Chief, and ten CPOA investigations completed during the reporting period. The monitoring team also reviewed the APD and CPOA websites and CPOA Board minutes relative to the approval of investigations. It should be noted that APD has maintained a full-time Intake Manager since June 20, 2021. APD hired the Intake Manager to ameliorate misclassifications of complaints and complaints with a discipline sanction level of 5 or above being assigned to area commands. This manager was trained and is responsible for the intake of all complaints against members of APD. This step standardized the intake and classification of all complaints and kept APD in full compliance with paragraphs 169 through 182.

During this monitoring period, the APD fully complied with paragraphs 169 through 182. The findings related to Paragraphs 169 through 182 indicate the following outcomes related to the requirements of the CASA.

In previous monitor's reviews, APD was in operational compliance with the requirements of paragraph 178, which requires supervisors to provide all complaint information they receive to the Internal Affairs Division within 48 hours. In this monitoring period, we found the following results through our review of the stratified random sampling of 20 cases for which IAPS was responsible. All cases reviewed indicated that all allegations of policy violations were reported within the required time limit, with the exception of one. In that case [IMR-17-52], the administrative review process worked as intended. All of the 20 cases complied with paragraph 178, which is a 100% compliance rate. Therefore, APD is in operational compliance with paragraph 178.

As noted above, in November-December of 2021, IAPS implemented a change in the Blue Team entry module, which mandates the reporting member to document when the potential violation was identified. While this change brought IAPS into operational compliance, it is still recommended that the administrative review of completed investigations include verifying when a potential policy violation was identified and when it was reported to ensure it was reported within 24 hours of its identification.

During this monitoring period, none of the 20 IAPS or 10 CPOA cases reviewed were found to have been improperly classified for assignment based on the level of sanctions. In prior reporting periods, numerous cases were improperly classified for assignment based upon the level of sanctions. The progress regarding this issue indicates the administration of IAPS and CPOA are properly processing and managing these cases.

In prior reports, the monitoring team consistently found that internal and civilian (external) complaints were accepted, reviewed, and assigned for investigation according to CASA requirements and approved policy. Regarding acceptance of complaints, in our review of the stratified random sample of investigations and IAPS and CPOA processes, we found no instances of a refusal by APD or CPOA to accept a citizen's complaint. It has been and continues to be a long-standing policy among APD personnel that refusing to accept a complaint or discouraging a complaint are grounds for discipline. Although timely complaints are encouraged, ultimately, all complaints are accepted, including anonymous and third-party complaints. The monitoring team has also seen annual written requests from APD to relevant judicial officials requesting that APD be made aware of all allegations of officer misconduct made by judicial officials. One of the 20 IAPS cases reviewed for this period was a referral from the courts, which was properly accepted and investigated.

APD has developed and continues to use a centralized numbering and tracking system that assigns unique identification numbers to all received complaints. Complaints are received and classified according to allegations and not potential outcomes. APD currently utilizes the IA Pro records management system to manage its internal affairs complaints. During the last monitoring period, APD initiated a pilot program in which Benchmark Analytics was contracted to assist in the analysis of APD data, but this project has since been abandoned. The CPOA maintains an electronic log of all complaints received, and once CPOA does a preliminary review and determines an investigation is necessary, it utilizes IA Pro to track them. During the December 2022 site visit, the possibility of CPOA utilizing IA Pro for initial complaint intake was discussed. CPOA will explore the capability of IA Pro to do so.

Based on our comparisons with "known data," the tracking system appears to be used correctly and maintains accurate data. APD's Blue Team management software enables the tracking of misconduct allegations by the homeless or those with a mental illness. However, due to the sensitive nature of these data, civilians are encouraged to self-identify their homeless or mental health status by reporting that information on the complaint forms. In this monitoring period, two civilian complainants self-identified with mental health issues.

Our reviews of the relevant logs and investigations continue to show that complaints referred to or directly made to APD and IAPS that are within the jurisdiction of the CPOA are referred to CPOA within three business days.

Regarding the requirements to accept anonymous and third-party complaints per paragraph 172, our review of the IAPS log of civilian complaints referred to CPOA shows that “anonymous complaints” are accepted by IAPS and forwarded to CPOA. Our random sample for IMR-17 did include one complaint that was received by an anonymous third-party complainant and was thoroughly investigated. Based on these findings and past operational compliance, APD and CPOA continue to be in full compliance with paragraph 172.

Moreover, no cases were found in which APD received a civilian complaint of misconduct and failed to inform supervisors promptly or failed to refer a complaint to IAPS in a timely manner. Thus, we continue to find operational compliance with paragraph 173.

Our stratified random sample found no instances in which a supervisor investigated an incident in which the supervisor was involved as a participant or witness. Therefore, operational compliance by APD for paragraph 182 continues.

We note that IAPS started consultations with the monitoring team during the IMR-13 period, which resulted in extensive technical assistance in overhauling its complaint intake function. During the IMR-15 period, APD released an updated SOP AO 3-41, Complaints Involving Department Policy or Personnel, which addresses the procedures for accepting, processing, and investigating allegations of employee misconduct.

Adherence to the revised AO 3-41, effective October 19, 2021, and the improved complaint intake function has enabled APD to maintain compliance with this section. APD was in 100% compliance with Paragraphs 169 through 182.

4.7.155 Assessing Compliance with Paragraph 169: Training on Complaint Intake

Paragraph 169 stipulates:

“Within six months of the Operational Date, APD shall train all personnel in handling civilian complaint intake.”

Results

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

4.7.156 Assessing Compliance with Paragraph 170: Complaint Receipt Process

Paragraph 170 stipulates:

“APD shall accept complaints regardless of when they are filed. The City shall encourage civilians to promptly report police misconduct so that full investigations can be made expeditiously, and the full range of disciplinary and corrective action be made available.”

Results

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

4.7.157 Assessing Compliance with Paragraph 171: Prohibition of Refusal to Take Complaints

Paragraph 171 stipulates:

“The refusal to accept a misconduct complaint, discouraging the filing of a misconduct complaint, or providing false or misleading information about filing a misconduct complaint shall be grounds for discipline.”

Results

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

4.7.158 Assessing Compliance with Paragraph 172: Acceptance of Anonymous Complaints

Paragraph 172 stipulates:

“APD and the Civilian Police Oversight Agency shall accept all misconduct complaints, including anonymous and third-party complaints, for review and investigation. Complaints may be made in writing or verbally, in person or by mail, telephone (or TDD), facsimile, or electronic mail. Any Spanish-speaking individual with limited English proficiency who wishes to file a complaint about APD personnel shall be provided with a complaint form in Spanish to ensure that the individual is able to make a complaint. Such complaints will be investigated in accordance with this Agreement.”

Results

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

Operational: **In Compliance**

4.7.159 Assessing Compliance with Paragraph 173: Inform Supervisors of Citizen Complaints

Paragraph 173 stipulates:

“All APD personnel who receive a misconduct complaint shall immediately inform a supervisor of the misconduct complaint so that the supervisor can ensure proper intake of the misconduct complaint. All misconduct complaints shall be submitted to the Internal Affairs Division by the end of the shift following the shift in which it was received.”

Results

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

4.7.160 Assessing Compliance with Paragraph 174: Allegation by Judicial Officers

Paragraph 174 stipulates:

“APD and the Civilian Police Oversight Agency shall develop a system to ensure that allegations by a judicial officer of officer misconduct made during a civil or criminal proceeding are identified and assessed for further investigation. Any decision to decline investigation shall be documented.”

Results

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

4.7.161 Assessing Compliance with Paragraph 175: Allegations Made by the Homeless or the Mentally Ill

Paragraph 175 stipulates:

“APD and the Civilian Police Oversight Agency shall track allegations regarding misconduct involving individuals who are known to be homeless or have a mental illness, even if the complainant does not specifically label the misconduct as such.”

Results

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

4.7.162 Assessing Compliance with Paragraph 176: Centralized Complaint Numbering System

Paragraph 176 stipulates:

“Within six months of the Operational Date, the Internal Affairs Division, in coordination with the Civilian Police Oversight Agency, shall develop and implement a centralized numbering and tracking system for all misconduct complaints. Upon the receipt of a complaint, the Internal Affairs Division shall promptly assign a unique numerical identifier to the complaint, which shall be provided to the complainant at the time the numerical identifier is assigned when contact information is available for the complainant.”

Results

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

4.7.163 Assessing Compliance with Paragraph 177: IAD Complaint Data Management

Paragraph 177 stipulates:

“The Internal Affairs Division’s tracking system shall maintain accurate and reliable data regarding the number, nature, and status of all misconduct complaints, from initial intake to final disposition, including investigation timeliness and notification to the complainant of the interim status and final disposition of the investigation. This system shall be used to determine the status of complaints and to confirm that a complaint was received, as well as for periodic assessment of compliance with APD policies and procedures and this Agreement, including requirements on the timeliness of administrative investigations.”

Results

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

4.7.164 Assessing Compliance with Paragraph 178: Supervisors to Provide Complaint Information

Paragraph 178 stipulates:

“Where a supervisor receives a complaint alleging that misconduct has just occurred, the supervisor shall gather all relevant information and evidence and provide the information and evidence to the Internal Affairs Division. All information should be referred to the Internal Affairs Division within 48 hours, absent exceptional circumstances.”

Results

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

4.7.165 Assessing Compliance with Paragraph 179: Referral of Complaints to CPOA

Paragraph 179 stipulates:

“Within three business days of the receipt of a misconduct complaint from a civilian, the Internal Affairs Division shall refer the complaint to the Civilian Police Oversight Agency.”

Results

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

4.7.166 Assessing Compliance with Paragraph 180: Handling of Internal Complaints by IAD

Paragraph 180 stipulates:

“Internal misconduct complaints submitted by APD personnel shall remain with the Internal Affairs Division for review and classification. The Internal Affairs Division shall determine whether the internal complaint will be assigned to a supervisor for investigation or retained by the Internal Affairs Division for investigation. In consultation with the Chief, the commanding officer of the Internal Affairs Division shall also determine whether a civilian or internal complaint will be

investigated criminally by the Internal Affairs Division, the Multi-Agency Task Force, and/or referred to the appropriate federal law enforcement agency.”

Results

Primary: **In Compliance**

Secondary: **In Compliance**

Operational: **In Compliance**

4.7.167 Assessing Compliance with Paragraph 181: IAD Classification Protocol

Paragraph 181 stipulates:

“APD shall continue to maintain an internal complaint classification protocol that is allegation-based rather than anticipated-outcome-based to guide the Internal Affairs Division in determining where an internal complaint should be assigned.”

Results

Primary: **In Compliance**

Secondary: **In Compliance**

Operational: **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 an individual; who authorized the conduct that led to the reported incident or complaint; or who witnessed or was involved in the incident leading to the allegation of misconduct.”

Results

Primary: **In Compliance**

Secondary: **In Compliance**

Operational: **In Compliance**

4.7.169--4.7.180 Assessing Compliance with Paragraphs 183 through 194: Investigation of Complaints

Paragraphs 183 through 194 of the CASA pertain to requirements for thoroughness, timeliness, reliability of findings, and overall quality regarding investigating misconduct complaints. These paragraphs require that all relevant evidence be considered and that those investigations are fair, impartial, and reach reliable findings. They also require time limits for the completion of investigations, designation of permissible findings with the corresponding standard of proof, and assessment of whether the facts of an investigation indicate a need for change in policy, procedure, or training. In addition, requirements are set forth regarding the situations in which there may be simultaneous criminal and administrative investigations of the same subject matter.

Regarding paragraphs 183 through 194, during the 17th reporting period, members of the monitoring team reviewed a stratified random sampling of 20 investigations for which IAPS was responsible (eight completed by IAPS, six completed by the area commands, five by IAFD, and one conducted by a Deputy Chief against an area commander). In addition, a stratified sampling of 10 investigations completed by CPOA was reviewed. The monitoring team also met with the Chief of Police and the City Attorney, the CPOA Executive Director, CPOA Legal Counsel, and the IAPS Commander attended virtual meetings with CPOA Board members, and reviewed CPOA Board meetings and agenda minutes, and findings on the CPOA website.

The commander of IAPS continues to require supervisory reviews of investigations at ten, 20, and 40-day marks after assignment. Also, investigations must be complete within 70 days of assignment, and the commander must approve any extension. The commander must likewise approve requests for the Chief's approval for an extension of IAPS cases beyond 90 days. The commander also performs a weekly "timeline check" on every open IAPS investigation, and investigations surpassing 60 days are automatically flagged for the commander's review. Approval of completed investigations is electronically signed by the commander, leaving no room for the challenge of when the investigation was completed. The timeline for reviewing a completed investigation by the chain of command through the Chief/Superintendent of Reform, or their designee, is also tracked.

The organizational changes made in June of 2021 have been maintained and continue to maintain the quality of investigations and timeliness. The Civilian Intake Manager continues to intake and classify all incoming complaints. This position has allowed the lieutenant to oversee area command investigations and the IAPS commander to focus on the quality and thoroughness of investigations. The Civilian Intake Manager decides which allegations to forward to the area command for investigations and is available if called upon for guidance and quality control for those minor investigations assigned to the area commands. Once investigations are assigned to IAPS investigators, the quality of those investigations is the purview of supervisory focus of a separate Investigations manager. As we pointed out in the discussion of paragraphs 169-182, the monitoring team continues to provide technical assistance in the complaint intake function. It should be noted that IAPS has needed less technical assistance, but the communication process among the parties and monitoring team regarding intake and discipline has been maintained.

The findings related to Paragraphs 183 through 194 address the following requirements of the CASA.

The mediation program has been nonfunctional for three consecutive reporting periods (IMR-15 through IMR-17). The mediation process is thoroughly discussed in the narrative section of Paragraphs 271-292.

APD personnel are required by policy and practice to cooperate with the internal affairs system. In past IMRs, we found instances in our random samples of investigations in which a member of APD refused to cooperate with an investigation. In this period, no cases were discovered indicating any refusal to cooperate. Therefore, APD continues to demonstrate operational compliance with the task of requiring cooperation in internal affairs investigations.

Based on past reviews, we have found that non-use of force investigations conducted by IAPS, and investigations conducted by CPOA, generally have contained reliable findings. The monitoring team has reviewed minor misconduct allegations conducted by the area and division commands. During this period, we continued to focus on cases that were forwarded to IAPS as a result of Use of Force reviews of cases that were out of compliance with the Use of Force policies and/or collateral violation issues from those cases. Over the last two monitoring periods, APD has retrained all personnel responsible for conducting internal affairs investigations, and this has resulted in substantial increases in the quality of the investigations conducted by the Area Commanders. APD consistently requires its agency training for all newly assigned personnel required to conduct these investigations.

During this monitoring period, it was reported that three cases, which were not part of the stratified random sample of cases reviewed, were sent to an outside investigative entity for investigation. In prior IMRs, we recommended that a formal protocol be established to regulate the intake, assignment, receipt, and review of these investigations. According to the Deputy Chief of Police Reform, a protocol was established by City Legal in that they require any outside investigators to provide weekly updates to City Legal, who must also be provided with their complete investigations.

During this reporting period, our stratified random sample of investigations completed by APD revealed only one investigation that we deemed deficient. The deficiencies noted are based on the review of completed files of these cases, as provided by the APD. These are discussed below.

First, our review of the 20 cases that the area commands (six cases), IAPS (eight cases), IAFD (five cases), and one case completed by a Deputy Chief revealed none were administratively closed cases. The review of the ten cases that CPOA was responsible for revealed that no cases resulted in an administratively closed finding.

The following is an assessment of the IAFD case found to be deficient:

[IMR-17-63] This investigation was initiated as the result of a Use of Force Investigation that IAFD conducted. In this investigation, IAFD identified potential policy violations and was assigned to investigate them in conjunction with their force investigation. The initial Use of Force investigation resulted from a subject shooting at APD officers responding to a call for service. A preliminary investigation by the officers at the scene revealed that the gunshots came from a specific residence. The APD SWAT team, along with Rio Rancho PD SWAT and the Bernalillo Sheriff's Department, responded. Attempts were made by on-scene personnel, via the public address system, to have the occupants exit the residence from where the shots came. Announcements were made that the occupants of the residence were under arrest, and a warning about force being used if the occupants did not comply was given. Tactical plans were devised and authorized by the Tactical Commander. Noise Flash Diversionary Devices (NFDDs) were deployed without effect. Chemical munitions were then deployed through several windows in the residence, which caused two subjects to exit and surrender. As it was believed that more subjects were in the residence, more chemical munitions were deployed, which caused additional subjects to exit the residence and surrender. The on-scene investigation revealed that a subject who refused to comply was still in residence. That subject eventually exited the residence but sat on the step at the front of the house, refusing to surrender or comply. Another tactical plan was devised to use a department robot between the subject and the front door to prevent the subject from re-entering the residence. The subject was dressed only in boxer-type underwear and, when told to raise his hands, placed them behind his back. The robot used was equipped with four live-view cameras, which captured a view of the back of the subject. The robot was equipped with additional chemical munitions, and part of the tactical plan was to deploy them if needed to prevent the subject from re-entering. The robot operator was authorized to deploy the chemical munitions by the tactical commander. The Use of Force investigation determined that the subject was only passively resisting at the time the chemical munitions were deployed by the robot operator, which violated policy. The robot operator acknowledged that he was aware the subject was only passively resisting at the time he deployed the chemical munitions and reported his observation to a sergeant prior to the deployment. That officer denied being instructed to abort the deployment. The tactical commander indicated that he authorized the deployment but did not order it, and the robot operator would decide to abort if the situation did not exist to deploy. The tactical commander denied being advised that the robot operator reported that the conditions did not meet the policy requirement to deploy chemical munitions. The Use of Force investigation was thoroughly conducted, but the allegation that the robot operator notified a sergeant on-scene that he could see that the subject's hands were visible and no weapons were observed was not addressed.

The IAFD report does not indicate any attempt to clarify if the robot operator made a notification that may have changed the tactical commander's decision to authorize the use of the chemical munitions. The APD policy strictly prohibits the use of force against a passively resistant subject. In this case, the robot operator advised he felt he was ordered to deploy the chemical munitions, but when he observed via the robot's cameras that the subject was only passively resisting and did not have any weapons in his hands, he requested someone notify the tactical commander to confirm he should still deploy. He advised he was not told to abort, and the pre-established plan was to deploy, so he

deployed. By policy, the robot operator should not have deployed the chemical munitions under the circumstances. The tactical commander advised that if he was advised of the robot operator's observations, he would have ordered to abort the deployment. Because the officer who the robot operator allegedly advised of his observations and his request to notify the tactical commander was not identified, the fact that radio recordings were not reviewed to determine what, if anything, was called out over the air, and the fact that no other potential witnesses were identified/interviewed, the investigation was not thorough and complete.

The deficiencies in the previously discussed IAFD case do not provide enough evidence to determine if the findings were reliable based upon the documentation in the case file. Any deficiencies in the imposition of discipline in this matter or any of the CPOA cases reviewed are discussed more fully in this report's Discipline and Transparency section (paragraphs 201-202).

Regarding those investigations conducted by the area commands, we continue to see a vast improvement from prior IMR periods. All six cases reviewed during this period were found to be in operational compliance with the requirements of paragraphs 183 through 194. We find this to be a significant outcome for APD.

Considering the review of the stratified random sample of the 20 investigations conducted by the area commands, IAFD, a Deputy Chief, and IAPS, deficiencies were noted in the thoroughness and quality of one investigation. This yields a 95% operational compliance rate, an improvement since IMR-16, where there was 90% operational compliance. The increase in operational compliance is attributed to the investigations completed by IAPS personnel and the area commands. At this point, policies and training regarding investigative processes for internal "complaints" exist. The only investigation that was not found to be operationally compliant was conducted by an IAFD investigator. Reportedly, all agency members responsible for conducting or supervising internal affairs investigations have now been trained, except for any newly hired or transferred members. The IAPS Commander is responsible for ensuring any newly assigned members receive the requisite training as soon as practicable. It is incumbent on the IAPS command to ensure all investigations are conducted within the requirements and timelines of their policies and the CASA.

Although area command investigations should involve only minor allegations (Sanction level 6-7), these investigations must still meet the CASA requirements pertaining to the quality of investigations. Any failures in these functions are serious impediments to "good order and discipline."

In IMR-13 through IMR-15, we noted that "APD must pay immediate attention to completing the training required for the area command investigators and must immediately act to standardize and upgrade the area command investigations, as well as the area command imposition of discipline (more fully discussed in the Discipline and Transparency section, paragraphs 201-202, of this report)". APD has heeded this recommendation and has reaped the rewards. The area command reviews have been standardized and are operating much more efficiently and effectively.

During this period, the review of the stratified random sampling of the 20 investigations found no cases that were classified other than Level 6 and Level 7, which were assigned to Area Commands for investigation. This continues to be a positive sign that more consideration is being made during the classification of complaints.

We strongly suggest that APD conduct a thorough quality review of the case we found deficient or in which we identified shortcomings to determine how these shortfalls made it through supervisory and command review at IAPS. This trend has diminished greatly but continues to be problematic and continues to require APD's commitment to command oversight and control.

CPOA findings and advisements are discussed in greater detail in paragraphs 271-292. We note that, of the ten CPOA cases reviewed, we found deficiencies in five cases. The deficiencies in three cases were determined to be related to incomplete interviews. Three cases were also found to have deficiencies in the timeliness of completion. One of the aforementioned cases was deficient in both an incomplete interview and was not completed within the required time period.

In prior IMR periods, we identified that APD assigned individuals to task-specific assignments without prior training to build the requisite knowledge, skills, and abilities (KSAs) required for that assignment. Therefore, we suggested appropriate external training. During IMR 16, all members of the APD who are responsible for conducting or supervising police internal affairs investigations were provided agency-specific training. APD has continued to train any newly assigned members to that training during this monitoring period. One of the results of that training is that members of the APD have reached operational compliance in the completion of internal affairs investigation during this period.

During this period, IAPS administratively closed 68 cases during the intake process after determining that there was no violation of policy in eight cases, determined by a preliminary review. The remaining 60 cases, which were Administratively Closed, were the result of duplicate cases of the same allegations. Although the number of overall Administratively Closed cases dramatically increased from IMR-16, it is attributable to the fact that APD is assigning a case number immediately on all complaints and rectifying any duplications after a preliminary review.

In the cases reviewed by the monitoring team during this reporting period, we found no cases that had preliminary indications of potential criminal conduct. Based on our review of the findings in a sample of cases for the 17th reporting period, APD and CPOA remain in operational compliance with the requirements of paragraphs 186 through 188.

We likewise found no cases in which an officer failed to submit a public safety statement by claiming that the statement would be self-incriminating. Given APD's performance related to this requirement over the past five reporting periods, the monitor continues to find APD in full compliance with the requirements of Paragraph 189.

Regarding the time requirements contained in Paragraph 191, the past performance of IAPS and CPOA generally have been consistent in terms of timely completion of investigations once they are assigned. In our current stratified random sample of the 20 investigations for which IAPS was responsible, all cases were completed within mandated time frames. Regarding the requirements relating to the timeliness of CPOA investigations, contained in the paragraphs 271-292 section of this report, CPOA had three cases of the ten cases that exceeded the time requirements for investigations. This equates to a 70% compliance rate for paragraph 191. Thus we find CPOA not in compliance with the requirements of Paragraph 191.

Although no instances of IAPS investigations completed this reporting period are outside the required time limit for completeness, CPOA continues to struggle with this area. The timeliness of CPOA investigations is addressed in detail in paragraphs 271-292.

4.7.169 Compliance with Paragraph 183: Investigations Reach Reliable Conclusions

Paragraph 183 stipulates:

“APD and the Civilian Police Oversight Agency shall ensure that investigations of officer misconduct complaints shall be as thorough as necessary to reach reliable and complete findings. The misconduct complaint investigator shall interview each complainant in person, absent exceptional circumstances, and this interview shall be recorded in its entirety, absent specific, documented objection by the complainant. All officers in a position to observe an incident, or involved in any significant event before or after the original incident, shall provide a statement regarding their observations, even to state that they did not observe anything.

Results

Our review indicates that only CPOA experienced issues with compliance with Paragraph 183 during this reporting period.

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

Recommendation for Paragraph 183:

4.7.169a: CPOA should ensure that all interviews are complete, including the investigator identifying themselves and all parties on the record, including the date, time, and location, and ask pertinent questions designed to solicit all pertinent information.

4.7.170 Assessing Compliance with Paragraph 184: Investigations Documented in Writing

Paragraph 184 stipulates:

“APD and the Civilian Police Oversight Agency shall investigate all misconduct complaints and document the investigation, its findings, and its conclusions in writing. APD and the Civilian Police Oversight Agency shall develop and implement a policy that specifies those complaints other than misconduct that may be resolved informally or through mediation. Administrative closing or inactivation of a complaint investigation shall be used for the most minor policy violations that do not constitute a pattern of misconduct, duplicate allegations, or allegations that even if true would not constitute misconduct.”

Results

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

4.7.171 Assessing Compliance with Paragraph 185: Required Cooperation with IAD/CPOA

Paragraph 185 stipulates:

“APD shall require personnel to cooperate with Internal Affairs Division and Civilian Police Oversight Agency investigations, including appearing for an interview when requested by an APD or Civilian Police Oversight Agency investigator and providing all requested documents and evidence under the individual’s custody and control. Supervisors shall be notified when an individual under their supervision is summoned as part of a misconduct complaint or internal investigation and shall facilitate the individual’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 individual has committed a crime, APD shall consult with the prosecuting agency (e.g., District Attorney’s Office or USAO) and seek the approval of the Chief before taking a compelled statement.”

Results

Primary: **In Compliance**

Secondary: **In Compliance**

Operational: **In Compliance**

4.7.173 Assessing Compliance with Paragraph 187: Advisement of Officer Rights

Paragraph 187 stipulates:

“Advisements by the Internal Affairs Division or the Civilian Police Oversight Agency to APD personnel of their Fifth Amendment rights shall only be given where there is a reasonable likelihood of a criminal investigation or prosecution of the subject employee.”

Results

Primary: **In Compliance**

Secondary: **In Compliance**

Operational: **In Compliance**

4.7.174 Assessing Compliance with Paragraph 188: Notification of Criminal Misconduct

Paragraph 188 stipulates:

“If at any time during misconduct complaint intake or investigation the investigator determines that there may have been criminal conduct by any APD personnel, the investigator shall immediately notify the Internal Affairs Division commanding officer. If the complaint is being investigated by the Civilian Police Oversight Agency, the investigator shall transfer the administrative investigation to the Internal Affairs Division. The Internal Affairs Division commanding officer shall immediately notify the Chief. The Chief shall consult

with the relevant prosecuting agency or federal law enforcement agency regarding the initiation of a criminal investigation. Where an allegation is investigated criminally, the Internal Affairs Division shall continue with the administrative investigation of the allegation. Consistent with Paragraph 186, the Internal Affairs Division may delay or decline to conduct an interview of the subject personnel or other witnesses until completion of the criminal investigation unless, after consultation with the prosecuting agency and the Chief, the Internal Affairs Division deems such interviews appropriate.”

Results

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

4.7.175 Assessing Compliance with Paragraph 189: Provision of Public Safety Statements

Paragraph 189 stipulates:

“Nothing in this Agreement or APD policy shall hamper APD personnel’s obligation to provide a public safety statement regarding a work-related incident or activity, including Use of Force Reports and incident reports. APD shall make clear that all statements by personnel in incident reports, arrest reports, Use of Force Reports and similar documents, and statements made in interviews such as those conducted in conjunction with APD’s routine use of force investigation process, are part of each employee’s routine professional duties and are not compelled statements. Where an employee believes that providing a verbal or written statement will be self-incriminating, the employee shall affirmatively state this and shall not be compelled to provide a statement without prior consultation with the prosecuting agency (e.g., District Attorney’s Office or USAO), and approval by the Chief.”

Results

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 account 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 have been 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**

Recommendations for Paragraph 190:

4.7.176a: APD and CPOA should require all pertinent information to be obtained during interviews and properly documented, so that it may be considered in determining the appropriate conclusion.

4.7.177 Assessing Compliance with Paragraph 191: 90 Days to Complete Administrative Investigations

Paragraph 191 stipulates:

“All administrative investigations conducted by the Internal Affairs Division or the Civilian Police Oversight Agency shall be completed within the applicable deadlines in the Collective Bargaining Agreement between the City and Intervenor. Review and final approval of the investigation, and the determination and imposition of the appropriate discipline, shall be completed within 40 days of the completion of the investigation. Extensions may also be granted to the extent permitted by state and city law or the Collective Bargaining Agreement between the City and Intervenor.”

Results

CPOA failed to meet this objective regarding timelines.

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

Recommendations for Paragraph 191:

4.7.177a: CPOA should refocus their efforts related to this paragraph by conducting a quantitative analysis of the reasons that cause any case to be delayed past 90 days.

4.7.177b: Once causes for these delays are identified, develop recommendations for changes to policy, staffing, procedure, or practice that are designed to eliminate such delays.

4.7.177c: All investigations should include a clear timeline that delineates the date of the incident, date of receipt of the complaint, date of assignment, date of extension if applicable, date investigation is completed, dates the review period begins and ends, and date of notice of intent to discipline where applicable.

4.7.178 Assessing Compliance with Paragraph 192: Case Dispositions

Paragraph 192 stipulates:

- “The 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: **In Compliance**

4.7.179 Assessing Compliance with Paragraph 193: Reopening Administrative Investigations

Paragraph 193 stipulates:

“Administratively closed complaints may be re-opened if additional information becomes available. The deadlines contained in Paragraph 191 shall run from when the complaint is re-opened.”

Results

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

4.7.180 Assessing Compliance with Paragraph 194: Training and Legal Standards

Paragraph 194 stipulates:

“In addition to determining whether APD personnel committed the alleged misconduct, administrative investigations shall assess and document whether the action was in compliance with training and legal standards and whether the incident suggests the need for a change in policy, procedure, or training. In reviewing completed administrative investigations, APD shall also assess and document whether: (a) the incident suggests that APD should revise strategies and tactics; and (b) the incident indicates a need for additional training, counseling, or other non-disciplinary corrective measures. This information shall be shared with the relevant commander(s).”

Results

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

4.7.181 – 4.7.183 Assessing Compliance with Paragraphs 195-197: Preventing Retaliation

Paragraphs 195 through 197 of the CASA pertain to the City’s requirement to prevent retaliation against anyone who reports misconduct or cooperates in a misconduct investigation by any employee of the City, including APD members, making it grounds for discipline.

Members of the monitoring team have reviewed both City and APD policies regarding the prohibition of retaliation, and they remain unchanged and appropriate. The monitoring team also selected and reviewed a stratified random sample of IA and CPOA cases completed during the 17th IMR review period. They also met with members of IAPS and CPOA during the site visit and received updates on the practices of each agency.

Retaliation is prohibited both as a matter of City and APD policy. The Albuquerque Code of Ordinances prohibits retaliation for reporting improper governmental action, and APD policy prohibiting retaliation and making it grounds for discipline is found in SOP (AO 3-41-4-A, GO 1-1-4-E-10 and 11, GO1-4-3-C-2, and GO 1-5-4-B-4).

The monitoring team conducted a stratified random sampling of cases assigned to IAPS and CPOA and found no cases in which retaliation was alleged or determined to have occurred during this monitoring period. Based upon data reviewed and observations made by the monitoring team for this reporting period, the City, APD, and CPOA continue to demonstrate compliance for the tasks in paragraphs 195-197.

4.7.181 Assessing Compliance with Paragraph 195: Retaliation Prohibited

Paragraph 195 stipulates:

“The City shall continue to expressly prohibit all forms of retaliation, including discouragement, intimidation, coercion, or adverse action, against any individual who reports misconduct, makes a misconduct complaint, or cooperates with an investigation of misconduct.”

Results

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

4.7.182 Assessing Compliance with Paragraph 196: Review of Anti-Retaliation Statements

Paragraph 196 stipulates:

“Within six months of the Operational Date, and annually thereafter, the Internal Affairs Division and the Civilian Police Oversight Agency shall review APD’s anti-retaliation policy and its implementation. This review shall consider the alleged incidents of retaliation that occurred or were investigated during the reporting period, the discipline imposed for retaliation, and supervisors’ performance in addressing and preventing retaliation. Following such review, the City shall modify its policy and practice, as necessary, to protect individuals, including other APD personnel, from retaliation for reporting misconduct.”

Results

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

4.7.183 Assessing Compliance with Paragraph 197: Retaliation Grounds for Discipline

Paragraph 197 stipulates:

“Retaliation for reporting misconduct or for cooperating with an investigation of misconduct shall be grounds for discipline, up to and including termination of employment.”

Results

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

4.7.184 – 4.7.186 Assessing Compliance with Paragraphs 198–200: Staffing and Training Requirements

Paragraphs 198 through 200 of the CASA require the City to adequately fund and resource internal affairs functions (IAPS and CPOA and the CPOA Board) and require that APD personnel who conduct misconduct investigations and CPOA investigators receive a baseline amount of initial and annual training.

Consistent with past site visits, the monitoring team met with IAPS and CPOA. Their respective offices and physical spaces have remained the same. The monitoring team discussed staffing needs and training, reviewed staffing charts and training records, and

assessed the timelines of processing complaints and information of potential misconduct in investigations that were randomly selected, assessing the quality of the investigations. The findings related to Paragraphs 198 through 200 indicate the following outcomes related to the requirements of the CASA.

At the present time, IAPS has a Commander, a civilian Investigation Manager, a civilian Intake Manager, one lieutenant, one Administrative Coordinator and ten investigators (six detectives and four civilian personnel), and three administrative assistants. IAPS has seven vacant positions at the time of this report. These include vacancies in the following positions: Deputy Commander, Administrative Lieutenant, two sergeants, a detective, and one administrative assistant position, plus one civilian position. This is a slight decrease from the IMR-16 monitoring period by one position. During this period, the acting IAPS Commander was filled by the Deputy Commander. The prior IAPS Commander was permanently elevated to the position of Deputy Director of the Police Reform Bureau. The monitor knows of few entities that can be effective with such substantial deficit staffing. It would seem important that APD address these issues and ensure that IAPS is completely staffed, trained, and supervised to complete its assigned tasks.

During this period, a new Superintendent of Reform was hired and began work. A civilian intake manager oversees the complaint intake function. Despite the fact that IAPS, as discussed more fully in the Investigations of Complaints section (paragraphs 183-194) of this report, has made strides in improving its processes, it bears repeating that additional staff may still be required to complete thorough investigations in a timely manner, as required by the time constraints of the CASA and Collective Bargaining Agreement. The CASA requires a timeline for the completion of investigations (90 days or 120 days with an extension approved by the chief). As of January 1, 2023, the CBA was modified to 120 days for the completion of an internal affairs case, but with no extensions. The CASA specifies the investigative timeline begins with "the initiation of the complaint investigation" (paragraph 191). In contrast, the CBA specifies the start of the time limit as "the issuance of the notice in writing to the officer, or the assigning of the investigation case number to the disciplinary investigation, whichever is later and within the 15-day time period." Compliance with the CBA time constraints impacts the APD's ability to impose discipline on sustained charges (compliance with CASA paragraphs 201 and 202). The 3rd Amended CASA includes 120 days for investigative timelines without extensions.

Thus, IAPS and CPOA must be staffed sufficiently to meet their timeline responsibilities so that CASA and CBA timelines are met and discipline for sustained charges is not "time-barred." Compliance with the CBA in cases in which discipline is time-barred by the CBA does not absolve the City of its failure to comply with the progressive discipline requirements of 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. In the past, the CPOA had a dedicated and independent source of funding equal to, at a minimum, one-half of 1% of the APD annual operational budget. This funding was adequate in the

past; however, the one-half of 1% requirement has since been removed. All CPOA investigative positions have been filled.

During IMR 16, a new Executive Director was hired. Unfortunately, she resigned on December 9, 2022. Also troubling is the fact that no acting executive director was appointed until February 6, 2023. That two-month vacancy created a situation in which no investigations were able to be forwarded to APD for disciplinary action, as the Executive Director was not there to approve or make recommendations. None of those cases were approved by the Board. A total of 43 cases were completed during that time period, with eight concluding with sustained findings. Seven of the eight sustained findings were “out of time” for discipline when the appointment of an Interim-Executive Director occurred on February 6, 2023. This created a situation in which the Chief of Police could not administer discipline to the offending officers.

In the monitor’s experience, a non-compliance of 87.5 percent finding based on the timeliness of completed investigations is a substantial red flag that indicates a need for assessment and revision. Given the apparent difficulties CPOA is encountering in its attempt to achieve some CASA requirements, the City may want to consider re-evaluating staffing levels and operational protocols at CPOA.

In addition, the Albuquerque City Council passed a new city ordinance, disbanding the CPOA Board on January 19, 2023. As of the writing of this report, the City of Albuquerque is in the process of re-constituting a new “advisory” board, in an attempt to remove some of the dysfunction of the previous structure. We do note that CPOA still has an unfilled funded position for a Policy Analyst. The new City ordinance abolished the previously created/funded position of Community Engagement Specialist and created a new position of Contract Compliance Officer, which remains vacant at this time. The number of untimely cases revealed by our stratified random sample is discussed more fully in conjunction with paragraphs 191 and 281 of this report.

The circumstances created by the abolishment of the Board and personnel turnover, leaving no supervision other than the Lead Investigator, support an operational non-compliance determination for paragraph 198 for the CPOA. A brief review of the staffing of the CPOA revealed that there is currently a lead investigator and six investigators assigned. The underlying issue of adequate staffing rests with the ability of each investigator to complete investigations within the time limits. According to the Lead Investigator, CPOA received 629 complaints in 2022, and 305 of those were determined to require full investigations. To put this in perspective, each CPOA investigator would need to complete more than one investigation per week, including identifying salient witnesses, scheduling witness interviews, conducting witness interviews, conducting officer interviews, analyzing witness and officer “testimony,” developing findings, fully documenting their investigations, and writing and proofing case reports. In short, it appears to the monitoring team that CPOA has a shortage of trained investigators.

Not surprisingly, there was a deficiency noted in the timely completion of investigations by CPOA, which may be attributed to an excessive caseload by each investigator and a lack of adequate supervision. Each investigator routinely has 20 or more active

investigations assigned to them, which based on the monitoring team's experience, likely leads to poor outcomes regarding timelines, quality, and effectiveness. The Lead Investigator advised that they attempt to triage cases and prioritize the cases which they believe may be sustained, in order to adhere to the CBA timelines. Unfortunately, the cases that are presumed less likely to be sustained often fall out of time, and some of those cases end up with sustained findings that cannot be disciplined due to CBA timelines.

From the monitor's perspective, CPOA is in crisis, a crisis birthed by understaffing, failure to fill important vacancies, organizational structure, and staffing shortcomings,

In addition, there is only one supervisor, the Lead Investigator, who does all the intake of the 600 plus complaints, provides support to the Executive Director, and acts as the Interim Executive Director for a period of time during this monitoring period. The Lead Investigator was responsible for training the two newly hired investigators and responsible for conducting a first-level review of all completed investigations. The workload on the Lead Investigator appears to be excessive and unsustainable. In addition, when the Lead Investigator was off, there was no one to administer any of her duties properly, so they waited until her return, adding to timeline issues. Obviously, staffing is critical, considering the time requirements established by the CASA and the CBA. The new City ordinance established a Deputy Director's position, which may assist in creating adequate supervision, but it remains vacant.

As we have pointed out in prior IMRs, in regard to paragraph 199 of the CASA, we are satisfied that the training requirement is met for those members of APD who conduct investigations involving allegations of misconduct. Both the 24-hour preliminary and 8-hour in-service training addressed the requirements of this paragraph. Currently, all members, except the newest members, who may be tasked with conducting an internal affairs investigation, have received the requisite hours of training. Any newly promoted members who have not received the training are scheduled to attend an upcoming training session.

There has been a practice of assigning IA investigations to members of an area command, at the rank of sergeant or higher, to conduct investigations alleging minor misconduct against an APD member of the same area command. This practice is currently in effect. A recommendation was made during IMR-14 to assign all CASA-related violations to IAPS. During this period, IAPS was assigned most CASA-related violations to investigate, except for OBRD violations, which are still being investigated by area commands, as they are classified as Level 6 and Level 7 violations. The predominant OBRD violation is and has been failing to upload recordings by the end of the member's following shift. The violation is usually able to be established by the technical data audit produced by the electronic system. The area commanders have routinely made findings based on the audit logs. During this period, all area command review investigations were conducted within the requirements of the CASA. Therefore we find that both the APD and the CPOA are in operational compliance with paragraph 199.

We further discuss the CPOA and CPOAB training requirements in the Civilian Police Oversight Agency section (paragraphs 271-292) in this report.

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 Professional Standards Division after the completion of the staffing study to be conducted pursuant to Paragraph 204. The City further shall ensure sufficient resources and equipment to conduct thorough and timely investigations.”

Results

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

Recommendations for Paragraph 198:

4.7.184a: CPOA should adequately staff its investigative responsibilities, using effective measures of workload, the time needed to complete the “average” CPOA investigation, and the time needed to assess and perform quality control processes.

4.7.184b: A comprehensive staffing study should be conducted to establish realistic expectations on the number of investigations an investigator can complete appropriately. That number should be utilized in establishing mandatory staffing levels to enable the CPOA to complete their investigations within the allotted time requirements.

4.7.185 Assessing Compliance with Paragraph 199: IA Initial and Annual Training

Paragraph 199 stipulates:

“All APD personnel conducting misconduct investigations, whether assigned to the Internal Affairs Division, an Area Command, or elsewhere, shall receive at least 24 hours of initial training in conducting misconduct investigations within one year of the Operational Date, and shall receive at least eight hours of training each year. The training shall include instruction

on APD’s policies and protocols on taking compelled statements and conducting parallel administrative and criminal investigations.”

Results

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

4.7.186 Assessing Compliance with Paragraph 200: CPOA Training

Paragraph 200 stipulates:

“Investigators from the Civilian Police Oversight Agency shall receive at least 40 hours of initial training in conducting misconduct investigations within one year of the Operational Date, and shall receive at least eight hours of training each year. The training shall include instruction on APD’s policies and protocols on taking compelled statements and conducting parallel administrative and criminal investigations.”

Results

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

4.7.187 – 4.7.188 Assessing Compliance with Paragraphs 201- 202: Discipline and Transparency

Paragraphs 201-202 require discipline to be fact-based and imposed for sustained violations based on appropriate and articulated consideration of aggravating and mitigating circumstances. These paragraphs also require the use of a disciplinary matrix in imposing discipline and the analytical elements of the disciplinary regulation SOP 3-46. Read together, these paragraphs require progressive discipline that is fair, consistent, and commensurate with the violation committed and balances aggravating and mitigating factors.

During this review period, the monitoring team reviewed a stratified random sample of disciplinary cases in which allegations were sustained and discipline imposed. We also met with the Chief of Police, the Associate Chief Administrative Officer of Police Reform, the Superintendent of Reform, the Executive Director of Reform, the City Attorney, the CPOA Executive Director, the IAPS Commander and other disciplinary authorities. We also reviewed APD and CPOA discipline processes.

As we have noted in past IMRs, marked improvements have been made in the processes of the APD disciplinary system, such as the adaptation of the Disciplinary

Action Packet (DAP) by both IAPS and CPOA, the updating of retention cards, assigning sanction levels to SOPs, having an IAPS representative attend major disciplinary PDHs, and improved communications and tracking of disciplinary matters. These improvements have persisted in the IMR 17 period and need not be detailed again in this report. The use of, and facility with, the revised disciplinary policy (SOP 3-46) and revised complaint intake policy (SOP 3-41) have also taken root in the APD disciplinary system. The role of the sworn position that the monitoring team described in IMR-14 as a “potential watershed event,” the Professional Integrity Commander (PIC), is now well-ensconced in the APD disciplinary system.

Of note is that the disciplinary authorities, after working with the revised SOP 3-46, took the initiative to identify other potential areas of improvement. Shortly before the end of the IMR 17 period, the monitoring team and DOJ met with a Deputy Director of Police Reform to discuss potential 3-46 revisions to clarify the principles of fair and progressive discipline outlined in the regulation. The monitoring team looks forward to reviewing the proposed changes when available, such as a reasonable limitation on the number of non-disciplinary corrective actions (NDCA) for minor offenses that an officer can receive within a specified period.

During the IMR-17 period, the new Superintendent of Police Reform began oversight of reform issues. The monitoring team met with the Superintendent and found him to be committed to the reforms embraced by the CASA and forward-thinking in terms of organizational assets and structure that will be needed to continue the inculcation of police reforms after the cessation of the monitoring process.

At the end of the IMR-17 period, the APD disciplinary system continued to function with four disciplinary authorities, with the same rank, albeit some with different titles than in the IMR-16 reporting period. This was a vast improvement in terms of consistency of process and discipline when compared to the past practice of utilizing Deputy Chiefs, Area Commanders, and Special Unit Commanders as individual disciplinary authorities. The disciplinary system at APD consists of the Executive Director of Police Reform, two (2) Deputy Directors of Police Reform, and the PIC.

During this monitoring period, in matters with sustained allegation(s) where the proposed discipline is more than 40 hours, the PIC is the first line of review of the investigation and recommended discipline. The non-ranking Deputy Director of Police Reform completes the second review. The Executive Director of Police Reform presides over PDHs. The appropriate board, the Personnel Board or the Labor Management Relations Board, hears appeals of those matters.

In major disciplinary actions in which the proposed discipline is 40 hours or less, the first line of review is the PIC, the second line of review is the non-ranking Deputy Director of Police Reform, and the PDH is heard by the ranking Deputy Directors of Police Reform. The Executive Director of Police Reform hears the appeal of such matters.

PDHs are not heard in minor disciplinary matters, and the PIC imposes discipline. If there is a disagreement between the recommendation of the area commander and the

PIC on the level of discipline, the non-ranking Deputy Director of Police Reform designates the appropriate discipline.

The above-noted improvements in the process have yielded noticeable improvements in compliance with the requirements of progressive discipline and a steadily increasing compliance rate.

The monitoring team reviewed a stratified random sample of 26 cases in which discipline was imposed during the review period. In that review, we identified ten cases investigated by IAPS in which charges were sustained, and there was the potential for major discipline: [IMR-17-66], [IMR-17-67], [IMR-17-68], [IMR-17-69], [IMR-17-70], [IMR-17-71], [IMR-17-72], [IMR-17-73], [IMR-17-74], and [IMR-17-75]. We reviewed thirteen cases investigated by IAPS in which charges were sustained and which can be described as minor disciplinary cases, [IMR-17-76], [IMR-17-77], [IMR-17-78], [IMR-17-79], [IMR-17-47], [IMR-17-80], [IMR-17-81], [IMR-17-82], [IMR-17-83], [IMR-17-84], [IMR-17-85], [IMR-17-58], and [IMR-17-59]. We reviewed three cases investigated by CPOA in which charges were sustained, two of which had the potential for major discipline [IMR-17-86 and IMR-17-87], and one case, which was a minor discipline matter [IMR-17-88].

Although, as demonstrated in past monitor's reports, the disciplinary process has made strides toward eliminating cases with sustained findings where discipline was not imposed due to time constraints, our review of the stratified random sample in this reporting period revealed two cases in which discipline was not imposed as "time-barred."

- [IMR-17-70] involved a sustained finding for a violation of 2-8-5.B (failure to activate OBRD in time, Sanction Level 6, performance category). There were no prior violations within time limits for purposes of progressive discipline. The range was an NDCA-written reprimand (presumptive) – 8-hour suspension. A written reprimand was determined to be the appropriate discipline but was not imposed because the IAR was not requested in time per the CBA. Disciplinary action was taken against the officer who failed to request the IAR in time in [IMR-17-109], and he has since resigned from APD.
- The second case in which discipline was not imposed due to timelines was [IMR-17-88]. This case involved sustained allegations against an officer for a violation of 2.60.4A5bf (failed to collect ID information and referred to assault as "incident," Sanction Level 7, Performance Category) and against the officer's Sergeant for a violation of 2-16-5 (failure to catch errors in supervisory reviews, Sanction Level 7, Performance Category). No prior violations enhanced the current discipline for purposes of progressive discipline. In both matters, a verbal reprimand, within range, was calculated as the appropriate discipline but was not imposed due to being "time-barred." As such, this matter is deficient.
- [IMR-17-74] involved a complaint for failure to properly request three vacation days for payroll, which was caught by a supervisor and then corrected by the

subject officer approximately two months after the payroll entries. The investigation sustained the allegation for violation of 1-1-6A1 (avoid behavior that may cast doubt on integrity or honesty, Sanction Level 5, Misconduct Category). An allegation for a violation of SOP 1-1-6A6e (knowingly misrepresent or make false statement in payroll, Sanction Level 2, Misconduct Category) was also considered but rejected as being duplicative. Regarding the administrative closing of this allegation, the monitoring team agrees and further notes that the duplicative finding could have been unfounded or not sustained, as there was insufficient evidence to prove that the subject officer knowingly or intentionally made misrepresentations. The investigator's notes in the investigative report mention and show investigator awareness of SOP 1-48-6D (validate calendar or timecard and review and approve all timecard entries no later than Sunday midnight, Sanction Level 6, Performance Category). That SOP, which was implicated by the evidence more than the two SOP allegations that were considered, was never framed as an issue or considered as a potential violation. In regard to the violation sustained in the investigation, it was listed as "exonerated" in the final memo and on the officer's retention card. No PDH results or other explanation was set forth for the ultimate finding of exoneration. The overall APD disciplinary/accountability performance in this matter results in a finding of deficiency, including a failure to frame a relevant SOP as a potential violation and the failure to set forth a memorandum or a PDH decision with a cogent explanation for changing a sustained investigative finding to a final finding of exoneration.

- [IMR-17-86] involved a sustained allegation for a violation of the social media policy, specifically SOP 1-2-4-B-3v (speech that negatively impacts or tends to impact the Department's ability to serve the public, Sanction Level 6, Misconduct Category). The content of the social media communication involved the officer expressing agreement with a posted article about police shooting "an illegal immigrant" 68 times, after the suspect had shot and killed a deputy sheriff. The officer expressed the view that the shooting was "not enough." Identified mitigating factors in the disciplinary authority's memorandum were that the officer admitted it was wrong and removed the posting from the Facebook page before the CPOA investigation, and did not indicate online that she was a member of law enforcement (an anonymous complainant recognized her as an APD officer and informed the CPOA). A verbal reprimand was imposed for Class 6, 1st offense. Although that discipline was in range for a Class 6, first 1st offense, there were two prior Class 5 violations, one performance, and one misconduct, both identified in the DAP. The prior Class 5 misconduct was within time limits and was the same category (misconduct). Thus, discipline should have been imposed based on the range for a Class 6, 2nd offense. In addition, the content of the message (bravado about shooting a murder suspect 68 times) had a direct nexus to the CASA and should have been recognized as an aggravating factor. We find discipline in this case to be deficient based on the failure to impose progressive discipline for a Class 6 violation based on a greater Class 5 prior violation, and failure to address an obvious aggravating factor.

The above three disciplinary cases that we find to be deficient, out of a total of twenty-six reviewed, which equals a compliance rate of 88% (a slight improvement from the 83% contained in IMR-16). APD continues to show steady, marginal increases in compliance for this paragraph.

It bears repeating that compliance with the CBA in not imposing discipline that is “time-barred” does not excuse APD’s failure to meet the requirements of paragraph 201 of the CASA to impose appropriate discipline on sustained charges. We note again that the union contract was recently re-negotiated, and the City, at that time, had the ability to revise problematic paragraphs of the CBA viz a viz the requirements of the CASA. The CASA requires APD and CPOA to be staffed sufficiently to meet their investigative responsibilities in a timely manner, operate efficiently, and bring sustained charges to the command review process in time for the review process to run its normal course.

In addition to the matters we found to be deficient, there is an additional case we reviewed that, although we find under the totality of circumstances that discipline was adequate, there were shortcomings or areas of improvement that warrant pointing out.

[IMR-17-82] involved a sustained charge for 2-8-4F3 (failure to upload OBRD footage before a scheduled vacation, Sanction Level 6, Performance Category.) In the investigative interview conducted by a supervisory Lieutenant, the subject officer took full responsibility and made no excuses. The interview also contained dialogue showing coaching took place during the interview, the OBRD policy was reviewed, and the officer correctly cited the policy after reviewing it. A verbal reprimand was imposed within the applicable range for a first offense. The PIC review cited no prior offenses for purposes of progressive discipline, but the retention card shows two prior Class 7 performance violations, not involving OBRD, within time limits. It appears that these priors were not considered because they were Class 7, a less serious violation than the Class 6 current offense. When there are prior offenses of the same category and within time limits, the disciplinary review must identify them and specify whether they are being considered for progressive discipline, and if they are not being considered, then the reasoning must be set forth. Nonetheless, given that there were no aggravating circumstances surrounding or resulting from the violation, and the investigative/supervisory interview of the officer showed full acceptance of responsibility and coaching/policy review, we find the discipline, in this case, to be adequate.

From our review of cases, it is apparent that there is not uniform agreement between the disciplinary authorities and the CPOA Executive Director on interpreting SOP 3-46 when it comes to calculating prior offenses for purposes of progressive discipline (increased range, i.e., a second or third offense for the Class level of the sustained violation).

3-46-3K states that a prior-related offense is : “(a) sustained violation of policy from the same group of prior-related offenses as set forth by Appendix II and consistent with the time limitations set forth in this SOP. Prior-related offenses shall be used for progressive discipline in determining the final discipline imposed.” The time limitations are set forth in 3-46-4 B2, which basically state that a prior sustained Class 6 or 7 violation within one year of the current offense and a prior sustained Class 5 violation within two years of the

current offense shall count for purposes of progressive discipline, as well as any sustained Class 1-4 violation throughout the duration of the officer's career. Appendix II of the regulation offers guidance on determining the offenses that fall under the appropriate category: performance, misconduct, or attendance. Despite the rather straightforward guidance of 3-46, we are starting to see instances in which a prior offense of the same category and within time limits is not counted because it is a less serious Class level, and in one instance, the prior offense was not counted when it was a more serious Class level.

SOP 3-46 does not say that a prior offense, within time limits and of the same category, must be the same Class level to count for purposes of progressive discipline. APD disciplinary authorities must calculate prior disciplinary records consistent with 3-46. The monitoring team underscores that even if discipline is adequate under the circumstances of a case, in order for there to be consistency in the disciplinary process, the correct calculus must take place when interpreting the APD disciplinary regulation. It is important that the calculation process be uniformly applied in accordance with the regulation. In instances where the disciplinary authorities feel that the correct calculus under the facts of a case reaches an unfair level of disciplinary range on the matrix, they are reminded that there may be a departure from the range only if there are identified mitigating or aggravating reasons set forth in the investigative record and/or that justify the downward or upward departure and only if a cogent articulation for the departure is set forth.

To its credit, APD is aware of these interpretation issues and has taken steps to revise the disciplinary regulation further to eliminate any areas of ambiguity. SOP 3-46 in its current form does not specify whether less serious or more serious Class levels of prior violations, within time limits and of the same category (misconduct or performance), enhance the current violation violations for purposes of progressive discipline. This topic should be addressed in revisions to 3-46 (see Monitors recommendations 4.7.188a-d). The monitoring team looks forward to reviewing proposed 3-46 refinements in the next reporting period.

We noted in IMR-16 that appeals of disciplinary decisions would be an area of focus in this report, particularly settlements of appeals to the Personnel Board or the Labor Management Relations Board. In this regard, we have reviewed all appeals finalized during the period and found a total of 11 cases. Nine (9) were internal appeals (discipline under a 40-hour suspension appealed to the Executive Director of Police Reform or the City Associate CAO): [IMR-17-89], [IMR-17-90], [IMR-17-91], [IMR-17-92], [IMR-17-93], [IMR-17-94], [IMR-17-95], [IMR-17-96], and [IMR-17-69]. We reviewed two external appeals to the Albuquerque Personnel Board, one [IMR-17-97], which resulted in a Hearing Officer Decision, and the second [IMR-17-98], which resulted in a settlement.

In the internal appeals, we examined the original discipline, whether the discipline changed upon appeal, the memorandum of "Appeal, Final Discipline Imposed," of the appellate authority, and if the discipline changed after appeal whether the memorandum contained an adequate and reasonable explanation in the memorandum for doing so.

We found that the exact discipline was upheld on appeal in eight cases. In the remaining internal appeal [IMR-17-90], the discipline was changed from a written reprimand to a verbal reprimand, which was within the applicable range and for which an adequate explanation was given.

We found the same positive findings for the two (2) external appeals finalized during the reporting period. One appeal, [IMR-17-97], involved a decision that a Hearing Officer of the Albuquerque Personnel Board rendered. The Hearing Officer found that the City had met its burden of proving that termination was based on cause and upheld the termination. It is obvious from the decision that the City made appropriate and significant litigation efforts in this case.

The second external appeal resulted in a settlement between the parties [IMR-17-48]. This case involved a factual scenario where an officer had requested time off for two consecutive shifts for family vacation-related reasons, the request was denied, and the officer failed to report for his shifts. The investigation sustained allegations of 1-1-6C3a (failure to obey lawful order, Sanction Level 4, misconduct category) and 1-1-5D1 (failure to report for duty, Sanction Level 5, misconduct category). For purposes of progressive discipline, there was a prior Class 6 misconduct violation within time limits. A total 68-hour suspension was imposed, 60 hours on the failure to obey a lawful order, and eight hours on the failure to report for duty. In the settlement, the discipline imposed on the failure to obey a lawful order was withdrawn, and the discipline on the failure to report for duty was increased from 8 to 16 hours, for a reduction in total discipline from 68 to 16 hours. In the settlement, the parties agreed that under the facts of this case, the sustained allegations were duplicative. The monitoring team agrees with that assessment. Although when there are duplicative sustained allegations, discipline should normally be imposed on the more serious allegation, in this case, the policy violation more strongly established by the evidence was the less serious SOP. Other than the prior sustained allegation, there were no identified aggravating factors pertinent to the incident. Based on the legal issues presented on appeal and the totality of circumstances of the underlying offense, we find the City's position in the appeal to be a reasonable compromise of appellate issues and the final discipline to be adequate.

Thus, based on our review of the appeals, we found the handling of issues raised on appeal by APD and the City to be reasonable and did not indicate that imposed discipline was undermined by positions taken on appeal.

An issue pertaining to the next reporting period should be mentioned at this juncture. The monitoring team has noticed a marked increase in the number of non-concurrence letters from APD disciplinary authorities to the CPOA. We find that APD is making a sustained effort, in the form of uniform memoranda/letters, to inform CPOA of the reasons for non-concurrence. A good majority of these letters pertain to disciplinary recommendations as opposed to investigative findings. Although the content of these letters offers explanations adequate in detail, we repeat that when there is a non-concurrence, an explanation robust enough to clearly understand the disciplinary authority's thought process must be provided, particularly when the non-concurrence is with an investigative finding. In short, the greater the non-concurrence, the more

detailed the explanation should be. Moreover, we signal that CPOA cases resulting in non-concurrence letters will be a focus of monitoring team review in the next monitoring period.

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 adequate explanation is given for selecting a classification level where there is more than one level of classification associated with a regulation for which a sustained finding is made.

4.7.187b: 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.

4.7.187c: The explanation of time limitations on the chart of sanctions, 3-46-4B2, and the explanation of prior-related offenses, 3-46-3K, should be uniformly understood, documented, and followed in DAP calculations.

4.7.187d: Calculate whether prior offenses come within the time periods specified in the disciplinary regulation, it is important that APD continue its efforts to update retention cards to accurately reflect the date of imposition of prior discipline and the date of the incident (conduct) of the current violation(s) under review. We continue to recommend that the date discipline was imposed be clearly entered on the retention cards. We further recommend that the date of conduct under review be clearly set forth in the recommended findings and conclusions section of investigative reports, that is, entering an “on or about” date for the conduct referenced in each specification.

4.7.187e: Calculate whether prior offenses count for purposes of progressive discipline, the current sustained allegations should continue to be accurately labeled regarding the “group”, that is, the category, consistent with Appendix II of SOP 3-46.

4.7.187f: When a NDCA is imposed, the investigative packet should include a NDCA form setting forth the measure that was taken such as coaching, review of policy, additional training, etc.

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: **In Compliance**

4.7.189 Assessing Compliance with Paragraph 203

This is a Non-Rated Paragraph.

4.7.190 Assessing Compliance with Paragraph 204: Comprehensive Staffing Study

Paragraph 204 is self-monitored by APD.

4.7.191 – 4.7.194 Assessing Compliance with Paragraphs 205- 208: Supervision and Related Paragraphs

For the reporting period (August 1, 2022 through January 31, 2023), the monitoring team requested and reviewed APD data related to these requirements in the form of policy, programs, course of business documents, and results. These included:

- COB documentation for first-line supervision review of officers as described in Section IV of the CASA;
- Daily worksheet schedules with CAD entry indicating sergeants log in and log-out times for that shift;
- Copy of monthly area command teams to determine proper ratio (8-1); and
- Commanders' and Lieutenants' correspondence, reports, analysis, and other relevant documents were prepared during normal COB. COB supervisory reports to ensure quantitative and qualitative reviews of supervision.

The paragraphs for this section consist of supervision requirements for First-Line Supervisors, the required span of control and levels of supervision, and the close oversight by lieutenants and commanders.

The reports consist of the following:

- Detailed Scorecards on a monthly basis containing:
 - Teams or units being monitored;
 - The topic that each team or unit is measured on; and
 - The compliance percentage attained.
- Detailed Scorecard by Topics;
 - ECW;
 - OBRD;
 - Firearms;
 - Supervision;
 - 72-hour extension;
 - Inspection Summary;
 - Citizen Complaint Forms.
- Detailed Scorecard
 - Sample size (number per team) and
 - Unit and number per topic).
- Detailed Explanation
 - Scorecard; and
 - Rebuttals.

The monitoring team notes continual improvement in compliance with respect to monthly activity reports, monthly check-off lists, monthly line inspections, monthly video inspections, and firearms (approved weapons and ammunition). It should be noted that any commander rebuttals about scorecard documents are scrutinized and supported with detailed explanations for approval of compliance or non-compliance with the category being disputed.

APD has made significant strides during this reporting period to increase overall compliance pertaining to use of force provisions in Section IV of the CASA. Training and oversight of the line supervisors in this area is critical for increasing compliance levels, particularly training for the first-line supervisors concerning investigating uses of force.

The intended results of this training should be a more appropriate and consistent response to policy violations. Key findings on this Paragraph include:

- The Data Analytics Division generates quarterly reports listing policy violations of SOP 2-57. This allows executive leadership to be proactive and identify deficiencies for quicker responses to address issues;
- A new training course was developed and delivered to ensure Commanders and Lieutenants identify deficient UoF investigations. This course is designed to assist supervisors in using quarterly Performance Evaluations to evaluate employees' performance;
- ReformStat continues to be utilized as a driving force to improve supervisory processes, and meetings are held weekly;
- During this reporting period, PRU reviewed sixty Level 1 Force reviews conducted by APD supervisors and found an average compliance rate of ninety-eight percent;
- APD delivered a supervisory course to sworn personnel (98% attended) designed to assist sworn supervisors in completing the EWP (Employee Work Plan) with emphasis on integrity and use of force;
- APD completed training for the EIS (Early Intervention System). During this reporting period, APD supervisors attended a two-hour briefing emphasizing operating the First Sign System and completing the course of action forms.

The monitoring team reviewed the following data for this reporting period:

- Random Line-up reports for area commands;
 - (Verification for 8:1 Ratio);
- Monthly Inspection Reports;
- Random CAD entry reports for:
 - Area Commands so that the monitoring team can verify identifiable first-line supervisors; and
 - If acting as a first-line supervisor, an "A" is used to log on CAD to signify to all officers clearly who the supervisor is for the shift;
- Detailed Supervision Scorecards Status reports;
 - Topics;
 - Sample size;
 - Explanation of scorecard findings;
 - Team Scorecards); and
- Random Sergeant CAD entry reports for Area Command.

APD supplied the monitoring team with documentation (Training PowerPoints) to support the requirement in the supervision paragraphs to work actively to engage the community and increase public trust. APD documented more than 3,000 community events for the year 2022, with approximately 1,000 of those events captured on the Community Event Tracker (75-1 and 75-4) application during this reporting period. The app supplies the end-of-year statistics, broken down into categories (Division, Community Engagement Section, and Tactical). The event types include non-law enforcement, scheduled

community, and self-initiated events. These community event trackers are submitted by event title and division/section of officers. These events are broken down into separate categories with categories of concern set up for follow-up. Currently, there is training to complete the loop so that the areas of concern can be addressed. The monitoring team will follow up with this program in the next reporting period. The program details are covered extensively in the community policing paragraphs of this report.

APD has put processes in place to capture supervisory shortfalls experienced in previous reporting periods. The documentation also illustrates that supervisory deficiencies are identified by the reviewing chain of command.

The progress made by APD in these areas is a positive sign that the department is moving in the right direction. The training received during this reporting period should help APD remove deficiencies with the supervisory requirements of these paragraphs. The monitoring team will continue to review audits and actions taken to reduce repetitive oversight errors during future reporting periods (See paragraphs 41-59 and 86-88 of this report, which are centered on the use, reporting, supervision, and investigations of UoF events). The systems that have been established and implemented should assist APD in meeting and exceeding the CASA requirements in these supervision paragraphs. The monitoring team conducted area command visits during the December 2022 site visit and found that supervisors are more comfortable with the requirements of the agreement with the recently received training and feel that the work product will show the fruits of the training in the next reporting period.

4.7.191 Assessing Compliance with Paragraph 205

Paragraph 205 stipulates:

“First-line supervisors shall ensure that officers are working actively to engage the community and increase public trust and safety, and perform all other duties as assigned and as described in departmental policy.”

Results

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

4.7.192 Assessing Compliance with Paragraph 206

Paragraph 206 stipulates:

“All field officers shall be assigned to a primary, clearly identified first-line supervisor and shall also report to any other first-line supervisor within the chain of command. First-line supervisors shall be responsible

for closely and consistently supervising all officers under their primary command. Supervisors shall also be responsible for supervising all officers under their chain of command on any shift to which they are assigned to ensure accountability across the Department.”

Results

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

4.7.193 Assessing Compliance with Paragraph 207

Paragraph 207 stipulates:

“First-line supervisors shall ordinarily be assigned as primary supervisor to no more than eight officers. Task complexity will also play a significant role in determining the span of control and whether an increase in the level of supervision is necessary.”

Results

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

4.7.194 Assessing Compliance with Paragraph 208

Paragraph 208 stipulates:

“APD Commanders and lieutenants shall be responsible for close and effective supervision of officers under their command. APD Commanders and lieutenants shall ensure that all officers under their direct command comply with APD policy, federal, state and municipal law, and the requirements of this Agreement.”

Results

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

4.7.195 - 4.7.197 Assessing Compliance with Paragraphs 209 - 211: Review of Sergeants' Training

Paragraphs 209 through 211 address various supervisory training requirements APD must meet for the CASA. "Every sergeant shall receive 40 hours of mandatory supervisory, management, leadership, and command accountability training before assuming supervisory responsibilities."

For this reporting period, the monitoring team reviewed the following data:

- October 2022 First Line Supervisor Training (Special Order SO 22-115);
- Schedule / Rosters for the 100-hour First Line Supervisor Training Course;
- Student Evaluation for the One-Hundred-hour course;
- Critiques for One-Hundred-hour course;
- Test Results; and
- Certificates.

The course is delivered in two forty-hour weeks and two ten-hour days of Reality Based Training Scenarios.

The requirements for paragraph 210 are interwoven throughout the 100-hour course and include the following:

- Techniques for effectively guiding and directing officers and promoting effective and ethical police practices;
- De-escalating conflict;
- Evaluating written reports;
- Investigating Use of Force
- Understanding supervisory tools (Early Intervention Systems (EIS), (OBRD) systems;
- Investigating officer misconduct;
- Officer performance;
- Disciplinary sanctions and non-punitive corrective action;
- Building community partnerships; and
- Legal update.

Data requested and received by the monitoring team indicate that APD has addressed these portions of the requirement in the supervisory course delivered during this reporting period.

During this reporting period, APD delivered the 2022 IAPS Supervisor Training to:

- Sworn Supervisors / Acting Supervisors (333);
- Active Sworn Supervisors / Acting (327);

- Total number of sworn completed as of 12/5/2022 (322)
- Make-ups needed (5);
- Total Percentage attended (98.47%).
- APD delivered during this reporting period;
- On Authorized Leave (6);

The 2022 Axon Capture and Incident Management for Supervisors Statistics to:

- Sworn Supervisors / Acting Supervisors (321);
- On Authorized Leave (8);
- Active Sworn Supervisors / (313);
- Total Number Sworn Supervisors / Acting completed as of 11/8/2022 (298);
- Still pending scheduling (15);
- Total Percentage attended (95.20%).

APD delivered during this reporting period the 2022 Perceptions and leadership (DISC) Supervisory Training:

- Sworn Supervisors / Acting Supervisors (333);
- Received in 100-hour supervisor course (32);
- Active Sworn Supervisors / Acting to attend (301);
- On Authorized Leave (7);
- Total Number Sworn Supervisors / Acting (294);
- Total Number Sworn Supervisors / Acting completed as of 12/5/2022 (288);
- Need to schedule (6);
- Total Percentage completed (97.96%).

APD delivered during this reporting period the 2022 Force Investigations and Performance Evaluation for Supervisors Statistics:

- Sworn Supervisors / Acting Supervisors (333);
- On Authorized Leave (10);
- Active Sworn Supervisors / Acting to attend (323);
- Active Sworn Supervisors / Acting completed as of 12/5/2022 (308);
- Scheduled (6);
- Need to schedule (9);
- Total Percentage completed (95.35%).

APD has fulfilled the requirements of the above-listed paragraphs by delivering the requisite training as required by the agreement. APD set up a training schedule and adhered to it to achieve this goal. It has set up its training calendar for 2023 that includes the courses needed to continue to achieve compliance with the paragraphs mentioned above. Based on the data reviewed by the monitoring team APD is in Operational Compliance.

4.7.195 Assessing Compliance with Paragraph 209

Paragraph 209 stipulates:

“Sergeant training is critical to effective first-line supervision. Every sergeant shall receive 40 hours of mandatory supervisory, management, leadership, and command accountability training before assuming supervisory responsibilities.”

Results

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

4.7.196 Assessing Compliance with Paragraph 210

Paragraph 210 stipulates:

“APD’s sergeant training program shall include the following topics:

- a) techniques for effectively guiding and directing officers and promoting effective and ethical police practices;**
- b) de-escalating conflict;**
- c) evaluating written reports, including those that contain canned language;**
- d) investigating officer uses of force;**
- e) understanding supervisory tools such as the Early Intervention System and on-body recording systems;**
- f) responding to and investigating allegations of officer misconduct;**
- g) evaluating officer performance;**
- h) consistent disciplinary sanction and non-punitive corrective action;**
- i) monitoring use-of-force to ensure consistency with policies;**
- j) building community partnerships and guiding officers on this requirement;**
- k) legal updates.”**

Results

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

4.7.197 Assessing Compliance with Paragraph 211

Paragraph 211 stipulates:

“All sworn supervisors shall also receive a minimum of 24 hours of in-service management training, which may include updates and lessons learned related to the topics covered in the sergeant training and other areas covered by this Agreement.”

Results

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

4.7.198-4.7.205 Assessing Compliance with Paragraphs 212-219 EIS/EIRS/PMEDS

The policy, curriculum, and plans to move forward with an Early Intervention System that can meet or exceed CASA requirements have been established. As we have long recommended, PEMS is proposed to be a data-driven system with thresholds supported by data analysis and research, using standard deviations to establish thresholds rather than arbitrarily assigned numbers of incidents.

At the close of the monitoring period for IMR-17, course of business documentation from APD indicates that all supervisors have completed training regarding using the PEMS system and that the PEMS system is currently in use in all APD Bureaus. The monitoring team approved the PEMS policy, the curriculum, and during the prior site visit, attended the supervisors' training. During the next site visit, the team will spend time with supervisors at several duty locations to view their abilities to demonstrate use of the system.

During the monitoring period for IMR-16, Special Order SO 22-23 announced the rollout of PEMS. Supervisors were instructed that assessment notifications would be distributed via Blue Team and reminded to check their Blue Team inboxes daily. Further instructions for the required timelines for completing a performance assessment were provided. During the December 2022 site visits to all six area commands, six supervisors had received a PEMS alert/notification. That is 50% of the (12) supervisors that were contacted. Each supervisor appeared to be comfortable navigating through the requirements for review and action. Some incidents were actionable and had ongoing monitoring. APD has provided documentation that during the third and fourth quarters of 2022, Actionable and Advisable assessments completed resulted in monitoring plans for five officers to improve their performance. This included one lieutenant, three sergeants, and one officer. All five successfully completed the monitoring plans.

While approved policy guidance exists, it is highly probable that policies will need to change when new systems or risk factors are integrated. Additionally, APD needs to continually monitor the thresholds in order to obtain a representative sample and ensure

that the system can function as an Early Warning System. Currently, APD is planning to alert at the rate of five to seven percent annually. Monitoring team reminders of CASA requirements related to data retention and threshold changes have been presented.

Secondary compliance has been obtained with the conclusion of the PEMS supervisory training. Operational compliance will require course-of-business data indicating full implementation and appropriate operation of all related systems in the field.

4.7.198 Assessing Compliance with Paragraph 212

Paragraph 212 stipulates:

“Within nine months of the Operational Date, APD shall revise and update its Early Intervention System to enhance its effectiveness as a management tool that promotes supervisory awareness and proactive identification of both potentially problematic as well as commendable behavior among officers. APD supervisors shall be trained to proficiency in the interpretation of Early Intervention System data and the range of non-punitive corrective action to modify behavior and improve performance; manage risk and liability; and address underlying stressors to promote officer well-being.”

Results

With the completion of the approved PEMS supervisory training for all active sworn supervisors, the requirements for secondary compliance relating to Paragraph 212 have been met. During the December 2022 site visit, several supervisors received PEMS alerts and were working through the requirements. During the next site visit, the monitoring team will assess whether APD supervisors are using the PEMS/Benchmark First Sign system appropriately and assess the system’s routine implementation as an evaluation and “early warning” system.

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

4.7.199 Assessing Compliance with Paragraph 213

Paragraph 213 stipulates:

“The Early Identification System shall allow for peer-group comparisons between officers with similar assignments and duties.”

Results

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

4.7.200 Assessing Compliance Paragraph 214

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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) all critical firearms discharges;**
- d) 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;**
- e) all civilian or administrative complaints and their dispositions;**
- f) all judicial proceedings where an officer is the subject of a protective or restraining order of which APD has notice;**
- g) all vehicle pursuits and traffic collisions involving APD equipment;**
- h) 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;**
- i) all disciplinary action taken against employees;**
- j) all non-punitive corrective action required of employees;**

- k) all awards and commendations received by employees, including those received from civilians, as well as special acts performed by employees;
- l) demographic category for each civilian involved in a use of force or search and seizure incident sufficient to assess bias;
- m) all criminal proceedings initiated against an officer of which APD has notice, 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
- n) all offense reports in which an officer is a suspect or offender of which APD has notice.”

Results

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

Operational: **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

The EIS has not been operational long enough to assess in-field compliance using real-time operational data. We will revisit this issue in IMR-18.

Primary: **In Compliance**

Secondary: **In Compliance**

Operational: **Not In Compliance**

Recommendation for Paragraphs 215, 216, and 218:

4.7.204a: Continue to collect data so that operational compliance can be determined.

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

4.7.206 – 4.7.217 Assessing Compliance with Paragraphs 220-231

During the monitoring period for IMR-17, APD’s PMU has continued actively auditing area commands for OBRD-related activities and has extended the auditing to various Investigations Units. The findings so far have yielded enough information to conclude that significant strides have been made concerning APD’s execution and training related to the CASA’s OBRD requirements. APD’s internal audit processes again showed an overall compliance rate of 95 percent or higher in all six area commands for OBRD requirements. The monitoring team visited all area commands during the IMR-17 on-site visit and expanded the discussions to include lieutenants and sergeants from each duty location to document CASA requirements. A total of twelve supervisors were interviewed. All but two of the supervisors stated that they had received the training to enable them to investigate cases returned to the Area Command from Internal Affairs. Two supervisors stated that they didn’t recall if they had the training.

Prior reporting of the monitoring team noted that APD had not yet documented where an OBRD complaint had originated. During this period, APD had provided Course of Business documentation that OBRD referrals to Internal Affairs originated from PMU, IAPS, immediate supervisors, IAFD, and the chain of command. While the preferred method of policy violation discovery is with the immediate supervisor, it is encouraging that APD has numerous systems in place in order to discover and report violations. Operationally, the monitoring team would recommend that immediate supervisors are held accountable when others find violations that immediate supervisors have overlooked. APD’s internal audits and the monitoring team’s assessments are similar, indicating the reliability and validity of APD’s internal audit functions.

During IMR-16, an individual commander was assigned to review all discipline cases and make a final disciplinary recommendation. This process differs from prior practices; now, a single appointee makes the final decision regarding imposing discipline or other corrective actions. In the past, an officer's commander would make disciplinary determinations. This change is designed to create a more consistent and fair disciplinary processes, removed from supervisory biases. In addition, training for all supervisors was conducted during the last reporting period to assist supervisors outside of Internal Affairs in conducting a misconduct investigation when it is returned to their unit. Again, this action was necessary to create a consistent and fair disciplinary process throughout APD.

The monitoring team, in prior reports, expressed concern for accountability and APD's response to the OBRD policy requirements violations. During the prior reporting period, clarifications were made to the OBRD policy, and definitions were added. Additionally, changes were made to the Disciplinary Matrix, separating policy violations into a performance or misconduct category. Within these categories, a performance violation would not add to the progressive discipline of a misconduct violation.

During this period, 137 records were created in Blue Team for OBRD violations. Cases were created by PMU (60), the officer's direct supervisor (24), IAFD (9), IAPS (27) and "other" supervisors, including the chain of command. Within the 137 files initiated, 116 potential violations of SOP 2-8 had been investigated. Within those records, 100 had been closed. (Note: Records may contain more than one allegation or more than one involved officer). The monitor notes that, ideally, these OBRD issues should be noted and corrected at the supervisory or command level. For this reporting period, the majority of these field-based OBRD errors were noted by IAFD or IAPS.

The findings of the closed cases are described below:

- Sustained: 77
- Not Sustained: 1
- Unfounded: 2
- Exonerated: 17
- Duplicated: 3

Sustained Findings/Actions/Discipline:

- Administratively Closed-Non-Disciplinary Corrective Action: 10
- Verbal Reprimand: 46
- Written Reprimand: 21
- Suspension: 3

Overall, we note that OBRD policy requirements are central elements of CASA compliance, as OBRD usage is a necessary tool for assessing officer actions in the field. As such, it requires serious oversight by command staff, who should hold first-line supervisors accountable for ensuring policy adherence.

During IMR-16, APD made policy changes to SOP 2-8. These changes had to do with requiring uploads to be conducted prior to the first day of training or leave. PMU began auditing the new requirements, and the change of policy accounts for 45 violations (56%) of reported violations during this period. There were also 25 Mandatory Recording Violations and 3 Line Inspection violations by supervisors. The new structure within IAPS has been in place for the entirety of IMR-17. APD documents state that the Professional Integrity Commander now reviews all cases and is now the disciplinarian on all “minor misconduct” investigations conducted at the Area Command or Division level. During the next site visit by the monitoring team, IA records will be reviewed to ensure that violations of Failure to Record are properly investigated and have appropriate dispositions.

Members of the monitoring team visited all six area commands during the December 2022 site visit. All supervisors could explain the updated policy requirements, were fluent in using the various supervisory systems, and demonstrated that they had completed the required video reviews. Two supervisors discovered violations of the OBRD policy (failure to upload), and both referred the officers to Internal Affairs. OBRD equipment issues reported included battery life, camera positioning, and docking problems.

The monitoring team views well-trained and engaged supervisors as the lynchpin to properly function for this entire process. Internal Affairs has worked to standardize the review of cases returned to the area command for investigation, including training for the first-line supervisors concerning investigating cases, with the intended results being a more appropriate and consistent response to policy violations. Training and supervising the line supervisors in this area is critical for maintaining compliance levels.

Advanced technology discussions are underway to build the capability of “blue tooting” or “geo-fencing” by AXON. This capability, when available, will (theoretically) eliminate a failure to record by officers on scene by turning on all cameras within a prescribed distance when one is activated.

4.7.206 Assessing Compliance Paragraph 220

Paragraph 220 stipulates:

“To maintain high-level, quality service; to ensure officer safety and accountability; and to promote constitutional, effective policing, APD is committed to the consistent and effective use of on-body recording systems. Within six months of the Operational Date, APD agrees to revise and update its policies and procedures regarding on-body recording systems to require:

- a) specific and clear guidance when on-body recording systems are used, including who will be assigned to wear the cameras and where on the body the cameras are authorized to be placed;**

- b) officers to ensure that their on-body recording systems are working properly during police action;
- c) officers to notify their supervisors when they learn that their on-body recording systems are not functioning;
- d) officers 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 individuals known to have mental illness;
- f) supervisors to review relevant recordings regarding misconduct complaints made to them about their supervisees;
- g) supervisors to review relevant recordings regarding injuries to their supervisees, or uses of force or foot pursuits conducted by their supervisees;
- h) supervisors to review recordings regularly and to incorporate the knowledge gained from this review into their ongoing evaluation and supervision of officers; and
- i) 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

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

4.7.207 Assessing Compliance with Paragraph 221

Paragraph 221 stipulates:

“APD shall submit all new or revised on-body recording system policies and procedures to the Monitor and DOJ for review, comment, and approval prior to publication and implementation. Upon approval by the Monitor and DOJ, policies shall be implemented within two months.”

Results

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

4.7.208 Assessing Compliance with Paragraph 222

Paragraph 222 stipulates:

“The Parties recognize that training regarding on-body recording systems is necessary and critical. APD shall develop and provide training regarding on-body recording systems for all patrol officers, supervisors, and command staff. APD will develop a training curriculum, with input from the Monitor and DOJ that relies on national guidelines, standards, and best practices.”

Results

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

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

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

4.7.210 Assessing Compliance with Paragraph 224

Paragraph 224 stipulates:

“Supervisors shall be responsible for ensuring that officers under their command use on-body recording systems as required by APD policy. Supervisors shall report equipment problems and seek to have equipment repaired as needed. Supervisors shall refer for investigation any officer who intentionally fails to activate his or her on-body recording system before incidents required to be recorded by APD policy.”

Results

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

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

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: **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: **In Compliance**

4.7.216 Assessing Compliance with Paragraph 230

Paragraph 230 stipulates:

“APD shall ensure that all on-body recording system recordings are properly stored by the end of each officer’s subsequent shift. All images and sounds recorded by on-body recording systems are the exclusive property of APD.”

Results

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

4.7.217 Assessing Compliance with Paragraph 231

Paragraph 231 stipulates:

“The Parties are committed to the effective use of on-body recording systems and to utilizing best practices. APD currently deploys several different platforms for on-body recording systems that have a range of technological capabilities and cost considerations. The City has engaged outside experts to conduct a study of its on-body recording system program. Given these issues, within one year of the Operational Date, APD shall consult with community stakeholders, officers, the police officer’s union, and community residents to gather input on APD’s on-body recording system policy and to revise the policy, as necessary, to ensure it complies with applicable law, this Agreement, and best practices.”

Results

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

4.7.218-239 Assessing Compliance with Paragraphs 232 - 253

Paragraphs 232 – 253 are self-monitored by APD.⁸¹

4.7.240 – 4.7.255 Assessing Compliance with Paragraphs 255 -270: Community Policing and Community Engagement

⁸¹ Paragraph 254 is an introduction paragraph and is not monitored.

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 the community, problem-oriented policing, and supporting administrative systems. The paragraph also serves as the foundational paragraph for APD’s community policing efforts. APD, over time, has made progress in integrating community policing concepts into its policies, operations, and practices. In prior reporting periods, APD revised its mission statement, updated its community-oriented policing training curriculum, expanded community partnerships, established an Ambassador Program which assigns officers to conduct ongoing outreach with community groups, and launched a Youth Working Group comprised of local youth-serving agencies and non-profits to leverage resources to expand services to high-risk youth.

During this reporting period, APD administered a new and updated culture survey to capture information about officers’ knowledge and attitudes regarding community policing. These surveys are a primary means to measure culture change and the extent to which officers are internalizing community policing principles and applying them in their daily activities. APD is analyzing these findings to determine any additional steps needed to fill knowledge gaps, improve supervision, and enhance community policing practices. APD also continued to expand its partnerships, especially those involving services for at-risk youth and continued to implement its Ambassador Program, increasing contacts with members of traditionally marginalized communities.

In October 2018, in conjunction with community members, APD developed the following mission statement, “The mission of the Albuquerque Police Department is to preserve the peace and protect our community through community-oriented policing, with fairness, integrity, pride, and respect.” The APD vision statement includes the following language, which appears on its website, “Help provide a safe and secure community where the rights, history, and culture of all are respected.” The City and APD have also become national leaders in exploring ways to effectively partner with other city agencies in responding to calls for service requiring non-law enforcement responses by establishing the Albuquerque Community Safety Department (ACS). The ACS dispatches trained behavioral specialists and social workers to non-violent and non-medical calls, reducing workloads for uniformed APD staff and providing responders who are better equipped to service these categories of calls. APD continued with its Violence Prevention Intervention Program Custom Notifications, reporting an increasing number of custom notifications in this reporting period. This program has increased connectivity to

community partners and resources in APD enforcement activity, including resources and an emphasis on social service intervention to help deter future violence.

In previous and the current reporting periods, APD's efforts to integrate community policing and practices into operations have included the following:

- Sworn personnel training in community policing practices and principles;
- Recruitment efforts to have a workforce that more closely mirrors the populations served;
- Personnel evaluations that include community policing component;
- Deployment of PRT officers in all area commands augmenting community policing activities;
- The assignment of crime prevention specialists to each area command
- Enhancements for School Resource Officer training;
- Implementing outreach strategies for each area command;
- Establishing a Youth Working Group to leverage resources and partnerships for expanding services to at-risk youth; and
- Completion of updated and revised climate survey assessing officers' knowledge of community principles

The monitoring team also notes APD's recent completion of another climate survey.

During this reporting period, APD completed the administration of a survey developed with the support of New Mexico State University (NMSU) to assess APD's "temperature" related to community policing principles. The survey data collected from a sample of APD staff provides a comprehensive assessment of APD's internal culture and beliefs towards community policing principles with analysis by rank, gender, and ethnicity and a baseline to assess future efforts to shape a more community policing-oriented culture.

APD reported other outreach activities in this reporting period that included the following:

- School-based youth initiatives, including Cleveland High School, Van Buren Middle Parent School, and Montessori One Academy;
- IMPRINT (program for young school-aged children) expanded to 28 schools;
- Sporting Goods partnership for boxing gym shopping;
- Events involving working with faith-based organizations and formerly convicted persons to deliver socks and toys to youth; and
- Red Ribbon Events involving partnership with DEA to speak to youth about drug prevention.

The monitoring team believes that the Youth Working Group, comprised of 22 members from city agencies and community-based non-profits, can further assist in expanding community partnerships and leveraging resources to provide additional prevention programming and other services to the thousands of at-risk youths in Albuquerque. APD has also worked to significantly expand youth programming to help thwart current and future criminality, build community trust, and enhance community safety.

Results

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

Monitor's Note:

We recommend that APD apply findings from the updated culture survey and use these findings to inform APD training and supervision.

APD should continue implementing working groups to work with DOJ, local agencies, non-profits, and the private sector to leverage resources to expand and reach significantly higher numbers of high-risk youth through various engagement programming.

4.7.241 Assessing Compliance with Paragraph 256: APD Response to Staffing Plan

Paragraph 256 stipulates:

“As part of the Parties’ staffing plan described in Paragraph 204, APD shall realign its staffing allocations and deployment, as indicated, and review its recruitment and hiring goals to ensure they support community and problem-oriented policing.”

Methodology

In this reporting period, APD continued using Problem Response Teams (PRTs) that provide area commanders with staffing flexibility to assign officers where they have the most impact. City-wide, at the end of the reporting period, APD assigned 35 officers to PRTs. In prior reporting periods, APD had struggled to meet this paragraph's requirements that call for a realignment of staffing resources to support community policing goals. The first attempt to comply with this requirement was APD's PACT (Police and Community Together) plan, approved on December 27, 2016. Staff realignment responsive to the plan was continued during the seventh reporting period. Implementation of the PACT plan was terminated during the eighth reporting period and replaced with PRT deployment to all six area commands. The PRTs represented a marked improvement to the old PACT process, with goals related to problem-solving policing processes instead of PACT's enforcement-based processes.

Recommendations from the staffing analysis included:

- Formalizing a hybrid approach that requires field officers to engage in some level of community policing while the specialized PRTs spend more time engaging in

community policing activities such as addressing problem areas or conditions, relationship-building activities, and showing additional police presence as needed;

- Analysis revealed that patrol officers would have about 20 minutes of each hour or about 33 percent of unobligated time that can be used in community policing activities; and
- APD adopted a community policing performance standard objective of 33 percent for the key hours of 7 a.m. to 8 p.m.

APD has continued to struggle to implement these recommendations. The monitoring team remains concerned that failure to implement these recommendations results in these PRTs primarily being used to support enforcement instead of the community policing and problem-solving activities envisioned by the CASA. APD has indicated that it will assess performance objectives to inform future deployment practices and measures.

For this reporting period, staffing levels remained relatively stable, with some changes resulting from promotions and changes in service demands. At the end of this reporting period, PRT staffing deployments by area command were as follows:

- Foothills- 4
- Northeast - 5
- Northwest- 4
- Southeast- 7
- Southwest - 4
- Valley- 11 (two teams)

The Valley Area Command has two teams because of its much higher calls for service rates and a higher concentration of homeless and persons with mental disabilities. APD reports that it will reassign PRT positions soon, replacing officers promoted to other assignments.

The monitoring team anticipates ongoing consultations with community stakeholders, including the Community Policing Councils (CPCs), in developing policies necessary to fully implement the staffing analysis recommendations regarding deployment decisions and ongoing analysis to assess the effectiveness of deployments to inform any required adjustments.

Results

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

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

APD’s Bid process includes information about geographic areas served, including ongoing and current issues and lists of community leaders. APD recently completed its latest Bid process and utilized a Beat Familiarity Questionnaire that included command area-specific information about community stakeholders and resources. The information included in the Beat Familiarity Questionnaire was last updated in July 2022.

APD previously reported completing the digitized bid process; however, APD identified issues and attempted corrective actions in the test phases. APD was eventually not able to adequately address the technical issues that surfaced during the piloting phase of implementation, leading to the abandonment of the effort to digitize the bid process at this time.

APD previously established and provided the monitoring team with a delineated process used for the Field Services Bureau BID process, sample BID packets, and Beat Familiarity Packets for Field Services Bureau staff. Information related to the officer’s assigned area is updated quarterly, and the process includes a Beat Familiarity Questionnaire.

The monitoring team continues to be encouraged by improvements in the delineation of BID processes and the refinements to information covered in the BID packets. However, we strongly encourage APD to update the contents of the Questionnaire at least quarterly as initially planned by APD. We encourage APD officers to utilize packet information fully and work with other city agencies to address community safety issues. APD may find it helpful to consider a greater emphasis on training and supervision in strengthening coordinative processes with other city agencies and non-profit community-based service providers.

Results

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

4.7.243 Assessing Compliance with Paragraph 258: Officer Outreach Training

Paragraph 258 stipulates:

“Within 12 months of the Operational Date, APD agrees to provide 16 hours of initial structured training on community and problem oriented policing methods and skills for all officers, including supervisors, commanders, and executives this training shall include:

- a) Methods and strategies to improve public safety and crime prevention through community engagement.**
- b) Leadership, ethics, and interpersonal skills.**
- c) Community engagement, including how to establish formal partnerships, and actively engage community organizations, including youth, homeless, and mental health communities.**
- d) Problem-oriented policing tactics, including a review of the principles behind the problem-solving framework developed under the “SARA Model”, which promotes a collaborative, systematic process to address issues of the community, safety, and the quality of life;**
- e) Conflict resolution and verbal de-escalation of conflict and;**
- f) Cultural awareness and sensitivity training.**

These topics should be included in APD annual in-service training.”

Methodology

During this reporting period, APD reported that in 2022, over 99 percent of its current active sworn workforce has completed 2020 Community Oriented Policing/Problem Oriented Policing (COP/POP) training in person or via Power DMS. Nearly all APD sworn personnel also completed the annual refresher training this calendar year. During the previous reporting periods, APD made revisions in content and delivery methods for COP training for its sworn personnel. During a prior reporting period, APD also completed the restructuring of its required 16 hours of COP training. This training better reflects the department’s community policing philosophy, incorporates new and evolving departmental policies and orders into the training, and better aligns with COP training requirements. The monitoring team subsequently approved the COP training, allowing for its first delivery in 2020. The COP training was developed using a documented seven-step process and covered all the required elements outlined in paragraph 258.

APD’s decision in prior reporting periods to overhaul the required 16 hours of COP training was initially necessitated by a paradigm shift in the department’s policing philosophy, placing a much greater emphasis on community policing and engagement. The approved curriculum and its eventual delivery in some form to all APD officers represented a major milestone for APD in their transformation journey. The training helps officers internalize a different way of perceiving their relationship with the community members they serve and assess alternative ways of interacting with the community. This allows APD to bring change to the forefront of its community policing processes. Evidence of this desired training impact may be assessed in culture surveys that can inform adjustments in training approaches.

In this calendar year, APD continued to deliver its 16 hours of Basic Training to the most recent Cadet class. In addition to the Basic Training, cadets also received a full day of training on Cultural Diversity/Community Engagement, including presentations by community members of various cultural/ethnic backgrounds. These training elements were previously added to cadet training, including a requirement to perform community outreach. During 2022, the Field Training and Evaluation Program (FTEP) again provided COP/POP training as part of the curriculum for the Field Training Officer (FTO) Basic Certification Course and the FTEP Recertification.

APD reports that the current course development process envisions three, two-hour COP/POP courses taught on a three-course cycle. Because of the breadth of the CASA training content requirements, the APD envisions dividing the content into multiple training segments to allow each topic to be covered more comprehensively. The first year contains a new course that serves as a refresher training for basic concepts, followed in subsequent years with additional content covering POP projects, cultural awareness and sensitivity, and community engagement. The monitoring team also expects APD to continue to adjust this training based on findings from culture surveys and feedback from field supervisors. The monitoring team also expects changes in training content as its community policing and engagement processes continue to expand and evolve. The monitoring team encourages APD to develop assessment processes to measure the impact of training on-field practices.

Results

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

4.7.244 Assessing Compliance with Paragraph 259: Measuring Officer Outreach

Paragraph 259 stipulates:

“Within six months of the Operational Date, APD agrees to develop and implement mechanisms to measure officer outreach to a broad cross-section of community members, with an emphasis on mental health, to establish extensive problem-solving partnerships and develop and implement cooperative strategies that build mutual respect and trusting relationships with this broader cross section of stakeholders.”

Methodology

During this reporting period, APD reported improvements in the consistency of usage of the Community Event Tracker (CET). Data provided for usage of CET from 12 JAN 22 to 30 NOV 22 indicated that 851 staff members submitted data through the CET. APD also provided an analysis of submitted data with engagement activity tracked for each

command area. APD previously conducted audits of the data and conducted cross-comparisons with CAD data to identify gaps and errors in usage. APD developed additional guidance for sworn personnel to address deficiencies in CET entries. Training regarding using the tracker was approved and published on Power DMS in January 2022 and required both specific sworn and specific non-sworn department personnel to create entries into the system for tracking. The CET is becoming an important management tool in expanding community events and contacts by systematically capturing and reporting this information in a manner that informs decision-making, allowing APD to enhance community outreach. The monitoring team recognizes that field officers' tracking and measuring community outreach encourages more outreach activities by officers and problem-solving with community-based service providers.

The monitoring team again acknowledges the Law Enforcement Assisted Diversion (LEAD) program that provides options other than arrests for non-violent misdemeanor crimes. For the second quarter of 2022, APD reported the number of residents suspected of non-violent, misdemeanor crimes referred for drug treatment and/or behavioral health services was 17. The monitoring team encourages APD to capture and report additional data to determine the degree of equitable use of that discretion across all area commands. APD also should consider processes to make system improvements to facilitate the reporting of contacts and referrals and provide evidence of effectively networking with various community service organizations and advocacy groups.

The monitoring team recognizes the progress in implementing the web-based CET application and acknowledges the steps APD has taken to ensure compliance with usage requirements. The monitoring team urges APD to continue its CET development, including capturing more contacts, outcomes, and referral information. APD should also continue to assess additional training needs and supervisory responses to ensure adherence to policy and effective implementation of these new processes.

Results

Primary: **In Compliance**

Secondary: **In Compliance**

Operational: **In Compliance**

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

In this reporting period, APD continued the progress made in the previous reporting period by implementing outreach and public information programs. Five of the six area

commands developed and posted monthly newsletters and made some progress in regularly posting upcoming events on their monthly calendar. The monitoring team reviewed the area command web pages for this reporting period and noted some improvements in information regarding upcoming events in their area commands, most notably “Coffee with a Cop,” but with limited messaging about other upcoming events. The APD ambassador program activity, CPC meetings, block parties, and other community events continue not to be routinely listed under the Upcoming Events headings.

In an earlier reporting period, the six Area Commands completed a Community Outreach and Public Information Strategy outlining goals/objectives and key activities. In the current reporting period, APD updated biographical sketches for area commanders and posted monthly and annualized crime data for the specific area commands. Based on the information provided to the monitoring team, we expect APD to have area commands update their Outreach and Public Information Strategy this calendar year. It is also important that area commanders continue to provide the necessary oversight and supervision to implement the Outreach and Public Information Strategies, including updating their respective websites.

In prior reporting periods, five of the six area commands were able to present and receive feedback on their plans from their CPCs. The CPCs have also expressed a strong interest in having greater input in updating these strategies in the next planning cycle. The monitoring team encourages APD to update their Outreach and Public Information Strategy and seek input and feedback from their CPCs.

One of the goals of area command-based public information plans, and strategies is to specifically address community outreach, messaging, outreach to marginalized segments of the population, and use social media to enhance community engagement. In this reporting period, APD reported providing additional assistance to area commands in further utilizing their social media tools with enhanced coordination. The monitoring team expects continued maturation of area command public information and outreach plans to include even more targeted social media activity,

Results

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

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 made presentations in all six area commands, informing the public about CASA requirements and updating progress in meeting those requirements. APD used the CPCs as a platform to share information about implementing CASA requirements.

CPCs provide a community platform for APD to regularly convey and receive relevant and timely information from community stakeholders and members. The monitoring team notes APD's increased acknowledgments of the work of the CPCs, raising awareness of specific community safety issues and helping facilitate a response from APD and other city agencies. APD personnel continue to be regular participants in CPC meetings addressing community concerns, sharing crime prevention information, and discussing crime reduction approaches. Recent changes to the City's Civilian Police Oversight authorizing ordinance now require APD to provide opportunities for CPCs to comment on significant policy changes. The monitoring team encourages APD to continue using CPCs as conduits for updates on policy change, new training, policing strategies and tactics, and addressing residents' community safety concerns.

Results

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

4.7.247 Assessing Compliance with Paragraph 262: Community Outreach Meetings

Paragraph 262 stipulates:

"The Community Outreach and Public Information meeting shall, with appropriate safeguards to protect sensitive information, include summaries, of all audits and reports pursuant to this Agreement and any policy changes and other significant action taken as a result of this Agreement. The meetings shall include public information on an individual's right and responsibilities during a police encounter."

Methodology

The monitoring team has noted in previous reports that “CASA-related reports are posted on the APD website.” Further, APD’s website has information relating to “an individual’s rights and responsibilities during a police encounter.” In this reporting period, we noted no changes to these processes.

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

APD continued its expanded use of the Community Event Tracker (CET) during this reporting period. As previously noted, APD reported 842 staff submitting data through CET in the first 11 months of the calendar year 2022. APD reports that the CET is fully operational and that improvements have been made in the utilization rates of APD officers. Training for CET is now a requirement for both sworn and unsworn staff. CET data are also starting to generate reports to inform management and produce maps of visual areas needing more community outreach. These reports will include information about each officer's participation levels. In a previous reporting period, APD conducted an audit of CET compliance with usage requirements and uncovered deficiencies in consistent usage by sworn personnel. APD has addressed many of these deficiencies with additional guidance and ongoing monitoring to identify officers not regularly reporting engagement activity for specific remedial measures. We note that APD previously established, through SOP-3-02-1, the requirement and tracking mechanisms to implement this task. These types of self-monitoring are the key to eventually removing APD from oversight by the monitoring team.

We expect APD to continue to expand usage and make further improvements in the CET. Future iterations may include more data about non-enforcement encounters. The monitoring team also expects future reports generated from CET data to cover any follow-up or referral data reports. The monitoring team continues to encourage APD to maintain the necessary supervisory controls and provide any additional training as required to ensure full officer participation.

Results

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

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, the monitoring team reviewed postings on the APD website concerning crime reporting. APD continued to report and post monthly crime statistics for each area command and city-wide crime trends. The monthly data are posted roughly two to three months after reporting, which is within national standards. The data sets completely report FBI index crimes and other categories. They are easy to follow and now meet CASA requirements. APD also continues its contract with a service that provides up-to-date crime mapping services based on “calls for service” that can be accessed on APD’s website. Since IMR-15, APD has tracked homicides with more up-to-date reporting in each area command. APD’s ongoing updated crime reporting represents significant progress.

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 continued to post 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 of Albuquerque, New Mexico, continue to evolve with several Councils operating as national models and “best practices” for area command-based police advisory bodies. The monitoring team expects CPCs to continue with their development and remain one of the lasting legacies of this CASA agreement, with CPCs permanence now established through on-going practice and a city ordinance. 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 generally meets once a month except during the December holiday season, far exceeding the once-every-six-month requirement articulated in the CASA. Since their establishment eight years ago, there has been a remarkable consistency and adaptability displayed over time. In the previous reporting periods, the monitoring team noted that CPCs often made this progress despite inadequate support and guidance from APD. We also noted that through the commitment of CPC leaders, the CPCs forged ahead and achieved a long-held objective of permanently establishing the CPCs as part of the City’s governance framework. This was accomplished by the CPCs suggesting and supporting an ordinance that statutorily provides for their ongoing operations. Albuquerque’s CPC process can serve as a national model.

During this calendar year, CPCs held 61 meetings, many virtual, with nearly as many hybrid meetings that were both in-person and virtual. By combining virtual and in-person audiences, these meetings were generally well attended, and APD participated and provided reporting in nearly all 61 sessions.

For this reporting period, the number of voting members was 48, consistent with numbers from the previous reporting period, but representing higher numbers from prior years for CPCs. The monitoring team observed many CPC meetings and reviewed agendas from those meetings. The topics covered informed community members about

various aspects of APD operations and other related community safety services. Topics covered in this reporting period included:

- LEAD Program – Law Enforcement Assisted Diversion;
- New Mexico Business Association – safe spaces;
- Use of Force Policy;
- Crime Prevention Tips;
- Active Shooter Scenarios;
- Crime Stoppers; and
- Real-Time Crime Center.

The monitoring team understands the importance of CPCs continuing in their role of providing a meaningful outlet for community members to share their views and concerns about APD's policing practices and to make meaningful recommendations for consideration by APD. In a recent ordinance change regarding the Civilian Police Oversight Agency, CPCs can now comment specifically on APD policy revisions.

The CPCs Council of Chairs continued in their role of helping to coordinate CPC activity, working closely with the CPOA CPC Liaison. Most CPCs report excellent working relationships with their area commanders and staff. APD leadership continued to participate in CPC meetings this reporting period, making presentations and answering questions from community members. The monitoring team looks forward to the continued development of CPCs and CPCs working even more closely with APD, providing more feedback on APD policy and policing practices.

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.”

Methodology

In this reporting period, CPC leadership experienced a high turnover rate and some instability leading to performance challenges for two of the six CPCs. At the end of the reporting period, CPOA reported 48 CPC members city-wide, nearly an average of 8 members per CPC. This is the same number reported for the previous reporting period. While new members contribute to a more diversified membership, there remains work to be done in growing and broadening CPC membership. CPOA and APD staff indicate their commitment to helping the CPCs expand and further diversify their membership.

In an earlier reporting period, the monitoring team noted CPC membership criteria, selection process changes, and misinformation about those changes posted on the APD/CPC website. The Council of Chairs took a leadership role in re-visiting the guidance for CPC membership selection. The CPCs requested technical assistance from the monitoring team regarding re-engineering the recruitment processes, selection criteria, the selection process, removal of members, and other considerations. The revised and updated guidance was approved in July 2020 by the City's newly designated CPC Liaison and the prior CPOA Executive Director. This guidance included the following changes:

- Citizen's Police Academy (CPA): the CPA 12-week course will not be required but recommended. (This will require an amendment to the CASA, which has the support of the City, the USAO, the Civil Rights Division of DOJ, and the monitor);
- Ride along: not required but recommended.
- Background Checks: not required. However, if one chooses to do a ride-along, then the background check is conducted using APD-stipulated criteria; and
- Criminal history: a criminal history will not exclude a person from serving on a CPC. However, active felony warrants or pending criminal charges will disqualify a person from membership.

The rationale for these changes offered by the CPC Council of Chairs and the Parties included removing barriers to membership, with many prospective members simply being unable to meet the demanding time requirements of completing the CPA training. In addition, the changes reduced the probability of criminal histories, possibly limiting others who now could make significant contributions having already answered for any past criminal conduct. The Council of Chairs noted that adhering to the CPC membership code of conduct held more relevance than any past behavior.

The City-appointed liaison and the CPOA staff assigned to support CPCs are working to help surge interest in CPC memberships, helping the CPCs become firmly embedded in the community and providing monthly opportunities throughout the City to give voice to community members regarding their community safety concerns and solutions. The meeting topics and discussions remain relevant, and APD involvement is consistent.

The monitoring team remains encouraged that CPC expansion and diversification will continue under the administration of CPOA. The monitoring team also recognizes that the CPOA, with support from APD and the City, must continue to provide ongoing guidance and support for these volunteer groups to ensure their ongoing functionality.

CPOA should also continue to encourage and support the CPC Council of Chairs collaboratively and strengthen their leadership role.

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 share appropriate information and documents with the Community Policing Councils, provided adequate safeguards are taken not to disclose information that is legally exempt or protected from disclosure.”

Methodology

During this and the previous reporting period, CPOA support for CPCs included a budgeted CPC liaison and liaison assistant positions. In addition, the City Council appropriated some limited funding to support CPC activity. During the IMR-12 reporting period, the City finalized the transfer of the CPC program from APD to CPOA. In this reporting period, CPOA staff continued to provide technical support, helping the CPCs from each area command host over 30 virtual and hybrid meetings, monthly Council of Chairs CPC leadership meetings, and a holiday celebration for CPC members.

The monitoring team reviewed CPC minutes and agendas posted during this reporting period and found most to be current. However, there was some slippage in completing and posting minutes and agendas in a timely manner for several CPCs. The monitoring team urges the CPCs to increase efforts to post the minutes and agendas in a more timely fashion. Recordings of past CPC meetings remained posted and available as well. CPC members continue to request more support for additional training, updating CPC strategic plans, and conflict resolution. CPCs have also requested more involvement in determining the allocation of CPC discretionary funds that are set aside for each CPC. The governing City Ordinance pertaining to CPCs requires the Mayor and Chief of Police to meet with CPC chairs annually to share accomplishments, concerns, and future challenges.

The continued dedication and commitment of CPC members remain the most important factor in the continued operations and success of the CPCs. As noted in previous IMRs, volunteers have devoted their time and efforts to building the foundation for the successful operations of CPCs. CPC voting members in the past updated program guidance and demonstrated flexibility by fully adapting to hosting meetings virtually. The CPCs are now demonstrating to other organizations how to successfully conduct hybrid meetings that include both in-person and virtual attendance.

The monitoring team believes it is important that the City, CPOA, and APD work together to grow and sustain CPC operations and find ways to conduct even further outreach and reach more members of marginalized communities. It is also important that the City continue to find ways to celebrate and honor this volunteerism that contributes to community safety and advances reform efforts. CPC members' tireless efforts on behalf of the residents of Albuquerque are helping to create a national model for engaging community members with the police officers who serve them and are providing opportunities for meaningful information sharing and dialogue.

Results

Primary: **In Compliance**

Secondary: **In Compliance**

Operational: **In Compliance**

4.7.254 Assessing Compliance with Paragraph 269: APD-CPC Relationships

Paragraph 269 stipulates:

“APD shall seek the Community Policing Councils assistance, counsel, recommendations, or participation in areas including:

- a) Reviewing and assessing the propriety and effectiveness of law enforcement priorities and related community policing strategies, materials, and training;**
- b) Reviewing and assessing concerns or recommendations about specific APD policing tactics and initiatives;**
- c) Providing information to the community and conveying feedback from the community;**
- d) Advising the chief on recruiting a diversified work force;**
- e) Advising the Chief on ways to collect and publicly disseminate data and information including information about APDs compliance with this Agreement, in a transparent and public–friendly format to the greatest extent allowable by law.”**

Methodology

During this reporting period, CPCs expanded their use of hybrid meetings, allowing for in-person and virtual participation. Meeting invites were posted and announced using social media platforms. A participatory webinar format allowed for exchanges among voting members and Q and A with other meeting participants. The monitoring team observed increased interaction among APD meeting participants and CPC members. CPC agendas and topics continue to align with CASA objectives and address a wider range of APD policies, practices, and strategies. Topics this reporting period included the following examples:

- The Level One pilot program;
- APD De-escalation training;
- Active Shooters Scenarios;
- Albuquerque Police Officers Association;
- Crime Stoppers; and
- External Use of Force Investigative Team.

The CPC meetings in this reporting period were used by police leadership, including the Chief of Police, to address CPC members in each command area and engage in question-and-answer sessions. CPC meetings also continue to provide a platform for APD presentations and discussions regarding CASA compliance and challenges. CPC sessions always provided opportunities for ongoing dialogue with area commanders and staff concerning neighborhood crime and safety issues. CPCs continue to seek opportunities to enhance their working relationships with APD and the City and be provided greater opportunities for more meaningful input into APD policy development and policing strategies. Several CPC members also continue to voice concerns about ensuring adequate APD response to recommendations that have touch points with other City agencies. These concerns were again presented to APD during this reporting period. APD responded by providing feedback on nearly all pending recommendations immediately prior to the end of this reporting period.

During this reporting period, the number of recommendations continue to decline causing some concern about the CPC deliberative processes. There were only two recommendations submitted in this reporting period:

- Remuneration for impounded vehicles when someone's car is taken as evidence; and;
- Window-breaking tools for patrol officers to break windows in case of emergencies.

The monitoring team encourages the CPCs to return to their prior practice of regularly developing and submitting recommendations to APD for their consideration.

In this reporting period, the CPCs encountered ongoing challenges in sustaining operations in two of their CPCs. The monitoring team recommends the City, CPOA, and APD work with the CPC Council of Chairs to address issues in the struggling CPCs and help rebuild their membership and improve their functionality. Also, the monitoring

team expects CPCs to broaden participation and provide more meaningful input regarding APD policy and operations, a central role for the CPCs. The monitoring team remains encouraged that CPCs will actualize their vision as a significant linchpin in the APD community engagement strategy. These formalized and highly active advisory bodies in each of the six area commands maintain a public profile and have increased collaborative efforts within their area commands.

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 an 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

APD posted all but one of its 2021 CPC annual reports in the previous reporting period and presented them in a standard format that captured CPC annual activities and achievements. The remaining report was completed shortly after the end of the previous reporting period. The monitoring team provided technical assistance in earlier reporting periods to the CPCs, which helped to promote standardization in annual reports. During this reporting period, CPCs indicated they were working on and finalizing reports for the calendar year 2022, to be posted on the website during the next reporting period.

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 the Civilian Police Oversight Agency Board (CPOAB or the Board). These paragraphs require an independent, impartial, effective, and transparent civilian oversight process that investigates civilian complaints, renders disciplinary and policy

recommendations and trend analyses, and conducts community outreach, including publishing semi-annual reports.

During the monitoring period and the December 2022 site visit, members of the monitoring team held meetings with the CPOA Executive Director and her staff, the CPOA/CPOAB Attorney, and members of the CPOAB. We reviewed relevant training records and selected (by way of a stratified random sample), and reviewed ten CPOA investigations and appeals. The CPOA investigations reviewed were [IMR-17-99], [IMR-17-100], [IMR-17-101], [IMR-17-102], [IMR-17-103], [IMR-17-104], [IMR-17-105], [IMR-17-106], [IMR-17-107], and [IMR-17-108]. Two of the ten cases reviewed [IMR-17-103] and [IMR-17-108] had non-concurrence decisions by the APD, of which the CPOA was properly notified in writing as to their decision and the reasons explained.

The findings related to Paragraphs 271 through 292 indicate the following outcomes related to the requirements of the CASA.

CPOA Budget and Staffing

Regarding the CPOA Budget and staffing, the CPOA Ordinance presently states:

"The CPOA shall recommend and propose its budget to the Mayor and City Council during the City's budget process to carry out the powers and duties under §§ 9-4-1-1 through 9-4-1-14, including itemized listings for the funding for staff and all necessary operating expenses." Section 9-4-1-4(A)(2).

In IMR-14, we found the CPOA budget and approved staffing were adequate to meet the CPOA mission but emphasized the importance of filling vacant positions. We were encouraged to note that in IMR-15, all approved investigative positions had been filled. With the Lead Investigator's return to a full-time role, the CPOA currently has all seven approved investigative positions occupied. This was a major milestone. Unfortunately, on December 9, 2022, near the end of this monitoring period, the Executive Director resigned, leaving the investigative agency without a supervisor, until February 6, 2023, when the Lead Investigator was again appointed as the Interim Executive Director, leaving the Lead Investigator position vacant. Vacancies in a relatively small agency such as the CPOA often create serious issues. The City and CPOA should be aware of developing issues created by this understaffing.

Most investigators are relatively new and going through a normal learning curve, gaining experience during the IMR-17 period. This full complement eventually should have a tangible impact on CPOA investigative output. We also point out that with the addition of the new Executive Director and the full-time return of the Lead Investigator, the guidance to the investigative staff, and the exercise of quality control over its work product, the Agency was in a strong position. Unfortunately, with the quick departure of the Executive Director, any positive impact was quickly diminished. With the turnover in personnel and the review of the stratified random samples of investigations, it is clear that a staffing and time-management study is warranted for CPOA.

On January 19, 2023, near the end of this reporting period, the City Council passed a new City Ordinance governing the Citizen Police Oversight Board, abolishing the board and ordering the re-constitution of a new "advisory" board to replace the existing board. Based on our information, we anticipate that another approach will be tested, anticipating a more efficient working agency in the future. We will continue to monitor closely these processes for issues and/or problems.

CPOA had openings for two other approved and funded positions, a Community Engagement Specialist and a Policy Analyst. The new City Ordinance abolished the Community Engagement Specialist position, and a new position Deputy Director was established. Another position, Contract Control Officer, was also created. The Contract Control Officer will be responsible for supervising the Executive Director. As of the end of this monitoring period, those positions remain vacant. Filling these positions should be a significant priority.

Investigations and Reliability of Findings

Satisfactory cooperation between the CPOA and IAPS has been firmly rooted since the early days of the CASA. In general, both agencies continue to respect each other's role and realize it is in their best interests and that of the CASA, to cooperate and facilitate their intertwined missions and related areas of responsibility. The CPOA has access to information and facilities reasonably necessary to investigate civilian complaints.

CPOA continues to have the authority to recommend findings and disciplinary action in cases involving civilian complaint investigations. The Superintendent, or a designated disciplinary authority, retains the discretion to impose discipline but is tasked with writing a non-concurrence letter to the CPOAB when there is disagreement with the CPOA recommendations.

As we noted in the past IMRs, the investigations produced by the CPOA, once complaints are assigned, are generally thorough. However, again this monitoring period, our stratified random sample revealed investigations that we deem to be deficient. We discuss those below.

First, our review revealed that the sample of ten CPOA cases included one investigation that was administratively closed [IMR-17-101]. We find that case administratively closed to be appropriate.

That positive finding notwithstanding, we believe it is worth reiterating that the monitor has approved of the use of administrative closure in situations in which a preliminary investigation cannot minimally sustain the allegations contained in a complaint. In a subsequent modification of that approval, the monitor allowed the use of an "unfounded" finding in lieu of "administrative closure" in cases in which a preliminary investigation shows, by clear and convincing evidence, that the conduct which is the subject of the complaint did not occur. However, the monitor cautioned that care must be taken not to use this practice as a panacea to reduce the current CPOA workload. Once again, we stress that this practice should only be used where the preliminary investigation shows,

by clear and convincing evidence, that the allegations of misconduct did not occur and reveal no indication of misconduct unrelated to the original complaint was identified.

Regarding CPOA investigations in which administrative closure was not utilized, we found three to be deficient in that the investigative record was not sufficiently thorough because proper investigative steps were not taken or documented and/or the analysis of evidence was lacking [IMR-17-106], [IMR-17-107], and [IMR-17-108].

The first case, [IMR-17-106], was the result of a complainant appearing at an APD substation, where they hand-delivered a complaint alleging two officers responded to a shelter where they were staying at her request. She alleged that she was threatened by a roommate, but the officers did nothing to investigate and then arrested her on an outstanding warrant. She alleged that the officers inappropriately searched her intimate areas numerous times. She alleged the officers committed an aggravated sexual assault, harassment, discrimination, and larceny against her. When she appeared to make her complaint, the on-duty supervisor attempted to meet with her in the lobby, but she was on her cell phone and told the supervisor to wait a minute. The supervisor complied and returned a few minutes later, but the complainant had departed. The complainant left their written complaint with the receptionist. The supervisor forwarded the complaint to the Sex Crimes Unit and entered it into IA Pro as notification of the complaint. The Sex Crimes Unit conducted a preliminary investigation and determined there was no probable cause that any criminal acts occurred. The case was then forwarded to CPOA for their investigation.

The investigation included an interview, presumed to be of the complainant. The telephonic interview was recorded, but lacked pertinent information, such as the date, time, location, phone number, or the identity of the investigator. The interview only included the complainant making their statement as to what she said occurred. The investigator failed to ask any questions, nor did they attempt to verify any statements provided. The investigation report failed to establish any basis for the investigation. The report documented both officers' statements and a review of the officers' OBRD recordings. The investigation report indicates that the officers were interviewed approximately one month before the complainant was interviewed. Industry standards dictate that the complainant and any fact witnesses be interviewed prior to the subject officers to provide the investigator with all the pertinent information to question the subject officers. In some cases, it becomes necessary to interview people out of logical order, but that should be explained in the investigation report. In this case, the investigator did consider the pertinent supporting documentation, including the officers' OBRDs, which captured the entire encounter. The OBRDs directly refuted the complainant's allegations, and therefore, the proper conclusion was reached.

In this case, prior to interviewing the subject officers, the investigator read a prepared statement advising them that their statement was being compelled and could not be used against them in any other legal proceedings. While it is recognized that under the rules of evidence, a compelled statement usually cannot be used against the person providing it in criminal matters, it was improper for the investigator to make that advisement. A legal argument could be raised that the investigator was granting Use

Immunity under *Garitty v. N.J.* case law. Under *Garitty*, only the prosecuting authority can grant Use Immunity. Thus it would be improper for an investigator to do so. This is a legal issue that should be addressed by legal counsel. We found a second example of investigators using an improper Garrity advisement in another incident (below). But it should be noted that during the later part of this reporting period, the CPOA investigators ceased providing that advisement.

Also, in this investigation, the issue of officers of the opposite sex conducting a search of a subject who has been arrested was examined. APD policy dictates that members of the opposite sex may conduct the search of an arrestee, to include intimate areas, for weapons using the back of their hand, if an officer of the same sex is unavailable. In this case the officers were both males and the defendant was a female. According to what was observed on the OBRDs, it did not appear that any female officers were on the scene. However, the investigation did not examine whether or not a female officer was available to respond to the scene.

The OBRDs clearly showed the officers logging and securing the complainant's personal belongings in an evidence bag, as per policy, which disputes the allegation that the officer stole her property. The investigation did not yield any evidence to indicate any policies were violated, but lacked the specificity and thoroughness mandated by professional responsibility and policy. We concur that the investigation reached the proper, logical conclusion based upon the preponderance of evidence that the allegations were unfounded.

The investigator composed a conclusion and recommendation document, in which the analysis of the facts supported the findings. The justification was determined to be minimally sufficient.

[IMR-17-107] was the result of a citizen complaint alleging two officers responded to a call for service at his request. The complainant called the police because a maintenance crew that worked for his landlord was making a lot of noise while making repairs on a nearby residential rental unit. The complainant advised he is a disabled military veteran and suffers from PTSD and other mental health illnesses. He provided that a witness was present and observed his interaction with the maintenance crew. He complained that when the first officer arrived, they spoke with the landlord and the maintenance crew, before speaking to him. The complainant was upset because he said he called the police, so they should have spoken to him first. He alleged that the officers immediately took the side of the landlord in their dispute. The complainant alleged that a security guard hired by the landlord was there and threw some type of chemical on him, but the officers did not do anything about it.

The investigation considered most of the relevant evidence. The investigation revealed the first officer was responding to a different call in the area alleging a man with a gun was threatening people. As that officer was driving by the complainant, the complainant was waving for him to stop. The officer asked if he called about the man with a gun, but the complainant advised he did not. The officer advised he had to address the initial call first and would return to this scene as soon as he could. The complainant agreed.

When the officer returned to this call, he had already been dispatched to this call to meet with the landlord. Upon his arrival he met with the landlord first, as the landlord and security guard approached him first. Another officer arrived at the scene and they conducted an appropriate investigation into this landlord-tenant dispute. The investigation concluded that neither officer violated any departmental policies. The complainant alleged that the officers mistreated him, berated him, and did not know how to deal with a person with mental health issues. The original officer was certified to deal with critical incidents and persons experiencing mental crisis. The OBRDs clearly recorded the encounters and showed that the officers were non-threatening and professional.

Some deficiencies were identified in the investigation. The investigation did not document the initial attempts to contact the complainant, but based on statements made by the investigator to the complainant, it was clear that some attempts had been made. It is important for the investigators to document investigative actions they take to demonstrate there was no undue delay in investigating an internal investigation. In this case, the first investigative step documented was over two months after the complaint was made.

A review of the interviews conducted by the investigator revealed that the complainant's interview did not include any preamble or background information to establish what was being investigated. It appears that the complainant called the investigator and caught him off guard, as the recording of the statement begins mid-sentence by the complainant who was making a statement. It is understandable under these circumstances that a complainant or witness may respond to the investigator's request to contact them and catch them unprepared. However, it is the investigator's responsibility to control the interview and as soon as possible, get the qualifiers, such as who is speaking, who else is present, the case number, the time, the date, the location (if applicable), the phone number calling (if applicable), etc.

Unfortunately in this investigation, none of that was captured and the reviewer has to assume those facts, which is inappropriate for a complete and thorough investigation. It should be noted that some of the other interviews in this investigation were conducted appropriately. It can be assumed that the deficiencies in the complainant's interview were unintentional, but the investigator should have remedied the situation at the time to enhance the credibility of the statement.

Another deficiency noted was the interview of a civilian witness, who was not identified, other than by a first name. It is important for the investigator to attempt to obtain pertinent identifiers of any fact witnesses so they could be contacted and/or utilized in a future proceeding, if necessary. We recognize that civilian witnesses/complainants cannot be compelled to provide their identifiers; however, the investigator should attempt to obtain that information and document the reason why, if they are unable to do so. In this case, the interview was conducted over the phone, so it would be problematic to prove who actually gave the statement in any type of formal proceeding. These deficiencies did not appear to be critical to the overall outcome of the investigation, but weakened the overall credibility of the investigation.

[IMR-17-108], this case was the result of a citizen complaint that reported the complainant was pulled over and cited for speeding, when the officer who pulled him over was speeding also. The allegations also included that the officer displayed an unprofessional demeanor toward the complainant, and was not wearing a body camera to record the encounter. The investigation revealed that the officer was, in-fact, wearing a body camera, which recorded the encounter. It appeared that the body camera was mounted low on the officer's uniform, as it mostly recorded the side of the complainant's vehicle, but the audio was captured clearly. The OBRD recording indicated that the officer did engage in some conversation concerning why the complainant was speeding and the officer advised the complainant that he allows for vehicles to go up to 7 mph over the speed limit before stopping and citing them. He explained his protocol provides for inaccuracies in speedometers and for drivers to travel slightly over the posted speed limit. At no time was the officer unprofessional in dealing with the complainant.

The investigation revealed that the officer was traveling seven miles per hour over the speed limit when the complainant, who was traveling in the same direction, approached the marked police vehicle operated by the officer. The investigation revealed that the officer flashed his emergency lights at the complainant to try to get him to slow down, but the complainant passed his marked vehicle. The officer stopped and cited the complainant for the speeding violation. The officer candidly admitted that he travels seven miles per hour over the speed limit and if anyone passes him, he knows they are speeding. He added that he tries to stop people from passing him by flashing his lights or signaling to them to slow down, but if they pass him anyway, he takes enforcement action.

The investigation revealed that his conduct in dealing with the complainant was not in violation of any policies; however, his admission that he was speeding was a violation of policy and New Mexico traffic law. As a police officer, he is authorized to exceed the speed limit for emergency purposes only, not routine traffic enforcement.

The investigation considered the most pertinent facts and reached logical conclusions for the allegations. The investigator conducted an interview of the Metro Division Commander to clarify when an officer is authorized to exceed the speed limit. Unfortunately, that interview, which was recorded, failed to document the pertinent identifiers, such as who was being interviewed, the date, time, case number, the investigator or any other identifiers to quantify the statement. When interviewing the subject officer, the investigator read a "Garitty" statement onto the record, which appears to be improper. The statement that was read appeared to grant Use Immunity to the officer which, as explained above, can only be granted by a prosecuting authority, not the investigator. Again, this is a problematic legal issue which should be addressed by legal counsel. The CPOA has since ceased reading that statement into the record.

The other deficiency in this case is the timeliness of the completion. The complaint was assigned to an investigator on May 3, 2022, but it was not completed until September 5, 2022, a 122-day span. The case was not reviewed by CPOA Executive Director until September 27, 2022. While the investigation sustained a violation against the officer for

speeding and recommended a specified level of discipline, given the fact that the investigation exceeded the time limit for an internal investigation, the discipline was diminished to a corrective action only. In this case the violation was a minor violation and the officer was still admonished for his violation. However, CPOA must ensure the investigations they conduct are completed within the allotted time frame. We note that the CPOA's case load is substantial and each investigator is assigned over 20 investigations at a time, creating a less than acceptable working atmosphere. We consider this a significant contributing factor to the inability to meet established investigative timelines.

In summary, our analysis reveals investigations generally of appropriate quality, Five of the ten cases needed to be more thorough and to cover each salient point in question, to meet the CASA's thoroughness and reliability requirements. This represents a CPOA compliance rate of 50 percent, a decrease from the 73 percent compliance rate in IMR-16 and still well short of the 95 percent required for compliance.

In addition, there was another matter that, although we do not find problematic for compliance purposes, we nonetheless point out to emphasize concerns about the need to conduct more complete investigations, definitively close out issues, and improve communication with complainants (see IMR-17-101, below).

[IMR-17-101], this case involved an administrative closure of a complaint from a third-party citizen alleging APD failed to respond to a report of a robbery/shoplifting complaint. The complainant was the loss prevention officer for a retail store, who reported that a subject entered the store, took a pair of boots into a bathroom and removed the security tag. It was alleged that the subject stated he had a weapon and ran out of the store with the boots. The complainant alleged they called the non-emergency phone number, but an answer was taking too long, so he made a complaint on-line.

The investigation revealed that the on-line report was not forwarded or received by APD until over a month later. The investigation revealed that the complainant failed to mention anything about a weapon or threats. The APD did not send anyone to investigate the matter when notified a month later, as too much time had elapsed. The complainant also alleged that the APD has failed to respond to numerous other calls over the past year, but a records check did not locate any other calls for service received. The CPOA investigator advised a store representative that in the future, they or their employees should call "911" for an immediate police response. A store representative advised they wanted to drop the complaint at that point and the original complainant no longer worked there. The investigation revealed that no APD employees were involved or had contact with the store employees concerning their robbery/shoplifting complaint. Therefore, no violations by any members of the APD could be established.

The correct conclusion for this case should have been Unfounded; however, CPOA administratively closed the case instead. Administrative closure is permitted to be used when the investigation reveals no policy violations occurred by any members of the APD, so it appears to also be appropriate. The CASA does allow for cases to be administratively closed, but recommends the use of Unfounded, when the investigation

shows the alleged violation did not occur. This is an area in which caution must be used by CPOA, as has been discussed in prior IMRs.

CPOA should note that even if they are confident that the OBRD recordings and preliminary assessment of evidence support their findings, repeated investigative shortcuts of not making adequate effort to gather potentially relevant evidence and/or failing to document those attempts and "close-out" issues could render investigations incomplete and thus deficient for purposes of paragraph 183 analysis.

It may be that the deficiencies and shortcomings noted are related to the CPOA workload, the current staffing level of investigative personnel, the fact that the Executive Director resigned during this reporting period, or the fact that the Lead Investigator was the only supervisor. The City should review these issues and implement changes (training, supervision, intervention or other processes) designed to ameliorate similar issues in the future.

Timeliness of Investigations

As the monitoring team has noted since IMR 8, during the review of random samples of investigations, we look for and determine the following dates: complaint received, complaint assigned for investigation, initiation of investigation after assignment, completion of investigation, and chain of command review and notification of intent to impose discipline (where applicable). During past site visits, the monitoring team has discussed with the CPOA the issue of delays between the date a complaint is received and the date it is assigned for investigation. Although the CASA does not deal directly with the issue of time to assign, the parties and the monitor agreed that a delay of more than seven working days for assignment is unreasonable and would affect the "expeditious" requirement of Paragraph 281.

During this reporting period, the monitoring team found three investigations, [IMR-17-102], [IMR-17-104], and [IMR-17-108], that exceeded the 120-day limit. In [IMR-17-102], the administrative closure memo exceeded the 120-day limit by three days; in [IMR-17-104] the investigation exceeded the limit by five days; in [IMR-17-108], the investigative report exceeded the limit by two days. This constitutes a 70% compliance rate, a decline from the 83% rate in the last IMR.

It must also be noted that due to the organizational discord within the CPOA Board and the CPOA Investigative Agency, the Executive Director resigned effective December 9, 2022. As of that date, the CPOA Investigative Agency maintained the Lead Investigator, as a supervisor, but not as the person in charge. As such, all investigations completed from December 9, 2022, through the end of this monitoring period were placed in limbo, pending the appointment of an interim executive director or a permanent one. An interim executive director was appointed February 6, 2023. The interim Executive Director is the current Lead Investigator. This situation led to a backlog of 43 cases, of which eight had recommended sustained allegations. These cases were not approved/completed, therefore could not be reviewed as part of the stratified random sampling of completed cases by CPOA. Five of the eight cases with sustained findings are time barred from

discipline as of the end of this IMR and the other three are in jeopardy, depending on when they get approved and forwarded. Cases that are time-barred regarding discipline are viewed by the monitor as insufficient.

Mediation

In our review of stratified random sample of ten CPOA cases, we found two, [IMR-17-106] and [IMR-17-107], that we believe would have been appropriate for mediation (with consent by the complainant and officer to mediate). Unfortunately, the mediation program was not operational, therefore no efforts were made toward referring these matters to mediation. The benefits of mediation could not be realized because the mediation program is no longer functioning.

As we pointed out in previous reports, during the 12th monitoring period, a second revised version of the mediation program was developed. The new Mediation Protocol, in the form of a Memorandum of Understanding (MOU) between the City, APD, APOA, and CPOA, was approved by the Court in the 13th reporting period. This protocol expired at the start of the IMR-15 review period, and effectively the mediation program has shut down. This constitutes a serious and potentially injurious lack of oversight of key CASA requirements by APD, CPOA, and the City.

Funds were dedicated to the mediation program in the 2023 City Budget, but no new mediation program has been established. The CPOA has proposed that any new mediation program involve the CPOA contacting and engaging directly with mediators instead of relying on the City to manage the mediation process as a third party. We join the CPOA's perspective on this matter.

The monitor is concerned about this lapse in attention regarding mediation of select external complaints. Establishing a viable mediation program has proven to be an elusive process. The monitoring team reiterates that effective use of a mediation process can be an important component of the APD disciplinary process and can improve understanding and relations between the community and APD. Mediation can help alleviate CPOA's investigative burden, thus resulting in increased time for the more complicated investigations. Restarting the mediation program should be a CPOA priority, and the City should give serious consideration to the CPOA proposal to engage directly with the mediators. This is the third consecutive monitor's report in which the monitoring team has given this recommendation. We recommend that City revisit its efforts regarding mediation. We find the City out of compliance with the requirements of this paragraph.

Monitor's Note: The resignation of the Executive Director of CPOA during this period further added to the agency's ability to re-establish the mediation program which should be considered a priority for the new administration and board, once they are re-constituted.

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: Reconstitute the CPOA Board.

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.”

Methodology

For most of this reporting period, there were five CPOA Board members, selected by a vetting process formulated and managed by staff from the Albuquerque City Council. The composition of the Board lacked Latinx representation, a significant ethnic group in Albuquerque. In the recently enacted City Ordinance governing the Board selection process, the existing Board was abolished, and modifications were made to criteria for Board members to better align with CASA requirements. The ordinance change also restricts employment of Board members by APD for up to three years prior to Board membership appointment, and requires candidates to pass a background check and have residency within the City of Albuquerque.

The monitoring team urges serious and careful consideration by Council staff in selecting Board members demonstrating diversity, representativeness, understanding of Board member duties and responsibilities, and capacity to perform Board member functions equitably and fairly.

Results:

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

Recommendation for Paragraph 273:

4.7.258a: Council staff should closely apply selection processes for CPOA Board members to ensure diversity and selection of members prepared to perform Board duties.

4.7.259 Assessing Compliance with Paragraph 274: CPOA Pre-Service Training

Paragraph 274 stipulates:

“Within six months of their appointment, the City shall provide 24 hours of training to each individual appointed to serve on the agency that covers, at a minimum, the following topics:

- a) This Agreement and the United States’ Findings Letter of April 10, 2014;**
- b) The City ordinance under which the agency is created;**
- c) State and local laws regarding public meetings and the conduct of public officials;**
- d) Civil rights, including the Fourth Amendment right to be free from unreasonable searches and seizures, including unreasonable uses of force;**

- e) All APD policies related to use of force, including policies related to APD's internal review of force incidents; and
- f) Training provided to APD officers on use of force."

Methodology

For this reporting period, insufficient evidence was provided to indicate full compliance with this requirement. While there were records of completion of some of this 24-hour required training, there was no indication that the appointed members had all completed this required training. Instability in agency leadership with the resignation of two CPOA agency directors occurring in this reporting period may have impacted the scheduling and tracking of the required training.

The monitoring team notes that given the newly enacted City Ordinance for CPOA and a new Board, the CPOA agency director, in consultation with the City, should revise the content of the 24 hours of required training for Board members. This training should better align with the duties and responsibilities of CPOA Board members and should ensure that the changes to the training regimen are responsive to the requirements of the new ordinance. The monitoring team also strongly encourages CPOA staff to update tracking and reporting mechanisms for completing required training.

Results:

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

Recommendation for Paragraph 274:

4.7.259a: The CPOA director should convene a working group with City Attorney's office representation to revise the 24-hour training to better align with Board member roles and responsibilities as defined by CASA and the revised city ordinance governing CPOA operations.

4.7.260 Assessing Compliance with Paragraph 275: CPOA Annual Training

Paragraph 275 stipulates:

"The City shall provide eight hours of training annually to those appointed to serve on the agency on any changes in law, policy, or training in the above areas, as well as developments in the implementation of this Agreement."

Methodology:

For this reporting period, there was no evidence provided that the appointed Board members completed the required 8-hour training. The instability in CPOA leadership, including the resignation of two agency directors, may have contributed to challenges in tracking and reporting Board training.

Results:

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

Recommendation for Paragraph 275:

4.7.260a: The CPOA should maintain careful records relating to Board member training activities. Training regimens used to satisfy Paragraph 275 should be directly related to Board member’s duties and responsibilities.

4.7.261 Assessing Compliance with Paragraph 276: CPOA Ride-Alongs

Paragraph 276 stipulates:

“The City shall require those appointed to the agency to perform at least two ride-alongs with APD officers every six months.”

Methodology:

For this reporting period there was no evidence provided that Board members serving this reporting period completed the required two ride-alongs. The monitoring team urges the CPOA director to ensure adequate tracking and reporting mechanisms to ensure compliance with this paragraph.

Results:

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

Recommendations for Paragraph 276:

4.7.261a: Detailed, date-sensitive data should be retained by CPOA related to CASA-required training for Board members.

4.7.261b: Establish a tracking and reporting system for recording Board member ride-alongs.

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. Nothing in this paragraph prohibits the City from requiring the Board and the Agency to comply with City budgeting, contracting, procurement, and employment regulations, policies, and practices.”

Results

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

Recommendation for Paragraph 277:

4.7.277a: A Memorandum of Understanding (MOU) between the City, CPOA/CPOAB, and the APOA on access to OIS/SUOF materials should be finalized and implemented, or some other solution reached, in order to allow the CPOAB more timely access to materials needed for review of OIS and SUOF incidents/investigations. This is a central component of the CASA’s community oversight processes, and the monitor notes that this recommendation has been made in multiple monitor’s reports, and has yet to be addressed.

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**⁸²

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**

4.7.266 Assessing Compliance with Paragraph 281: Prompt and Expedious Investigation of Complaints

⁸² The investigative staff continues having difficulties meeting CASA requirements. At this point we cannot state it is specifically because of too few staff, but it is something the City should consider looking into before operational compliance is impacted.

Paragraph 281 stipulates:

“Investigation of all civilian complaints shall begin as soon as possible after assignment to an investigator and shall proceed as expeditiously as possible.”

Results

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

Recommendations for Paragraph 281:

4.7.266a: Ensure all investigations are assigned within the agreed-upon seven days.

4.7.266b: Ensure investigation reports adequate document when the case is assigned to the investigator, as well as all investigative steps taken to demonstrate that no un-due delay in the investigations occurs.

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 Bureau of Police Reform shall retain discretion over whether to impose discipline and the

level of discipline to be imposed. If the Bureau of Police Reform decides to impose discipline other than what the agency recommends, the Bureau of Police Reform 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 Division for tracking and analysis.”

Results

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

4.7.272 Assessing Compliance with Paragraph 287: Opportunity to Appeal Findings

Paragraph 287 stipulates:

“The City shall permit complainants a meaningful opportunity to appeal the Executive Director’s findings to the agency.”

Results

During this reporting period, the CPOA provided a meaningful opportunity to appeal Executive Director’s findings to the Board. There were delays in holding appeals hearings towards the end of the reporting period.

The abolition of the Board at the end of the reporting period may lead to delays in holding future appeals hearings. Once a new Board is appointed, the monitoring team encourages the CPOA director to coordinate with APD to address backlogs in both case findings and appeal hearings. We suggest the city move quickly to address this issue.

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

Operational: **In Compliance**

4.7.273 Assessing Compliance with Paragraph 288: CPOA Recommendations Regarding APD Policies

Paragraph 288 stipulates:

“The agency shall make recommendations to the Chief regarding APD policy and training. APD shall submit all changes to policy related to this Agreement (i.e., use of force, specialized units, crisis intervention, civilian complaints, supervision, discipline, and community engagement) to the agency for review, and the agency shall report any concerns it may have to the Chief regarding policy changes.”

Methodology

During this reporting period, APD forwarded 14 SOPs that were CASA-related for CPOA Board consideration, all of which were sent for a 30-day commentary period as required by APD policy. APD also reported that CPOA provided only one recommendation that was responded to by APD. With the appointment of a new CPOA Board, the monitoring team expects the Board to provide commentary on policy submissions by APD more routinely and, as now required by the new City Ordinance governing CPOA operations, also include input from the City’s CPCs.

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.”

Methodology

In this reporting period, APD reported to the monitoring team that there was one recommendation forwarded to the Chief for his consideration. In accordance with paragraph requirements, the Chief provided a written response explaining issues with the recommendation.

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.”

Methodology

The monitoring team reviewed the record available related to this paragraph, and found the City to be in compliance with the requirements of Paragraph 290.

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.”

Methodology

With the responsibility of management and oversight of CPCs moving from APD to CPOA, opportunities for effective engagement are greatly expanded. The CPOA, using the public platforms provided by each of the six CPCs, can present proposed APD policies and programs and seek input from CPC members and other meeting participants during regularly scheduled CPC meetings which occur monthly in each of the six area commands.

In consultation with Board members, the monitoring team expects the Director to develop and document an engagement program that implements new ordinance requirements for CPC policy consultations and establishes processes for soliciting comments from CPC members and meeting participants on a wide range of APD activities.

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 Bureau of Police Reform;**
- 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 Bureau of Police Reform;**
- d) number of officer-involved shootings received and considered, including any dispositions by the Executive Director, the agency, and the Bureau of Police Reform;**
- e) policy changes submitted by APD, including any dispositions by the Executive Director, the agency, and the Chief;**
- f) policy changes recommended by the agency, including any dispositions by the Chief;**
- g) public outreach efforts undertaken by the agency and/or Executive Director; and**
- h) trends or issues with APD’s use of force, policies, or training.”**

Methodology

The CPOA reports that the semi-annual report for the second half of 2022 is being developed and finalized. The monitoring team has reviewed the posted 2022 semi-annual report covering January to June of that year. The semi-annual report for the first six months of 2022 addressed paragraph requirements.

Results

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

Results

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

5.0 Summary

APD has reached a significant milestone during the IMR-17 reporting period: Primary and Secondary Compliance findings are at 100 percent. This represents an exceptionally strong foundation for future efforts to achieve full operational compliance. Good policy is in place. Strong training processes are in place. Operational Compliance is at a new high, 92 percent. The final obstacle to Operational Compliance continues to be in-field practices. As we have noted in the past, achievement of Operational Compliance is almost completely reliant on supervisors (sergeants) and mid-command (lieutenants and commanders).

Our reviews of compliance for IMR-17 continue to identify several needs for APD leadership, mid management, and supervisory focus. These include:

- Ensuring appropriate classifications of uses of force at all levels;
- Applying progressive discipline;
- Build “backlog-proof” force investigation practices by monitoring timelines for force investigations and ensuring APD proactively identifies cases in danger of falling out of established timelines; and

- Continuing the processes to train, staff, and organize internal systems so that APD can replace the functions of EFIT with equally competent internal oversight systems for use of force and other CASA-congruent field operations.

We continue to recommend that the City consider a staffing study to identify current needs at CPOA, especially the investigative team, to determine if CPOA is adequately staffed and supervised to ensure timely completion of high-quality case investigations. As we have noted, we are concerned about CPOA staffing and oversight systems that may well be harbingers of potential difficulties at the agency.

During the 17th reporting period, we noted substantial movement toward effective command and supervisory control process that generate CASA-compliant practices in the field. Operational Compliance increased substantially this reporting period, from 80 percent to 92 percent. This is the fourth monitor's report in a row that has shown significant improvements in Operational Compliance.

While most of the monitor's comments in this report are data-based, as always, we would be remiss if we did not recognize a new attitude at APD when it comes to CASA compliance. We note, again this reporting period, a keen focus on compliance at executive, command, and in-field operations levels. APD systems are continuing to be diligently focused on the CASA and compliance practices in the field. What we have seen at APD in the 17th monitoring period indicates an agency that is committed to full compliance with the CASA. This is part of a two-year trend established in IMR-14, with substantial increases in compliance levels in the last three reporting periods.