Monitor's Fourth Report

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

No. CIV 14-1025 RB/KK

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1.0 INTRODUCTION

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

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

On November 14, 2014, the United States Department of Justice entered into a settlement agreement with the City regarding changes the Parties agreed to make in the management and operations of the APD. This agreement consisted of 278 requirements accruing to the APD, the City of Albuquerque, and related entities, including, for example, the City of Albuquerque's Citizens' Police Oversight Agency (CPOA), and the City of Albuquerque's Police Oversight Board (POB). After approval of the Settlement Agreement by the Court in November, 2014, on January 14, 2015, the Parties selected an independent monitor to oversee and evaluate the APD's response to the requirements of the CASA. Dr. James Ginger (CEO of Public Management Resources), and his team of policing subject matter experts (SMEs) in the areas of police use of force, police training, police supervision and management, internal affairs, police-community relations, crisis intervention, and special units were tasked with the responsibility of developing and implementing a monitoring methodology designed to, where possible, evaluate quantitatively each of the 278 individual requirements of the CASA. The monitoring team's proposed methodology was submitted to the parties (The USDOJ, the City of Albuquerque, the APD, and the Albuquerque Police Officers' Association) in March, 2015. The Parties were given time to review and comment on the draft, and the monitor made revisions to the methodology document that were meaningful and suggested an improved document in terms of accuracy, understandability, and/or style. A Court Order modifying deadlines for the CASA was approved by the Court and filed on September 24, 2015. This document reflects those comments and represents an attempt by the monitoring team to produce the most accurate assessment possible.

In the pages that follow, the monitoring team presents to the Court, the Parties and the residents of the City of Albuquerque, its findings developed from its fourth site visit. As usual, the monitor's first report, in

effect, represents a “baseline” from which improvements can be crafted. This fourth report represents an assessment of the progress made since the beginning of compliance efforts, in November, 2014. Full disclosure of the monitor’s reports will be made by presentation in Court, by in-person discussions with the Parties, by publication of the report on the Web, and provision of copies of the report on CDs for those who so desire. The reader is reminded that this document is the fourth step in a multi-year and multi-phase organizational development and planned change process. While the style of the report may be a bit technical, the reader should note that it is meant to inform the Court, applicable law enforcement professionals, and the Parties about the monitor’s assessment of the current levels of performance by the APD on the 278 specific tasks required of the City and the APD over the coming years. The reader is reminded that this is still the early phases of a multi-year journey to ensure that the APD operates from and with policies, procedures, and processes that are the nationally articulated standards for effective and Constitutional policing in America. The monitor’s reports allow the reader to actually assess progress made by APD since the reform process was initiated in January, 2015. Thousands of man-hours have gone into developing this report in the form of planning, data collection, data analysis, report writing, staffing and production. The fourth report serves as a review of the effectiveness of the organizational development process engaged in by the APD during the period of April, 2016 through July 2016 (inclusive). Similar processes will be used over the remaining life of the CASA.

2.0 Executive Summary

The Albuquerque Police Department has entered into one of the most complex, far-reaching, and difficult processes known to American policing: a process of organizational development and planned change that, before it is complete, will affect the very core of the agency, changing the way APD functions, plans, thinks, and responds to constructive criticism.

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

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

2.1 Overview of This Report's Conclusions

APD has worked through the process of revising policies, and is working to create new tracking and accountability systems. The agency is putting other critical components into place that should, if implemented and managed properly, serve it well in the years to come. As we noted in the last monitor's report, a substantial amount of work lies ahead, and this report continues to reflect that reality. APD has taken the first few steps down a very long road.

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

I. Use of Force;

II. Specialized Units;

III. Crisis Intervention;

IV. Policies and Training;

V. Misconduct Complaint Intake, Investigation, and Adjudication;

VI. Staffing, Management and Supervision;

VII. Recruitment, Selection, and Promotions;

VIII. Officer Assistance and Support; and

IX. Community Engagement and Oversight.

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

2.1.1 Use of Force

As the monitoring team noted in its first three reports, and a Special Report submitted to the Court in September of 2016, fostering the constitutional use of force is the primary goal of this entire effort, and every provision of the (CASA) is aimed, directly or indirectly, at achieving that goal. Success will eventually involve integrating a wide array of components, all working in unison: a strong, clear use of force policy that becomes the basis for training provided across the department; supervision focused on ensuring that officers follow the policy and training in the field; tracking systems that identify issues before critical problems arise; accountability systems that appropriately address issues when and where they arise; and community engagement that fosters collaboration between officers and the communities they serve. As noted in the Special Report submitted to the Court in September, the monitoring team continues to observe problematic issues in the department's response to use of force events, including problems in training, supervision, and administrative response to such events.

The Use of Force policy developed by APD and submitted to the monitor was acceptable to the monitoring team, and to the United States Department of Justice, and was approved by the monitor during the third reporting period. The delay to date in achieving compliance was substantive, and as the monitoring team noted in its second report:

> "The difficulty in crafting an acceptable use of force policy during the first two reporting periods is problematic on several levels. First, it highlights a general difficulty exhibited by the department in a critical area of management and oversight of the policing function: crafting of effective, meaningful, trainable policy to guide officers in the multiple functions and actions that must be coordinated to craft an effective policing process in the City of Albuquerque. Second, of necessity, it delays the start of required department-wide training related to the appropriate use of force.

> As a result, the process of developing, organizing, delivering and evaluating use of force training will be stressed, leaving little room for assessment of its effectiveness and revisions to training processes as it progresses. "Similarly, training of supervisors in how to assess, evaluate and review officers' use of force will be similarly delayed. Third, it compresses the timeline to a point that any unanticipated difficulties will be difficult to acknowledge, assess and overcome before they create additional issues that must be resolved prior to completing planned training…"

As we noted in the last monitor's report: "Information obtained from APD during the reporting period relating to supervisory training regarding use of force review and assessment indicates continued issues related to training of supervisory personnel and their expected responses to use of force and "shows of force".

In the third report, we also noted: "Training [of officers] regarding use of force began January 25, 2016, two days after receiving approval on the department's proposed use of force policy."[2] The monitoring team, at that time, cautioned APD that the 'rush to training' was risky, absent adequate time to ensure that the training was modified to reflect very recent changes in policy. As predicted, the training, as offered, had substantial issues due, we believe, to the rush to final preparation, and some critical pieces were omitted or were inaccurately covered (e.g., failing to cover adequately critical revisions to the use of force policy)."

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

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

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[2] The City notes that it updated the proposed training in "real time" based on continuing monitoring team feedback, arguing that the seemingly brief period between approval and commencing training was not as problematic as the monitor contended. Though as noted in Section 4, we did not find training to be adequate and therefore we stick by our original comments that rushing to training is problematic.

The monitoring team's review of training records indicates that APD trained 98.7 percent of its officers using the new Use of Force training materials. Nonetheless, we find four separate and distinct issues requiring further training: 1. vague use of "show of force" definitions; 2. use in the training of two Supreme Court cases that do not align completely with APD use of force policy; 3. lack of policy control on distraction strikes; and 4. unclear definitions of "un-resisted handcuffing."

Further, we again note that we are unaware of any APD formal inspections protocols related to paragraph 18's requirement that officers use only agency-approved firearms while on duty. Absent such protocols, the monitoring team is concerned about the APD's ability to enforce this policy.

We also note difficulty, again, as we did during the last monitoring period, with assessing APD's response to investigations of officer-involved shootings (OIS). The one case we requested for review this reporting period was still "under investigation" more than a year after the event. Further we note a concern that supervisory personnel seem to have failed, as of the last site visit, to incorporate effective use of the APD Early Intervention System (EIS) into their routine supervisory reviews of uses of force. This is more likely than not due to the fact that EIS came on-line only recently (during the fourth reporting period).

Again, the monitoring team express serious concerns about APD's *supervisory and managerial response* to issues of use of force. For example, we reviewed 20 use of force cases for the fourth monitor's report, and found 20 problematic factors.[3] Work remains to be done in training supervisors to assess effectively officers' execution of policy and training in the field.

Further, newly assigned responsibilities to APD's Critical Incident Review Team (CIRT) unit at times appear to not have been met on multiple levels. Use of Force supervision practices, also required by new policy and training, appear to be sporadically effective. We are cognizant that new policy and training take time to have an in-field effect; however, the number and severity of issues we have identified are of concern to the monitoring team. APD's newly formed Critical Incident Review Team (CIRT) became operational during the fourth reporting period. CIRT is designed to review critical uses of force with the goal of "learning from" the modalities deployed and the results achieved in more serious use-of-force events. As with any newly developed system, the monitoring team found several issues in CIRT's operational practices. For example, a large percentage, if not all, of CIRT's output is unsigned, undated, and un-attributed. This is problematic for a number of reasons, not the least of

[3] Some use of force cases had multiple problematic factors.

which is that such documentation does not meet the "selection criteria" of "normal course of business" (COB) documents that the monitoring team routinely uses to track APD compliance efforts. Such documents—documents created in the normal course of daily business—should be: trackable back to the original author; identified by an authorizing signature; dated so that those who receive the document (and members of the monitoring team) know when it was "effective"; and should be distributed using distributions lists that are clear. Nonetheless, the monitoring team reviewed this documentation in order to provide information to APD related to CIRT's initial debut as part of APD's force review process. Our observations include:

1. Substantial delays (three-five months) between "event" and completion of CIRT for review;
2. Substantial delays in classification, assignment to, and investigation by CIRT;
3. Substantial delays in completing CIRT assessments;
4. CIRT reviews that, apparently, do not include review of available OBRD (body cam) videos;
5. Failure to identify the need for (and eventual application) of remedial or disciplinary action regarding failure to report uses of force;
6. Failure to aggressively attempt to locate witnesses or even "victims" of excessive force;
7. Deployment of carefully worded excuses, apparently designed not to find fault with officer actions (for example, in at least one case the force was "excused" by stating that CIRT found no internal documentation directing APD to follow the provisions of the CASA—despite the fact that the City was a signatory to the settlement agreement!)[4];
8. Use of language and terminology apparently designed to absolve officers and supervisors of their responsibility to follow certain CASA-related provisions;
9. Failure to "classify" uses of force as objectively reasonable or not;
10. Failure to recommend discipline or retraining when apparently appropriate or necessary;
11. Failure to articulate an analysis of events so that an independent assessment of facts and actions can be developed from the CIRT report, without needing to consult original source documentation;
12. Failure to reduce findings to "official" APD reports;
13. Failure to identify investigating personnel and/or reviewing supervisors;
14. Indicators of perfunctory and sub-standard investigative techniques;

[4] The City disagrees with this characterization, providing alternative "explanation" for the sergeant's conclusory and inflammatory remarks. We are not convinced, given the record.

15. Failure to refer obviously serious incidents to IA for investigation into policy violations or training recommendations when such referrals were obviously called for;
16. Failure to adequately document investigative steps taken, such as contacting "victims" and canvassing for witnesses, etc.
17. Tardy investigative timelines, at times taking more than five months;
18. Drawing conclusions that uses of force were "reasonable and conform to APD policy" before the investigation was completed.

The implementation of a unit such as CIRT is an important step forward; however, APD should ensure, through the use of every administrative, leadership, and policy modality available to it that CIRT becomes an effective and efficient review, assessment, and corrective-focused unit, not just a rubber stamp for use of force events. As the unit now stands, it is much closer to the latter than the former. This is a critical issue calling for immediate, forceful, and effective remediation.

APD has attempted to revitalize substantially its use-of-force review and assessment processes. In the monitoring team's assessment, that review process has experienced some substantial lapses, and needs to be subjected to a carefully scrutinized planning-implementation-assessment-revision "learning cycle," so that it develops into an effective system of interrelated parts, all working to a common goal: to ensure that uses of force by APD personnel are in conformance with well-written policy, effective training, and hands-on supervision.

Similar issues appear to be endemic with APD's Incident Review Team (IRT) which, it appears, tends to make sweeping generalizations and to develop conclusions based on existing reports, fails to conduct actual investigations, and, at times, appears to self-generate excuses for officer use of force that were not stated by officers in their original reports. IRT should be a fact-finding unit, not one that extends rationalization or purpose for use of force beyond that claimed by the officer in his original report.

Use of force practices and review processes remain significant and substantial roadblocks to APD's compliance efforts.

2.1.2 Specialized Units

APD's tactical units—the SWAT unit, the canine unit, and the bomb squad—continue to take significant steps toward incorporating the requirements of the CASA into their operations. These units continue to be guided by some of the best policy yet developed at APD. They continue to train on an on-going basis, and they continue to use scenarios into their training that emphasize de-escalation techniques and

the use of the minimum amount of force necessary to resolve an incident. In specific tactical operations, tactical units continue to balance the number of tactical specialists deployed with crisis negotiators, which impressed the monitoring team because there is often asymmetry between these two critical components in other law enforcement agencies. These policy and training processes have resulted in fewer deaths and injuries attributed to actions of these specialized units over the last year or more.

Likely as a result of these improvements, APD continues to see commendable results from its tactical operations, many of which are resolved without any force being used. The monitoring team reviewed all major tactical operations that occurred during this reporting period, and found that incident commanders continue to exhibit skill and control in the incidents we reviewed. Training for tactical units has fostered coordinated decision-making that contributed to the use of de-escalation techniques and to there being no need to use force.

2.1.3 Crisis Intervention

APD has made several changes in its Behavioral Science Division processes. This unit, and its supporting role for Patrol Services in crisis intervention, is critical to effective compliance efforts related to police service to the mentally ill. A new Director of BSD has been selected and appointed. The new director has developed significant and wide reaching plans for changes to BSD practices and organization. The monitoring team will continue to assess BSD activities and operations as they are delivered in the field in order to assess the efficacy of the new director's plans and operations.

2.1.4 Policy and Training

APD has produced policies that comply with the CASA and comport with best practices in American policing. All submitted policies salient to critical functions have been approved by the monitor. APD has now shifted to the policy training and integration process.

As we warned in previous reports, the "policy bubble" has affected or will similarly affect APD "down-line" systems, e.g., the training timelines will be compressed, supervisory responses to policy "outliers" will create a similar high-volume spike in the amount of time spent reviewing officer behavior and tactics, and corrective actions will also "spike" as new supervisory protocols confront current in-field tactics. APD has a Policy and Procedures Review Board (PPRB), as required by the CASA. APD has created a way for all officers to review and comment on proposed policies (through PowerDMS), again as required by the CASA. APD has recently revised a problematic policy development and vetting process

(outside the reporting dates for this report) by creating the "Office of Policy Analysis," an amalgam of most of the entities with policy writing responsibility supervised by the Director, Administrative Support Bureau. The monitoring team commend the APD for this step. It shows a commitment to grow capability and function to meet the requirements of the CASA. We will continue to monitor Office of Policy Analysis' (OPA) influence on the quality of policies and procedures.[5]

As predicted by the monitoring team in previous reports and in interactions with City and APD personnel, the policy bubble has begun to affect down-line systems, such as training, supervision, discipline, and remediation of improper tactics, etc. APD has moved forward on some training requirements without approval by the monitoring team of content and modalities. Based on the City's objection, the monitoring team did not review or significantly comment on documentation of proposed training. As a result, 17 issues were noted by the monitoring team related to training deficiencies that need to be addressed before City-proffered training of APD personnel related to use of force and supervisory review of use of force training can be approved by the monitoring team. The monitor will work with the City to develop a workable response plan to these 17 issues. We reiterate that, in all likelihood, these issues could have been avoided if the monitoring team had been provided detailed outlines of the planned training, as requested by the monitoring team, in sufficient time for review in advance of provision of training.

2.1.5 Internal Investigations and Adjudication

As noted in the monitor's first report: APD's "universe" related to internal investigations and adjudication is separated into three components: APD's Internal Affairs Section (IAS), the Citizen Police Oversight Agency (CPOA), and the Police Oversight Board (POB). Members of the monitoring team revisited these issues for the Fourth report. The monitoring team reports continued positive results from CPOA and POB for this reporting period. It is clear the new Executive Director has changed the organizations' approaches to policy (CPOA and POB policy was approved last reporting period) and, based on observations of completed CPOA investigations, the substantial clearance of CPOA case backlogs, and POB meetings, the monitor assesses the current "trajectory" of POB and CPOA to be more than satisfactory. It is clear the new Executive Director has made meaningful positive change. At the

[5] For the purposes of clarity and consistency, the monitor notes that as of June 10, 2016, the monitor has approved all of the key CASA-related policies prepared by APD in response to the requirements of the CASA, with the exception of the policy relating to canine deployments and analysis of data relating to those deployments. The Parties have agreed to an interim policy, and the monitor has provisionally approved that policy pending resolution of one outstanding issue related to counting and analyzing canine deployments.

same time, it is also clear to the monitoring team that APD has a great deal of work to do to build effective supervisory, management and command systems to identify, assess, and control police use of force.

2.1.6 Staffing, Management, and Supervision

Issues related to APD staffing, management, and supervision continue to be "underway" after the release of a report by Alexander Weiss and Associates. In response to Dr. Weiss' report, the APD reorganized and restructured during the third reporting period. At this point, APD has drafted a staffing plan, with input from the Parties and the monitor.

2.1.7 Recruitment, Selection, and Promotions

Many of the elements of APD's response to the requirements of the CASA related to recruitment, selection, and promotions of officers are also policy intensive. These policies were submitted and approved by the monitoring team during the previous reporting period. The monitor has no "output" data to use to assess the validity of these practices at this time.

2.1.8 Officer Assistance Programs

As of the close of the monitoring period, APD has provided critical training to supervisors at all levels of the organization concerning performance evaluations, and has developed plans for implementation moving forward. In addition, APD has committed to "major changes" in the Behavioral Science Division (BSD). That commitment has translated to the appointment of a new director of BSD and the development of extensive plans for changes within the division. The monitoring team would anticipate a great deal of change to staffing levels, policy, training, and supervision based on this new appointment. As these components of effective management come "on-line" in future monitoring reporting periods, the monitoring team will assess and report on their effectiveness.

Training protocols have been seriously delayed pending the development of outlines and syllabi and submission of those documents for review by the monitoring team. All BSD staff are qualified independently-licensed mental health professionals. Further, BSD continues to refine its training and outreach programs in response to known best practices, under the leadership of the new director. Policies are currently being reviewed and revised. Operational compliance is pending adherence to policy on a continued, evaluable basis.

2.1.9 Community Engagement and Oversight

APD has initiated several Problem-Oriented Policing practices in various neighborhoods, and is currently expanding officer participation is such

projects. Training and "implementation/expansion" on these practices remains on APD's "to do" list. To date, APD seems to continue to "miss" the essence of community-based policing. The monitoring team provided references to the DOJ COPS Office documents, inclusion of which in the department's training curricula for community engagement should greatly improve the "freshness" of their training processes. Further, APD's "outreach" training needs to reflect policy changes made by APD responsive to relevant paragraphs in the CASA. APD remains in the "planning stages" on much of its community outreach requirements. Further we note that the "shelf-life" of the Community Policing Councils (CPCs) is rapidly expiring. APD should consider what to do about extending these valuable entities past the original two-year timeline. Active integration of CPCs into APD planning modalities has yet to occur in any substantive way. Further, APD has published an SOP requiring officer attendance at CPC meetings. With the exception of publication of the SOP, all of these activities are "planned" during this reporting period. No data from the field were available to the monitoring team for this reporting period. We find it seriously concerning that, this late into the CASA, these "public-focused" elements appear to be foundering.

2.2 Self-Selected Data

During the monitor's presentation to the City and the Department of Justice selection interview, in the early stages of this project, the monitor made it clear that "self-selected data," e.g., provision of data selected by the City or APD would not be used by the monitor to evaluate APD's performance in responding to the requirements of the CASA. Instead the monitor advised the parties that the team would use only "normal course of business" data selected by the monitoring team either randomly or by taking a 100 percent sample of that data. That admonition was repeated again as the monitor worked with the Parties in developing a detailed monitoring methodology. It was repeated at least twice more during the early stages of the monitoring process. Despite those notices, the City continues to send self-selected data to the monitor. The first submission of self-selected data occurred early-on, with the City submitting to the monitor thousands of pages of self-selected data. We advised the City we would not accept those data as per our monitoring methodology and previous discussions. Despite that admonition, we have received at least two large sets of self-selected data from the City in the past few months, the latest coming early in the fourth reporting period, consisting of large volumes of data not asked for by the monitor.

Such submittals require huge expenditures of non-budgeted time to review, and directly violate the parties' agreements relating to this issue, established when the monitor outlined his strategies to the selection committee, and again when the Parties' approved the monitor's

methodology. We continue to stand by our original statements and agreements related to self-selected data, for obvious reasons. All information related to compliance assessments will be based on data selected and requested by the monitoring team.

During the fifth monitoring period, we will schedule a Parties' meeting to discuss this issue again, and to resolve it fairly and openly.

2.3 Summary

The "next step" for APD as it works toward compliance is building assessment tools designed to identify problematic behaviors, and developing effective practices that can be adopted by APD as it moves forward in its efforts to meet the individual and global requirements of the CASA. The monitor's reports are a good starting point.

As noted above, this report covers April, 2016 through July, 2016. APD has demonstrated apparent difficulties in operationalizing and implementing policing practices relative to training, supervision, and controlling uses of force. The monitoring team view this fourth report as a critical crossroads: we have identified clear, meaningful, and serious lapses in training, supervision, and oversight of uses of force, and have called to APD's attention additional problems in reporting, analysis, and assessment of police operations, including use of force, training assessment and control, supervision and leadership. **It is incumbent on APD to develop effective assessment and response protocols to the monitor's reports. These processes must clearly and effectively address the issues noted in each monitor's report if APD is to move forward**. To that end, the monitor has had an initial discussion with the Chief of Police regarding a way forward. We stand ready to continue those discussions with an eye toward building more effective policing practices for the City of Albuquerque.

In the coming months, the monitor will continue to work with APD's leadership, supervisors, and line officers to ensure they understand the requirements of the planned-change project that confronts them, and are successful in meeting their commitments to the residents of the City of Albuquerque.

Finally, we cannot emphasize enough the need for APD to "dissect" carefully each monitor's report and to develop strong, clear, specific guidance from the executive level to the operational level about:

1. What problems were noted in the monitor's reports?
2. What priorities exist for rectifying issues noted in the monitor's reports?

3. What mechanisms are best suited for addressing identified problems?
4. What measurement and assessment mechanisms will best identify if progress is being made in addressing those issues?
5. Who is responsible for design, assessment, implementation and evaluation of the modalities selected to respond to the monitor's concerns?
6. How will those assessment processes be communicated to command and executive personnel and the community? and
7. How will APD know when an identified problem has been "corrected?"

At the present time, it appears that no such "after-action" assessment process occurs.

Without tight, executive-level "command and control" it appears that these steps will not be taken. If this is so, the final result will be monitor report after monitor report that identify over and over the same issues preventing compliance. We see this as a critical issue.

2.4 EPILOGUE

Monitor's reports almost exclusively focus on the time frame for a given piece of the CASA. In the case of IMR-4 that would-be April -July (inclusive), 2016. However, recent developments militate for inclusion in this report of information about events occurring after the end of reporting period for IMR-4. In late September, 2016, the monitor and executive staff for APD spent a substantial amount of time discussing a "way forward" for APD's compliance efforts, and the processes underlying those efforts.

APD has reached out to identify resources to build its ability to assess and react to monitoring reports in a strategic manner: making the effort to locate training sources with the ability to "train up" APD command staff in developing processes capable of building coherent responses to issues identified in each monitoring report.

The monitoring team take this as a good sign. As APD moves forward with this process, it is incumbent on the agency to use past monitor's reports as a starting point. Each monitoring report is an in-depth, fact-based, and detailed assessment of where APD stands at a given point in time.

Four things need to happen if this plan is to succeed:

First, APD needs to carefully adapt the *Six Sigma* approach to the policing environment (*Six Sigma* is a business-centric process which the monitor adapted

for use in monitoring the Pittsburgh Police Department in 1997, and updated for this project with APD);

Second, APD needs to identify the critical path necessary to solve the issues identified in each successive monitor's reports[6];

Third, APD needs to structure, engender and motivate a command staff capable of taking each section of the monitor's reports—and the issues identified therein—and forging detailed, time-lined objectives that need to be accomplished to achieve results; and

Fourth, APD needs to carefully monitor process and outcome variables to determine, as early as practicable, if its chosen change modalities are having the desired outcomes.

This approach to responding to monitor's reports proved successful in Pittsburgh, New Jersey, and Los Angeles. There is no reason why is should not be effective in Albuquerque.

[6] This would entail "going back" over each monitor's report and ensuring that all "issues" identified by the monitoring team are included in an "action plan."

3.0 Articulation of Findings

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

- Accomplishments; and
- Outstanding Issues.

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

3.1 Accomplishments

Importantly, APD has accomplished several key milestones during the fourth reporting period. Most significantly, the department has completed policy development on the specific requirements for policy that were articulated in the CASA. All of the policies the APD have submitted have been approved by the monitor and DOJ, with one exception. During the policy development process, we found it difficult to come to agreement with how the "bite ratio" related to canine deployments would be calculated. The City favored strongly the "gross measure," i.e., calculating the bite ratio by dividing the number of bites by total deployments. DOJ and the monitor favored just as strongly the "specific measure," i.e., calculating the bite ratio by dividing the number of bites by deployments in which a subject was encountered. The monitor repeatedly asked the City for extant "model policies," which they assert are supported by the National Tactical Officers Association. None were forthcoming. As a compromise, the parties have agreed to conduct an implementation and six-month review of canine deployments at APD. Final approval of the canine policy will be reserved until that trial "definitional" process is implemented and assessed by the Parties.

Obviously, APD has "broken the log-jam" on policies. In the months since the end of the third reporting period, newly revised policies have been forwarded to the monitoring team at a rate well exceeding previous rates, and as of the end of the fourth reporting, the monitor has approved all 37 "required" policies.[7]

Further, the APD has "re-grouped" its policy development process, combining several previously related tasks, completed by various entities within APD, into a centralized Office of Policy Analysis (OPA) which will

[7] Final approval of the Canine policy is reserved as stated above.

broaden the scope of community consultation and input, refines the policy analysis "flow," more clearly articulates responsibilities of the various offices and processes working on the policy process, and incorporates the services of newly hired "technical writers" who will provide the APD much needed technical support in taking disparate policy requirements and distilling them into workable wholes, thus hopefully vastly improving the policy product.

Moreover, as of the end of the third reporting period, the APD began training field officers and supervisors on the newly developed use of force policy, which constitutes a major milestone for the agency. Members of the monitoring team and representatives of the DOJ reviewed the training and made comments and suggestions to APD based on those reviews. Not all of the comments were accepted and implemented in the delivered training. As a result, in this report, we note 17 specific issues with the use of force training, identifying them for remedial work by APD. We view this simply as a result of APD insisting that the monitoring had no CASA-specific "authority" to review and approve training.

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

3.2 Outstanding Issues

In IMR-3, the monitor noted four "critical outstanding issues" remaining noting that "APD is still in the formative stages of assessment, development, and response to the full requirements of the CASA, and such systems, in the previous experience of the monitor, take time, careful planning, attentive development, and critical self-evaluation. The outstanding issues identified at that point were:

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

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

3.2.1 Building Strong Administrative Systems

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

1. Development of clear, concise, trainable, supervise-able, and evaluable policies that are congruent with State and Federal law and "best practices" in the field;

2. Routine, methodical, and pervasive assessments of citizen-police interactions to ensure that policing practice conforms to policy;

3. Identification and clear and consistent remediation of interactions that do not conform to policy;

4. Establishment of "learning cycles" designed to assess interactions that do not conform to policy, identify how and why those interactions occurred, and develop responses to ensure, to the extent possible, they do not occur again; and

5. Build feedback loops between policy-training-supervision-discipline-administration and leadership to foster "early warning" of trends that run counter to established policy and practice.

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

APD has, at the current time, achieved most of the first item: policy development. Obviously, most of the following work is dependent upon "good policy."

3.2.2 Building Reliable Use of Force Reporting Mechanisms

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

Again, in IMR-3 we noted "To date, we have seen little evidence of a coherent "command and control" function establishing clear, attainable, and reasonable processes for supervisory and command review of officers' in-field actions relating to policing practices, particularly use of force." The majority of problematic instances noted in the past three site visits have not tended to result in appropriate supervisory and/or command-level reviews, assessments, findings, and responses to behavior that occurs in contradistinction to the requirements of the CASA. For example, this reporting period, the monitoring team noted three incidents of improper or "out of policy" uses of force by a single officer. APD review, apparently, noted only one of those as part of its required supervisory and command review of use of force.

In addition, we often found examples of language from supervisory and command levels "minimizing" or "rationalizing" out-of-policy behavior, as opposed to noting it formally and requiring retraining or other remedial steps to ensure the out of policy behavior was not repeated. Systems designed to achieve this goal appear to be at times "undermined" during training, noting, for example the changes being trained are "required by DOJ," instead of APD owning those changes "for the betterment of the organization." While the monitoring team has noted incidents of excellent supervisory and administrative response to "out of policy behavior," we suggest APD needs to re-double its efforts to ensure that supervisory and command staff are universally "on board" on this critical requirement.

At this point, it appears that the monitoring team is the only systemic overseer of on-street activities of APD's officers. Past notification to the APD of problematic behavior have resulted in piecemeal, uneven, or, in some cases no, responses by APD, even after questionable incidents have been brought to APD's attention by the monitoring team. Officers identified in monitoring reports who needed retraining were not adequately processed for that retraining. Incidents resulting in out-of-policy behavior, such as applications of neck holds, have not been adequately processed (and in fact some evidence related thereto has "gone missing" to routine location and review). It is apparent that some supervisors, in "writing up" reviews of officer behavior, tend to supplement their write-ups with exculpatory, conclusory, or other

language minimizing what actually happened. At this point, a lieutenant or commander would be expected to identify such language and counsel the supervisors using such practices. To date we have noted few instances of such self-initiated corrective behavior on the part of supervisors, lieutenants or commanders.

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

Given the facts articulated in this report and an interim "Special Report" on APD's use of force practices, we judge that cultural change not to be substantially engendered at this point. Much work remains to be done, although APD has "begun the process."

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

In IMR-3 we noted: "Based on the monitor's experience in assessing compliance in other police agencies, the process of compliance requires an integrated approach to organizational development and planned change. Creation of disparate and un-related individual "systems" simply does not work. A complete whole is needed to address fully the issues raised in the CASA. To date, the product produced by the City, and under evaluation at this point in time, appears to be a "collection of parts," as opposed to an integrated system consisting of policy-driven policing, well supervised, carefully self-audited, self-correcting, and evolving along carefully thought-out paths as its environment changes, i.e., a learning organization, responding to nascent situational cues in a thoughtful, coherent, integrated manner. [8]"

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

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

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[8] Senge, P. M., *The Fifth Discipline*: The Art & Practice of the Learning Organization, Crown Publishing Group, 2010.

3.2.4 Creating a Culture of Accountability within APD

In IMR-3 we noted: "Supervisory response to use-of-force and related issues is delayed because *training* has been delayed (as it cannot be adequately structured without an understanding of the underlying policies). Training is delayed because *policy* was delayed. For example, the Use of Force policy "suite" was approved by the monitoring team in late January, 2016. Training on that topic by APD began only a few days after the supporting policies were finalized, leaving APD training staff very little time to ensure that training curricula were specifically related to new policy. The same issues confronted the monitoring team as they began to assess the quality of training provided by APD to supervisors who will be eventually tasked with reviewing officer use of force processes, identifying issues (if any) with uses of force and other key operational tactics, and establishing remedial recommendations to ensure that errors are eventually eliminated to the extent possible. The critical issue confronting the monitoring team and the APD is to identify why critical components of CASA compliance are continually running behind expectations, and, as a result push problems "down-line."

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

We continued, giving APD specific incidents indicative of un-remedied actions or events. Based on our review of APD's use of force system this reporting period, the agency has not yet moved forward with a system designed to craft, structure, implement, and maintain officer accountability for use of force. We have identified repetitive examples of such failures in our Special Report, filed with the Court in September, after having been delayed by the City's motion to censor the report.

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

It appears that the APD has adapted a reactive response process, viewing each monitor's report as an event to be "managed," rather than as a highly detailed and specific identification of internal supervisory, management and leadership issues that must be addressed in an organized problem-solving and reform effort. What is required for success, in the monitoring team's opinion, is a problem-identification and problem-solving process designed to carefully assess each section of the monitor's reports and to specifically and assiduously identify concrete "action steps" designed to analyze each "issue" noted in the monitor's reports and to develop clearly articulated goals, objectives, processes, and evaluative mechanisms to address each of those issues.

The monitoring team has had a detailed conversation with the Chief of Police relative to a six-step response mechanism for each monitor's report. We will continue to support APD, as requested, in a thoughtful process designed to change and improve APD's response modalities relating to the monitor's reporting process.

4.0 CURRENT STATUS

As part of the monitoring team's normal course of business, it established a base-line assessment of all paragraphs of the CASA for the Independent Monitor's first report, (IMR-1). This was an attempt to provide the Parties with a snapshot of existing compliance levels and, more importantly, to provide the Parties with identification of issues confronting compliance as the APD continues to work toward full compliance. As such, the baseline analysis is considered critical to future performance in the APD's reform effort as it gives a clear depiction of the issues standing between the APD and full compliance. This report, IMR-4, provides a similar assessment, and establishes a picture of progress on APD goals and objectives since the last report.

4.1 Overall Status Assessment

While it is true that the monitoring component of this process began late (due to funding issues, etc.), the monitor is concerned that the City's focus on deadlines (at times to the exclusion of an insistence on quality) is leading to delay in getting quality policies, procedures, and training in place. Again, this is reflective of the four-year timeline originally allotted for compliance at the City's insistence.

4.2 Dates of Project Deliverables

Project deliverables are defined by the Agreement governing the parties' response to the CASA, (DOJ, the City, APD, and the Albuquerque Police Officers' Association (APOA)). Dates for deliverables for this report are April-July, 2016, inclusive.

4.3 Format for Compliance Assessment

The Monitor's Reports are organized to be congruent with the structure of the Agreement, and specifically reports, in each section, on the City's and APD's compliance levels for each of the 278 individual requirements of the CASA.

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

I. Use of Force;

II. Specialized Units;

III. Crisis Intervention;

IV. Policies and Training;

V. Misconduct Complaint Intake, Investigation and Adjudication;

VI. Staffing, Management, and Supervision;

VII. Recruitment, Selection and Promotions;

VIII. Officer Assistance and Support; and

IX. Community Engagement and Oversight;

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

4.4 Compliance Assessment Processes

The following sections discuss the City's compliance efforts over the past four months**.** Members of the monitoring team have collected data concerning the APD's compliance levels in a number of ways: through on-site observation, review, and data retrieval; through off-site review of more complex items, such as policies, procedures, testing results, etc.; through review of documentation provided by APD or the City which constituted documents prepared contemporaneously during the normal daily course of business. While the monitoring team *did* collect information provided directly by APD in response to the requirements of

the Agreement, those data were never used as a sole source of determination of compliance, but were instead used by the monitoring team as explanation or clarification of process. All data collected by the monitoring team were one of two types:

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

Under no circumstances were the data selected by the monitoring team based on provision of records of preference by personnel from the City or APD. In every instance of selection of random samples, APD personnel were provided lists of specific items, date ranges, and other specific selection rules, or the samples were drawn on-site by the monitor or his staff.

Data requested for the Monitor's third report were selected by March 31, 2016, allowing time for APD to identify, collect and respond to the data request, and to allow members of the monitoring team ample time to sort, organize, assess and evaluate the data provided, prior to writing this report. The same process will be adhered to for all following reports until the final report is written.

4.5 Operational Definition of Compliance

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

- **Primary Compliance**: Primary compliance is the "policy" part of compliance. To attain primary compliance, APD must have in place operational policies and procedures designed to guide officers, supervisors and managers in the performance of the tasks outlined in the CASA. As a matter of course, the policies must be reflective of the requirements of the CASA; must comply with national standards for effective policing policy; and must demonstrate trainable and evaluable policy components.
- **Secondary Compliance**: Secondary compliance is attained by implementing supervisory, managerial and executive practices designed to (and effective in) implementing the policy as written, e.g., sergeants routinely enforce the policies among field personnel and are held accountable by managerial and executive levels of the department for doing so. By definition, there should be operational artifacts (reports, disciplinary records, remands to

retraining, follow-up, and even revisions to policies if necessary, indicating that the policies developed in the first stage of compliance are known to, followed by, and important to supervisory and managerial levels of the agency.

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

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

4.6 Compliance Assessment Processes

The following sections discuss the City's compliance efforts over the past four months**.**

4.7 Operational Assessment

4.7.1 Assessing Compliance with Paragraph 14

Paragraph 14 stipulates:

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

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

another person or persons; to overcome active resistance; or as objectively reasonable where physical removal is necessary to overcome passive resistance and handcuff the subject;

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

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

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

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

Methodology

The monitor evaluated APD policy requirements relating to this paragraph in IMR-3 and the department was found in Primary Compliance following the approval of SOP 2-52. As APD reaches its 6-month policy review interval, the monitoring team will look heavily upon APD's review of SOP 2-52, and their ability to make necessary modifications to that policy. During its site visit in June 2016 the monitoring team provided specific recommendations that should be considered to either address or close gaps that will support the CASA requirements and help APD reach operational compliance. A word of caution is appropriate relating to APD's management of use of force policies. Following SOP 2-52 being approved in January 2016, the monitoring team observed that at least two modifications of the policy occurred by April 1, 2016. While the modifications may have been nominal, these changes also pushed back the review interval. Therefore, while APD may have made a minor correction to the policy, in practical terms the timeliness for review of more critical parts of the policy were delayed.

Results

APD has achieved Primary Compliance on all of the requirements set forth in this paragraph with the monitor's approval of Standard Operating Procedure (SOP) 2-52 Use of Force, dated January 8, 2016. However, the requirement in sub-section h) was modified by mutual agreement of the parties to add a Show of Force classification which falls below Supervisory Use of Force investigations. The only reference to Show of Force investigations is found in SOP 2-52 in the Definitions section, designated as Letter S, which provides: "Pointing a firearm or ECW (sparking or painting with the laser) at a person and acquiring a target. This is reportable as a Show of Force and investigated by the officer's chain of

command." It does not appear that APD has developed procedures for conducting Show of Force investigations in any of its force-related policies to implement this requirement. Thus, incorporation of such documents and training will be necessary prior to attaining full compliance with this task.

To facilitate a timely compliance assessment of both the 40-hour Use of Force Curriculum and the 24-hour Supervisory Use of Force Investigations Curriculum, the monitoring team asked APD staff to develop a matrix that correlated the CASA requirements with the pertinent course documentation and actual classroom instructional materials (e.g., the PowerPoint presentation, handouts). We also requested they add a column for instructor inputs on how each requirement was covered. This provided a paragraph-by-paragraph spreadsheet that enabled the monitoring team to conduct a thorough review and to assess the correspondence between CASA requirements, APD policy, the course documentation, and actual instruction. It also enabled the monitoring team to compare that assessment with its own personal observations of selected blocks of instruction in the 40-hour Use of Force Curriculum.

We would be remiss if we didn't express our appreciation to APD staff for the quick turnaround on our request and the excellent work that they did in producing a professional and comprehensive analytical matrix. Without it the task would have taken longer and been far more burdensome. [9] As substantiated by the matrix, the monitoring team's review of course documentation, and our personal observations, APD, as noted above, still needs to refine and train the topics of "show of force," as included in APD practice, and needs to formalize that process into written policy and training at the supervisory level.

Notwithstanding that assessment, we hasten to add that the monitoring team has noted significant confusion over the actual meaning of language in the Show of Force definition, as indicated by interactions with APD command and supervisory personnel that arose during the monitoring team's June visit. In a meeting with training staff, it became apparent that the existing language in the Show of Force definition needed clarification. This is due to the fact that there is a conflict between what APD teaches in firearms instruction and the SOP definition: "Pointing a firearm…at a person and acquiring a target." During our site visit several APD officers, at various ranks, were questioned as to their interpretation of what constituted a Show of Force, in mechanical terms. The monitoring team was met by at least three explanations of what would constitute a Show of Force. The confusion is centered on the phrase "acquiring a target", which was not an element of the CASA.[10] In fact, APD training staff acknowledged in the meeting, and agreed, that some form of supplemental training would be required to clear

[9] This will also prove to be a valuable analytical tool in future APD projects.
[10] While reviewing APD's 24-hour Supervisor Course the monitoring team believes there was sufficient confusion by supervisors attending that training to warrant some type of supplemental instruction.

up confusion that may exist in the department. It is essential that this issue be resolved during the six-month review of the use of force policy to ensure that firearm displays are being classified and reported properly. We reiterate here --- as we did within IMR-3 --- that without specific protocols governing Show of Force investigations APD may encounter wide variations of performance across organizational commands as to how Show of Force incidents are investigated, and the quality of those investigations. The monitoring team believes that significant deference and latitude is given to field Commanders to handle issues with officer performance. In most instances that is appropriate and expected. However, APD needs to be diligent to ensure wide variations do not occur at the operational levels of the organization with respect to the proper handling of Use and Show of Force events. If that occurs, APD will undoubtedly encounter future difficulties as operational compliance with the CASA is measured.

The monitoring team reviewed videotaped portions of the 24-hour Supervisor Use of Force Training and noted a couple of areas of concern relevant to this paragraph. Though described in greater detail in Paragraph 88, the monitoring team believes that supervisors may have left that particular training session confused, in some measure, over the proper handling of use of force cases involving leg sweeps and neck holds. APD trainers must be particularly cautious with "off the cuff" remarks or commenting on personal opinions that are not grounded in APD policy or CASA requirements. The concerns are not significant enough to negate APD training compliance with this specific paragraph, but APD should take careful consideration of the importance of trainers teaching the relevant law, their policy and CASA requirements. Instructors should always operate under the basic philosophy "If you said it, you trained it", in particular when the department is at the initial stages of reform and cultural change.

Primary: **In Compliance**
Secondary: **Not In Compliance**[11]
Operational: **Not In Compliance**

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

Paragraph 15 stipulates:

"APD shall develop and implement an overarching agency-wide use of force policy that complies with applicable law and comports with best practices. The use of force policy shall include all force techniques, technologies, and weapons, both lethal and less lethal, that are available to APD officers, including authorized weapons, and weapons that are made available only to specialized units. The use of force policy shall clearly define and describe each force option and the factors officers should consider in determining which use of such force is appropriate. The use of force policy will

[11] Secondary compliance is pending resolution of the show of force issue by training.

incorporate the use of force principles and factors articulated above and shall specify that the use of unreasonable force will subject officers to discipline, possible criminal prosecution, and/or civil liability."

Methodology

APD achieved Primary Compliance on all of the requirements set forth in this paragraph with monitor approval of three core force-related policies in early 2016: SOP 2-52 Use of Force; SOP 2-53 Electronic Control Weapons (ECW); and, SOP 2-54 Use of Force Reporting and Supervisory Force Investigations. These policies are due to undergo a required six-month review to ensure that they are updated as needed, revised to provide greater clarity and completeness, and that they remain internally consistent. The approved policies served as the basis for development of both the 40-hour Use of Force Curriculum and the 24-hour Supervisory Use of Force Investigations Curriculum, which were presented in the first half of 2016. During its last site visit the monitoring team discussed several issues of concern with training staff, which we believe has direct impact on secondary compliance with this paragraph.

Results

During the monitoring team's June 2016 site visit, we identified a similar set of concerns that bear directly on the issue of Secondary Compliance, which expressly requires that "[t]he use of force policy shall clearly define and describe each force option…." In our view, the 40-hour Use of Force Curriculum left the following policy provisions unclear and, therefore, not in Secondary Compliance until supplemental training is developed and delivered to clarify those provisions. These include:

1. There is confusion over language in the Show of Force definition, to wit, pointing a firearm...at a person and acquiring a target." It appears that there is a conflict between the interpretation of this provision and what is actually taught in APD firearms instruction. Therefore, supplemental training is clearly required.
2. Two SCOTUS firearms cases were included in the instruction, though they do not align closely with APD use of force policy. We asked APD for their perspective, reviewed the instructor's explanation for their inclusion and re-checked the course documentation to assess whether adequate qualifications were made to put them in proper context. After doing so, because of the significance of provisions of Paragraph 22, we believe that some form of supplemental training is also required to resolve any confusion and reiterate the stricter APD policy provision. (Quite frankly, there was little reason to include them in the instruction in view of their obvious disconnect with APD's three-prong use of force standard.)

3. Distraction strikes, which we flagged in our recent Special Report, should be addressed both in policy and in use of force training. There is significant confusion about their place in APD's Tactical Array and their classification as a reportable use of force. These need to be resolved definitively, and incorporated into APD's overall use of force policy.
4. Un-resisted handcuffing and escort holds require further clarification. The term "secondary action" was used in the 24-hour Supervisory Use of Force Investigations Curriculum in an attempt to demarcate the point at which those two techniques escalate to a reportable use of force. That term may be helpful, but it should be integrated into policy before it is taught as the "bright line" separating these two low-level, non-reportable instances of force from reportable force. Academy staff has developed a fairly well-done video to accomplish the same objective, but we are unclear about its status. APD should evaluate whether these two approaches present an opportunity for conceptual integration.

According to APD, the academy was responsible to train 839 officers (including all ranks) in the 40-hour Use of Force training curriculum. The monitoring team reviewed course of business documentation that the academy provided and learned that twenty-seven officers were on various types of authorized administrative leave, leaving 812 officers that were available to attend the training. APD documentation reported that of the 812 officers available to attend the training, 802 attended the program for a 98.7% attendance rate. Parenthetically, it is common for police departments to have officers with outstanding training requirements due to administrative leave. The monitoring team will follow up with APD to provide records that demonstrate the remaining officers received their initial 40 hours of use of force training during the next site visit.

APD now is in Primary Compliance, but will not achieve Secondary Compliance until the open issues enumerated above and in other sections of this report are settled with appropriate supplemental training. Other issues continue to plague APD's compliance efforts with this paragraph. For example, in the monitor's "Special Report" on use of force at APD, filed with the Court on September 16, 2016, we noted the following:

> "At this point the monitoring team believes that even legitimately questionable use or shows of force cannot survive APD's process, since each step appears preconditioned to rationalize or explain away officer conduct. Likewise, it appears to the monitoring team that APD sees many of the missed opportunities as "water under the bridge" and not events that should be reinvestigated --- or in cases that were missed, investigated at all. The agency has almost no appetite for correcting behavior that violates existing policy. Therefore,

it is nearly impossible at this point to rely on force data that APD reports" (emphasis added).[12]

Until officers accurately report their uses of force, and until supervisors review those reports with an eye toward adherence to established policy (and eventually training) the APD's use of force "statistics" will remain problematic, in the monitor's view.

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

4.7.3 Assessing Compliance with Paragraph 16: Weapons Protocols

Paragraph 16 stipulates:

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

Methodology

With the exception of Electronic Control Weapons (ECW), APD retained policy and procedures for all of the tools and techniques approved for field use within the body of SOP 2-52 Use of Force (January 21, 2016; Revised April 1, 2016), which is APD's overarching, main directive on the use of force. ECW was covered in a separate SOP (2-53) that was approved in early January 2016. The Department included a four-hour block of instruction on ECW policy and procedures in its 40-hour Use of Force Curriculum that was presented in the first half of 2016 (the attendance rate is reflected in the narrative on Paragraph 15).

Results

The monitoring team attended one of the four-hour blocks of instruction during its site visit. As was the preceding instruction on the use of force generally, the instructor was well qualified and a skilled presenter. In addition to personal observation of the instruction, the monitoring team also reviewed course documentation and classroom materials, including the PowerPoint presentation and handouts. As a result, the monitoring team finds that APD is in both Primary and Secondary Compliance on the requirements in Paragraph 16.

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[12] *Special Report of the Independent Monitor: Use of Force Policy, Supervision and Management at the Albuquerque Police Department*, September 16, 2016.

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

4.7.4 Assessing Compliance with Paragraph 17: Weapons Modifications

Paragraph 17 stipulates:

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

Methodology

APD SOP 2-52 "Use of Force" and SOP 2-55 "Use of Force Appendix" has been approved having been subjected to best established pattern and practice in the field, and to the requirements stipulated in the CASA. The monitoring team reviewed other Course of Business (COB) documentation that was requested during the fourth site visit.

Results

The monitoring team noted in prior reports that via COB documentation, APD successfully completed its transition to Department-provided firearms in 2015, had clear qualification standards for the issuance of patrol rifles, and also had procedures in place to conduct firearms remediation subsequent to qualification failures. APD has provided extensive documentation, including a Firearms Remediation Lesson Plan, remediation records of officers who failed to quality, and authorization forms for the issuance of patrol rifles, which attest to the ongoing soundness of these programs.

The monitoring team also reviewed an Excel Spreadsheet "2016 Day Qualifications: Jan. to Feb. 15". A total of 349 officers are listed in this document. The monitoring team requested, but did not receive an updated list for 2016 Firearm qualifications through the July monitoring period. The monitoring team will meet with firearms training staff during its next visit to determine the actual level of compliance and discuss how failures are documented and tracked through remediation and clarity in the process of re-qualifying after an initial "failure to qualify".

Additionally, the monitoring team was unable to locate clear procedures for re-qualifying officers returning from various types of authorized leave.

This is a risk management and officer safety concern, and inconsistent with contemporary professional standards. During the fourth site visit we requested data that would verify the existence of such protocols and whether any officers returning from leave status underwent re-qualification before re-assuming field duties. The data that we received was not sufficiently clear to assess compliance.

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

4.7.5 Assessing Compliance with Paragraph 18: On-duty Weapons

Paragraph 18 stipulates:

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

Methodology

APD received monitor approval of SOP 2-52 "Use of Force" and within that policy specific language exists in Section 2-52-5-D that addressed the provisions of this paragraph. The monitoring team will continue to evaluate training and other progress toward full compliance with this task. The monitoring team reviewed additional course of business documentation to determine if APD supervisors were conducting field inspections related to this paragraph.

Results

The policy provisions set forth above satisfactorily meet the provisions of this paragraph. The monitoring team reviewed APD course of business forms that are used to conduct monthly inspections to verify compliance with equipment and appearance standards. Plans are underway to automate the supervisor's monthly inspection report and include suggestions made previously by the monitoring team—including ECW placement and a complete item-by-item list of required safety equipment.

As a parenthetical, members of the monitoring team have been observing ECW placement in all interactions and observations of APD personnel since early in the monitoring process. In no instances to date, have the members of the monitoring team seen any APD personnel with their service firearm and ECW on the same side of their bodies. We will continue our observations, and will supplement those with roll-call inspections and other mechanisms as the monitoring project proceeds. We are unaware of any APD formal inspection mechanisms for such requirements, which we strongly recommend. Once the monitoring team

leaves, some form of routine inspection will be necessary. To date, we have observed no routinely created COB reports indicating spot, or rollcall-related inspections related to this paragraph.

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

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."

Methodology

As of the fourth site visit all sworn personnel had completed the transition to APD authorized weapons, with only a few exemptions due to administrative leave, FMLA and Military duty. Additionally, the monitoring team has requested other information, including processes or methods to flag those officers, from a training perspective, once the officers return to work. The data that we received were not sufficiently clear to assess Secondary or Operational compliance.

Results

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

The monitoring team also reviewed APD Administrative Order 3-75 Department Property, dated November 6, 2012, which set forth detailed procedures for the issuance and control of Department property, including all items within the Department's Tactical Array. APD has

reviewed and updated this order to ensure that it is consistent with any changes to related policies and CASA requirements.

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

4.7.7 Assessing Compliance with Paragraph 20: Weapons Qualifications

Paragraph 20 stipulates:

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

Methodology

The monitor approved SOP 2-55 "Use of Force Appendix," dated February 12, 2016. SOP 2-55 was promulgated to supplement APD's Use of Force Policy (2-52) and set forth minimum training requirements for various force options, including firearms. The monitoring team also reviewed SOP 2-22 "Firearms and Ammunition Authorization," which exists in different iterations in different locations in the department.

Results

The monitoring team's assessment of SOP 2-55 revealed that APD's requirement to mandate annual firearms training is satisfied in that Procedural Order. As we have noted on numerous previous occasions, APD still needs to reconcile various iterations of Procedural Order 2-22, and other internal policies, that exist in different locations and are accessible to APD officers. The issuance of a monitor-approved version of SOP 2-22 should reconcile these procedural deficiencies, but work needs to be done to ensure that firearms remediation protocols are specific and clear, and consistent[13].

[13] The monitoring team has frequently advised APD that it needs to "clean" its policy and operations writing practices to ensure that only one version of any given policy or procedure exists "officially" at any given time, yet we continue to find numerous policies with differing

The monitoring team has commented positively on the remediation efforts that were conducted after qualification failures. The approach of the involved range masters was analytical, supportive, and out-come based. Their work was also well documented. However, in prior reports, we raised several questions about remediation procedures that still need clarification. Our questions related to the intervals that were allowed between qualification failures and successful remediation, which we have found to be listed in various documents as five days, seven days and 30 days. This remains a concern because of the severe consequences of an adverse event involving an "unqualified" shooter. We also asked, "When does an officer lose his privilege to carry a specialized weapon after a qualification failure. Is it immediate or is a seven-day period to remediate and re-qualify permitted?" Both issues require clarification and decision rules that satisfy risk management concerns. We have yet to see a definitive answer to those questions. Given the severity of potential outcomes and liability exposure, until APD resolves those issues, the monitoring team finds APD Not in Compliance with paragraph 20.

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

4.7.8 Assessing Compliance with Paragraph 21: Firearms Training

Paragraph 21 stipulates:

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

Methodology

Section 2-52—5-D of APD's approved Use of Force policy covers the requirements of this paragraph. The monitoring team also reviewed a Basic Academy lesson plan, "Handgun Training and Certification," that provides detailed instruction on holstering, un-holstering, and re-holstering a firearm in Section 7, page 17 of the lesson plan. At this stage, however, the monitoring team has not yet visited a Basic Academy or range session to verify instruction in these procedures first-hand. This issue was not covered during several range visits that the monitoring team made to observe firearms training in its last two visits.

Results

numbers and titles addressing apparently the same topic. We do note, however, that some progress has been made on this front.

Based upon approved APD policy and the detailed lesson plan supporting training in the requirements of Paragraph 21, the monitoring team finds that APD is in Primary Compliance with respect to the requirements in this paragraph. Secondary Compliance will require a visit to a future Basic Academy or range session to verify that the instruction conforms to the lesson plan.

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

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

Paragraph 22 stipulates:

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

Methodology

The monitor has approved SOP 2-52 "Use of Force," and within that policy specific language exists in Section 2-52-3-F that addressed the provisions of this paragraph. The monitoring team also reviewed lesson plans for APD's 40-hour use of force training, which was scheduled to be delivered to the entire department.

Results

It has been difficult to assess compliance with the requirements in this paragraph for several reasons: First, these incidents have been relatively infrequent during the past two years; second, though we have asked several times for closed Officer-involved Shooting (OIS) cases to review, APD has advised each time that no case is available; third, we have been further advised that many active OIS cases are backlogged in the District Attorney's Office or still being held by the investigating detective. We are aware of the backlogged cases caused by long delays in the District Attorney's Office and commented on that problem critically in past reports. In the one instance we requested a specific OIS case involving a vehicle, we were told that the investigator was still working on it (more than a year had passed since the incident) and it would be available in July. The monitoring team checked back with APD in July and learned that the case still had not been completed. We have yet to see a copy of the case, which again

precludes any review to determine compliance with the provisions in this paragraph. Such unexplained and drawn-out delays are problematic for several reasons:

- First, they avoid identifying problematic practices, or potentially problematic policy provisions;

- Second, they deny APD and its sworn personnel valuable "lessons learned" from the analysis and fact finding that should occur in such events;

- Third, they tend to create doubt and distrust in a community already focused on such issues; and

- Fourth, they leave the involved officers and their families "hanging" not knowing the outcome of potentially damaging incidents for months or longer.

The monitoring team has approved APD's use of force policy and the provisions of this policy were covered during multiple sessions of the 40-hour Use of Force Curriculum that were presented in the first half of 2016 -- the monitoring team was able to observe a training session related to this paragraph. However, during the course the APD participants were provided instruction based on a US Supreme Court decision that is less restrictive than APD's CASA requirement. As noted in Paragraph 15, the monitoring team asked APD for their perspective, reviewed the instructor's explanation for the case's inclusion and re-checked the course documentation to assess whether adequate qualifications were made to put them in proper context. After doing so, we believe that some form of supplemental training is also required to resolve any confusion and reiterate the stricter APD policy provision. Hence, APD is in Primary Compliance with respect to Paragraph 22. Once the monitoring team is presented with training materials related to this training gap and COB records of attendance secondary compliance will be assessed. It is our understanding that several training gaps identified throughout this report will be addressed in supplemental training that is delivered either in-person or through some form of remote, on-line training platform.

The monitoring team will continue to request copies of any closed OIS cases involving a vehicle throughout the next reporting period. However, if backlogs at both points in the process continue, the monitoring team will be unable to assess Operational Compliance and this task will unavoidably slip to 2017.

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

4.7.10 Assessing Compliance with Paragraph 23: Tracking Firearm Discharges

Paragraph 23 stipulates:

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

Methodology

In our last report, the monitor reported that APD was building a comprehensive Early Intervention System (EIS) and an accompanying EIS policy to meet the requirements of Paragraph 23. While the EIS program is "up and running, the EIS **system** continues to be "under development."

Results

It remains unclear to the monitoring team if APD's Early Intervention System (EIS) is fully operational in terms of reliable data entry into the system and the issuance of regular alerts based upon established thresholds. The monitoring team conducted a major review of one use of force case during this reporting period that revealed serious deficiencies in how APD's EIS functions in practice. Although the EIS issued successive alerts on two officers with disproportionate involvements in use of force incidents over several months, the field response was untimely, superficial, and ineffective. Thus, while the technical system may be working, its use as a supervisory and management tool has been called into serious question. It appears that EIS was shut down for a period of time during this reporting period because, as a member of the monitoring team was informed, it "triggered too many alerts." We continue to express concern about the system's functioning and APD's use of its guidance.

The monitoring team will conduct an in-depth examination of EIS during the next reporting period. Our assessments to date have left us with the impression that this component of APD's use of force oversight and accountability system is performing poorly---particularly at the operational level--- at the present time.[14]

[14]During an exit briefing, as noted above, the monitoring team was informed by APD staff that their EIS had been de-activated because it was generating "too many alerts". Simply shutting the system down seems extreme to the monitoring team without first conducting an analysis of how and why the system is performing at a particular level. In our experience, there will always be questions regarding appropriate alert thresholds within an EIS and the rate at which an EIS

The monitoring team also reviewed APD's 2015 Annual Report, which includes limited and very general data on firearms discharges. To paint a more complete picture of these incidents, APD should consider adding important circumstances---such as whether suspects were armed, the level of resistance, the underlying type of call to which officers responded, and whether lesser force was used to no avail---to the report. Otherwise, readers are left to draw conclusions based upon limited data.[15]

Other issues continue to plague APD's compliance efforts with this paragraph. For example, in the monitor's "Special Report" on use of force at APD, filed with the Court on September 16, 2016, we noted the following:

> "At this point the monitoring team believes that even legitimately questionable use or shows of force cannot survive APD's process, since each step appears preconditioned to rationalize or explain away officer conduct. Likewise, it appears to the monitoring team that APD sees many of the missed opportunities as "water under the bridge" and not events that should be reinvestigated--- or in cases that were missed, investigated at all. The agency has almost no appetite for correcting behavior that violates existing policy. Therefore, it is nearly impossible at this point to rely on force data that APD reports" (emphasis added).[16]

Until officers accurately report their uses of force, and until supervisors review those reports with an eye toward adherence to established policy (and eventually training) the APD's use of force "statistics" will remain problematic, in the monitor's view.

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

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generates false positives. In view of the EIS's important role in APD's oversight system, we will monitor the status of EIS closely to ensure that critical issues are being addressed and resolved.

[15] We appreciate that there are limits to how much data can be presented in APD's Annual Reports, but the present level of detail provides no insights about context. Should it be necessary, a more detailed, in-house document may need to be created focusing on OIS and firearms discharges—we encourage APD to treat any discharge of an officer's firearm with the *intent* to hit a person as a OIS for the purposes of improving training, assessment, policy development, and response.

[16] *Special Report of the Independent Monitor: Use of Force Policy, Supervision and Management at the Albuquerque Police Department*, September 16, 2016.

4.7.11 Assessing Compliance with Paragraph 24: Use of ECWs

APD continues in Primary Compliance with respect to the requirements set forth in Paragraphs 25 through 36, all of which concern the use of Electronic Control Weapons. APD's approved stand-alone ECW SOP incorporates all of the requirements set forth in Paragraphs 24 - 36. The requirement in Paragraph 33 that officers receive annual ECW certifications was met by the 4-hour block of instruction on ECW policy and procedures within the 40-hour Use of Force Curriculum that was presented in the first half of 2016. For this reason, it makes sense to treat these paragraphs as a group of related requirements with which APD is now in compliance at the first level. We note that APD "temporarily" suspended operation of the EIS, ostensibly because it was issuing "too many alerts." Accordingly, the monitoring team will draw a sizeable sample of Taser cases --- both Supervisory Use of Force Investigations and Serious Uses of Force --- for review in the next reporting period to assess the level of operational compliance.

We, however, have treated Paragraphs 37 and 38 outside this grouping because of unresolved issues regarding "random and directed audits" and the "reconciliation of downloads with officers' use of force reports". We flagged both issues in IMR-3 and underscored their importance as integral oversight measures. We are unaware of any changes by APD responsive to these issues as of this reporting period. The monitoring team will re-visit these issues yet again in the IMR-5 reporting period to ensure that both have been resolved consistent with CASA requirements.

The decision to schedule the next review of Taser cases in the IMR-5 reporting period was based upon concerns that the full effect of recent training would not be immediately discernible at the operational level without an integration period of several months. Because we have sufficient baseline data on past investigations, we believe that it is important to draw a sample of more recent cases to assess the effects of recent training and APD's current level of operational compliance. Also, to date, the monitoring team has provided extensive feedback on the quality of use of force investigations (and the oversight of those investigations) through direct, in-person meetings with APD and through past IMRs.

Meanwhile, it is important that APD continue to conduct regular internal case reviews and provide timely feedback on performance to investigators and chain of command reviewers during the intervening period.[17] As we explained in our recent Special Report (Draft provided to APD on August

[17] For this reason, we have concerns about cancellation of the Second Quarter FRB, although we understand that it was in response to workload issues at the operational level that affected the flow of cases. At this stage of reform, however, more frequent reviews and feedback are essential to shaping performance during the shift to new, markedly different practices.

19, 2016), the 90-day FRB and the 120-day monitoring team assessment-feedback loops may be too infrequent and too elongated to provide the volume of feedback[18] that is necessary during the "break-in" period, when it would have the highest impact.[19] For this reason, we have concerns about the cancellation of the Second Quarter FRB. Although we believe it was in response to workload issues at the operational level that affected the flow of cases, APD will need to assess whether proper resources are being diverted to the most critical areas of the organization that will benefit CASA compliance.

Paragraph 24 stipulates:

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

Methodology

During the IMR-3 reporting period, the monitoring team conducted an in-depth review of APD use of force cases that involved the use of Tasers. The results of those case reviews were communicated to APD for consideration as they continue to implement new policy provisions through training and operational oversight.[20] APD's subsidiary policy on Electronic Control Weapons (ECW) was approved by the monitor and DOJ in January 2016, bringing APD into policy compliance on CASA requirements in Paragraphs 24 through 36.

The monitoring team also reviewed training materials for a 40-hour Use of Force Training Program that was delivered to APD personnel throughout the first half of 2016 and found the training incorporated the provisions of this paragraph.

Results

Primary: **In Compliance**

[18] We view this as largely a period of intense coaching to shape performance through successive, supportive critiques on the early part of the learning curve. There is clearly a role for APD SMEs in this process, as seen in the addition of APD's use of force SME to the FRB.
[19] That report also suggested several other means to support rapid learning during this phase.
[20] At least one case included an APD officer using their Taser for what appeared to be pain compliance. Whether this issue resulted in any follow up action by APD will be explored during the next site visit.

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

4.7.12 Assessing Compliance with Paragraph 25: ECW Verbal Warnings

Paragraph 25 stipulates:

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

Methodology

During the IMR-3 reporting period, the monitoring team conducted an in-depth review of APD use of force cases that involved the use of Tasers. The results of those case reviews were communicated to APD for consideration as they continue to implement new policy provisions through training and operational oversight. APD's subsidiary policy on Electronic Control Weapons (ECW) was approved by the monitor and DOJ in January 2016, bringing APD into policy compliance on CASA requirements in Paragraphs 24 through 36.

The monitoring team also reviewed training materials for a 40-hour Use of Force Training Program that was delivered to APD personnel throughout the first half of 2016 and found the training adequately incorporated the provisions of this paragraph.

Results

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

4.7.13 Assessing Compliance with Paragraph 26: ECW Limitations

Paragraph 26 stipulates:

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

Methodology

During the IMR-3 reporting period, the monitoring team conducted an in-depth review of APD use of force cases that involved the use of Tasers. The results of those case reviews were communicated to APD for consideration as they continue to implement new policy provisions through training and operational oversight. APD's subsidiary policy on Electronic Control Weapons (ECW) was approved in January 2016, bringing APD into policy compliance on CASA requirements in Paragraphs 24 through 36.

The monitoring team also reviewed training materials for a 40-hour Use of Force Training Program that was delivered to APD personnel throughout the first half of 2016 and found the training incorporated the provisions of this paragraph.

Results

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

4.7.14 Assessing Compliance with Paragraph 27: ECW Cycling

Paragraph 27 stipulates:

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

Methodology

During the IMR-3 reporting period, the monitoring team conducted an in-depth review of APD use of force cases that involved the use of Tasers. The results of those case reviews were communicated to APD for consideration as they continue to implement new policy provisions through training and operational oversight. APD's subsidiary policy on Electronic Control Weapons (ECW) was approved by the monitor and DOJ in

January 2016, bringing APD into policy compliance on CASA requirements in Paragraphs 24 through 36.

The monitoring team also reviewed training materials for a 40-hour Use of Force Training Program that was delivered to APD personnel throughout the first half of 2016 and found the training incorporated the provisions of this paragraph.

Results

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

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

Paragraph 28 stipulates:

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

Methodology

During the IMR-3 reporting period, the monitoring team conducted an in-depth review of APD use of force cases that involved the use of Tasers. The results of those case reviews were communicated to APD for consideration as they continue to implement new policy provisions through training and operational oversight. APD's subsidiary policy on Electronic Control Weapons (ECW) was approved by the monitor and DOJ in January 2016, bringing APD into policy compliance on CASA requirements in Paragraphs 24 through 36.

The monitoring team also reviewed training materials for a 40-hour Use of Force Training Program that was delivered to APD personnel throughout the first half of 2016 and found the training incorporated the provisions of this paragraph.

Results

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

4.7.16 Assessing Compliance with Paragraph 29: ECW Reasonableness Factors

Paragraph 29 stipulates:

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

Methodology

During the IMR-3 reporting period, the monitoring team conducted an in-depth review of APD use of force cases that involved the use of Tasers. The results of those case reviews were communicated to APD for consideration as they continue to implement new policy provisions through training and operational oversight.[21] APD's subsidiary policy on Electronic Control Weapons (ECW) was approved by the monitor and DOJ in January 2016, bringing APD into policy compliance on CASA requirements in Paragraphs 24 through 36.

The monitoring team also reviewed training materials for a 40-hour Use of Force Training Program that was delivered to APD personnel throughout the first half of 2016 and found the training incorporated the provisions of this paragraph.

Results

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

4.7.17 Assessing Compliance with Paragraph 30: ECW Targeting

Paragraph 30 stipulates:

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

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[21] At least one case included an APD officer using their Taser for what appeared to be pain compliance. Whether this issue resulted in any follow up action by APD will be explored during the next site visit.

Methodology

During the IMR-3 reporting period, the monitoring team conducted an in-depth review of APD use of force cases that involved the use of Tasers. The results of those case reviews were communicated to APD for consideration as they continue to implement new policy provisions through training and operational oversight. APD's subsidiary policy on Electronic Control Weapons (ECW) was approved by the monitor and DOJ in January 2016, bringing APD into policy compliance on CASA requirements in Paragraphs 24 through 36.

The monitoring team also reviewed training materials for a 40-hour Use of Force Training Program that was delivered to APD personnel throughout the first half of 2016 and found the training incorporated the provisions of this paragraph.

Results

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

4.7.18 Assessing Compliance with Paragraph 31: ECW Restrictions

Paragraph 31 stipulates:

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

Methodology

During the IMR-3 reporting period, the monitoring team conducted an in-depth review of APD use of force cases that involved the use of Tasers. The results of those case reviews were communicated to APD for consideration as they continue to implement new policy provisions through training and operational oversight. APD's subsidiary policy on Electronic Control Weapons (ECW) was approved by the monitor and DOJ in January 2016, bringing APD into policy compliance on CASA requirements in Paragraphs 24 through 36.

The monitoring team also reviewed training materials for a 40-hour Use of Force Training Program that was delivered to APD personnel throughout the first half of 2016.

Results

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

4.7.19 Assessing Compliance with Paragraph 32: ECW Holster

Paragraph 32 stipulates:

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

Methodology

During the IMR-3 reporting period, the monitoring team conducted an in-depth review of APD use of force cases that involved the use of Tasers. The results of those case reviews were communicated to APD for consideration as they continue to implement new policy provisions through training and operational oversight. APD's subsidiary policy on Electronic Control Weapons (ECW) was approved in January 2016, bringing APD into policy compliance on CASA requirements in Paragraphs 24 through 36.

The monitoring team also reviewed training materials for a 40-hour Use of Force Training Program that was delivered to APD personnel throughout the first half of 2016 and found the training incorporated the provisions of this paragraph.

Results

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

4.7.20 Assessing Compliance with Paragraph 33: ECW Certifications

Paragraph 33 stipulates:

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

Methodology

During the IMR-3 reporting period, the monitoring team conducted an in-depth review of APD use of force cases that involved the use of Tasers. The results of those case reviews were communicated to APD for consideration as they continue to implement new policy provisions through training and operational oversight. APD's subsidiary policy on Electronic Control Weapons (ECW) was approved by the monitor and DOJ in January 2016, bringing APD into policy compliance on CASA requirements in Paragraphs 24 through 36.

The monitoring team also reviewed training materials for a 40-hour Use of Force Training Program that was delivered to APD personnel throughout the first half of 2016 and found the training incorporated the provisions of this paragraph.

Results

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

4.7.21 Assessing Compliance with Paragraph 34: ECW Annual Certification

Paragraph 34 stipulates:

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

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

Methodology

During the IMR-3 reporting period, the monitoring team conducted an in-depth review of APD use of force cases that involved the use of Tasers. The results of those case reviews were communicated to APD for

consideration as they continue to implement new policy provisions through training and operational oversight.[22] APD's subsidiary policy on Electronic Control Weapons (ECW) was approved in January 2016, bringing APD into policy compliance on CASA requirements in Paragraphs 24 through 36.

The monitoring team also reviewed training materials for a 40-hour Use of Force Training Program that was delivered to APD personnel throughout the first half of 2016.

Results

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

4.7.22 Assessing Compliance with Paragraph 35: Medical Evaluation of Subjects Exposed to ECW Application

Paragraph 35 stipulates:

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

Methodology

During the IMR-3 reporting period, the monitoring team conducted an in-depth review of APD use of force cases that involved the use of Tasers. The results of those case reviews were communicated to APD for consideration as they continue to implement new policy provisions through training and operational oversight.[23] APD's subsidiary policy on Electronic Control Weapons (ECW) was approved by the monitor and DOJ in January 2016, bringing APD into policy compliance on CASA requirements in Paragraphs 24 through 36.

The monitoring team also reviewed training materials for a 40-hour Use of Force Training Program that was delivered to APD personnel

[22] At least one case included an APD officer using their Taser for what appeared to be pain compliance. Whether this issue resulted in any follow up action by APD will be explored during the next site visit.
[23] At least one case included an APD officer using their Taser for what appeared to be pain compliance. Whether this issue resulted in any follow up action by APD will be explored during the next site visit.

throughout the first half of 2016 and found the training incorporated the provisions of this paragraph.

Results

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

4.7.23 Assessing Compliance with Paragraph 36: ECW Notifications

Paragraph 36 stipulates:

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

Methodology

During the IMR-3 reporting period, the monitoring team conducted an in-depth review of APD use of force cases that involved the use of Tasers. The results of those case reviews were communicated to APD for consideration as they continue to implement new policy provisions through training and operational oversight. APD's subsidiary policy on Electronic Control Weapons (ECW) was approved by the monitor and DOJ in January 2016, bringing APD into policy compliance on CASA requirements in Paragraphs 24 through 36.

The monitoring team also reviewed training materials for a 40-hour Use of Force Training Program that was delivered to APD personnel throughout the first half of 2016.

Results

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

4.7.24 Assessing Compliance with Paragraph 37: ECW Safeguards

Paragraph 37 stipulates:

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

Methodology

APD's subsidiary policy on Electronic Control Weapons (ECW) was approved in January 2016, but the specific provisions of this paragraph were not included.

Results

Paragraph 37 has unresolved issues regarding "random and directed audits" and the "reconciliation of downloads with officers' use of force reports". We flagged both issues in IMR-3 and underscored their importance as integral oversight measures. The monitoring team will re-visit these issues in the next reporting period to ensure that both have been resolved consistent with CASA requirements.

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

4.7.25 Assessing Compliance with Paragraph 38: ECW Reporting

Paragraph 38 stipulates:

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

Methodology

APD's subsidiary policy on Electronic Control Weapons (ECW) 2-53 was approved by the monitor and DOJ in January 2016, however, the provisions of this paragraph were not addressed.

Results

Paragraph 38 stipulates that APD conduct several types of analyses to determine the level of ECW use over time, the rate of suspect and officer injuries in relation to the rate of ECW use, and the effect of ECW "painting and arcing" on compliance rates. Currently, APD has neither he data nor the analytical capabilities to perform such assessments, in our judgment. These, to be candid, are fairly sophisticated statistical

computations that may require some form of outside expertise (the University of New Mexico could be a possible source). Clearly, there are APD members, both sworn and civilian, who are capable of doing the required analysis with appropriate direction, training, and expert support. For example, APD currently analyzes the effectiveness of different weapons and techniques in its use of force database.[24] This is critically important information that should be reviewed regularly by those in oversight roles and particularly by APD SMEs to provide a foundation for continuous learning and improvement.

The monitoring team requested, and reviewed, use of force data related to ECW's that was generated for the time frame of February 15, 2016, through July 25, 2016. We have reported previously on the lack of credibility of APD's use and show of force data, and that relying on that data for purposes of determining CASA compliance will not be possible until such time that the department expends its full effort toward greater accountability in its reporting of use of force. Notwithstanding that observation, APD reported a total of forty (40) ECW uses of force during this time period.[25] However, a portion of the data that was provided to the monitoring team mixed ECW use and show of force events together.[26] As best the monitoring team can determine, within that total number thirteen (13) were ECW show of force cases, leaving 27 actual ECW uses of force. Because ECW show of force cases were separated in a second data source, it appears that ECW shows of force for the time frame reached a total of twenty-three (23).

The collection of data is important, but what the data tells APD is equally critical to its success. For instance, APD reported that the ECW was ineffective 20% of the time it was deployed by an officer. The reason behind that figure may provide important perspective to APD trainers, supervisors and command staff when making organization-wide decisions related to ECW use. It is unclear whether that type of critical analysis routinely occurs within APD for either ECW use of show of force by officers.

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[24] This is a relatively simple computation based upon the officer's self-reporting in the Use of Force Data Report. Ideally, SMEs would be auditing a sample of videos to make such assessments, thereby providing empirical feedback on both the use of ECWs, their effectiveness in different circumstances, and the efficacy of Departmental training.

[25] The monitoring team notes that the data source APD provided came in two difference forms. One set of data included ECW show of force events, while the second did not. The total number of ECW uses listed at the end of the report, when compared to the list of case numbers within the data source, does not match. This inconsistency leaves questions as to the correct number APD is reporting.

[26] The monitoring team made two separate requests for use of force data. By not making one large request APD's data display may simply be the product of two different people processing the request in different ways.

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

4.7.26 Assessing Compliance with Paragraph 39: Crowd Control Policies

Paragraph 39 stipulates:

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

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

Methodology

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

Results

The Albuquerque Journal reported in an article on August 15, 2016, that APD's Critical Incident Review Team (CIRT) would be conducting a review of the May 24, 2016 Trump Rally demonstration that "spun out of control", leading to a complaint from the Albuquerque Police Officers Association (APOA) that officers were not properly equipped and that the Department mishandled the demonstration. The monitoring team agrees strongly that a formal review is imperative in view of apparent issues and the need to extract every lesson that

the Department can glean from the experience. However, we question whether CIRT is the appropriate body to conduct such a review, in light of the high level of incident command knowledge, skills, and experience required. We are also aware of conflicting claims made by key officials in the riot's aftermath that might warrant an independent review to accommodate those differences fairly. It may well be, given the complex nature of the event in question and the police response, that external "peer review" of the incident is the appropriate way to handle these issues.

The Trump Rally incident underscores the fact that well-conceived and well-written policies are not self-executing. The breakdowns that have been implicated appear to have occurred at multiple levels of responsibility and raise serious questions about APD's ability to translate high-level doctrine into effective street-level practice in the case of volatile civil protests. The breakdowns also are a prime example of how a cascade of low-level failures can escalate rapidly, placing officers at risk and necessitating the use of significant force to regain control. Weaknesses in pre-event preparation and incident command shortfalls[27], in the monitoring team's judgment, will surface quickly as major contributing factors in APD's failed response.

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

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

- The After-Action Report (AAR) notes that BCSO agreed to provide their ERT to assist as "an immediate action team", which proved to be a highly consequential point of confusion in the midst of the protest.

- APD Executive and Command Staff conducted a walkthrough prior to the event and were provided copies of the action plan for the event (commonly termed an Operations Plan). The creation of a "free speech zone" was discussed and barricades were ordered to restrict protesters to the designated area.

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

- A pre-deployment briefing with assigned supervisors was held and the rules of engagement for the event were covered. An overall briefing involving all assigned units was held on the afternoon of the event. APD assigned units were fully in place by 1400 hours for an event that was officially to begin at 1600 hours.

- It is obvious from the event chronology in the report that the protest immediately took on a dynamic feature that called for constant adjustments by on-scene officers and incident command.

- At one point, the ERT Lieutenant linked up with the protest organizer[28] and she assisted in moving protesters to the designated free speech zone. This is a critical aspect of effective protest management and without question a "best practice" in the discipline.

- As the protest grew and became unruly, the ERT Lieutenant asked BCSO ERT to deploy in support of APD's efforts to control the protesters at the front of the Convention Center. The BCSO ERT Lieutenant advised him that he was under orders to deploy only as a "cut team to address protester devices". A BCSO Captain affirmed the Lieutenant's understanding. Shortly thereafter, protesters surged from the protest zone, jumped the barricades in place, and rushed the front doors of the Convention Center.

- From the number of protesters described in the report, this did not appear to be an unusually large group with which to contend. However, contemporary protest is far different than what police have dealt with historically. The ratio of officers to protesters appears fairly high. The challenge, however, is to discriminate between relatively small groups of aggressive protesters---highly mobile, linked by lightning-quick social media, and adhering to well scripted "operational tactics"[29]--- imbedded in a body of peaceful protesters. These challenges demand that the police response feature both static and mobile elements, along with an incident command process that tracks contingencies in real time, adjusts quickly to them, and often anticipates the trajectory of the protest.

- Staffing decisions diverted trained ERT officers from front-line assignments and placed them in "softer" internal security roles. As a result, they did not have ready access to protective equipment that had been left at another, distant location. This made it difficult to transition

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

[29] These tactics often are both planned and emergent.

quickly to crowd control duties and left them unprotected from foreseeable risks from projectiles thrown by the demonstrators. The lack of gas masks also precluded the use of gas munitions to control the most aggressive portions of the crowd. Proper crowd control tactics were difficult to implement because of ERT's degraded staffing and the intermixture of ERT and non-ERT officers.

- The operations command post appeared to have been sited in an unsuitable location and functioned poorly during the event.

We repeat that the ERT Lieutenant's AAR was a reasonable effort and attempted to cover numerous critical issues. It remains, however, a single-source perspective on a multi-agency, rapidly unfolding, complex event that was tense, stressful, uncertain, and, at times, dangerous. The problems experienced were not novel; rather they have reappeared time and time again as policing attempts to cope with increasingly sophisticated and aggressive protest elements while protecting the rights of persons to assemble and engage in free speech. They do, however, demand capable, adaptive incident commanders who understand the dynamics of contemporary protest movements.

APD will not be in Secondary Compliance or Operational Compliance on the requirements in Paragraph 39 until a full review of the Trump Rally response is completed and appropriate actions are taken, including incident command training, to improve its capabilities to plan for, manage, and extract important lessons from each experience. Any remediation should include authentic, scenario-based incident command exercises that stress advance planning and preparation, command post operations, and large-scale tactical maneuvering to respond to dynamic aspects of modern-day protests while operating within Constitutional bounds.

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

4.7.27 Assessing Compliance with Paragraph 40: After Action Reviews

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."

Methodology

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

Results

It is our understanding that the Critical Incident Review Team (CIRT) has been tasked with conducting a comprehensive after-action review of the May 24, 2016 event and the police response. We have several major concerns regarding tasking CIRT with this review. First, from our contacts and selected reviews of CIRT reports, the monitoring team believes that CIRT detectives do not possess the requisite knowledge, skills, and command-level perspectives required to conduct such a complex, multi-factorial, multi-agency review. Second, because of conflicting claims about the police response and its management among the four agencies involved that evening, an independent inquiry that accommodates all of the agency inputs fairly and objectively is highly recommended.[30]

APD will only achieve Secondary and Operational Compliance on the requirements in Paragraph 40 when it demonstrates that it has in place standardized procedures to conduct objective, thorough reviews of protest events and the police response to each. Consequently, the Trump Rally-Riot review will serve as a major test of APD's capability to rigorously assess its performance in managing civil protests---especially with respect to certain critical functions like pre-event planning, incident command, crowd control tactics, command post operations, and inter-agency coordination.

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

The series of related Paragraphs 41 through 59 encompasses requirements for reporting, classifying, and investigating uses of force that require a supervisory-level response based upon the type and extent of force used. APD is now at a crucial juncture in the reform process as it transitions from the first level of compliance to the work of transferring policy and training to front-line practice. Thus far, our reviews have revealed major deficiencies in the oversight and accountability process, particularly with respect to supervisory-level investigations and chain of command reviews, which we reported on in both IMR-

[30] The appearance of independence and neutrality is of fundamental importance to such reviews.

2 and IMR-3, as well as in a Special Report --- first provided to APD on August 19, 2016 --- on systemic failures we have observed.[31]

The CASA breaks this larger group of paragraphs down into three separate sub-groups: Use of Force Reporting, Paragraphs 41-45; Force Investigations, Paragraphs 46-49; and Supervisory Force Investigations, Paragraphs 50-59. We follow this breakdown in our analysis.

The greatest challenge that APD presently faces on the path to reform is the institutionalization of an effective use of force reporting, investigation, and adjudication process. The performance of the current system at multiple levels remains problematic, despite an approved policy. The expectation, however, is that field practice will gradually align with APD's approved policies and recent training on use of force reporting and investigation. The pace of change will depend unquestionably upon APD's ability to conduct timely, in-depth, meaningful internal assessments to support learning and fulfill CASA requirements. The quality of those internal assessments will determine how rapidly alignment actually takes place. But this will require each and every component of the system to function at a high level, thereby infusing the process with candor, rigor, and a commitment to continuous learning and improvement. This endeavor will require a significant and genuine commitment by APD to hold supervisors accountable at all levels of the organization.

It is not possible at this stage to assign clear-cut percentages to APD's compliance level on the reporting and investigation of use of force incidents, particularly at the level of first-line supervision, which handles approximately 80% of these investigations.

During the next reporting period for IMR-5 the monitoring team will conduct a comprehensive review of use of force investigations[32] to assess the impact of recent training and the level of APD's operational compliance. As we explained elsewhere in this report, this will provide ample time for the effects of the training to be revised and become manifest in practice and allow for the buildup of sufficient case numbers from which to draw suitable samples.

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

Paragraph 41 stipulates:

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[31] Again, as we have done in previous reports, we hasten to add that we have found "bright spots" in all of our reviews. However, until those "bright spots" become pervasive and the organizational norm, compliance will remain elusive.

[32] This will encompass every level or type of investigation, including Show of Force, Supervisory, Serious Use of Force, CIRT/IRT, and OIS. Though we have requested OIS cases to cover in the last two reports, none have been made available.

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

Methodology

The requirements in Paragraph 41 are included in APD's approved suite of force-related policies and the monitoring team reviewed training materials for a 40-hour Use of Force Curriculum and 24-hour Supervisory Use of Force Investigations Curriculums, which were completed in June 2016. Based on our review of materials, APD remains in Primary Compliance with respect to this paragraph, and additional work is needed to bring all related use of force training into alignment with the CASA.

Results

Our assessments in this series of paragraphs is based upon an extensive review of course documentation, continuing discussions with Academy and IAS staff, personal observation of instruction, and a correspondence assessment to determine if instructional content matches APD policies and CASA requirements.[33] Although our assessment of Secondary Compliance in this report proceeds in a paragraph-by-paragraph fashion, we've also have identified a number of gaps in the training that involve omitted, incorrect, unclear, or incomplete content. We highlight these after Paragraph 59 and outline APD's plan to bridge the gaps in both curricula. It is our position that each gap needs to be analyzed and that appropriate supplemental training needs to be developed and presented in a timely manner. The monitoring team has informed Academy and IAS staff of those gaps. We are aware that several have already been addressed, while others are under review and will be addressed in the near future. Because of the critical nature of this instruction, the need for regular updating, and the importance of constant reinforcement of standards to counter predictable slippage, much of this course content needs to be repeated annually to sustain the reforms.[34]

The monitoring team noted in its first report that APD's "blank sheet" approach lacks the structure commonly used to ensure reporting consistency and

[33] The monitoring team is indebted to APD auditors and Academy staff who took on this task and produced a comprehensive, professional matrix quickly to support our review.
[34] Though, we note the format and training medium may vary based upon content and other considerations. APD, however, should keep in mind that higher level cognitive skills education (e.g., analysis and synthesis) are best addressed in hands-on, interactive problem-solving sessions dealing with real-world scenarios and case studies.

completeness in a wide range of settings. Predictably, we have found wide variations in content, formatting, and sequencing in the reports that we have reviewed. As a result, quality control, is difficult and time-consuming, both for the monitoring team and for command-level personnel. We strongly recommend that APD re-consider our early recommendation to remedy this problem. To some extent, the checklists developed by IAS provide the type of structure that we believe is needed to overcome these problems. Accordingly, we recommended in our recent Special Report on a case of systemic failure that APD require investigating supervisors to complete the checklist and include it in the investigative report. Repetition in its use over time will embed the content in long-term memory and eventually performance should become second-nature.[35]

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

4.7.29 Assessing Compliance with Paragraph 42: Force Reporting Policy

Paragraph 42 stipulates:

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

Methodology

The monitoring team reviewed materials provided by the APD academy to determine if the provisions of this paragraph were adequately covered within the 24-hour Supervisory Use of Force Investigations Curriculum and the 40-hour Use of Force Curriculum, which were completed in June 2016.

Results:

The requirements in Paragraph 42 are included in APD's approved suite of force-related policies and were covered in presentations of both the 24-hour Supervisory Use of Force Investigations Curriculum and the 40-hour Use of Force Curriculum, which were completed in June 2016. Our assessments of this paragraph are based upon an extensive review of

[35] We also made the same recommendation in IMR-3 based upon the wide variances in content, formatting, and sequencing that we were seeing.

course documentation, continuing discussions with Academy and IAS staff, personal observation of instruction, and a correspondence assessment to determine if instructional content matches APD policies and CASA requirements.

The monitoring team reiterates the importance of supervisory oversight of report narratives, and the value checklists --- developed by APD --- could be if incorporated as a Job Aide for Officers. As reported in IMR-3, it is our belief that there is a considerable value in using these types of tools in the field.

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

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

Paragraph 43 stipulates:

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

Methodology

The requirement in Paragraph 43 is included in APD's approved suite of force-related policies and was covered in presentations of both the 40-hour Use of Force Curriculum and the 24-hour Supervisory Use of Force Investigations Curriculum, which were completed in June 2016.

Results

Our assessments in this series of paragraphs are based upon an extensive review of course documentation, continuing discussions with Academy and IAS staff, personal observation of instruction, and a correspondence assessment to determine if instructional content matches APD policies and CASA requirements.

The monitoring team has provided extensive feedback to APD concerning the quality of force reporting and supervisory investigations throughout IMR-2, IMR-3 and in a Special Report that was recently delivered to the department. Throughout those writings there are examples where, in the opinion of the monitoring team, use of force --- and show of force --- incidents went unreported. That said, APD must ensure there is a greater scrutiny of force events to ensure that each and every officer in an incident that uses force is accounted for during force investigations. As we move into the next monitoring period, now that policy is in place and specific guidance has been provided to APD regarding how to fix

issues we pointed out regarding training, the monitoring team will re-assess the compliance rates with this paragraph during the next site visit.

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

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

Paragraph 44 stipulates:

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

Methodology

The requirements in Paragraph 44 are included in APD's approved suite of force-related policies and were covered in presentations of both the 24-hour Supervisory Use of Force Investigations Curriculum and the 40-hour Use of Force Curriculum, which were completed in June 2016.

Results

Our assessments in this series of paragraphs are based upon an extensive review of course documentation, continuing discussions with Academy and IAS staff, personal observation of instruction, and a correspondence assessment to determine if instructional content matches APD policies and CASA requirements. Generally, the many case reviews we've conducted over the past year have revealed that APD officers are diligent in addressing medical needs of people they arrest or who are subject to force during an arrest. As we move into the next monitoring period, now that policy is in place and specific guidance has been provided to APD regarding how to fix issues we pointed out regarding training, the monitoring team will re-assess the compliance rates with this paragraph during the next site visit.

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

4.7.32 Assessing Compliance with Paragraph 45: OBRD Recording Regimens

Paragraph 45 stipulates:

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

Methodology

Members of the monitoring team reviewed SOP 1-39 Use of On-Body Recording Devices, and subjected it to best established practices in the field, and to the requirements stipulated in the CASA. The monitoring team provided extensive technical assistance to APD to guide development of policies that would meet the provisions of the CASA.

Results

The monitor approved APD SOP 1-39, Use of On-body Recording Devices, in late March, 2016. APD has provided documentation demonstrating that more than 95% of the department has successfully attended OBRD training/testing via Public Service University (PSU). Excused absences included Military and FMLA, who will attend training/testing upon their return.

Moving forward, the monitoring team will determine operational compliance through records and reviews of use of force cases.

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

4.7.33 Compliance with Paragraph 46: Force Investigations

Paragraph 46 stipulates:

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

Methodology

The requirements in Paragraph 46 are included in APD's approved suite of force-related policies and were covered in presentations of both the

24-hour Supervisory Use of Force Investigations Curriculum and the 40-hour Use of Force Curriculum, which were completed in June 2016.

Results

Our assessments in this series of paragraphs are based upon an extensive review of course documentation, continuing discussions with Academy and IAS staff, personal observation of instruction, and a correspondence assessment to determine if instructional content matches APD policies and CASA requirements.

We reported extensively on the quality of supervisory use of force investigations in IMR-2, IMR-3 and again in our Special Report on a case of systemic failure involving such an investigation and serious deficiencies that beset the follow-up process. Rather than simply reiterate those issues and recommendations here, we refer reviewers to our previous reports regarding Paragraph 46 and the recently issued Special Report. With respect to the Use of Force and Show of Force cases reported in IMR-3, the monitoring team notes that APD did not have an adequate amount of time to read and assess the information in that report prior to our June 2016 site visit --- since the report had only been provided a few days before that visit. Typically, the monitoring team will review the cases it comments on with APD, particularly if cases had significant deficiencies. Since the monitoring team provided sufficient detail in IMR-3 for APD to self-assess and make determinations as to the proper follow up actions that may be necessary in each case, we will review these cases in detail during our November 2016 site visit to determine any follow up activities APD has conducted and report on those activities in IMR-5.

As noted in previous reports, APD should continue to improve its investigative protocols and practices based, in part, upon the extensive comments that are provided within monitoring reports. Such feedback should be an integral part, among other sources, of any professional, comprehensive training needs assessment. As we move into the next monitoring period, now that policy is in place and specific guidance has been provided to APD regarding how to fix issues we pointed out regarding training, the monitoring team will re-assess the operational compliance rate with this paragraph during the next site visit.

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

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

Paragraph 47 stipulates:

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

such reviews and investigations.

Methodology

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

Results

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

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

4.7.35 Assessing Compliance with Paragraph 48: Force Classification Procedures

Paragraph 48 stipulates:

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

Methodology

The requirements in Paragraph 48 are included in APD's approved suite of force-related policies and were covered in presentations of both the 24-hour Supervisory Use of Force Investigations Curriculum and the 40-hour Use of Force Curriculum, which were completed in June 2016. APD continues to participate in the Multi-Agency Task Force (MATF) under the terms of the original agreement.

Results

Our assessments in this series of paragraphs are based upon an extensive review of course documentation, continuing discussions with Academy and IAS staff, personal observation of instruction, and a correspondence assessment to determine if instructional content matches APD policies and CASA requirements.

Even though the CASA requirement only specifies a two-level classification of force model and the required investigative responses, the monitoring team again strongly recommends that APD expand the classification model to five levels and specify the investigative response to each to provide a more accurate, complete representation, including the following levels:

1. Non-Reportable: Un-resisted Handcuffing, Escort Techniques
2. Show of Force: ECW Painting/Arcing, Pointing of a Firearm
3. Supervisory Use of Force Investigations: Less than a Serious Use of Force
4. Serious Use of Force
5. Officer-involved Shootings/In-custody Deaths

As we move into the next monitoring period, now that policy is in place and specific guidance has been provided to APD regarding how to fix issues we pointed out regarding training, the monitoring team will re-assess the operational compliance rate with this paragraph during the next site visit.

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

4.7.36 Assessing Compliance with Paragraph 49

Paragraph 49 stipulates:

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

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

Methodology

The requirements in Paragraph 49 are included in APD's approved suite of force-related policies and were covered in presentations of both the 24-hour Supervisory Use of Force Investigations Curriculum and the 40-hour Use of Force Curriculum, which were completed in June 2016, and still need revision and additional training processes.

Results

Our assessments in this series of paragraphs are based upon an extensive review of course documentation, continuing discussions with Academy and IAS staff, personal observation of instruction, and a correspondence assessment to determine if instructional content matches APD policies and CASA requirements. As we move into the next monitoring period, now that policy is in place and specific guidance has been provided to APD regarding how to fix issues we pointed out regarding training, the monitoring team will re-assess the compliance rates with this paragraph during the next site visit.

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

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

Paragraph 50 stipulates:

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

Methodology

The requirements in Paragraph 50 are included in APD's approved suite of force-related policies and were covered in presentations of both the 24-hour Supervisory Use of Force Investigations Curriculum and the 40-hour Use of

Force Curriculum, which were completed in June 2016. APD continues to participate in the Multi-Agency Task Force (MATF) under the terms of the original agreement.

Results

Our assessments in this series of paragraphs are based upon an extensive review of course documentation, continuing discussions with Academy and IAS staff, personal observation of instruction, and a correspondence assessment to determine if instructional content matches APD policies and CASA requirements. As we move into the next monitoring period, now that policy is in place and specific guidance has been provided to APD regarding how to fix issues we pointed out regarding training, the monitoring team will re-assess the compliance rates with this paragraph during the next site visit.

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

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

Paragraph 51 stipulates

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

Methodology

The requirements in Paragraph 51 are included in APD's approved suite of force-related policies and were covered in presentations of both the 24-hour Supervisory Use of Force Investigations Curriculum and the 40-hour Use of Force Curriculum, which were completed in June 2016.

Results

Our assessments in this series of paragraphs are based upon an extensive review of course documentation, continuing discussions with Academy and IAS staff, personal observation of instruction, and a correspondence assessment to determine if instructional content matches APD policies and CASA requirements. As we move into the next monitoring period, now that policy is in place and specific guidance has been provided to APD regarding how to fix issues we pointed out regarding training, the monitoring team will re-assess the compliance rates with this paragraph during the next site visit.

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

Operational: **Not In Compliance**

4.7.39 Assessing Compliance with Paragraph 52: Supervisory Force Review

Paragraph 52 stipulates:

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

a) Respond to the scene, examine all personnel and subjects of use of force for injuries, interview the subject(s) for complaints of pain after advising the subject(s) of his or her rights, and ensure that the officers and/or subject(s) receive medical attention, if applicable

b) Identify and collect all relevant evidence and evaluate that evidence to determine whether the use of force was consistent with APD policy and identifies any policy, training, tactical, or equipment concerns;

c) Ensure that all evidence to establish material facts related to the use of force, including audio and video recordings, photographs, and other documentation of injuries or the absence of injuries is collected;

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

e) Ensure that all officers witnessing a use of force incident by another officer provide a use of force narrative of the facts leading to the use of force;

f) Separate all officers involved in a use of force incident until each has been interviewed and never conduct group interviews of these officers;

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

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

i) Utilize on-body recording systems to record all interviews;

j) Review all use of force narratives and ensure that all Use of Force Reports include the information required by this Agreement and APD policy;

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

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

m) Obtain a unique tracking number; and

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

Methodology

The requirements in Paragraph 52 are included in APD's approved suite of force-related policies and were covered in presentations of both the 24-hour Supervisory Use of Force Investigations Curriculum and the 40-hour Use of Force Curriculum, which were completed in June 2016. Additionally, IAS developed several job performance aids (i.e., checklists) to assist investigators and reviewing command commands. We recommended in our recent Special Report that APD should consider making their use mandatory and part of the investigative packet.[36]

Results

Our assessments in this series of paragraphs are based upon an extensive review of course documentation, continuing discussions with Academy and IAS staff, personal observation of instruction, and a correspondence assessment to determine if instructional content matches APD policies and CASA requirements.

The monitoring team has reported extensively in previous reports on cases we've reviewed in which there was a lack of quality in force investigations that were completed by APD supervisors --- as well as the lack of quality in command level reviews. APD must rely heavily on the requirements of this paragraph and ensure that supervisors and commanders are held to a high level of accountability. The provisions of this paragraph encapsulate the key investigative elements that supervisors must complete during force investigations. The actions that are necessary in meeting operational compliance (in the future) in this paragraph will have great influence on APD reaching operational compliance in other related paragraphs.

[36] Commercial aviation mandates the use of pre-takeoff and landing checklists, which are documented by the Cockpit Voice Recorder (CVR).

As we move into the next monitoring period, now that policy is in place and specific guidance has been provided to APD regarding how to fix issues we pointed out regarding training, the monitoring team will re-assess the compliance rates with this paragraph during the next site visit.

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

4.7.40 Assessing Compliance with Paragraph 53: Force Review Timelines

Paragraph 53 stipulates:

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

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

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

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

d) the supervisor's narrative evaluating the use of force, based on the supervisor's analysis of the evidence gathered, including a determination of whether the officer's actions complied with APD policy and state and federal law; and an assessment of the incident for tactical and training implications, including whether the use of force could have been avoided through the use of de-escalation techniques or lesser force options; and

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

Methodology

The requirements in Paragraph 53 are included in APD's approved suite of force-related policies and were covered in presentations of both the 24-hour Supervisory Use of Force Investigations Curriculum and the 40-hour Use of Force Curriculum, which were completed in June 2016.

Results

We are aware that compliance with the 72-hour deadline has slipped significantly in recent months. According to a report from IAS, this was expected to some degree because of more extensive investigative requirements and more rigorous chain of command reviews. In effect, APD decided in the short run that quality was far more important than meeting the current deadline. We agree with that decision and expect that timeliness will improve as new practices take hold. Whether the current deadline is realistic in light of supervisory workloads and field presence requirements remains an open question, but it should be deferred until such time as APD has sufficient data and experience to conduct a thorough evaluation.

Members of the monitoring team selected a random sample of APD Use of Force Data reports to assess their current compliance with the 72-hour provision of this paragraph. Forty-five (45) reports were reviewed to determine if each supervisor completed and documented a supervisory Use of Force Data Report within 72-hours of completing their on scene investigation. Of the forty-five (45) reports reviewed, thirty-six (36) met the threshold for this paragraph; therefore, nine (9) reports failed to meet the threshold for compliance with this paragraph. This equates to an 80% compliance rate --- below the 95% threshold requirement needed to be in compliance with this paragraph.

Of the nine (9) reports that failed to meet the threshold, three (3) of the cases did not meet the time requirement AND no extension was requested. The monitoring team has provided documentation as to the specific reasons for the non-compliance (as it pertains to the 72-hour deadline and extension request rules), as well as brief observations, for the other six. They are as follows:

Case **[[IMR-4-1]]**[37]: This case was initially determined not to be a UoF (Use of Force) by CIRT, but after the Executive Staff of APD requested further review of the incident, CIRT determined the matter a UoF. The 72-hour threshold and any request for extension were not met for this case.

Case **[[IMR-4-2]]:** The UoF data report done by the supervisor was not completed within the 72-hour threshold nor was an extension requested. The

[37] APD has been provided with specific "IMR" identifiers in both the draft report and via separate attachment, that indicate the actual case number of all cases discussed herein and identified by "brackets," e.g., "[[…]]"

Commander's narrative makes reference to a delay in the supervisor's report due to clarification issues on whether this was or was not a UoF matter.

Case **[[IMR-4-3]]:** There is no supervisory signature or date at the bottom of this report. There are no Lieutenant and/or Commander narratives.

Case **[[IMR-4-4]]:** The 72-hour threshold was not met, nor was there a request made to the Commander for an extension. An Interoffice Memorandum was created on July 8, 2016 to address issues with the initial matter. The Commander's narrative does not address an extension request, even though the incident occurred on July 3, 2016 and a request was made on July 8, 2016 in the afore-mentioned memorandum.

Case [[IMR-4-5]]: The incident took place on June 11, 2016 and was forwarded to CIRT on July 17, 2016: The CIRT report indicates that a duty Lieutenant was notified the day of the incident and that Lieutenant determined that the incident was not a reportable UoF. CIRT later deemed the matter to be a UoF.

Case **[[IMR-4-6]]:** The incident occurred on June 11, 2016 and the supervisory report is dated June 23, 2016, which exceeds the 72-hour threshold. Furthermore, there is no documented request for an extension until the Lieutenant's narrative, dated June 28, 2016. The Commander's report also noted an extension authorization.

As noted above, in previous case reviews--- reported on in IMR-2 and IMR-3-- the monitoring team has seen instances where commanders note in their review narratives that extensions were authorized to front line supervisors where the initial force investigation exceeded the 72-hour threshold. Moving forward, to meet compliance, APD will be required to provide a sequence of official course of business documents that demonstrate that extension requests and approvals occurred in compliance with this paragraph. A commander noting they extended an approval in their review narrative--- which in most instances will be prepared after the 72-hour threshold expired--- will be insufficient.

Our assessments in this series of paragraphs is based upon an extensive review of course documentation, continuing discussions with Academy and IAS staff, personal observation of instruction, and a correspondence assessment to determine if instructional content matches APD policies and CASA requirements.

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

4.7.41 Assessing Compliance with Paragraph 54: Command Review of Force

Paragraph 54 stipulates:

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

Methodology

The requirements in Paragraph 54 are included in APD's approved suite of force-related policies and were covered in presentations of both the 24-hour Supervisory Use of Force Investigations Curriculum and the 40-hour Use of Force Curriculum, which were completed in June 2016.

Results

We have commented on chain of command reviews in past reports, including IMR-3, and in the Special Report that was issued recently. These, in our judgment, represent the weak link in the overall process. They represent a critical quality control point in the use of force oversight and accountability system, which, for the most part, performs poorly at present. The monitoring team attributes this to two primary factors. First, the terms of reference for chain of command reviews are not articulated clearly. We suggest how these requirements might be revised and strengthened in the monitor's recently issued Special Report, in which superficial chain of command reviews are cited as a serious deficiency in many investigations. Once appropriate terms of reference, or performance standards, are established, command-level training, which includes hands-on, interactive, case-based studies, is absolutely essential. The second factor, a culture of low accountability, will take more time and effort to address. New roles and expectations induce anxiety, resistance, and uncertainty, all of which create friction in the change process. Nonetheless, departmental leadership must cast the new terms of reference as non-negotiable standards of excellence and insist without let-up that they be followed.[38]

The monitoring team also has critical questions about the adequacy of training with regard to the preponderance of evidence standard of proof and its relationship to the *Graham* test of objective reasonableness. We will explore this

[38] Again, we hasten to add that the overall tone must, at least initially, be supportive, with coaching, timely feedback, and non-disciplinary remediation being the constants in the process.

issue further with Academy staff to assess the need for supplemental training on this issue.

Our assessments in this series of paragraphs is based upon an extensive review of course documentation, continuing discussions with Academy and IAS staff, personal observation of instruction, and a correspondence assessment to determine if instructional content matches APD policies and CASA requirements.

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

4.7.42 Assessing Compliance with Paragraph 55: Force Review Evidence Standard

Paragraph 55 stipulates:

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

Methodology

The requirements in Paragraph 55 are included in APD's approved suite of force-related policies and were covered in presentations of both the 24-hour Supervisory Use of Force Investigations Curriculum and the 40-hour Use of Force Curriculum, which were completed in June 2016.

Results

Our assessments in this series of paragraphs is based upon an extensive review of course documentation, continuing discussions with Academy and IAS staff, personal observation of instruction, and a correspondence assessment to determine if instructional content matches APD policies and CASA requirements.

Moving forward, to determine compliance APD will be asked to produce course of business documentation that captures the movement of cases from level to level where investigative deficiencies are noted by command level reviewers. The monitoring team has identified and documented many examples of investigative deficiencies in IMR-3, IMR-4 and a Special Report recently provided to APD. Those reports provide a wealth of guidance for APD to consider as they move into the compliance stage of assessment. Items missing or incorrectly done during the Use of Force

and Supervisory Investigation of Use of Force training will need to be remedied before APD achieves secondary compliance with this paragraph. Much of this will require re-training, either individually or possibly organization-wide.

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

4.7.43 Assessing Compliance with Paragraph 56: Force Review Quality

Paragraph 56 stipulates:

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

Methodology

The requirements in Paragraph 56 are included in APD's approved suite of force-related policies and were covered in presentations of both the 24-hour Supervisory Use of Force Investigations Curriculum and the 40-hour Use of Force Curriculum, which were completed in June 2016.

Results

Our assessments in this series of paragraphs are based upon an extensive review of course documentation, continuing discussions with Academy and IAS staff, personal observation of instruction, and a correspondence assessment to determine if instructional content matches APD policies and CASA requirements. Items missing or incorrectly done during the Use of Force and Supervisory Investigation of Use of Force training will need to be remediated before APD achieves secondary compliance with this paragraph.

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

4.7.44 Assessing Compliance with Paragraph 57: Force Review Board

Paragraph 57 stipulates that:

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

Methodology

The requirements in Paragraph 57 are included in APD's approved suite of force-related policies and were covered in presentations of both the 24-hour Supervisory Use of Force Investigations Curriculum and the 40-hour Use of Force Curriculum, which were completed in June 2016.

Results

The first requirement in this paragraph appears to conflict with the Force Review Board's (FRB) practice of reviewing only a sample of supervisory force investigations every 90 days (see Paragraph 78, sub-section c). The language in this paragraph states that the FRB shall review the supervisory force investigation "to ensure that it is complete and that the findings are supported by the evidence". The intent of this provision, as specifically stated, is to require that the FRB review 100% of these investigations; that is not the current practice, based upon the information that we have been provided. At present, the endpoint for completed supervisory use of force investigations is unclear. CIRT, at some point, was designated as the endpoint, but that practice was discontinued in January, 2016 because of workload issues. We are somewhat concerned that the complex process of supervisory force investigation and review may be overwhelming the support systems required to achieve and maintain compliance. This issue will be revisited during IMR-5's site visit.

These investigations represent, on average, 80% of APD use of force cases. Consequently, it is important that a semi-independent quality control point be designated to conduct final appraisals and confirm any findings. The monitoring team will explore this further with APD during its next site visit in November 2016.

Our assessments in this series of paragraphs as APD works toward secondary compliance are based upon an extensive review of course documentation, continuing discussions with Academy and IAS staff, personal observation of instruction, and a correspondence assessment to determine if instructional content matches APD policies and CASA

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

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

4.7.45 Assessing Compliance with Paragraph 58: Reassignment of Force Review

Paragraph 58 stipulates that:

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

Methodology

The requirements in Paragraph 58 are included in APD's approved suite of force-related policies and were covered in presentations of both the 24-hour Supervisory Use of Force Investigations Curriculum and the 40-hour Use of Force Curriculum, which were completed in June 2016.

Results

Our assessments in this series of paragraphs as APD works toward secondary compliance are based upon an extensive review of course documentation, continuing discussions with Academy and IAS staff, personal observation of instruction, and a correspondence assessment to determine if instructional content matches APD policies and CASA requirements. Secondary compliance is not attained due to items missing or incorrectly done during the Use of Force and Supervisory Investigation of Use of Force training. These items will need to be remediated before APD achieves secondary compliance with this paragraph.

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

4.7.46 Assessing Compliance with Paragraph 59: Abuse of Force Discipline

Paragraph 59 stipulates:

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

Methodology

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

Results

Our assessments in this series of paragraphs as APD works toward secondary compliance are based upon an extensive review of course documentation, continuing discussions with Academy and IAS staff, personal observation of instruction, and a correspondence assessment to determine if instructional content matches APD policies and CASA requirements. Secondary compliance is not attained due to items missing or incorrectly done during the Use of Force and Supervisory Investigation of Use of Force training. These items will need to be remediated before APD achieves secondary compliance with this paragraph.

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

Paragraphs 60 through 77 encompass a series of requirements relating to the policy, procedures, and practices of APD's Internal Affairs Division (IAD), which is a subordinate unit in the Professional Accountability Bureau (PAB). IAD is composed of two subordinate units: Internal Affairs Section and Critical Incident Review Team (CIRT) Unit. The Investigative Response Team (IRT) Unit is a subordinate unit within the Criminal Investigations Division (CID). CIRT handles all Administrative Investigations and focuses specifically on "lessons learned" from its case reviews. IAS investigates all internal complaints involving officers and employees. IRT handles all criminal investigations of uses of force involving an officer above the rank of sergeant, Serious Uses of Force,

Officer-involved Shootings (OIS) and In-custody Deaths, working closely with the Multi-Agency Task Force (MATF).

4.7.47 Assessing Compliance with Paragraph 60: IAB Force Review

Paragraph 60 stipulates that:

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

Methodology

PAB SOP 2-05 was approved by the monitor on June 5, 2016, bringing APD into Primary Compliance on the requirements in Paragraph 60. Because the previous indexing system was confusing, APD recently implemented a new system to differentiate different levels of policy, including, in descending order, Departmental, Bureau-level, and Unit-level. The monitoring team has not yet adjusted to the new system, but we are aware that several orders in the Internal Affairs suite have been re-numbered in the seven series, which now includes policies covering IAS, IRT, and CIRT. Because these policies provide the foundation for training and field implementation, the monitoring team will review the implementation and assessment of these policies thoroughly as part of its broad, in-depth review of use of force investigations in IMR-5.

Results

The monitoring team is aware that a staffing study was recently completed that may have staffing implications for IAS. It is our impression that staffing currently may be sub-optimal to handle the present workload, based upon the limited work flow data that we have reviewed (e.g. compliance rates with the 72-hour rule) which is complicated by the unavoidable, uneven implementation of new investigative requirements. This causes concern for several reasons: First, timely feedback is delayed, which means that deficiencies take longer to detect and remediate. This is especially crucial during early stages of the learning curve associated with the reform process. Second, workload pressures frequently lead to "workarounds" that investigators employ to lighten workloads and the associated stress. This can result in practices---as we

found with respect to profanity and distraction strikes---that erode the original intent of agency policies. Third, as we noted in our recent Special Report, it appears that CIRT is no longer routinely reviewing supervisory use of force investigations. If that is the case, the point of final review and approval of those investigations now rest with the commander overseeing the investigation. Although the Force Review Board (FRB) does review a small sample of those investigations quarterly, the monitoring team does not regard that as a sufficiently robust level of oversight, particularly in the early and critically important stage of transitioning to a new investigative regime. This is the stage when frequent, timely, and supportive coaching, for the most part, is indispensable. Yet, APD cancelled the second quarter FRB---for understandable reasons---which now extends a vital assessment-feedback cycle from 90 to 180 days. Thus, if we are correct about the endpoint for supervisory use of force investigations, and the FRB cycle, APD is moving in exactly the opposite direction in terms of oversight and accountability.

The monitoring team requested serious use of force cases that were initiated by CIRT/IRT between the dates or May 16 and July 15, 2016. For the timeframe noted above, twenty-five (25) CIRT cases were initiated. The cases provided to the monitoring team were not completed by CIRT, presumably due to the complexity of cases and timing of our request. However, a review of the limited data that was available still provided usable information that allows us to provide feedback to APD concerning the investigation of serious uses of force. It's important to note that the following is based on preliminary information that usually accompanies CIRT/IRT responses to serious uses of force.

The current business process for APD, in our understanding, is that once a serious use of force is identified in the field, CIRT and IRT are required to be contacted. Both units are required to respond to the scene to take over investigatory responsibilities. IRT investigates the underlying crime/event that led to the use of serious force, while CIRT investigates the administrative elements of the case. If CIRT identifies misconduct, they contact the Internal Affairs Unit that will then initiate an internal investigation into that misconduct. Based on our review CIRT creates an initial Use of Force Data Report to capture the preliminary elements of the case, which will typically include the key aspects of the case that constituted a serious use of force. That report is then given a cover memo that is submitted to the Chief of Police --- within 24-hours, by policy --- which is a key element of the CASA. CIRT is then required to submit their investigation within two months, unless they request an extension from the Chief of Police. The monitoring team reviewed twenty (20) of the cases that were provided. The following are some broad observations we have made from the data that was provided:

1. The proper categorization of force v. serious use of force cases is still a problem at the field level of APD.

2. Seven (7) of the cases --- or 35 percent --- included some type of force against a handcuffed person.[39]

3. In 20 percent of the cases a 24-hour notification was not submitted on time as required by the CASA.

4. In six (6) of the first eight (8) cases (75 percent) the monitoring team reviewed there was an extension request (meaning CIRT needed more than two months to complete their investigation).[40]

5. Evidence exists that the CIRT response to serious use of force is maturing, but is still in need of refining to ensure that in all cases where a serious use of force is reported, or suspected, they immediately respond.

6. The initial response by a supervisor, and the manner in which they collect information, to a scene where an officer uses force is critical to APD's operational success. APD must monitor that process to ensure supervisors who respond to the scene of a use of force are asking clear, concise, yet probing questions of officers to make sure they have a clear understanding of what transpired. Doing so is to the benefit of the officers as well as the citizenry they encounter.

To put this information in perspective, we reviewed 20 cases, and found 20 problematic factors. Such substandard performance seriously calls into question the degree to which policy and training have affected supervisory personnel to date. This issue should be a center-point for APD moving forward.

In addition to the above general observations, the monitoring team is providing feedback on six (6) CIRT cases. However, we stress that the information is based on the initial reports that were submitted, and not complete investigations. That said, we feel there is still valuable

[39] The monitoring team draws no conclusions as to the appropriateness of the force used against each person. However, it is this type of critique CIRT should be self-identifying to determine if there are tactical, policy or training revisions that are appropriate.

[40] The two remaining cases are unclear as to whether extensions were requested due to the quality of data that was provided. Therefore, they too could have extension requests. The monitoring team believes that of the remaining twelve (12) cases reviewed, extension requests probably now exist for those cases as well. However, because of the timing of our data request for those cases APD, CIRT probably had not reached a point where an extension request had been submitted.

information that APD can look to in order to better refine their response to serious uses of force.

CASE 1 – [[IMR-4-7]]

The monitoring team reviewed a CIRT initial Use of Force Data Report into a serious use of force that occurred on May 10, 2016. Though the case occurred on May 10, the force was not initially categorized as a serious use of force in the field. The Use of Force Data Report was prepared by a CIRT investigator, and was dated May 17, 2016, a full week after the event. Reportedly, the underlying case involved a theft of electronics. An APD officer responded to the scene and ultimately arrested a suspect for the crime. The suspect was reportedly uncooperative and verbally abusive toward the officer, up to and including after they arrived back at the police station. When they arrived at the station the officer asked the suspect --- who was handcuffed --- to look away so he could key in the access code to the back door of the station. The suspect refused and ultimately the officer "…used the opposite wall to restrain (the suspect)". A report referenced, but not provided to the monitoring team, apparently indicated that the suspect was later found to have a cut on his cheek, the top of his forehead and on his left wrist.

The monitoring team reviewed a memo, dated May 12, 2016 (two days later) that was prepared by a field sergeant. The sergeant reported that he learned of this force event, then called and spoke with a supervisor of CIRT to ask for guidance. The sergeant documented that he was told to complete an initial investigation and forward the report to CIRT. (CIRT did not apparently respond). The memo articulated that there was a different sergeant working on the night of the actual force event, and that sergeant did not know that force against a handcuffed person constituted a serious use of force and would require a CIRT response. He also reported that the sergeant who was working on the night of the incident had not attended the 24-hour supervisor training. This begs the question regarding what APD has done to remediate training for those who did not attend or who did not pass the post-training exam. Because CIRT did not initiate their initial report until seven (7) days after the use of force, the preliminary actions they are required to conduct at the scene did not occur contemporaneous with the event.

CASE 2 – [[IMR-4-8]]

Officers responded to a family dispute, and ultimately arrested a suspect. The suspect initially resisted, but the officers were able to take him into custody and handcuff him. While conducting a search the suspect refused the orders of an officer to spread his feet, and the officer had to use his own foot several times to make the suspect spread his feet so the search

could occur. This was categorized as a serious use of force due to force being used on a handcuffed person. As a result, both CIRT and IRT responded. IRT determined that the case "…did not meet their investigative criteria and left the scene". The monitoring team will follow up with IRT to determine under what circumstances they will leave a scene without conducting a criminal investigation into the underlying call for service that led to a serious use of force. It was the monitoring team's understanding that IRT would conduct each criminal case into an underlying investigation that led to a serious use of force. It is unclear why IRT did not conduct their investigation. We consider this a potential policy or training issues, and encourage APD to follow-up, identify which it is, and remediate same.

CASE 3 – [[IMR-4-9]]

K9 Officers assigned to the Special Operations Section were called to assist with locating a suspect who ran from police --- it was later determined the suspect was a wanted felon. The case resulted in the deployment of a K9, which constituted a serious use of force against the suspect. The monitoring team conducted a cursory review of this file, but highlight it here for one specific reason. While extensive criticism has been levied against APD's command level reviews, this case stands apart as a positive example of the type of scrutiny that should be expected from all APD commanders in every case they review. The Special Operations Commander felt that in order for the file to be thorough, which would allow him to complete his review, an additional officer interview had to be completed by the IRT. He contacted IRT and requested the additional officer statement be taken --- which was done and communicated to him by way of a transcript (of a taped statement). Once reviewed the commander made the determination that the K9 officer's use of his Patrol Service Dog (PSD) was reasonable and within policy. Notwithstanding some additional points that could have been highlighted by the commander to enhance the final analysis, his initiative to ensure that all relevant statements be taken is an excellent example of the oversight APD should strive to achieve throughout its force investigation system.

CASE 4 – [[IMR-4-10]]

Officers responded to the report of a suspect carrying two large sticks, acting aggressively and hitting cars. The officers ultimately encountered the suspect and attempted to place the subject under arrest. The suspect resisted, and during the course of the arrest seven (7) ECW deployments --- in both Standoff and Drive Stun Modes--- were used to effect the arrest. The monitoring team has flagged this particular case because (based on a limited review) this case appears to involve an ECW deployment --- in Drive Stun Mode --- but not so an officer can create space and consider

other force options. In IMR-3 the monitoring team provided a case review in which an officer appeared to use the ECW as a pain compliance tool, as opposed to a tool to create separation. The monitoring team believes this case is still under investigation by CIRT, so we are not commenting on whether justification existed for the use of force. Nor are we commenting on the quality of the CIRT investigation. We point this case out because based on the documents provided to the monitoring team --- and our observation of an earlier ECW case involving the Drive Stun Mode --- that the use of the ECW in this case will be explored further during our next site visit. In our opinion, APD supervisory and command personnel should adopt the same careful screening practices, which appear not to be in effect currently.

CASE 5 – [[IMR-4-11]]

On June 16, 2016, officers responded to a treatment facility to help staff members with a reported assault. The case resulted with the officers attempting to take a suspect into custody. The monitoring team reviewed a June 22, 2016, memorandum that was completed by a sergeant that responded to the scene, wherein he documented that based on the information he was provided by the officers he did not initially believe that the case involved a use of force. Therefore, the case was not classified as force generally, but more specifically the case was not classified as a serious use of force. Later (it is unknown when) the sergeant conferred with his lieutenant who recommended that CIRT be contacted for clarification. It is unclear exactly when CIRT was contacted based on this memo, but based on the information that was provided to CIRT it was decided that CIRT would initiate a serious use of force investigation. On June 27, 2016, a CIRT detective prepared a memo to his sergeant concerning this case. In it, he documented that on that date he received a memo from a field sergeant, wherein there is a suggestion that this case may have involved a serious use of force. The CIRT detective completed a review of reports and lapel videos and determined that the case did in fact involve a serious use of force. The CIRT detective appeared to suggest in his initial memorandum that because the Chief of Police was notified within 24-hours of CIRT receiving the memo that the notification he made met the 24-hour CASA requirement. The monitoring team disagrees. Though the sergeant who initially consulted with CIRT does not specifically identify the person he spoke with, that consultation occurred well outside the 24-hour timeframe that would have been required to notify the Chief of Police. We consider this a training and supervision issue that should be addressed expeditiously. We also note this confusion occurred after the 24-hour supervisory use of force training.

Case 6 – [[IMR-4-12]]

On July 4, 2016, Officers responded to a reported domestic dispute and ultimately arrested a suspect for assault. The suspect was handcuffed, and while handcuffed --- according to the CIRT Use of Force Data Report (dated July 5, 2016) --- a sergeant's "…right hand (made) contact" with the suspect's head. The lack of more descriptive language as to the manner that the sergeant's hand "made contact" with the suspect's head is curious, and more than a little disturbing to the monitoring team. Was it a touch, a tussle of the hair, or a strike? We note this event occurred after the 24-hour use of force training provided to supervisors. We will continue to follow up on this event, both from a perspective of use of force and adequate supervision.

An APD lieutenant responded to the scene and contacted CIRT to discuss the incident. They decided that the incident did not warrant a CIRT response, but the next day (July 5, 2016) a CIRT member --- it is unclear who that member was --- reviewed the tape and made the determination that CIRT would assume investigatory responsibility of the case. Parenthetically, this case illustrates another weakness in APD supervisory and management chain: we often find "memos" that are in files that are not identified as to author. We feel it is imperative that a strong management and supervisory "chain of control" be established, and that certainly appears not to be the case with APD at this time. Official "reports" or memoranda covering critical events are often provided to the monitoring team sans identifying information, e.g., no "To: --From:" header or other identifying information. We strongly urge APD to correct this critical problem. Henceforth, such non-identified memoranda will not be considered "course of business documents" for the purposes of the monitoring process. Parenthetically, we remind APD that these data elements are part of the definition of "Course of Business" documents developed and used by the monitor.

While the case is still pending a completed CIRT investigation, it is illustrative of failures at the initial reporting and classification stages of a force event. We consider it critical to APD's operational success that events be closely scrutinized by supervisors. The monitoring team makes no judgment on the appropriateness of the force in this case, but notes that supervisors must ask clear, probing questions of officers to ensure they have a clear picture of what happened at an event. Likewise, if CIRT is contacted to respond to a case of serious use of force, they too must be thorough in their initial assessment. Supervisors must "stand up" and claim their actions in follow-up documentation that is trackable and understandable. Otherwise, APD could be left with unprocessed scenes, potentially lost evidence or witness statements, and lost opportunities for officer accountability. Further, such failures of supervision can often lead to enhanced jury verdicts in civil cases involving allegations of police misconduct.

CIRT Assessment of a Series of Force Cases

As noted throughout this report the monitoring team issued a Special Report originally scheduled for August 2016, but delayed by the City, that centered on a series of force and serious uses of force cases by two specific APD officers. We learned that APD was conducting an internal assessment of the force cases, so we asked APD for information that would allow an inspection of the quality of that follow up by the department. The specific information we requested was as follows:

> "The IMT was advised that a secondary review was conducted of Officers X's and Y's uses of force – (The monitoring team) requested copies of all APD investigative and administrative reports, and memos, generated as a result of that secondary review. Including any APD/CIRT/IA recommendations for training, counseling, reassignment, or discipline, or referrals to the District Attorney's Office."

The monitoring team is familiar with the series of force cases involving these two officers, in particular the facts and circumstances surrounding one serious use of force event --- that initially went unreported.[41] If the APD force oversight process worked properly, at some point during the ensuing reviews and investigation APD would have identified and rectified any mishandled steps[42] --- or improper conduct --- in a meaningful way through some degree of training, counseling or discipline. In response to our request, the monitoring team received a series of internal documents. There are a host of obvious shortcomings with the documents that were provided. For instance:

Document 1: (Unsigned and unattributed)

- This document reported that a case was assigned for a CIRT review on March 4th, 2016 --- three months after the event. The monitoring team cannot determine who prepared the document, when it was prepared or if a supervisor ever reviewed it. While reasons are provided for the delayed review, there is no indication that these reasons

[41] The facts and circumstances are reported on extensively in our Special Report.

[42] Those missteps would include any mishandling of force investigations or the initial reporting of force in those case.

were valid or followed up by the author of the report or by any supervisor.

- The author identified issues with the handling of the initial force case and referred the case to internal affairs. Records were not provided to the monitoring team detailing the follow up activities IA took with respect to the deficiencies that were noted within this document.
- The case involved a use of force that resulted in a suspect having a broken arm. The report indicated that the event was not officially classified as a serious use of force until January 15, 2016, more than six weeks after the event occurred.
- The case was not investigated by the IRT until "February 23, 2015" (sic), and a memo was drafted back to CIRT on February 29, 2016. The findings of the IRT investigation indicated that the force used in the case was "necessary". This occurred nearly three (3) months after the event.
- The author of the report interviewed the officer and his sergeant. Both the officer and sergeant indicated that no force had been used in the case, which is completely inaccurate. The monitoring team has reviewed the lapel videos and without question force was used against the suspect, and because there was a resulting broken arm the case should have immediately been classified and investigated as a serious use of force.
- There is no indication that any remedial or disciplinary action was taken regarding the failure to initially report the use of force this case to IA/CIRT, or the misrepresentations by the officers.
- This case carried on into May of 2016, and it appears that the author of the report put little effort into locating and interviewing the person who was the subject of the force. Yet, the CIRT investigator stated, "My avenues of further investigation regarding this injury have been exhausted at this point."

The quality of this particular CIRT administrative review is deficient, especially in light of the oversight by the monitoring team, and APD's clear knowledge that the actions and quality of CIRT reviews had been heavily criticized in recent monitor's reports. It is important to note that the follow up activity by APD occurred only after receiving the monitoring team's initial data request.

Document 2: A CIRT Sergeant's Memo to a Commander (Dated - May13th, 2016)

- The memo indicated that the sergeant was assigned the task of reviewing use of force incidents for Officers X and Y that occurred between January 2016 and May 2016.
- The report is specifically directed at one case (Involving Officer Y) that occurred in September of 2015, in which two CASA defined serious uses of force are identified ---3 cycles of a ECW and a neck hold. The report continued by indicating that at the time the event occurred that APD policy did not classify these two types of force as serious, and that CIRT found no internal documentation directing APD to follow the provisions of the CASA --- though they were required to do so.
- The CIRT sergeant did note an internal Special Order, dated October 20, 2015, mandating that APD follow specific CASA provisions related to the report and investigation of force.

The monitoring team notes that the memorandum here is prepared with specific notations to absolve the officers or supervisors from their responsibility to follow certain CASA-related reporting or investigation requirements. However, the CIRT sergeant never answered the most fundamental question concerning this particular use of force case. Regardless of the CASA or policy provisions (at the time) that defined the level of force that the event should have been categorized into, the CIRT sergeant never made a determination if the force was objectively reasonable. Notwithstanding the fact that APD did have the responsibility to follow the CASA in September 2015, and using objectively reasonable force was an APD policy provision at that time, there is no indication whether the force that was used in the case under CIRT evaluation was determined to be appropriate or excessive in light of the circumstances. While this may be a simple oversight, the monitoring team continues to note an apparent precondition to explain away responsibility, or rationalize behavior within APD, instead of holding officers accountable.

Document 3: <u>(Unsigned and Unattributed)</u>

- This document appears to be an assessment of use of force cases that Officer X & Y were involved in between January 2015 and January 2016. Issues include:

1. The monitoring team cannot determine who authored the report, how it was assigned, the scope of the review, and whether the report was ever reviewed by a supervisor.

2. The quality of the reviews cannot be determined because, generally, the author inserted canned language to each review, indicating that the force was reasonable, within policy and that the author agreed with the findings of the officer's chain of command. These are the types of "flags" that the monitoring team have learned are virtually prima facie evidence of poor and inconsequential administrative investigations.

3. There is no articulated analysis of the events to demonstrate APD considered whether problematic patterns existed with each individual officer, OR perhaps for importantly, when these two officers ride together as partners.

4. The document is not committed to an official APD report.

Document 4: (Unsigned)

- This document is apparently prepared by a CIRT investigator, but the report is unsigned and there is no indication that it was reviewed or approved by a supervisor. The document is not committed to an official APD report.

- The CIRT investigator documents reviewing an incident involving Officers X & Y. By the time this particular review took place the two officers had been involved in several use of force incidents together as partners --- three of which were improperly reported and investigated as serious uses of force from the onset.

- This specific case was assigned on March 4, 2016, three months after the event.

- The quality of this review/investigation is poor and in many respects, perfunctory.

- Despite the many reporting and investigation failures with the case, specifically, a serious use of force that was improperly reported and investigated, the CIRT investigator makes no recommendations for an IA investigation into

policy violations or recommendations for training for any officer or supervisor.

- The CIRT investigator stated in the report, "I am making every effort to contact (the subject of the force) to see if he will speak with me about this incident." There is no indication what efforts were made, when they were made or what follow up has occurred since the time the report was authored. Again, this is the kind of conclusory investigative report writing that needs to be "trained out" of CIRT reports.

- The last dated entry was May 21, 2016, (more than 5 months after the event) where there was an indication that an interview of the sergeant who was supervising Officers X and Y would take place. However, there is no indication whether that interview ever occurred or what information was learned.

- The CIRT investigator found the use of force to be "reasonable and to conform to APD policy" based on the information he had at the time, but failed to complete the investigation before making such a statement. (added underline).

The monitoring team's understanding of CIRT is that they identify training, policy and tactical issues with events and take what they learn and feed it back to the organization through specific training and bulletins to the APD. With respect to the plethora of issues associated with these cases, there is no indication in the record provided to the monitoring team that any of these areas were addressed at the street level--with the officers or supervisors--or at the organizational level (through policy revision, plans for re-training, supervisory counseling, etc.). Because CIRT occupies a critical position in APD's force oversight system, we believe that they should set the standard for the quality of analysis APD expects if a series of force events is under review. In this particular situation, the quality of evaluation was inadequate, which is particularly troubling because of the scrutiny APD's CIRT has been under in the past two monitoring reports. We reiterate here that it appears that CIRT's roles and responsibilities continue to expand and evolve, which will obviously place constraints on their time and quality of work. APD should ensure that CIRT is properly staffed and they receive the necessary resources to meet the needs of their unit. At the present time, we consider these CIRT failures critical and troublesome.

As noted above the purpose of our case reviews is to continue providing perspective and feedback on the quality of use of force reporting, response and investigations by APD as they move toward their assessment phase for operational compliance. We understand that change takes time, and no training is 100 percent effective, but we cannot emphasize enough the critical and essential role that effective and measured supervision is *the key* element in effecting change in a modern police agency. At the current time, that strong cadre of tough-minded supervisors appears to be missing at APD.

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

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

Paragraph 61 stipulates:

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

Methodology

PAB SOP 2-05 was approved by the monitor on June 5, 2016, bringing APD into Primary Compliance on the requirements in Paragraph 61. From our reviews and discussions with both IRT and IAS staff, APD has erected a strong firewall between the two that permits a one-way flow from IRT to IAS, but not the reverse.

Results

As we noted above, the monitoring team has not been able to evaluate the training that IRT and IAS provide to their investigators, but will address this issue in IMR-5, along with the relationship between workload, case flow, and staffing. The monitoring team has found references to IRT's predecessor FIT in several recent documents that APD provided. We encourage greater diligence to remove these legacy references.

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

4.7.49 Assessing Compliance with Paragraph 62: Revision of IAB Manual

Paragraph 62 stipulates:

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

Methodology

PAB SOP 2-05 was approved by the monitor on June 5, 2016, bringing APD into Primary Compliance on the requirements in Paragraph 62. The task now before IAD staff is to conduct a thorough review of the manual, identify important training content, determine relevant audiences, select the best training medium, and then develop and deliver the required training.

Results

During its next site visit the monitoring team will meet with PAB and academy personnel to determine how, and for whom, training will be conducted related to SOP 2-05.

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

4.7.50 Assessing Compliance with Paragraph 63: Staffing IAB

Paragraph 63 stipulates:

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

Methodology

PAB SOP 2-05 was approved by the monitor on June 5, 2016, bringing APD into Primary Compliance on the requirements in Paragraph 63. As we noted above, IAD must still develop and deliver training to ensure that its investigators and IRT investigators are fully aware of the requirements in this paragraph. This training should target two audiences---officers in general who require a working knowledge of IAD procedures and IAD and IRT investigators who must work daily within the framework of these policies and procedures. This task is due outside the reporting dates for this monitor's report.

Results

To some extent, the first objective has been met through the 40-hour and 24-hour presentations. However, SOP 2-05 was not approved until June 5, 2016, which means that some content probably was omitted in the two courses. To determine what type of supplemental training is required, APD will need to compare carefully the instruction that was presented in the two courses with the provisions in the newly approved IAD policy.

The monitoring team assumes that the question of whether IAD has sufficient staff to handle its workload to ensure the timely processing of force investigations and CIRT reviews will be dealt with in APD's review of the recent staffing analysis report. In the same vein, the monitoring team will watch carefully for bottlenecks, backlogs, and serious delays in the case flow management process that potentially degrade oversight and accountability. We see adequate staffing and training for IAS personnel as a critical "next step" in the compliance process.

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

4.7.51 Assessing Compliance with Paragraph 64: Training IAB Personnel

Paragraph 64 stipulates:

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

Methodology

PAB SOP 2-05 was approved by the monitor on June 5, 2016, bringing APD into Primary Compliance on the requirements in Paragraph 64. To achieve secondary compliance, APD must now convert policy into meaningful training for its IAD and IRT investigators.

Results

The monitoring team's review of training to date reveals that a more structured, task-based, prioritized portfolio of training courses is required. If outside vendors are used in preference to internally-developed courses, proper vetting is essential to ensure that their content aligns closely with APD values, CASA requirements, and policies. This should include, in our judgment, detailed inputs from APD SMEs.

Other issues continue to plague APD's compliance efforts with this paragraph. For example, in the monitor's "Special Report" on use of force at APD, filed with the Court on September 16, 2016, we noted the following:

> "At this point the monitoring team believes that even legitimately questionable use or shows of force cannot survive APD's process, since each step appears preconditioned to rationalize or explain away officer conduct. Likewise, it appears to the monitoring team that APD sees many of the missed opportunities as "water under the bridge" and not events that should be reinvestigated --- or in cases that were missed, investigated at all. The agency has almost no appetite for correcting behavior that violates existing policy. Therefore,

it is nearly impossible at this point to rely on force data that APD reports" (emphasis added).[43]

Until officers accurately report their uses of force, and until supervisors and IAB review those reports with an eye toward adherence to established policy (and eventually training) the APD's use of force "statistics" will remain problematic, in the monitor's view.

Results

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

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

Paragraph 65 stipulates:

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

Methodology

PAB SOP 2-05 was approved by the monitor on June 5, 2016, bringing APD into Primary Compliance on the requirements in Paragraph 65.

Results

PAB SOP 2-05 is a critical component in the APD's system for use of force reporting and investigations. To the monitoring team's knowledge, no training regarding the MATF process has been provided.

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

4.7.53 Assessing Compliance with Paragraph 66: MATF Assistance to IAB

Paragraph 66 stipulates:

[43] *Special Report of the Independent Monitor: Use of Force Policy, Supervision and Management at the Albuquerque Police Department*, September 16, 2016.

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

Methodology

PAB SOP 2-05 was approved by the monitor on June 5, 2016, bringing APD into Primary Compliance on the requirement in Paragraph 66.

Results

The monitoring team will focus heavily on the interaction between IA, CIRT and IRT during its case reviews for IMR -5. Likewise, training related to this paragraph will be requested now that SOP 2-05 has been approved by the monitor. As expected, we will monitor the nexus between IA-CIRT-IRT as it affects MATF assistance.

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

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

Paragraph 67 stipulates:

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

Methodology

PAB SOP 2-05 was approved by the monitor on June 5, 2016, bringing APD into Primary Compliance on the requirements in Paragraph 67.

Results

The underlying use of force case in our recently issued Special Report[44] involved a knee strike to the head of a suspect who was pinned to the ground by 3-4 officers with his head overhanging the curb line. The strike,

[44] The report was scheduled to be released in August, 2016, but was delayed by the City.

which the officer described as a "distraction strike", was clearly intentional and appears to have rendered the suspect unconscious. He suffered a visible bloody nose and several cuts and abrasions as a result of the strike. In our judgment, the strike constituted deadly force because it was directed at a vital bodily location and little justification existed for its use. Despite this, a superficial IRT investigation found that no criminal violation occurred without conferring with the District Attorney's Office. The IRT investigator actually found the strike justifiable, even though the subject officer failed to articulate any justification for it. Had several officers who actually viewed the strike not persisted in asking questions about whether it should have been reported and investigated, this case would never have come to light[45]. In the IAS interview, the officer stated that he had used "distraction strikes plenty of times".

We described this case as a systemic failure because of serious breakdowns at successive stages in the use of force oversight and accountability process. The failure to confer with the District Attorney's Office, in our judgment, was one of those breakdowns.

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

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

Methodology

PAB SOP 2-05 was approved by the monitor on June 5, 2016, bringing APD into Primary Compliance on the requirements in Paragraph 68.

Results

As reported under Paragraph 67, the monitoring team's recent Special Report focuses upon a case in which there was a question of whether an intentional, unnecessary knee strike to a defenseless suspect's head required consultation with the District Attorney's Office or the USAO. In that case IRT determined that there was no need for consultation because the officer's actions were lawful. The monitoring team reviewed the relatively brief memo from the IRT investigator and determined that it in

[45] Such instances militate for a rigorous, thorough ad hoc review of randomly, or stratified random videotapes recorded in the routine course of police business, particularly as it relates to use of force events.

fact had relied totally upon existing reports[46] and involved no independent investigative activity. As later determined, those reports were unreliable and had failed to even uncover the improper knee strike to the suspect's head. Although the IRT investigator located the knee strike on one of the case videos, he then proceeded to articulate a rationale for the strike--- even though the officer never reported the strike, nor did he articulate his reasons for executing the strike. The gratuitous creation of a defense to the allegation of excessive force by the investigator was an improper departure from his fact-finding role and conflicted with the facts of the case, which were not established until IAS investigated the incident. The IRT investigation was, in a word, perfunctory, and apparently deliberately ignored facts in evidence and excused improper uses of force. We will monitor to assess the types of intervention APD provides for the investigator as well as the officer involved.

Cases that implicate the consultation requirement with the DA clearly call for high-level review and approval.[47] It is unclear, to the monitoring team, at what level this decision is currently being made. The monitoring team sees this failure to consult the District Attorney's Office as significant at the early stages of their reform process. The purpose for consulting the District Attorney is two-fold: ensure a case is reviewed for thoroughness and legal sufficiency, and to have an objective review of the case facts so an appropriate and transparent decision can be made. By building this review into their business process APD will be able to demonstrate to the community their commitment to transparency and accuracy when assessing force that is used by their officers --- and thereby reduce external criticism. The standard practice in major departments today is to defer any compelled interviews, elevate the matter to the executive level immediately, and, if there is any doubt, err on the side of consultation in view of the seriousness of the issues involved. If the decision is never elevated expressly to the Chief Executive's level, it will be impossible for APD to comply with the requirements in Paragraphs 67 and 68. The monitoring team has seen a significant backlog in OIS reviews in the District Attorney's Office, therefore, APD will have to work closely with their prosecuting agency to develop a timely review process and build it into their use of force investigation system. The issues of concern to the monitoring team also seem germane to the provisions in Paragraph 186,

[46] The IRT investigator was not provided the Use of Force Data Report that would have undoubtedly provided additional perspective to make an accurate determination. This failure was communicated directly with IRT and IA supervisors during our June 2016 site visit.

[47] To be accurate, the Acting IRT Lieutenant, who was also the case investigator, submitted his 1- ½ page memo to the Assistant Chief of Police. However, it was a "final" report and there is no mention of consultation with the District Attorney's Office. The investigator, on the basis of a seriously deficient primary investigation, concluded that the knee strike was lawful, even though the officer's report never mentioned that it was a head strike, rendered the suspect unconscious, and caused facial injuries. The last two items were, however, included in other officers' supplemental reports.

which is referred to specifically in this paragraph. **The monitoring team has reported previously on the lack of credibility of APD's use and show of force data, and that relying on that data for purposes of determining CASA compliance will not be possible until such time that the department expends its full effort toward greater accountability in its reporting of use of force.**

Note: The language refers to the Internal Affairs Bureau when it is actually the Internal Affairs Division, which is a subordinate division within the Professional Accountability Bureau. The Bureau head holds the rank of Assistance Chief of Policy and plainly qualifies as an executive-level officer.

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

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

Paragraph 69 stipulates:

"In conducting its investigations of serious uses of force, as defined in this Agreement, the Internal Affairs Bureau shall:

a) respond to the scene and consult with the on-scene supervisor to ensure that all personnel and subject(s) of use of force have been examined for injuries, that subject(s) have been interviewed for complaints of pain after advising the subject(s) of his or her rights, and that all officers and/or subject(s) have received medical attention, if applicable;

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

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

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

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

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

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

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

i) record all interviews;

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

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

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

Methodology

PAB SOP 2-05 was approved by the monitor on June 5, 2016, bringing APD into Primary Compliance on the requirements in Paragraph 69.

Results

The task before IAS is now to assess whether the training that has taken place to date----both internally and in outside courses----fulfills the requirements in each sub-section of the paragraph. IAS will need to assess correspondence between CASA requirements and the 40-hour and 24-hour courses. APD should consider using that approach to conduct a systematic review of training and assigned responsibilities. The sub-sections could also be organized as a checklist to support performance, especially in the transition period to a new set of investigative requirements. IAS did this exact thing for officers completing use of force reports and supervisors conducting use of force investigations, which we recently recommended be included in the investigative packet to help embed investigative requirements in long-term memory and increase the pace of transfer into practice.

During the reporting period for IMR-5, the monitoring team will examine a sample of IA investigations (we review a sample of CIRT investigations elsewhere in this report) literally requirement-by-requirement to assess compliance. One of the more challenging areas for APD has been with the report writing process, where officers commit to paper their activities

during a use of force investigation. The monitoring team sees the current open narrative method of writing to be cumbersome and time consuming for APD supervisors. For supervisors to locate and assess that individual CASA and policy requirement have been completed properly they have to comb through sometime extensive report narratives. We have written about this issue, and the inefficiencies that accompany APD's current report structure extensively in IMR-2 and IMR-3. To date we have seen no progress from APD in addressing this issue.

Other issues continue to plague APD's compliance efforts with this paragraph. For example, in the monitor's "Special Report" on use of force at APD, filed with the Court on September 16, 2016, we noted the following:

> "At this point the monitoring team believes that even legitimately questionable use or shows of force cannot survive APD's process, since each step appears preconditioned to rationalize or explain away officer conduct. Likewise, it appears to the monitoring team that APD sees many of the missed opportunities as "water under the bridge" and not events that should be reinvestigated --- or in cases that were missed, investigated at all. The agency has almost no appetite for correcting behavior that violates existing policy. Therefore, it is nearly impossible at this point to rely on force data that APD reports" (emphasis added).[48]

Until officers accurately report their uses of force, and until supervisors review those reports with an eye toward adherence to established policy (and eventually training) the APD's use of force "statistics" will remain problematic, in the monitor's view.

For IMR-5 we will also carefully review IAS training in detail to assess Secondary Compliance.

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

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

Paragraph 70 stipulates:

[48] *Special Report of the Independent Monitor: Use of Force Policy, Supervision and Management at the Albuquerque Police Department*, September 16, 2016.

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

Methodology

PAB SOP 2-05 was approved by the monitor on June 5, 2016, bringing APD into Primary Compliance on the requirement in Paragraph 70.

Results

As recent training content is introduced into actual front-line practice, the pace of investigations has understandably slowed and will probably continue that way for several months. This, we understand, has caused a decline in meeting the 72-hour deadline for supervisory use of force investigations. This was the result of a conscious decision to stress quality and focus less on deadline compliance in the near-term. The monitoring team agrees with that decision, especially in view of our past comments about APD's preoccupation with deadlines to the detriment of work quality.

As noted in Paragraph 60, the monitoring team reviewed twenty (20) CIRT reports to establish a baseline of data for compliance with this Paragraph. The monitoring team determined that in 20% of the cases a 24-hour notification was not submitted on time as required by the CASA, which equates to an 80% compliance rate. We expect this percentage to improve as APD adapts to the pace and requirements of new policy and practice implemented to comply with the CASA.

Other issues continue to plague APD's compliance efforts with this paragraph. For example, in the monitor's "Special Report" on use of force at APD, filed with the Court on September 16, 2016, we noted the following:

> "At this point the monitoring team believes that even legitimately questionable use or shows of force cannot survive APD's process, since each step appears preconditioned to rationalize or explain away officer conduct. Likewise, it appears to the monitoring team that APD sees many of the missed opportunities as "water under the bridge" and not events that should be reinvestigated --- or in cases that were missed, investigated at all. The agency has almost no appetite for correcting behavior that violates existing policy. Therefore,

it is nearly impossible at this point to rely on force data that APD reports" (emphasis added).[49]

Until officers accurately report their uses of force, and until supervisors review those reports with an eye toward adherence to established policy (and eventually training) the APD's use of force "statistics" will remain problematic, in the monitor's view.

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

4.7.58 Assessing Compliance with Paragraph 71: IAS Investigative Timelines

Paragraph 71 stipulates:

"The Internal Affairs Bureau shall complete administrative investigations within two months after learning of the use of force. Any request for an extension to this time limit must be approved by the commanding officer of the Internal Affairs Bureau through consultation with the Chief or by the Chief. At the conclusion of each use of force investigation, the Internal Affairs Bureau shall prepare an investigation report. The report shall include:

a) a narrative description of the incident, including a precise description of the evidence that either justifies or fails to justify the officer's conduct based on the Internal Affairs Bureau's independent review of the facts and circumstances of the incident;

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

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

d) the Internal Affairs Bureau's narrative evaluating the use of force, based on the evidence gathered, including a determination of whether the officer's actions complied with APD policy and state and federal law; and

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[49] *Special Report of the Independent Monitor: Use of Force Policy, Supervision and Management at the Albuquerque Police Department*, September 16, 2016.

an assessment of the incident for tactical and training implications, including whether the use of force could have been avoided through the use of de-escalation techniques or lesser force options;

e) if a weapon was used by an officer, documentation that the officer's certification and training for the weapon were current at the time of the incident; and

f) the complete disciplinary history of the target officers involved in the use of force."

Methodology

PAB SOP 2-05 was approved by the monitor on June 5, 2016, bringing APD into Primary Compliance on the requirements in Paragraph 71.

Results

The monitoring team commented on a major IAS investigation in its recently issued Special Report. In that report, we identified several significant concerns that we believe are general in nature.[50] These include improperly extending *Garrity* provisions to witness officers,[51] extending *Garrity* provisions much earlier than required by case law or standard practice in the field, excessive commentary by APOA representatives during investigative processes, overlooked or ignored policy violations, including possible untruthfulness, and limited probing by investigators to fully establish relevant facts. These are described in full detail in the Special Report.

With respect to *Garrity*, while following up on a case that involved an unreported serious use of force[52] during its June 2016 site visit we became aware that IA was extending Garrity to witness officers during their investigations. It was unclear under what procedural, policy, contractual of prosecutorial authority Garrity was being extended, therefore, the monitoring team requested APD to provide an explanation. The monitoring team requested that APD provide: "Any/all document, record or collective bargaining agreement (CBA) provision that requires the application of Garrity provisions to witness officers in use of force or IA investigations."

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[50] We have not included minor issues that could improve the organization and flow of investigative reports. For example, in the major case that we reported on, there is no separate investigator's log, which is common practice in the field, but not at APD. Instead, administrative information is interspersed with substantive material, which can affect narrative flow. We have and will share comments of this type directly with IAS staff.

[51] We were advised in a recent e-mail that IAS has discontinued this practice, but we have not been provided with any COB documentation to that effect.

[52] The case was fully reported on in a recently submitted Special Report.

In response to that request APD reported to the monitoring team that they were unaware of any documentation that mandated *Garrity* be extended to witness officers in use of force or IA investigations. However, the monitoring team was advised that IA has had a long-standing practice of extending *Garrity* to witness officers and that the APOA has an expectation of APD officers receiving Garrity. The monitoring team was further advised that internally APD had been discussing the application of *Garrity* to witness officers and that as of July 21, 2016, IAS investigators had been instructed to no longer read *Garrity* to witness officers in IAS investigations.[53] The monitoring team was told, "The APOA has indicated they will read *Garrity* in all IAS investigations. The practice of applying *Garrity* to Use of Force investigations in the field was never taught or sanctioned by the Department. It is believed the APOA or some other entity may have encouraged it on some level. The recent 24-hour supervisor training addressed this and clarified the issue to supervisors. This was done prior to this data request."

With respect to *Garrity* being addressed and clarified during the 24-hour Supervisory Use of Force Investigation training, the monitoring team reviewed a videotape of the Day 1 training that covered the topic of *Garrity*. Based on our review of that training, in the opinion of the monitoring team, the topic of *Garrity* is anything but clarified, in particular for field supervisors. In the opinion of the monitoring team the instructor conflated a number of related, but incongruous factors. The instructor stated that officers are "…technically being compelled" and that supervisors can compel an officer to answer questions and to provide a statement concerning their use of force. She went on to say, "In regular supervisory force investigations[54] we don't want you guys reading officers *Garrity*, it's understood that the statement is coerced, they have to provide their statement and we don't want you guys reading them their *Garrity* rights…that's kind of implied." In the opinion of the monitoring team the topic of *Garrity* is a significant issue. APD must research and properly resolve its use at all levels of the organization.

The monitoring team reviewed a sample of preliminary CIRT investigations that included extension requests to the Chief of Police because those cases were approaching the 2-month submission provision in this Paragraph. (See Paragraph 60) CIRT routinely prepares 24-hour reports and extension requests in their investigative process; the latter appears to occur regularly as a product of the workload assigned to CIRT.

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[53] The monitoring team was provided no course of business documentation that verified IA delivered such an edict to its investigators. We will request that APD provide the internal documentation they have assembled to research the proper application of Garrity, and any memorandums they dispensed to their command.

[54] We understand "regular supervisory force investigations" to mean investigations into non-serious uses of force that are conducted in the field.

During its June site visit, the monitoring team met with CIRT supervisors to discuss the typical duties and responsibilities of the unit. As CIRT continues to mature and refine its roles within the department, it seems obvious that CIRT is being relied upon for a wide array of tasks --- from training and administrative, to investigatory responsibilities. APD should ensure CIRT is being supported properly with the resources and staff to meet its obviously increased workload. This will be critical to ensure they are meeting the CASA provisions of this Paragraph.

The monitoring team reviewed a videotape of Day 1 for the Supervisory Use of Force Investigation Course. When discussing the 2-month requirement (of this Paragraph) a CIRT supervisor candidly told the class that there was not a high likelihood that their cases could be submitted within the 2-month timeframe.[55] In fact, CIRT extension requests reviewed by the monitoring team did not include a definitive extension date, meaning, the requests were made but there was no new date set for the case submission. This will most likely cause significant backend oversight and accountability issues as CIRT cases get backed up. The concern for the monitoring team is that serious use of force cases will become old and investigative avenues stale as the tolling period elongates. Because CIRT investigates the more serious uses of force, the resultant outcome could be a lack of timely mitigation of problematic officer behavior in the field. Likewise, the ability for CIRT to cycle lessons learned into academy training programs in a timely fashion could be adversely affected. APD should closely and carefully monitor CIRT workload, staffing, and its ability to meet established investigative timelines.

Other issues continue to plague APD's compliance efforts with this paragraph. For example, in the monitor's "Special Report" on use of force at APD, filed with the Court on September 16, 2016, we noted the following:

> "At this point the monitoring team believes that even legitimately questionable use or shows of force cannot survive APD's process, since each step appears preconditioned to rationalize or explain away officer conduct. Likewise, it appears to the monitoring team that APD sees many of the missed opportunities as "water under the bridge" and not events that should be reinvestigated --- or in cases that were missed, investigated at all. The agency has almost no appetite for correcting behavior that violates existing policy. Therefore,

[55] This comment is paraphrased and was said in the context that CIRT will not sacrifice accuracy for expediency. That said, CIRT extension requests reviewed by the monitoring team most commonly cited workload issues as the reason for the need for more time.

it is nearly impossible at this point to rely on force data that APD reports" (emphasis added).[56]

Until officers accurately report their uses of force, and until supervisors review those reports with an eye toward adherence to established policy (and eventually training) the APD's use of force "statistics" will remain problematic, in the monitor's view.

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

4.7.59 Assessing Compliance with Paragraph 72: IAB Report Review

Paragraph 72 stipulates:

"Upon completion of the Internal Affairs Bureau investigation report, the Internal Affairs Bureau investigator shall forward the report through his or her chain of command to the commanding officer of the Internal Affairs Bureau. The Internal Affairs Bureau commanding officer shall review the report to ensure that it is complete and that, for administrative investigations, the findings are supported using the preponderance of the evidence standard. The Internal Affairs Bureau commanding officer shall order additional investigation when it appears that there is additional relevant evidence that may assist in resolving inconsistencies or improve the reliability or credibility of the findings."

Methodology

PAB SOP 2-05 was approved by the monitor on June 5, 2016, bringing APD into Primary Compliance on the requirements in Paragraph 72.

Results

Because the policy was only recently approved, the monitoring team did not assess the two remaining levels of compliance during the reporting period. During the reporting period for IMR-5, the monitoring team will examine a sample of IAD investigations (we review a sample of CIRT investigations elsewhere in this report) literally requirement-by-requirement to assess compliance. We will also be looking at IAD training in detail to assess Secondary Compliance.

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[56] *Special Report of the Independent Monitor: Use of Force Policy, Supervision and Management at the Albuquerque Police Department*, September 16, 2016.

Other issues continue to plague APD's compliance efforts with this paragraph. For example, in the monitor's "Special Report" on use of force at APD, filed with the Court on September 16, 2016, we noted the following:

> "At this point the monitoring team believes that even legitimately questionable use or shows of force cannot survive APD's process, since each step appears preconditioned to rationalize or explain away officer conduct. Likewise, it appears to the monitoring team that APD sees many of the missed opportunities as "water under the bridge" and not events that should be reinvestigated --- or in cases that were missed, investigated at all. The agency has almost no appetite for correcting behavior that violates existing policy. Therefore, it is nearly impossible at this point to rely on force data that APD reports" (emphasis added).[57]

Until officers accurately report their uses of force, and until supervisors review those reports with an eye toward adherence to established policy (and eventually training) the APD's use of force "statistics" will remain problematic, in the monitor's view.

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

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

Paragraph 73 stipulates:

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

Methodology

[57] *Special Report of the Independent Monitor: Use of Force Policy, Supervision and Management at the Albuquerque Police Department*, September 16, 2016.

PAB SOP 2-05 was approved by the monitor on June 5, 2016, bringing APD into Primary Compliance on the requirements in Paragraph 73.

Results

Because the policy was only recently approved, the monitoring team did not assess the two remaining levels of compliance during the reporting period. During the reporting period for IMR-5, the monitoring team will examine a sample of IAD investigations (we review a sample of CIRT investigations elsewhere in this report) literally requirement-by-requirement to assess compliance. We will also be looking at IAD training in detail to assess Secondary Compliance.

Other issues continue to plague APD's compliance efforts with this paragraph. For example, in the monitor's "Special Report" on use of force at APD, filed with the Court on September 16, 2016, we noted the following:

> "At this point the monitoring team believes that even legitimately questionable use or shows of force cannot survive APD's process, since each step appears preconditioned to rationalize or explain away officer conduct. Likewise, it appears to the monitoring team that APD sees many of the missed opportunities as "water under the bridge" and not events that should be reinvestigated --- or in cases that were missed, investigated at all. The agency has almost no appetite for correcting behavior that violates existing policy. Therefore, it is nearly impossible at this point to rely on force data that APD reports" (emphasis added).[58]

Until officers accurately report their uses of force, and until supervisors review those reports with an eye toward adherence to established policy (and eventually training) the APD's use of force "statistics" will remain problematic, in the monitor's view.

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

[58] *Special Report of the Independent Monitor: Use of Force Policy, Supervision and Management at the Albuquerque Police Department*, September 16, 2016.

4.7.61 Assessing Compliance with Paragraph 74: IAB Quality Control

Paragraph 74 stipulates:

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

Methodology

PAB SOP 2-05 was approved by the monitor on June 5, 2016, bringing APD into Primary Compliance on the requirements in Paragraph 74.

Results

Because the policy was only recently approved, the monitoring team did not assess the two remaining levels of compliance during the reporting period. During the reporting period for IMR-5, the monitoring team will examine a sample of IAD investigations (we review a sample of CIRT investigations elsewhere in this report) literally requirement-by-requirement to assess compliance. We will also be looking at IAD training in detail to assess Secondary Compliance.

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

4.7.62 Assessing Compliance with Paragraph 75: IAB Quality Control

Paragraph 75 stipulates:

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

Methodology

PAB SOP 2-05 was approved by the monitor on June 5, 2016, bringing APD into Primary Compliance on the requirements in Paragraph 75.

Results

Because the policy was only recently approved, the monitoring team did not assess the two remaining levels of compliance during the reporting period. During the reporting period for IMR-5, the monitoring team will examine a sample of IAD investigations (we review a sample of CIRT investigations elsewhere in this report) literally requirement-by-requirement to assess compliance. We will also be looking at IAD training in detail to assess Secondary Compliance. Likewise, we will be asking for course of business documentation that demonstrates that IA cases are being moved through the system to the Force Review Board and Chief of Police.

Other issues continue to plague APD's compliance efforts with this paragraph. For example, in the monitor's "Special Report" on use of force at APD, filed with the Court on September 16, 2016, we noted the following:

> "At this point the monitoring team believes that even legitimately questionable use or shows of force cannot survive APD's process, since each step appears preconditioned to rationalize or explain away officer conduct. Likewise, it appears to the monitoring team that APD sees many of the missed opportunities as "water under the bridge" and not events that should be reinvestigated --- or in cases that were missed, investigated at all. The agency has almost no appetite for correcting behavior that violates existing policy. Therefore, it is nearly impossible at this point to rely on force data that APD reports" (emphasis added).[59]

Until officers accurately report their uses of force, and until supervisors review those reports with an eye toward adherence to established policy (and eventually training) the APD's use of force "statistics" will remain problematic, in the monitor's view.

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

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

Paragraph 76 stipulates:

[59] *Special Report of the Independent Monitor: Use of Force Policy, Supervision and Management at the Albuquerque Police Department*, September 16, 2016.

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

Methodology

PAB SOP 2-05 was approved by the monitor on June 5, 2016, bringing APD into Primary Compliance on the requirements in Paragraph 68.

Results

Because the policy was only recently approved, the monitoring team did not assess the two remaining levels of compliance during the reporting period. During the reporting period for IMR-5, the monitoring team will examine a sample of IAD investigations (we review a sample of CIRT investigations elsewhere in this report) literally requirement-by-requirement to assess compliance. We will also be looking at IAD training in detail to assess Secondary Compliance.

In preparation of IMR-3, the monitoring team requested the total number of force cases that were assigned or reassigned to the MATF, FBI or IA during the reporting period, and any/all documentation concerning the reason for the referral. As a result of that request the monitoring team was provided written documentation for [[**IMR-4-13]]**. That case was followed up extensively by the monitoring team and addressed in its Special Report that was scheduled to be delivered to the parties in August 2016, but was delayed by the City.

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

4.7.64 Assessing Compliance with Paragraph 77: Discipline on Sustained Investigations

Paragraph 77 stipulates:

"Where, after an administrative force investigation, a use of force is found to violate policy, the Chief shall direct and ensure appropriate discipline and/or corrective action. Where a force investigation indicates apparent criminal conduct by an officer, the Chief shall ensure that the Internal Affairs Bureau or the Multi-Agency Task Force consults with the District Attorney's Office or the USAO, as appropriate. The Chief need not delay the imposition of discipline until the outcome of the criminal investigation. In use of force investigations, where the incident indicates policy, training, tactical, or equipment concerns, the Chief shall ensure that necessary

training is delivered and that policy, tactical, or equipment concerns are resolved."

Methodology

PAB SOP 2-05 was approved by the monitor on June 5, 2016, bringing APD into Primary Compliance on the requirements in Paragraph 68.

Results

Because the policy was only recently approved, the monitoring team did not assess the two remaining levels of compliance during the reporting period. During the reporting period for IMR-5, the monitoring team will examine a sample of IAD investigations (we review a sample of CIRT investigations elsewhere in this report) literally requirement-by-requirement to assess compliance. We will also review IAD training in detail to assess Secondary Compliance.

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

4.7.65 Assessing Compliance with Paragraph 78: Force Review Board Responsibilities

Paragraph 78 stipulates that:

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

days to ensure that the investigations are complete and timely and that the findings are supported by a preponderance of the evidence;

d) order additional investigation when it appears that there is additional relevant evidence that may assist in resolving inconsistencies or improve the reliability or credibility of the force investigation findings. For administrative investigations, where the findings are not supported by a preponderance of the evidence, the Force Review Board shall document the reasons for this determination, which shall be included as an addendum to the original force investigation, including the specific evidence or analysis supporting their conclusions;

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

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

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

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

Methodology

APD SOP 3-67 Force Review Board (FRB) was approved by the monitor on April 25, 2016, which brings the Department into Primary Compliance on the requirements in Paragraph 78. The monitoring team reported extensively on FRB activities in IMR-3 and also attended the June 8, 2016 meeting to view its operation.

Results

The cases presented during the June 8, 2016, FRB meeting were chiefly Special Operations Division tactical deployments and the presentations were well done, identifying both strong points and several operational issues of concern. Nine SWAT activations were reviewed and all were resolved without significant force. As we have noted in previous reports, SWAT operations continue to be characterized by exceptional patience, the employment of a wide range of tools, weapons, and tactics, capable incident command, a high level of coordination between tactical and negotiation elements, and repeated attempts to de-escalate

situations. APD's multi-level response protocol and continued operational successes attest to the soundness of the model that SOD and CIT-trained staff have created and implemented over the past two years.
Specific highlights from the nine SWAT cases include:

- A case involving a man threatening to jump off a building (he also had several felony warrants, including child abuse and assaulting a police officer). He was manipulating a lighter to make it appear to be a firearm. Because of timely communication, this information was relayed quickly to all officers as operational intelligence to avoid an unnecessary shooting incident.

- Responding to a request from narcotics detectives to assist in serving a search warrant that met the criteria for a tactical deployment, tactical officers developed a detailed operations plan that was then executed uneventfully. The plan included a thorough reconnaissance of the location and surrounding area beforehand.

- Tactical officers responded to a major shooting that eventually led to their deployment at the location where the shooter's vehicle was stopped at an intersection. It was unknown at the time if the suspect was still alive. Tactical officers used the department's two Bearcats to provide cover and pin the vehicle at the location. Based upon several pieces of intelligence, officers exercised extreme precautions to avoid tripping any explosive devices in the vehicle. Once they determined----from the cover of the Bearcats----that the offender appeared to be deceased from a self-inflicted gunshot to the head, EOD was activated to render the vehicle safe by using the unit's robot to enter the car, remove the suspect, and inspect the car's interior. <u>This incident epitomized SOD's measured, prudent, and risk-smart approach to resolving high-risk tactical incidents.</u>

- In an incident involving an extremely violent suspect armed with a pistol and high on methamphetamine, SWAT officers used a wide variety of tactics to end a barricaded suspect situation without resorting to deadly force. The tactics included repeated PA callouts to alert neighbors to the police action and advise them to shelter in place, attempts to contact the suspect by cell phone, the use of "flash-bangs" to gain the suspect's attention, breaking out windows to make communication easier and later to insert gas munitions (several volleys were used), the use of the unit's Rook to deploy a camera inside the premises, and the use of a small "throw robot" to try to locate the suspect. All the while negotiators continued attempts to contact the suspect by phone, voicemails, and texts.

These attempts took place over a five and one-half hour deployment with the suspect eventually surrendering without incident.

- There were only two comments about policy, training, equipment, and tactical issues in the After-action Reviews. One reinforced the value of the Rook in maneuvering officers "behind armor" to carry out tactical movements. The other reinforced the need to alert neighbors---as set forth in existing policy---to the use of gas munitions and the need to seal their premises to avoid contamination.

The monitoring team noted the meeting turnout and the participation of high-ranking members. We also noted that APD use-of-force subject matter experts were present and participated fully. These continue to be important factors in the Board's success.

It appears that the Board's schedule was altered in the first half of 2016. The 1st Quarterly Review was actually not held until May 31, 2016, two months past the scheduled review date. According to data that we received for this reporting period, the 2nd Quarterly Review is now scheduled for August 23, 2016 due to scheduling conflicts, trainings, and a backlog of supervisory use of force investigations (Source: IMT Data Request, July 25, 2016). These are understandable reasons, but the monitoring team is concerned that a vital component in the use of force oversight and accountability is now less active than intended at a critical point in the implementation of a new investigative regime.[60] In our judgment, the sheer volume of reviews required might warrant APD, at least for the near-term, changing to a fixed-date, monthly schedule to ensure timeliness. In any event, APD must provide careful, timely, accurate, and tangible review of critical incidents in order to achieve full compliance. We are seriously concerned about these delays.

FRB Quarterly Review and Monitoring Team Observations

During the 2016 1st Quarterly review, held on May 31, 2016,[61] the Board reviewed a sample of six Supervisory Use of Force investigations, ranging from the use of "hands-on" techniques and strikes to ECWs and OC Spray. Five of the uses of force were ruled "Reasonable," Within Policy, while the sixth was ruled "Approved." We recommend that the Board follow a standard set of findings to ensure consistency and clarity. Further, we are concerned that "approved" and "reasonable" can easily be two separate and distinct finding categories, noting one set of cases that were reasonably handled, and another set of cases that were *not reasonably handled, but approved.*

[60] The same source did report FRB reviews of three CIRT cases, two on July 21 and one on July 25.

[61] The first case was actually heard on April 26, 2016, but carried over to the May meeting.

In past reviews, we have commended the use of a Key Points section to summarize important aspects of the case. The sections in this sample of reports also follow that pattern and list factors that explain the reasoning behind the officer's decision to use force. These in effect comprise the totality of circumstance in each case. This listing of factors[62] should also include any de-escalation attempts, other force options available, and the reasons for the officer using a specific option. Evaluation of the *Graham* factors---offense seriousness, the immediacy of any threats, and the type and level of active resistance--- is another useful analytical framework that we found one supervisor regularly using in his analyses.

The monitoring team notes that the PowerPoint presentations are, by themselves, "thin" representations of the incident. To appreciate each incident in detail, it is essential that the officer's report, the supervisor's investigation, and the chain of command reviews be read in conjunction with video reviews. It appears that this is the FRB's current practice, based upon our review of Board reports and FRB Evaluation Forms for these six cases.

Specific concerns noted by the Board are highlighted below after a brief synopsis of the incident; the monitoring team's observations follow those comments:

1. An officer failed to search a suspect prior to transporting him to the MDC. This violated what should be considered a "NEVER" rule in policing because of the obvious risks and the fact that a simple pat-down---or more intrusive search if lawful----is an effective means of managing inherent risk. The supervisor describes the failure as unintentional and a "mere oversight". During the arrest the officer failed to exert adequate control to prevent the subject from reaching back into his vehicle, in which a firearm was later found. We note repeatedly in our reviews of APD supervisory reports, incidents of supervisors using *de minimis* language in their reviews of officer actions, in an attempt to "cover for" action that is not acceptable by policy. APD should work diligently to ensure that the supervisor's role is seen as just that—a quality control effort by one charged with correcting out of policy or practice behavior.

   The Board faulted the officer for not taking immediate physical control of the vehicle's driver, noting that subsequent to subject's arrest, a fully-loaded firearm was discovered by another officer in the front-seat console. The Board also noted, in what we regard as an important action, that the supervisor and chain of command reviewers failed to address this issue. However, the Board's comment that this "…will be brought to their

[62] SOP 2-52 Use of Force contains a lengthy listing of factors than may influence use of force decision-making. However, merely listing these factors is insufficient. Full articulation is required to explain the officer's reasoning. However, merely listing these factors is insufficient. Full articulation is required to explain the officer's reasoning

attention" is ambiguous, undocumented and not acceptable "corrective behavior." The Board made similar observations regarding the officer's failure to properly search the suspect before placing him into his police vehicle and transporting him to the detention center. However, this issue was addressed in an Additional Memo of Concern by the reviewing Lieutenant. The monitoring team believes that this issue should have been addressed directly in the supervisory investigation and chain of command review, as it relates directly to the issue of risk prevention. Thus, it should have been noted by the FRB as a failure of supervisory process.

Monitoring Team Comments

The monitoring team observed that most Board members noted the above issues on their FRB Evaluation Forms. This case underscores the importance of video evidence in contrast to relying solely upon an officer's account. Though the report seems accurate, the written accounts often fall well short of capturing the actual incident dynamics. The salient question is whether the officer actually "allowed" the suspect to reach back into the vehicle or was "hesitant" to use force. This was not addressed by the Board.

We agree with the Board's concerns in this case after viewing the video. First, it is important to note that officer had no idea that there was a firearm in the console, yet allowing the suspect to reach back into the vehicle violated a basic safety rule. Second, his account doesn't provide any sense of the time that elapsed between different events within the encounter. Third, using the one handcuff as leverage did not have the desired effect and placed the officer at risk by allowing the subject to reach back into the vehicle.

Although we are in full agreement with the Board's observations, we believe that a major, ongoing safety issue[63] underlies many of the use of force incidents that we have reviewed. In our judgment, far too often APD officers are handling moderate to high-risk calls without proper backup. In this particular case the officer does not request backup until at least 20 minutes into the incident[64], despite repeated non-compliance with his directions. He is tussling with the subject at that time, but does not request expedited cover, which was clearly needed in our judgment. Accordingly, we recommend that APD immediately conduct a study to determine the extent to

[63] By no stretch of the imagination do we believe that APD higher-ups are insensitive to this issue. They are fully aware of the impacts of staffing shortfalls upon officer safety. The issue has arisen in many of the cases that we have reviewed.

[64] The first 20 minutes of the video is not included in the FRB material, so we are not aware of any previous cover requests or dispatches. We assume that it was dispatched as a one-unit call.

which its officers are handling two-unit dispatches alone, or delaying requests for cover (e.g., calls involving non-compliant subjects). Further, we recommend that APD assign use of force SMEs, in conjunction with field supervisors, to conduct thorough debriefs of this and other similar incidents to fully understand the dynamics seen in the incident videos. An admonition to simply employ greater force without specific guidance is premature at this point. These are critical officer-safety issues. We comment further on that issue in the next case.

Lastly, we do not agree with the sergeant's characterization of the failed search prior to transport. Missing a weapon on a person to be transported is in our judgment a serious safety lapse, and should be described as such. It warrants a stern admonition and even, perhaps, remedial training, depending upon the officer's history. The monitoring team believes the FRB should have stated strongly that safety lapses of this type should be dealt with firmly and reviewed with every officer.

2. In the second case the officer appeals several times to an intoxicated male annoying customers in a Wal Mart to leave the premises. The officer's approach is reasonable and he continues to attempt to de-escalate the situation when the man again bothers some customers. The officer then grasps the man's jacket and starts to escort him off of the property, but he tenses up and the officer applies a wrist hold to move him outside. He continues to ask the man to leave, but the man takes an aggressive stance and "balls up his fists" by his sides. The man then fails to comply with the officer's directions and advances toward him, resulting in some bumping and pushing. This back and forth continues for a bit until the man shoves the officer violently, the officer then pushes the man into a nearby pole, and he falls to the ground. The officer handcuffs the man as cover officers arrive.

   The FRB PowerPoint reported that there were "no additional concerns" in this case.[65] Yet, as the FRB reported, nothing could be further from the truth. The Board found issues in this case similar to those outlined in the first case.

   Monitoring Team Comments

   There is a serious issue in this case that the supervisory investigation and the chain of command review did not address thoroughly. The officer's

[65] The dispatch printout shows the officer on scene at 19:42 hours, then broadcasting a Code 82 at 19:57 hours. At 19:59 he advises that the subject is in custody. We understand that Code 82 is a request for "cover assistance".

repeated lack of decisive action[66] to control the subject and protect himself, despite aggressive behavior, physical contact, and total non-compliance, is a serious issue, in our judgment. The report describes the subject as "X-LARGE" in terms of build and 6'1" to 6'3" in height, which would be a significant "force disparity" if the officer were of average size. If so, there was a sound reason to not engage the subject physically without backup. At numerous points in the encounter it seems that the subject was close enough to the officer to strike and overcome him. We would describe the officer's tactics as a "herding action", buying time until his covered arrived, but exposing him to greater risk in comparison to simply delaying engagement, assuming that no exigency existed.

The first step in cases of this sort---as we recommended above---- is to conduct a supportive, but meticulous debrief of the officer's reasoning at key points within the encounter. This should include going through the video and having the officer provide a running commentary on what he was thinking at critical points. Two questions jump out immediately to us. First, why didn't he ask for an expedited response by his backup, if any was even assigned? Non-compliance, with few exceptions, should trigger the request for and the dispatch of immediate backup. The subject's initial reaction---kneeling and putting his hands on his head, as if to be handcuffed---should have been a clear signal that cover was needed. Second, did he consider escalating to a higher force option, such as his ECW or OC Spray, in light of the subject's active physical resistance and belligerence? This is not easily answered because the underlying violation is minor and, thus, intermediate force was probably not an option until actual physical resistance occurred. The FRB must address both excessive use of force and the underuse of force by APD officers to constantly re-calibrate front-line practice, avoid over-emphasizing either of the two extremes, ensure a high level of officer safety, and deliver Constitutional policing.

It appears, based upon these two cases, that the Board directed CIRT to issue an Awareness Report that was titled "Under Use of Force" (*sic*) and dated June 1, 2016. The monitoring team has major concerns about both the content and tone of the report, which we explain below.

3. The third case involved relatively low-level force to seat a passively resisting, handcuffed suspect in the back seat of a police car. The force involved was moderate downward pressure on the cuffs to force the suspect to sit down. The tactic worked and the suspect was not injured.

[66] This should not be taken as criticism as the officer continues to engage the suspect fully despite his size and increasing resistance. He should be commended for his physical courage.

The Board directed that the Area Commander submit a memo explaining the delay in submission of the report. It also noted that investigating supervisors need to articulate their reasoning full, rather than simply restating the officer's account.

Monitoring Team Comments

Dealing with non-compliant, passively resisting subjects is frustrating, to say the least, but in this case the involved officers used a minimal amount of force to overcome the resistance and gain compliance. Efforts such as this should be recognized and reinforced. The only question that we have is whether this tactic is actually taught in APD training. If it is not, it should be evaluated as another tactic for dealing with such situations.

This case is an example of a borderline reportable use of force. These gray-area cases will always exist and require judgment to classify them properly. In this case, the decision was made to investigate the incident, particularly because the subject was handcuffed. Although slight force using the handcuffs as leverage was applied to control the subject's movements, this is an example of "secondary" action that one Deputy Chief uses to explain force above un-resisted handcuffing and use of an escort hold. However, based upon the CASA definition, the monitoring team does not view this incident as a serious use of force. Yet we do believe that the decision to conduct a supervisory use of force investigation was sound at this stage of reform.

4. This case involved a response to a reported armed carjacking (the weapon was reported as a knife, but later was determined to be a screwdriver), followed by an area search and subsequent foot chase, and the eventual apprehension of the suspect, during which he fell to the crowd and struggled with the officers. A sergeant arrived as cover and immediately attempted to control one of the suspect's hands. To overcome the suspect's resistance, the sergeant delivered a knee strike to the suspects left back, side torso, at which point the officers were able to handcuff him.[67]

Monitoring Team Comments

The FRB correctly identified two issues---the involved officers were not interviewed on camera and another sergeant, instead of a lieutenant, conducted the investigation. The Lieutenant's Memo of Additional Concerns noted that the policy changes on use of force reporting still were

[67] The monitoring team continues to be impressed with the response of field supervisors to a wide range of incidents, including routinely providing needed backup to their officers. This practice is critically important in view of APD's on-going staffing shortfalls.

relatively new and that both sergeants had not yet become familiar with the provisions of the new policy. The Lieutenant reviewed both of the issues with the two sergeants. He was not working the day of the incident.

5. This case is the first that the monitoring team has reviewed in the BlueTeam format. It involved a field training officer (FTO) and his trainee being dispatched to a call of a male lying on the ground next to a motorcycle. They located the person and motorcycle and the FTO allowed the trainee to handle the encounter. As the trainee was checking the subject's pockets for a suspected hypodermic needle, the subject suddenly bolted and charged the FTO, who steered him into a chain link fence. He then heard the trainee yell, "He's got a gun." The FTO saw that the subject's left hand was empty, but could not see his right hand. Because he believed that the other two officers had control of the subject's hands, he immediately deployed and pointed his ECW at the subject. He also warned the subject that he would be Tased if he did not comply with the officers' instructions, at which time he submitted and was handcuffed. A small firearm was then recovered from the suspect's pocket; it was also later discovered that he was a convicted felon and in possession of methamphetamine.

   Monitoring Team Comments

   This is a well done report, but it would be helpful if the authors would break extremely long narratives down into a series of paragraphs, assuming that space limits aren't a constraint. The restraint shown by the officers is remarkable, but they appeared to have sufficient control to avoid resorting to deadly force. Hence, their actions were not tactically unsound or foolhardy. Their actions reflect a high degree of skill, composure, and situational awareness.

   The "kick-back" (this term has a negative connotation to some) feature in BlueTeam provides documentation of open issues identified by later reviewers that require additional work or clarification. Finally, the monitoring team commends the investigating supervisor's decision to consult with the IRT Lieutenant on whether a neck hold had actually occurred, possibly requiring a higher investigative response. It was decided that none had occurred, as the officer had only exerted downward pressure on the subject's head during attempts to control him. Although the sergeant notes, "…at no time was the air flow obstructed....", this would have been impossible to determine at the time, and, quite frankly, there is nothing in the officers' accounts to raise significant concern about the use of the tactic in the context in which it occurred.

6. The sixth case in the sample involved attempts to control and handcuff a domestic violence suspect, who refused to put his hands behind his back

and repeatedly failed to comply with the officer's directions. At one point the suspect broke away from the officers, who then attempted to use OC Spray on him with the effect that the suspect put his hands behind his back. However, the suspect continued to resist as the officers attempted to place him on the ground. One of the officer's then drew his ECW and pointed it at the suspect's back. At that point the suspect became compliant.

Monitoring Team Comments

This report was well written and provided a detailed description of the incident. When the investigating Lieutenant later learned that the officers had not mentioned that two probation officers were at the scene in their initial debrief, he contacted them and conducted a follow-up phone interview with each. As it turned out, they had witnessed the physical encounter and corroborated the officers' accounts. The investigation was conducted by a Lieutenant because the sergeant was involved in the use of force incident.

This investigation is compliant with APD policy and is an example of both a thorough primary investigation and professional, conscientious chain of command reviews. The Commander's review, though relatively brief (concise is probably the better word), addresses all of the issues and outlines the basis for his findings logically and clearly. It clearly demonstrates that these reviews do not necessarily require lengthy narratives that often merely repeat the officer's account and the investigator's analysis. Perhaps the most important point in the Commander's analysis is his comment about how the progression of force was "dictated by the actions and responses of the subject" throughout the incident, which he had articulated in the preceding paragraph.

Lastly, the Board expressed concern over what it described as a "reluctance to effectively control the subject and use force when reasonable and appropriate". The monitoring team believes that this case is another example of a situation that would benefit from a cognitive review of the officer by APD SMEs in conjunction with field supervisors to fully understand the officers' reasoning and decision-making.

General Monitoring Team Observations

- We remain concerned that the "blank sheet" to report writing results in wide variations in content and sequencing. We note that we have advised APD of this concern numerous times, both in writing and in personal conversations. For example, an early, absolutely essential topic is the legal basis for the officer's initial and follow-on actions. Because it is of critical importance, this analysis should follow the description of the

incident. (We have reviewed reports by several supervisors who use the *Graham* factors as a framework for their analysis.) Report writing formats cover a broad spectrum, from the unstructured, open-ended blank sheet approach to dense, multi-page, seemingly endless arrays of check boxes that try to cover every conceivable type of information. At the mid-point are semi-structured formats that require the author to address specific topics in a fixed sequence. This is sometimes accomplished by having the author conform to a checklist of standard topics in a fixed sequence. Once again, we recommend that APD evaluate such an approach to eliminate some of the inconsistencies and variations that we are seeing in our reviews.

- Two of the six cases included conscientious, competent chain of command reviews, which are critical quality control points in the use of force oversight and accountability process.

- The Department must continue to remind officers to avoid boilerplate and conclusory language. One way to resolve this problem would be to adopt a "to wit" construction, which is used widely in legal reporting. For instance, if an officer states that a subject is belligerent, that would call for a "to wit" construction, with highly descriptive, behavioral language after the conclusion. Thus, as an example, "The subject appeared intoxicated, to wit, his eyes were bloodshot and watery, he was unsteady on his feet, stumbling at times, there were empty beer cans in the front seat, and he smelled of alcoholic beverage."

It is sometimes difficult to distinguish between remarkable restraint and failure to act decisively, because so many variables come into play during an encounter. That is why personal debriefs using video evidence are so important to understand an officer's perceptions, inferences, and reasoning. This should be the work of APD SMEs working in conjunction with line officers, supervisors, and commanders. We are quick to translate repeated appeals to comply in the face of continued defiance as a form of "deadly inhibition", and, in some cases, it may just be that and call for immediate remediation. But before we reach such a weighty conclusion and issue guidance to "step up the use of force",[68] we must assemble and examine carefully all of the evidence. And, if we do find instances of actual, unsafe under-uses of force, the monitoring team believes that it is imperative to avoid extreme terminology and provide specific tactical guidance based upon a representative sample of cases. Mere generalizations without detailed guidance garnered from careful reviews of representative samples and in conformance with the principles of Constitutional policing are unacceptable

[68] We overstate this point to highlight the possible adverse effects of ill-conceived guidance, such as that produced by CIRT's "Underuse of Force" "report".

Monitoring Team Review of CIRT Awareness Report "Under Use of Force" (June 1, 2016)

APD issued an (again) unsigned and unattributed (other than the CIRT reference on the cover page) special report entitled misleadingly "Under Use of Force." A number of key assumptions about the discipline of issuing such alerts---often reported as "lessons learned" or "near misses" --- underpin our concerns:

- These reports should be based upon representative events generated by APD's use of force oversight and accountability system. Issuing a report based upon anecdotal evidence, a superficial or non-existent analysis, or a one-off incident is generally unsound. Though the feedback loop on safety issues should be relatively short, it still must be based upon a thorough trend analysis.

- The vetting process for the development and issuance of these reports needs to be made clear. Multiple levels of timely reviews, including consultation with APD SMEs, are essential to ensure that the trend analysis is accurate and the recommended solutions are sound.

- Simply because an officer could have used greater force, but doesn't, is not necessarily an indication of underuse of force. Officer styles and abilities vary widely, which may result in two officers in similar circumstances using different levels of force (though you would expect them to act within the same level of force). A thorough debrief of each use of force incident is essential to identify the incident dynamics and judge whether force was appropriate in a given set of circumstances.

- Underuse and excessive use of force are of equal importance, though the tendency is to focus on the latter. APD should carefully monitor both trends, based upon data generated by its system of investigations and reviews, regular examination of video evidence by SMEs, and through officer surveys and focus groups. The triangulation of multiple sources is essential to create a trustworthy incident database.

The Basis for Concluding that a "Dangerous Trend" Is Occurring

Though the report refers to "several recent Force Review Board presentations", no concrete circumstances are presented to describe how "officers are engaging in a dangerous trend". Because it speaks largely in generalizations, there also is no specific guidance on officer tactics and techniques that should have been used in the cases upon which the report is based. What, in specific behavioral and tactical terms, constituted an under-use of force? APD must ensure that these reports are based upon a solid, reliable foundation of thoroughly vetted incidents. We are also concerned that APD's present investigative capabilities

may fall short in identifying significant use of force issues, including both underuses and excessive uses of force. Without a cognitive debrief of the involved officers, it is also inappropriate to label an incident as an underuse of force. Further, unlike monitoring reports, for instance, the CIRT report is not "data based." There is not a single reference to an extant APD-involved case or set of facts. It appears to the monitoring team to be merely hyperbole, designed to create a false sense of danger (i.e., not related to specific, documentable events) related to officer safety. This report does a disservice to the requirement for strong, data-based decision-making concerning use of force events.

Use of Force Principles and Lack of Concrete Guidance

The report lists a number of reasons why underuse is a problem and we find them generally valid, but it provides no concrete guidance to field officers, such as request backup at the first indication of defiance or non-compliance. The report goes on to reiterate many of the use of force principles that APD has adopted, but these are spread out and separated by far too much white space, in effect, turning a one-page "report" into three pages. Moreover, these principles are never linked to the "presentations" that sparked the original concern. For instance, did an officer try to proceed in a stair-step fashion instead of going at once to the appropriate force option given the circumstances? Such specificity is imperative to ensure that the report's intent is properly communicated and that relevant solutions are explained. The report's lack of "voice" on this issue is more than troublesome.

Fuzzy Signal

We believe that the terminology --- underuse of force and a "dangerous trend" --- may send an incorrect signal. This could have been handled differently to put force decision-making----both underuse and excessive use---into a broader context. The lead APD use of force SME's concept of "force disparity" would have been useful to stress the challenge of using necessary force, but avoiding excessive use of force. Because this concept addresses both categories of force, it would have provided more balance and specific guidance on use of force decision-making in the report. At this point, CIRT investigators may not have the requisite training background to develop this type of material.

Underuse Versus Restraint

In our reviews, we have seen numerous examples of restraint, which we see as different from underuses of force. Restraint occurs when officers maximize advantage and thereby avoid the immediate necessity to use a significant level of force. When excessive restraint places an officer or a third party at increased risk, it, arguably, becomes an underuse of force (or some means of advantage has been lost, which may constitute officer-created jeopardy). That should be the standard of analysis.

Recommended Follow-up Actions

APD should document and evaluate the process by which these reports are generated---from conception, to drafting, to vetting and, finally, to approval and distribution. We are concerned, once again, that command-level reviews and SME inputs added little value to the process of developing the CIRT "dangerous trend" report. Given the gravity of the issue, we do not want to appear dismissive of officer safety concerns, but the APD report represents a faint, ambiguous type of signal--- generated without proper vetting and engagement by higher command and SMEs---that is open to wide interpretation, which may affect field practices adversely. Further, when specific guidance is not provided on field tactics and force decision-making, the desired effects upon officer safety are unlikely.

We continue to note the FRB's progress as probably the most pivotal point in the overall use of force oversight and accountability process. In this series of cases, the Board identified significant tactical issues, assessed both the quality of supervisory investigations and chain of command reviews, and directed that a number of follow-up actions be taken. That progress, however, was directly and effectively sabotaged by the undocumented, un-sourced, and unsigned CIRT "Underuse of Force" fiction. It may be that officers are under using force at APD (we have provided some evidence of that in our analysis here), but if the agency wants to make that claim, it is duty bound to provide empirical evidence of it, just as the monitoring team provides empirical evidence supportive of its assertions of failures and breakdowns in APD's compliance attempts. The monitoring team will continue examine how the Board documents and follows up on use of force issues in IMR-5.

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

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

Paragraph 79 stipulates that:

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

a) number of calls for service;

b) number of officer-initiated actions;

c) number of aggregate uses of force;

d) number of arrests;

e) number of custodial arrests that involved use of force;

f) number of SWAT deployments by type of call out;

g) number of incidents involving officers shooting at or from moving vehicles;

h) number of individuals armed with weapons;

i) number of individuals unarmed;

j) number of individuals injured during arrest, including APD and other law enforcement personnel;

k) number of individuals requiring hospitalization, including APD and other law enforcement personnel;

l) demographic category; and

m) geographic data, including street, location, or Area Command."

Methodology

APD has continued to include the use of force data required in this paragraph as a separate section within its annual reports, in contrast to a stand-alone report. As APD's use of force reporting and analysis expands and becomes more elaborate, the Department may find it beneficial to convert to a single-themed report. The provisions of this Paragraph are contained within SOP 2-05. The monitoring team has reviewed the data reported for 2015 and determined that it fails to meet the provisions Paragraph 79.

Other issues continue to plague APD's compliance efforts with this paragraph. For example, in the monitor's "Special Report" on use of force at APD, filed with the Court on September 16, 2016, we noted the following:

> "At this point the monitoring team believes that even legitimately questionable use or shows of force cannot survive APD's process, since each step appears preconditioned to rationalize or explain away officer conduct. Likewise, it appears to the monitoring team that APD sees many of the missed opportunities as "water under the bridge" and not events that should be reinvestigated --- or in cases that were missed, investigated at all. The agency has almost no appetite for correcting behavior that violates existing policy. Therefore,

> it is nearly impossible at this point to rely on force data that APD reports" (emphasis added).[69]

Until officers accurately report their uses of force, and until supervisors review those reports with an eye toward adherence to established policy (and eventually training) the APD's use of force "statistics" will remain problematic, in the monitor's view. For example, as of the end of this reporting period, we have seen no official "push back" from the APD management cadre regarding the CIRT "under-use of force" missive, although upon review of our draft, APD leadership commented that it would "… continue to carefully examine how it it [sic] develops awareness reports and make sure the evidence is well documented." While we appreciate this sentiment, we are concerned that current monitoring systems allowed this problematic report to survive the managerial process, and are uncertain how this level of review will serve to mitigate the forces behind CIRT's "underuse of force" report.

Results

APD continues to add valuable, expanded information to the report to provide readers with greater insight into the context and dynamics of use of force incidents. For example, the report states that in 2015 "less than 1% of all arrests resulted in a use of force incident". The report also notes that APD's Emergency Communications Center dispatched a total of 499, 613 calls in 2015. Based upon a total of 180 use of force incidents in 2015, this calculates to a ratio of 1 force incident per 2,776 dispatches. When uses of force are broken down by seriousness, the ratio is far lower, underscoring the infrequent use of significant force by APD officers. Lastly, the report shows that two-thirds of those against whom force was used were armed with some sort of weapon or object that could be used as a weapon. Given our reported documented under-reporting of force on the part of APD, this brings into serious question the utility of these data.

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[69] *Special Report of the Independent Monitor: Use of Force Policy, Supervision and Management at the Albuquerque Police Department*, September 16, 2016.

> under the bridge" and not events that should be reinvestigated --- or in cases that were missed, investigated at all. The agency has almost no appetite for correcting behavior that violates existing policy. Therefore, it is nearly impossible at this point to rely on force data that APD reports" (emphasis added).[70]

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Compared to 2014, the number of use of force incidents rose in 2015. We recommend that APD break out figures for these categories in this and subsequent reports to provide a clearer picture of year-to-year force use. For the same reason, we recommend that figures for empty-hand and take-down techniques be displayed in the same fashion as other force categories (the 2015 data is reported in a format similar to a footnote).

The use of firearms against persons fell to a nine-year low of five in 2015 (this number was also reported in 2008 and 2009; it spiked to a high of 13 in 2010). The dynamics and of police shootings are complex, making cause and effect assessments extremely difficult and hazardous. We underscore once again that the relevant standard is not "zero shootings." Rather it is the number of shootings that are necessary, lawful, and unavoidable in the face of an immediate, deadly threat after lesser options have been tried and failed, or those options were clearly infeasible. However, experience has shown empirically that sound policy, training, and field supervision are important factors in the management of use of force. Of equal importance is a department's use of force oversight and accountability system.

We mentioned in the previous paragraph narrative that the FRB expressed concern about the apparent "underuse" of force in several incidents that it reviewed in May 2016. We found the document asserting that "underuse" to be suspect methodologically, and to have drawn unsupported and undocumented conclusions. It may be that APD officers are "under using" force, but the document used by APD to support that contention was so methodologically flawed as to be little more than a political tool. Comparative data from 2015 and 2016 may bear directly upon this question.

When the number of take-downs and empty-hand techniques are compared for Quarter 1-2015 and Quarter 1-2016, there is a dramatic increase in the use of these techniques: take-downs went from 17 to 58 (up 241%), while empty-hand

[70] *Special Report of the Independent Monitor: Use of Force Policy, Supervision and Management at the Albuquerque Police Department*, September 16, 2016.

went from 14 to 43 (up 207%). This may simply be a reporting artifact[71] as the result of changes in force definitions and reporting mandates, or it may reflect a trend in which APD officers are "going hands-on" more frequently, in lieu of using intermediate force options with standoff capabilities. But before sounding any alarms, there are important questions that should be asked: How widespread is the pattern and what is the evidence? If there is a trend, has it resulted in more injuries to officers, or more serious injuries? What is driving the trend? Is, overall, the trend beneficial or harmful? If the latter, what sort of intervention is needed quickly to reverse the trend? What indicators warrant watching closely to prevent any intervention from shifting the pendulum too far in the other direction?

Self-evident, unsupported "evidence," beliefs, and responses (such as the CIRT "Under Use of Force" document), aren't acceptable in light of the potential consequences. This is clearly an issue calling for a knowledge-based, measured approach based upon a careful analysis of the evidence and consultation with both field officers and SMEs. The monitoring team urges APD to commission a high-level review (possibly drawing from external expertise) to address these and other questions to ensure that its officers work under the safest of conditions. The monitoring team has reported previously on the lack of credibility of APD's use and show of force data, and that relying on that data for purposes of determining CASA compliance will not be possible until such time that the department expends its full effort toward greater accountability in its reporting of use of force.

The monitoring team will continue to work closely with APD staff, particularly the auditing group, to further refine and improve APD's use of force reporting and analysis in the next reporting period.

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

4.7.67 Assessing Compliance with Paragraph 80: Tracking System for Officer Use of Force

Paragraph 80 stipulates that:

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

[71] The lack of historical data makes the assessment even more difficult, given recent changes in reporting practices.

Methodology

During its June 2016 site visit, the monitoring team met with City and APD IT representatives, along with the auditing group to review the status of the requirements in this paragraph. They reported that the Department has a clear conceptual plan that integrates all sub-elements, and that most of those are completed or near completion, and that the Department was then running a pilot Blue-Team implementation in one Area Command. (The monitoring team actually reviewed one report in the new format during its review of FRB cases.) We have received no further updates on the status of the project's implementation.

The one element that is sub-optimal, in our judgment, is EIS, which the monitor was told during a recent exit debriefing the Department had suspended the use of EIS because "too many alerts" were being generated. The implementation of a reliable, meaningful and accurate force tracking system continues to be an evolving entity within APD. We have cautioned APD on several occasions that the tracking system they implement --- and integrate with an EIS --- will be fully reliant upon accurate reporting and investigation of force in the field. As reported on extensively in IMR-2, IMR-3 and in our Special Report, APD continues to struggle in these areas.

Other issues continue to plague APD's compliance efforts with this paragraph. For example, in the monitor's "Special Report" on use of force at APD, filed with the Court on September 16, 2016, we noted the following:

> "At this point the monitoring team believes that even legitimately questionable use or shows of force cannot survive APD's process, since each step appears preconditioned to rationalize or explain away officer conduct. Likewise, it appears to the monitoring team that APD sees many of the missed opportunities as "water under the bridge" and not events that should be reinvestigated --- or in cases that were missed, investigated at all. The agency has almost no appetite for correcting behavior that violates existing policy. Therefore, it is nearly impossible at this point to rely on force data that APD reports" (emphasis added).[72]

Until officers accurately report their uses of force, and until supervisors review those reports with an eye toward adherence to established policy

[72] *Special Report of the Independent Monitor: Use of Force Policy, Supervision and Management at the Albuquerque Police Department*, September 16, 2016.

(and eventually training) the APD's use of force "statistics" will remain problematic, in the monitor's view.

Results

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

4.7.68 Assessing Compliance with Paragraph 81: MATF Participation by APD

Paragraph 81 of the CASA stipulates:

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

Methodology

Professional Accountability Bureau (PAB) SOP 2-05 Internal Affairs was approved by the monitor on June 5, 2016, bringing APD into Primary Compliance on the requirements in Paragraph 81 that relate directly to procedures in the MATF Memorandum of Agreement.

Results

The "continuity of investigations" requirement in this paragraph is contingent upon expiration of the current MOU, which remains in force. It also grants discretion to APD to enter into a similar MOU for the investigation of the types of cases within the scope of the present MOU.

As we noted previously, there are minimal training requirements associated with APD's participation in the MATF, as the assigned officers are experienced investigators who understand the MATF framework, which is typical of such multi-agency agreements. The most important issues concern the question of who serves in the lead agency role, the frequency and content of multi-agency briefings, and the role of agencies participating in a support capacity. As yet the monitoring team has not had an opportunity to review an officer-involved shooting handled by MATF.

Primary: **In Compliance**
Secondary: **Pending Review of an MATF-Referred Incident**
Operational: **Pending Review of an MATF-Referred Incident**

4.7.69 Assessing Compliance with Paragraph 82: Investigative Protocols for the MATF

Paragraph 82 stipulates that:

"APD agrees to consult with participating jurisdictions to establish investigative protocols for the Multi-Agency Task Force. The protocols shall clearly define the purpose of the Multi-Agency Task Force; describe the roles and responsibilities of participating agencies, including the role of the lead investigative agency; and provide for ongoing coordination among participating agencies and consultation with pertinent prosecuting authorities."

Methodology

PAB SOP 2-05 Internal Affairs was approved by the monitor on June 5, 2016, bringing APD into Primary Compliance on the requirements in Paragraph 82 that relate directly to procedures in the MATF Memorandum of Agreement. The monitor attended a MATF meeting in which these issues were discussed and clarified based on then-current occurrences of officer-involved shootings.

Results

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

4.7.70 Assessing Compliance with Paragraph 83: Coordination with MATF

Paragraph 83 stipulates:

"APD agrees to consult and coordinate with the Multi-Agency Task Force on the release of evidence, including video recordings of uses of force, and dissemination of information to preserve the integrity of active criminal investigations involving APD personnel."

PAB SOP 2-05 Internal Affairs was approved by the monitor on June 5, 2016, bringing APD into Primary Compliance on the requirements in Paragraph 83 that relate directly to procedures in the MATF Memorandum of Agreement.

Results

In our last report, we noted that the "…MOU contains a provision (Section 1. F. Bullet #7, p. 3) that states, 'The Head of the Lead Agency will have the final decision on the release of any information.' This guidance is non-specific, but we assume that it encompasses any type of investigative material, including video recordings. Because the release of video recordings is likely to be controversial, we recommend that APD discuss more detailed guidelines with the other MOU

signatories." (Underlining in the original) The monitoring team will follow up in the next reporting period to determine if more detailed guidelines have been agreed upon and issued specifically with regard to video evidence.

Primary: **In Compliance**
Secondary: **Unable to Evaluate**
Operational: **Unable to Evaluate**

4.7.71 Assessing Compliance with Paragraph 84: Briefing with MATF

Paragraph 84 of the CASA stipulates:

"APD agrees to participate in all briefings of incidents involving APD personnel that are investigated by the Multi-Agency Task Force."

Methodology

PAB SOP 2-05 Internal Affairs was approved by the monitor on June 5, 2016, bringing APD into Primary Compliance on the requirements in Paragraph 84 that relate directly to procedures in the MATF Memorandum of Agreement.

Results

As yet the monitoring team has not had an opportunity to review an officer-involved shooting (handled by MATF). There were also no MATF case briefing sign-in sheets provided for this reporting period.

Primary: **In Compliance**
Secondary: **Unable to Evaluate**
Operational: **Unable to Evaluate**

4.7.72 Assessing Compliance with Paragraph 85: Expiration of MOU re MATF

Paragraph 85 stipulates:

"If the Memorandum of Understanding governing the Multi-Agency Task Force expires or otherwise terminates, or APD withdraws from the Multi-Agency Task Force, APD shall perform all investigations that would have otherwise been conducted pursuant to the Memorandum of Understanding. This Agreement does not prevent APD from entering into other investigative Memoranda of Understanding with other law enforcement agencies to conduct criminal investigation of officer-involved shootings, serious uses of force, and in- custody deaths."

Methodology

PAB SOP 2-05 Internal Affairs was approved by the monitor on June 5, 2016, bringing APD into Primary Compliance on the requirements in Paragraph 85 that relate directly to procedures in the MATF Memorandum of Agreement.

Results

The provisions in this paragraph that require "continuity of investigations" is contingent upon expiration of the current MOU, which remains in force. It also grants discretion to APD to enter into a similar MOU for the investigation of the types of cases within the scope of the present MOU.

Whether APD would have the resources to function without MATF support remains an open question. In any event, we know of no intentions by any of the participating agencies to discontinue the arrangement.

Primary:	**In Compliance**
Secondary:	**Unable to Evaluate**
Operational:	**Unable to Evaluate**

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

Paragraph 86 stipulates:

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

Methodology

APD SOP 2-52 Use of Force was approved by the monitor in January 2016. APD's policies on the use of Electronic Control Weapons and the reporting and investigation of use of force incidents have also been approved, which put APD in Primary Compliance. As of June 1, 2016, APD had completed all presentations of the 40-hour Use of Force Curriculum. Over the past several months the monitoring team has provided extensive feedback, in both written format[73] and during site visits, to APD on the content of that course.

[73] Written feedback was in the form of memos to the APD academy Director as well as IMR-3.

Results

As of June 1, 2016, APD had completed all presentations of the 40-hour Use of Force Curriculum. Based upon the monitoring team's review of official attendance data for the course, the attendance rate was nearly 98%. Additionally, APD identified a small percentage of officers on extended leave for follow-up training upon their return. It also intends to provide make-up sessions for the few officers who did not attend the course.

The monitoring team commented in IMR-3 about the need for APD to monitor staffing levels at the academy closely. We do so again for IMR-4. It is critical that APD allocate resources to areas that have the greatest opportunity to influence a cultural change within the department. As noted in IMR-3, as more APD policies come into compliance, and receive monitor approval, the additional training burden will require proper management. As APD moves into the next few monitoring periods the academy will have to place an even greater emphasis on the specific needs of officers and supervisors in the field. Only through the collection of field implementation data will APD be able to customize its training to the areas of the organization that have the closest influence on operational compliance with the CASA. That process is labor intensive and requires the academy staff to be diligent and precise when identifying implementation successes and failures in the field. Building lessons learned from the field will be essential as APD enters the next training cycle.

Other issues continue to plague APD's compliance efforts with this paragraph. For example, in the monitor's "Special Report" on use of force at APD, filed with the Court on September 16, 2016, we noted the following:

> "At this point the monitoring team believes that even legitimately questionable use or shows of force cannot survive APD's process, since each step appears preconditioned to rationalize or explain away officer conduct. Likewise, it appears to the monitoring team that APD sees many of the missed opportunities as "water under the bridge" and not events that should be reinvestigated --- or in cases that were missed, investigated at all. The agency has almost no appetite for correcting behavior that violates existing policy. Therefore, it is nearly impossible at this point to rely on force data that APD reports" (emphasis added).[74]

Until officers accurately report their uses of force, and until supervisors review those reports with an eye toward adherence to established policy

[74] *Special Report of the Independent Monitor: Use of Force Policy, Supervision and Management at the Albuquerque Police Department*, September 16, 2016.

(and eventually training) the APD's use of force "statistics" will remain problematic, in the monitor's view.

Primary: **In Compliance**[75]
Secondary: **Not In Compliance**
Operational: **Not In Compliance**

4.7.74 Assessing Compliance with Paragraph 87: Use of Force Training Based on Constitutional Principles

Paragraph 87 stipulates:

"APD's use of force training for all officers shall be based upon constitutional principles and APD policy and shall include the following topics:

a) search and seizure law, including the Fourth Amendment and related law;

b) APD's use of force policy, use of force reporting requirements, and the importance of properly documenting use of force incidents;

c) use of force decision-making, based upon constitutional principles and APD policy, including interactions with individuals who are intoxicated, or who have a mental, intellectual, or physical disability;

d) use of de-escalation strategies;

e) scenario-based training and interactive exercises that demonstrate use of force decision-making and de-escalation strategies;

f) deployment and use of all weapons or technologies, including firearms, ECWs, and on-body recording systems;

g) crowd control; and

h) Initiating and disengaging foot pursuits."

Methodology

APD SOP 2-52 Use of Force was approved by the monitor in January 2016. APD's policies on the use of Electronic Control Weapons and the reporting and investigation of use of force incidents have also been approved, which put APD in Primary Compliance. As of June 1, 2016, APD had completed all presentations of the 40-hour Use of Force Curriculum. We note here and elsewhere seventeen specific problems with the training in use of force and supervisory use of force review training.

[75] The policy is written; however, APD personnel have not yet begun to adapt to the new requirements "in the field."

Results

To assist in assessing the correspondence between the 40-hour Use of Force Curriculum, CASA requirements, policy provisions, course documentation, instructional materials, and actual instruction, an APD auditor compiled a comprehensive matrix outlining every requirement to determine if it was covered. This then enabled the monitoring team to locate or ask for the pertinent COB documents to substantiate its assessments. This contribution by APD staff dramatically decreased the time needed to conduct a thorough, systematic review.

Based upon an in-depth review of relevant documents and records, combined with numerous discussions and exchanges --- both verbal and written --- with APD training staff, the monitoring team found that a significant body of the instruction complied with policy and CASA requirements. This analysis was conducted paragraph-by-paragraph--- and in many instances requirement-by-requirement within paragraphs. For some subjects, such as ECW (Paragraphs 24-38), we found a high rate of Secondary Compliance.

The monitoring team also broke subjects down into critical and essential requirements in its analysis. In the former category, we included APD's three-part standard for the use of force, the *Graham* standard of objective reasonableness, the concept of officer-created danger, Show of Force, the minimum amount of force necessary requirement, the concepts of de-escalation and Tactical Array, and APD's standard for shooting at a moving vehicle.

After careful analysis and review, the monitoring team identified several open issues that require some follow-up or supplemental training --- we find APD not in Secondary Compliance on its 40-hour Use of Force Training Curriculum. The monitoring team wants APD to understand that to achieve secondary compliance, APD has a continuing responsibility to address lingering or emerging use of force training issues.

The monitoring had protracted and sometimes heated discussions with City compliance leaders (the City Attorney and APD Executive staff). The City took strong exception to providing the monitoring team advance copies of the proposed curriculum for these trainings, asserting that there were no national standards for acceptable training, and insisting that APD was not required to submit the training in advance for approval. The training failures noted above could have been avoided, and the need for retraining averted if APD had done so.

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

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

Paragraph 88 stipulates:

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

a) conducting use of force investigations, including evaluating officer, subject, and witness credibility;

b) strategies for effectively directing officers to minimize uses of force and to intervene effectively to prevent or stop unreasonable force;

c) incident management; and

d) supporting officers who report unreasonable or unreported force, or who are retaliated against for using only reasonable force or attempting to prevent unreasonable force. "

Methodology

As of June 1, 2016, APD had completed all presentations of the 24-hour Supervisory Use of Force Investigations Curriculum. Based upon the monitoring team's review of official attendance data for the course, and cross referenced that data with academy sign in sheets. In doing so the attendance rate was determined to be 99%. APD identified a small percentage of officers on extended leave for follow-up training upon their return. It also intends to provide make-up sessions for the few officers who did not attend the course. The monitoring team also reviewed videotapes from a 24-hour training session to determine if the course materials were adequately delivered. A great deal of insight was gained by reviewing the videotapes and comments by the monitoring team are provided below.

Results

The monitoring team has taken the same approach to assess Secondary Compliance with respect to the 24-hour Supervisory Use of Force Investigations Curriculum as we did with the 40-hour Use of Force Curriculum. We found open issues in this curriculum that require supplemental training to bring APD into Secondary Compliance with this paragraph. Those are listed in the following table.

Open Issues: 24-hour Supervisory Use of Force Investigations Course	Status

1. Review of problematic FRB case involving profanity, serious use of force re-classification	APD staff has acknowledged that this case was not presented well and they will address these issues in future use of force training.
2. Credibility determinations	The monitoring team has found no treatment of this issue in the course documentation or our video reviews of the instruction. APD cannot hold supervisors and other reviewers accountable for this task without proper training. We reviewed a training matrix prepared by the academy, in which the academy self-evaluated their training process as having addressed this topic. In our opinion APD does not address how supervisors go about conducting credibility determinations based on their investigations of force. For example, how supervisors make determinations based on the collection of statements, and the evaluation of facts and evidence is not directly addressed. This is a critical oversight.
3. *Garrity* Protections	Before designing training, APD needs to conduct a thorough review of how this issue is currently handled in supervisory-level force investigations.[76] It reportedly recently changed the IAS practice to discontinue extending Garrity protections to witness officers, but we have seen no COB documentation on that change, nor have we seen evidence of it in the field .
4. Show of Force language confusion, i.e., "Pointing a firearm at a person…and acquiring a target".	This remains a significant point of confusion, as seen in video reviews of the instruction. This issue is under discussion in the six-month review of SOP 2-52 to resolve the confusion.[77] It remains non-compliant until "clarified."

[76] The application of Garrity across all APD use of force and IA investigations has to be evaluated. The failure to apply Garrity properly is an issue that could have profound implications to APD's operational compliance. It is unclear under what policy or prosecutorial authority APD is operating when extending Garrity to APD officers in use of force investigations. This will be follow up during our next site visit.

[77] During the monitoring team's June 2016 site visit APD candidly admitted that Show of Force was improperly instructed. Parenthetically, the monitoring team reviewed a portion of the 24-hour Supervisor's Course where Show of Force was discussed. It is clear to the monitoring team that

5. Minimum amount of force necessary and de-escalation	Without clear-cut guidance on how to conduct these assessments, the resultant judgments are likely to be highly subjective. More "how-to" instruction is needed.
6. Default to *Graham's* objective reasonableness (OR) standard	APD needs to explicitly treat APD standard as a three-part standard, *Graham's* test of OR being only one of the three parts. Otherwise, investigators and reviewers tend to rely solely upon the *Graham* test, which does not address APD's existing policy standard articulated in the new use of force policy.
7. Un-resisted handcuffing issue	APD developed a video that addressed this issue, but the video has not yet been disseminated. Discussions in the 24-hour course clearly indicate that confusion remains.
8. Classification System	APD policy now has five distinct levels of force with specific investigative responses required for each. The classification system (CS) should reflect all five of these levels. Current training does not do so.
9. Use of IAS Checklists	See the recommendations in the monitor's Special Report.[78]
10. Preponderance of Evidence Standard	Without clear-cut guidance on how to interpret and apply this standard, supervisors and chain of command reviewers will have difficulty making the correct findings. More "how-to" instruction is needed, using actual examples.
11. De-escalation Assessment	Without clear-cut guidance on how to conduct these assessments, the resultant

supplemental training is required to ensure all APD officers are clear on what constitutes a "low-ready" weapon position and what constitutes a Show of Force. The "acquiring a target" concept was discussed extensively with APD, which is a contributing factor to the confusion. While on site the monitoring team heard at least three different explanations of what constituted a Show of Force.

[78] The use of checklists consistently has been recommended by the monitoring team to APD for supervisors and reviewers to use when conducting use of force investigations. Since APD will have to conduct supplemental training to reach secondary compliance with this paragraph, we include it in this table to amplify that recommendation. However, we reiterate the need to create a standardized and approved checklist that becomes an annex to SOP 2-54.

	judgments are likely to be highly subjective. More "how-to" instruction is needed.
12. Neck Holds	The definition of a neck hold is contained within the academy lesson plan and SOP 2-52. However, the instructor expanded the definition to include a standard of: restricted blood or airflow. In the opinion of the monitoring team this additional language confused the issue of when supervisors are required to contact CIRT/IRT for a serious use of force case. How an officer/supervisor knows if airflow or blood flow is "restricted" remains apparently uncovered in the training. Because this is not contained in the lesson plan, it is impossible for the monitoring team to determine if this instruction was isolated to one specific class or to every class that the academy provided. It is also impossible to determine if the intent was to require APD supervisors to specifically make a determination if a suspect's airflow is restricted before handling a case as a neck hold. Therefore, supplemental training will be required. Re-working of the policy on this issue is also suggested.
13. Conducting Neighborhood Canvasses and Interviewing Officers	An APD field supervisor provided instruction in these areas that undermined the intent and purpose of separating officers and conducting canvasses for witnesses. (See below).

As noted in IMR-3, this curriculum is a key component of the strategy to improve the quality of both supervisory use of force investigations and chain of command reviews (that level of training will be another key component of the strategy). The monitoring team asked for and received copies of videotaped sessions from the 24-hour training program. The following observations were made that should be regarded as constructive feedback and potential areas for improvement as APD moves forward addressing the open issues we have identified, and as they develop training moving forward.

- An APD Deputy Chief and Major addressed the class and took questions from the participants on several key areas that were being trained in the class --- Show of Force and Force Used on Handcuffed Persons. While some of the information that was provided has to be addressed through supplemental training, the monitoring team agreed with the tone of their

message and the professionalism they displayed. Their willingness to stand up and address their supervisors is a clear demonstration of leadership and, in the opinion of the monitoring team, a clear message these two APD commanders are committed to the type of activities that will be necessary to achieve a cultural change. The Deputy Chief did a particularly good job stressing the importance of proper documentation. He accurately described feedback that the monitoring team has provided APD in past reports; the monitoring team has provided examples where a particular type of force was justified but that the breakdown was in the reporting or investigation of the force. The monitoring team feels strongly that these types of executive "give and take" sessions --- where officers get a command level perspective --- would be very beneficial in the field as well as training settings. In particular, as APD begins the implementation of new policies the command staff become essential because they are typically more connected to organizational level decisions and discussions with the monitoring team.

- The definition of a neck hold, contained in APD policy and the CASA, was included in the training lesson plan. The monitoring team observed in two locations of the training that the instructor gave expanded commentary that left the definition and a supervisor's responsibilities related to neck holds unclear. The instructor explained to the class that a neck hold involves the restriction of air and/or blood flow to a suspect, and said, "If there is no restriction of the airway, it's not a neck hold. This left the monitoring team --- and presumably the class --- with an ambiguous impression of what constitutes a neck hold and when a serious use of force investigation should be initiated at APD. It also gives an analysis requirement to a field supervisor that may be impossible to determine. In addition, it intimates that "neck holds may not be neck holds" which simply muddles the policy and training to the point of uselessness. Because this added commentary is not a part of the lesson plan it is unknown if this was an isolated piece of instruction or if it was provided to each supervisor class. Therefore, the instruction in this area has to be remediated through some form of supplemental training.

- The concept of "under use of force" was addressed in the course. We commented on a CIRT Awareness Report[79] focused on this concept earlier in this report, but we appreciate the approach taken by the Deputy Chief in that he focused on the importance of watching that officers are addressing potential force situations properly from the onset so that higher degrees of force are not necessary.

[79] The monitoring team felt that the report provided insufficient details and perspective to be a helpful document to APD officers and supervisors.

- The concept of force being applied to a handcuffed person, reporting requirements and what constitutes a serious use of force requiring a CIRT/IRT investigation took up a considerable amount of time, indicating that a great deal of uncertainty clearly exists among supervisors. These areas of discussion related to lack of clarity included:

    1. While the Deputy Chief and Major did their best to clarify the issue, this area of force reporting clearly needs additional training, based on our review.
    2. The idea of using "pressure points" was discussed, but it's unclear what the message to the supervisors was intended to be and whether they, in the opinion of APD, constitute a use of force.
    3. A video of a use of force involving a handcuffed person was used as a training tool. The instructor told the class that she did not initially feel the case involved force, but noted the officer involved had been "retrained".
    4. When discussing the case, the instructor commented that a Deputy Chief would not discipline someone for not reporting the force depicted in the case. This certainly calls into question the legitimacy of APD accountability since the statement was not explained or qualified.
    5. It is clear to the monitoring team that the degree of confusion about what constitutes use of force was significant and that supplemental training is necessary. The instructor stated to the class that the policy (SOP 2-52) has remained constant throughout the different offerings of the 24-hour class, but the interpretation --- at least relating to force against handcuffed persons --- of the policy "was evolving." That certainly suggested to the monitoring team that the procedures have been unevenly instructed.
    6. One class participant even commented to the instructor that if the interpretation of the policy is still evolving, how were they (the class) supposed to implement it and mentor their officers.

- The instruction concerning Show of Force resulted a great deal of confusion by the class, based on the videos reviewed. In the opinion of the monitoring team the information provided to the class concerning what constituted a Show of Force was unclear at times and needs to be supplemented through retraining. The concepts of "low-ready" and "high-low-ready" positioning of a weapon, and "acquiring a sight picture" all appeared to confuse a relatively simple concept. During our June 2016 site visit this topic was discussed with an APD Deputy Chief who candidly agreed that Show of Force would need to be addressed through some type of retraining.[80] We appreciate his willingness to self-identify the need

[80] As noted earlier in this report we asked for a definition of what constituted a Show of Force of APD commanders and received different interpretations.

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

- During Day 2 of the training the class was turned over to an APD supervisor to share a "Use of Force Investigation, Supervisor On-Scene Reminder" checklist that he reportedly constructed. It is unclear to the monitoring team if the supervisor was a class participant (for that specific class) or if he was asked to provide instruction for each of the courses the academy hosted. The monitoring team found the supervisor to be professional in his delivery, and had a good instructional demeanor, but several issues of concern resulted from this apparently *ad hoc* instruction:
    - It does not appear to the monitoring team that the checklist he presented and discussed is an APD approved document. In fact, the instructor presented the checklist as a "take it or leave it" option. We have provided feedback to APD on several occasions that these types of checklists, reports or job aids are useful, but should be approved and included as addendums to the SOP they support. By not doing this APD ends up with varying types of reports being used by similar organizational units. We reiterate again, APD should consider appending APD approved documents, reports, checklists or job aids to the SOP they support.
    - The checklist was presented to the class as a document that, if followed, would ensure supervisors addressed each CASA requirement. While the checklist appears to be a step in the right direction, based on our review that statement does not appear to be accurate.
    - The checklist was presented to the class as an option to be considered as opposed to a mandated document supervisors should follow.
    - The supervisor --- who effectively was serving as an academy instructor --- told the class that when at the scene of a use of force case he places his emphasis on removing the suspect from the scene and getting criminal complaints addressed over conducting a use of force investigation. Note – His rationale for removing a suspect from the scene --- under certain circumstances – was sound[81], but he undercuts the importance of scene management and several CASA / APD policy requirements. We further note that this "undercutting" occurred in an APD sanctioned and required, thus "official" training event.
    - He indicated that he does not interview officers at the scene. He waits until officers complete their reports and then conducts the interviews.[82] There are a host of issues with approaching use of

[81] He indicated that suspects that remain at a scene too long can become agitated.

[82] The monitoring team has seen instances where initial use of force investigations can extend for several days. That type of delay in interviewing officers can be counterproductive to

force cases in this manner. By not interviewing officers at the scene, at least preliminarily using his lapel camera, key information or evidence could be lost. Likewise, the ability to keep officers separated, another key responsibility, diminishes as time passes and officers depart a scene. The monitoring team has learned during its use of force case reviews that information collected at the scene could be vital to a properly investigated case.

- The supervisor deemphasized the importance of conducting a canvass for witnesses. He indicated that if he were conducting an investigation, and it was late in the evening, he would not make efforts to locate witnesses of the use of force unless "a light was on in the house". The supervisor that was instructing the class provided no qualifying examples or instruction as to how he would conduct a canvass under late night circumstances. For instance, he did not indicate that he would ask a supervisor on the next shift to assist him by conducting a canvass nor did he indicate that he would return to the scene to conduct the canvass. This instruction undermined the intent of APD policy and the CASA and has to be addressed through some type of supplemental training.
- The monitoring team recognizes the importance of addressing underlying criminal conduct by a suspect at the scene of a use of force, and does not dismiss the fact that circumstances can exist at a particular scene where addressing criminal complaints against a suspect will be a high priority. Likewise, we understand that under some circumstances conducting a canvass for witnesses may better be served during daylight hours. Our concern is centered on the lack of sufficient explanation as to how policy requirements will be covered under those circumstances.

- The use of Additional Concerns Memorandums (ACM) was discussed. There was a robust discussion about ACM's and the instructor did a good job moving through the topic. However, in the opinion of the monitoring team additional guidance concerning ACM's and the specific types of incidents --- and follow up actions that should be expected --- that should be captured within an ACM would benefit APD supervisors. The class participants brought up several good points, including the fact that without better guidance different commands could implement ACM's in different ways. Consistency across organizational commands is important to ensure APD policy and CASA requirements are applied evenly, which will benefit operational compliance.

- When addressing ACM's, the monitoring team was impressed with a CIRT supervisor's comments to the class. He discussed the importance of preparing ACM's with solutions to potential problems included, and to

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completing a thorough and accurate force investigation. It could also lead to lost opportunities to identify and interview witnesses or collect relevant evidence.

"close the loop" on performance issues to insure officers receive proper counseling or training. This resonated with the monitoring team because this is exactly the type of guidance APD has been provided throughout the monitoring process, and is a strong "best practices" recommendation. The fact that this important concept is being communicated in a training program is a good step toward a cultural change.

- The training program included a training exercise that used an APD lapel video from a use of force case that the monitoring team identified as an excellent example of officer restraint, minimum amount of force and de-escalation (reported in IMR-2). In prior reports and during site visits with academy staff we have stressed the value in using APD reports and lapel videos as learning tools. There will be few better ways of effecting cultural change than the academy showing APD officers doing things "the right way" in a training setting. This training exercise created extensive and meaningful dialog in the room that was certainly a benefit to the class. We hope to see more similar examples in future use of force training programs. However, based on other examples the monitoring team has seen, the academy must closely scrutinize the examples they choose. They may encounter cases that contain examples of both good and bad performance. In cases where potential performance issues exist, if APD pre-identifies those issues and instructs the class how a particular case could have been handled better/differently, those cases may still be good learning tools.

- During Day 3 of the course APD inserted a 2-hour block of instruction that included blocks of instruction on social media and internet security. Since the monitoring team had not been provided with training materials on this block of instruction, we have no idea what this topic has to do with use of force or use of force investigations, who approved it being a part of the course, if it was presented to all of the classes, and if not, what block of instruction did it take time away from.

- The instructor who presented the topics on social media and internet security also delivered the block of instruction on Early Intervention Systems (EIS). While the concept of EIS in APD is still evolving, the monitoring team felt that the instructor's ability to deliver the material was outstanding. The instructor was passionate and had a very good stage presence in front of the audience.

    - The instructor introduced a TED website video at the beginning of the training program that did not appear in course materials reviewed by the monitoring team. While the TED video was loosely related to the topic, and relatively innocuous, it took up approximately 1/3 of the time allocated to EIS.

- With respect to unplanned blocks of instruction or the inclusion of unapproved teaching tools, such as videos, the academy must be on high alert and appreciate that they are responsible for the content of information that is delivered to APD officers. In our experience, organizational leaders unconnected with academy responsibilities will at times order topics of instruction be delivered without keeping the larger picture in mind.[83] It is the academy's job to protect the integrity of the training against off hand comments, ad lib training blocks and any course materials that are inconsistent with APD policy or the CASA. For instance, the lesson plans reviewed by the monitoring team did not include references to restricted blood or airflow when defining a neck hold. But for the monitoring team reviewing that portion of the course, that issue would not have been identified; and that may ultimately have an impact on APD operational compliance. Some form of constant, consistent quality control at the Academy is essential, but, in ways obviously lacking. More likely than not this is attributable to under-staffing at the Academy at a time when the Academy plays a crucial role in achieving compliance with the CASA and reform of APD practice.

The issues of de-escalation, credibility assessments, the minimum amount of force necessary standard, the application of the preponderance of evidence standard, and the *Graham* test of objective reasonableness require supervisors and chain of command reviewers to make often-complicated, multi-factorial, difficult judgments about an officer's decision-making and actions. Without substantial guidance, these judgments risk being highly subjective and inconsistent. Or, as we have seen in many instances, reports simply fail to address these issues. To minimize subjectivity and smooth out inconsistencies, instruction must be rooted in actual case studies and include interactive problem-solving to give students hands-on experience in making these critical judgments. This sort of work involves high-level cognitive skills,[84] such as analysis, comparison, and synthesis, which can only be taught and refined in immersive contexts. **The monitoring team does not regard PowerDMS or similar media as suitable platforms for teaching these particular concepts and their application to real-world cases**. In conclusion, though this instruction addressed many of the CASA requirements and APD's new policy on force reporting and investigation, the foregoing open issues, which are substantial, must be addressed if the Department is to achieve Secondary Compliance.

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

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[83] APD is not precluded from determining a particular block of instruction should be delivered to its officers. However, like other training we expect there to be documentation for the origin of training to determine how the need for a topic was decided upon. Especially when placed in the center of such critical policy/CASA related training, which was curious to the monitoring team.
[84] Bloom's Taxonomy is a commonly used array of cognitive skills to differentiate levels of complexity and reasoning abilities.

Operational: **Not In Compliance**

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

APD has successfully completed its transition to department-owned firearms during 2015 and in accordance with CASA requirements as set forth in APD policy. Additionally, APD completed and documented nearly 100% compliance with its firearms qualification policies and procedures in 2015. This included day and night shoots; qualifications with special weapons, including the patrol rifle; and remediation of qualification failures. The monitoring team was particularly impressed with the well-documented procedures for both the patrol rifle qualification and remediation processes. Approximately a dozen officers were granted "qualification exemptions" because they were on some type of extended, approved leave. APD provided COB documentation on the exemptions granted in 2015; APD SOP 2-22 Firearms and Ammunition was approved, which moves APD into Primary Compliance on the requirements in Paragraph 89.

Results

APD provided COB printouts showing that one officer returned to duty from extended leave during 2016 and qualified successfully with all of the weapons that the officer was certified to use. The monitoring team suggests the inclusion of data showing the type of leave and its duration. Obviously, the duration is especially important because certain skills are more "perishable" than others. Because firearms competency involves a set of high-risk critical tasks, it is without question a major liability and officer safety concern. Any lapses in assuring competency in technical, tactical, and decision-making skills can have serious downstream consequences.

During the next site visit, the monitoring team will focus significant time and effort on reviewing APD firearms training focusing specifically on inducing and managing stress (both physical exertion and cognitive processing), and the use of force decision-making, including the use of scenario-based and simulation methods. APD included a day of scenario-based training in its current 40-hour Use of Force Curriculum, which, based upon student evaluations, has been especially well received. We will also review the records from that instruction, particularly the evaluation work sheets and the report writing evaluations, in the next reporting period.

During the next site visit, the monitoring team will work with the firearms section to determine if existing processes and data exist to elevate compliance levels, and what exactly will be required to develop in order to attain operational compliance. Although we concluded that remediation practices, both written and actual, were generally sound and done well, correlations between failures and remedial actions were not clear. The monitoring team received six hand written documents from the firearms training unit used to document remedial training. All were difficult to read and lacked the date of initial failure to determine if the remedial training was conducted within policy guidelines. APD should be tracking:

- Failures to qualify per training session
- Remedial training required per session
- Outcomes of the remedial training
- Percentage of remedial training completed within policy guidelines
- Officers who regularly fail to qualify and what efforts are required to both determine and address the causes of repeated failures

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

4.7.77 Assessing Compliance with Paragraph 90: Management of Specialized Units

Paragraph 90 stipulates:

"To maintain high-level, quality service; to ensure officer safety and accountability; and to promote constitutional, effective policing, APD shall operate and manage its specialized units in a manner that increases the likelihood of safely resolving critical incidents and high-risk situations, prioritizes saving lives in accordance with the totality of the circumstances, provides for effective command-level accountability, and ensures force is used in strict compliance with applicable law, best practices, and this Agreement. To achieve these outcomes, APD shall implement the requirements set out below.

Methodology

All of the policies pertaining to the organization, staffing, and operation of APD's tactical units were approved in May and June of 2016, bringing the Department into Primary Compliance on all of the policy-related requirements in this and other paragraphs in this section. Because this paragraph only sets forth high-level operational goals, there is no extensive training required. However, APD has created various mechanisms, such as the Search Warrant Risk Matrix, tactical activation consultation procedures, informative databases, and extensive unit-level review and reporting practices that constitute Secondary Compliance. Lastly, based upon documented field outcomes over the past 18 months, the monitoring team finds that APD's specialized tactical units are in Operational Compliance.

Results

Special Operations Division (SOD) staff continues to refine its operational capabilities to handle high-risk tactical incidents in a measured, adaptive, and risk-smart manner. Its tactical successes in 2015 have been replicated with similar results in the first half of 2016, as shown in the following table based upon the Division's Tactical Activation Analysis database. The data also included eight requests for tactical activations that were declined because they failed to meet APD's risk criteria.

APD SWAT Activations and Outcomes – January-July 2016

Total Activations	15
Resolved without force	7
Resolved with less-lethal force	7
Police Service Dog	1
Bean-bag round	1

Electronic Control Weapon –Taser	0
Resolved with deadly force	0
Chemical munitions	4
CNT (negotiators) involved	15*
Possible mental illness, drug impairment	2

*CNT responds automatically as part of an integrated tactical activation

The monitoring team tabulated the factors that underpin SOD's successes in previous reports, but it is noteworthy to list them once again in this report.

1. Tactical activations are based upon explicit risk criteria to minimize unnecessary activations.
2. SWAT uses a wide range of tools and tactics to minimize risk and the need to use deadly force.
3. CNT has become an integral component of tactical activations.
4. Forced entries and the use of "dynamic entries" are restricted to extreme circumstances, which occur rarely.
5. Incident commanders and supervisors are protective of their personnel and employ an array of stand-off tools and tactics to avoid putting them at unnecessary risk.
6. SOD has developed rich databases to track its activities and deployments to inform an ongoing cycle of review and assessment to promote continuous learning and improvement.
7. Incident commanders exercise exceptional patience and are committed to "playing most situations long", absent exigent circumstances that demand immediate, decisive action.
8. APD has developed a multi-tiered system of response to incidents involving persons in crisis that puts trained responders in front-line roles to resolve each crisis without force if feasible. The role of each tier is clearly defined, along with explicit decision rules for escalation to a higher level of response, including tactical activations.

We note that SOD has put in place a variety of standard management practices that are important factors in achieving and sustaining CASA-related reforms. These include operational planning procedures and templates, regular after-action reviews, thorough, impartial K-9 bite investigations, intensive, balanced training in both "hard" and "soft" approaches to problem resolution, clear decision rules, integrated operations, risk-smart incident command, a wide array of tactical options, well-trained incident commanders, regular self-assessments, and rich unit-level databases to inform decision-making.

Critical to Special Operation's continued success will be their ability to sustain the current state of business to ensure it survives changes in command. We have found throughout the past year that the current commanders are exceptionally receptive to feedback and openly willing to implement business processes that meet CASA requirements. The responsibilities of Special Operations units, and their relationship use of force, will require deep consideration on the part of APD when they are deciding who can be assigned to those units, and more importantly, who can supervise those units.

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

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

Paragraph 91 stipulates:

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

Methodology

Special Operations has developed and implemented certain policies (Bomb SOP 4-03, Swat SOP 4-04, K-9 SOP 4-12, and CNT SOP 2-43) that have been reviewed and approved and address the requirements set forth in paragraph 91.

Results

Special Operations conducts regular, extensive training at numerous levels, including but not limited to: Individual, Unit, and Team. As a result, a review of the training conducted during the period of April 1st 2016 through July 31st 2016 took place. The Crisis Negotiation Team (CNT) has also been added as an internal unit.

The monitoring team also reviewed APD Personal Training Records, including:

- 4/7 Tactical Section along with CNT (Hostage Rescue/Active Shooter scenarios), Bomb Unit (Explosive Disposal);
- 4/12 SWAT Units (Firearms);
- 4/14 K-9 Unit (PSD Performances);

- 4/20 SWAT Units (Mechanical Breeching), Bomb Unit (PSD Performance), Bomb Unit (Explosive Disposal);
- 4/21 K-9 Unit (PSD Performance), Bomb Unit (Explosive Disposal); and
- 4/28 K-9 Unit (PSD Performance).

The monitoring team also reviewed training records for May, June, and July, 2016. All reports document the proper dates, types of training, sign in sheets for training, operational functions trained in, location, overview of course, synopsis, and instructor.

Sixteen After-Action Reports (AARs) were received for the time frame documented in the Interoffice Memorandum. The AARs documented a synopsis of call, tactical response, considerations, as well as any policy, training, equipment, and tactics as required by CASA. A review of the AARs indicates that APD specialized units conform to best practices nation-wide, and to the specific requirements of this paragraph.

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

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

Paragraph 92 stipulates:

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

Methodology

A review of the Special Operations training conducted by the monitoring team confirmed that the operational functions included in this paragraph are regularly covered and documented. The monitoring team reviewed the Excel spread sheet (2016 Tactical Files) that displays training by officer, by unit, and by operational function trained that correspond to those listed in paragraph 92.

Results

Lesson plans, handout material, and scenario-based exercises were also received and reviewed by the monitoring team. Throughout the tactical training, members are trained in the basic operational functions (Command and Control; Containment; and Entry, Apprehension, and

Rescue), as required by this paragraph. Additionally, the monitoring team reviewed the daily Course of Business Interoffice Memorandums that highlighted the second-quarter training schedules of Bomb, K-9, SWAT, and CNT Units for 2016. Actual observation of training functions was not conducted during the fourth site visit but will be conducted at future visits, when it will be more feasible. Based on a review of Tactical Team files, performance indicates a high-level of training, supervision, command and control consistent with the high-quality policies developed for tactical units.

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

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

Paragraph 93 stipulates:

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

Methodology

Special Operations has invested considerable time and effort in continuously revising its internal policies to accord with CASA requirements. All of the policies pertaining to the organization, staffing, and operation of APD's tactical units were approved in May and June of 2016, bringing the Department into Primary and Secondary Compliance on all of the policy-related requirements in this and other paragraphs in this section. The Division also completed an internal review of recently approved Unit-level policies, which the monitoring team was able to verify from attendance sheets for each session.

Results

As we note in Paragraph 90, SOD has put in place a variety of standard management practices that are important factors in achieving and sustaining CASA-related reforms. In preparation of this report the monitoring team has reviewed course of business documentation and discussed the status for each SOD paragraph with its commander and staff. Based on our review, we have determined that SOD is in operational compliance with this paragraph.

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

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

Paragraph 94 stipulates:

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

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

Methodology

It is important to note that Special Operations has invested considerable time and effort in continuously revising its internal policies to accord with CASA requirements. All of the policies pertaining to the organization, staffing, and operation of APD's tactical units were approved in May and June of 2016, bringing the Department into Primary and Secondary Compliance on all of the policy-related requirements in this and other paragraphs in this section. The Division also completed an internal review of recently approved Unit-level policies, which the monitoring team was able to verify from attendance sheets for each session.

Results

As we note in Paragraph 90, SOD has put in place a variety of standard management practices that are important factors in achieving and sustaining CASA-related reforms. In preparation of this report, the monitoring team has

reviewed course of business documentation and discussed the status for each SOD paragraph with its commander and staff. Based on our review, we have determined that SOD is in operational compliance with this paragraph.

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

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

Paragraph 95 stipulates:

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

Methodology

All of the policies pertaining to the organization, staffing, and operation of APD's tactical units were approved in May and June of 2016, bringing the Department into Primary and Secondary Compliance on all of the policy-related requirements in this and other paragraphs in this section. The Special Operations Division (SOD) conducted the required 2015 annual review in January 2016. The resultant report was forwarded to the Bureau Deputy Chief with a memorandum of transmittal from the Division Commander on January 22, 2016. The monitoring team has reviewed the report, which consisted of four principal sections: Policy; Analysis of Tactical Activations; Training; and Legal Review. As we noted in IMR-3, the report was written well, organized logically, and covered substantive matters. It provides a useful template for future annual reports.

Results

The monitoring team identified one Supreme Court case---*Mullenix v. Luna*, 136 S. Ct. 305 (2015) ---included in the Legal Review section of the Division's 2015 Annual Report that is problematic without proper qualification. This case, similar to *Plumhoff*, which was included in the 40-hour Use of Force Curriculum, sets forth a standard for shooting at vehicles that is less restrictive than APD's use of force policy. We do not believe, based upon our review of pertinent course documentation and personal observations, that either case was sufficiently differentiated from APD's standard for shooting at vehicles. Interestingly, when we asked how Mullenix came to be included in the Division's annual report, SOD staff advised that the City's Legal Department had provided the case, along with the others reported, in response to a request for a list of recent significant cases

affecting law enforcement. The monitoring touched upon this issue in IMR-3, but it bears repeating. There appears to be no central vetting of legal cases for training to ensure that they are consistent with APD policy or, if they are cited, to ensure that they are clearly differentiated from APD's use of force standard.[85] The monitoring team finds this a critical oversight, and will follow up on this issue during our next site visit.

As we note in Paragraph 90, SOD has put in place a variety of standard management practices that are important factors in achieving and sustaining CASA-related reforms. In preparation of this report the monitoring team has reviewed course of business documentation and discussed the status for each SOD paragraph with its commander and staff. Based on our review, we have determined that SOD is in operational compliance with this paragraph.

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

4.7.83 Assessing Compliance with Paragraph 96: Documentation of Tactical Activities

Paragraph 96 stipulates:

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

Methodology

Special Operations has incorporated the requirements of Paragraph 96 at all compliance levels and its policies have been approved by the monitor and have subsequently been published. During the monitoring period (April 1st 2016 through July 31st 2016), no operational plans were prepared for review by the monitoring team. During this same period,

[85] It might be less troublesome to simply omit these cases because they do not accord with APD's standard for shooting at vehicles, unless they obviously address other significant issues. We recommended in IMR-3 that APD review how legal updates are currently developed and approved, as they appear to be done in an ad hoc fashion without central Academy oversight. In this instance, an officer simply requested a list of recent cases, which the City's Legal Department provided without proper internal vetting, in our judgment. This has created an unintentional loss of compliance due to the contradictory nature of "training," e.g., policy updates, that is inconsistent with established and approved APD policy. We would recommend immediate retraining via memo and roll-call training to ensure the contradictory training and APD policy guidance are reconciled.

sixteen (16) AARs were conducted. Each AAR contains an area for remarks on policy, training, equipment, and tactics. These included:

[[IMR-4-31]] (Policy, training, equipment, and tactics addressed);
[[IMR-4-32]] (Training addressed);
[[IMR-4-33]] (Training and equipment addressed);
[[IMR-4-34]] (Training, equipment, and tactics addressed);
[[IMR-4-35]] (Training, equipment, and tactics addressed);
[[IMR-4-36]] (Policy, training, and equipment addressed);
[[IMR-4-37]] (Training and equipment addressed); and
[[IMR-4-38]] (Training and equipment addressed).

Results

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

4.7.84 Assessing Compliance with Paragraph 97: Tactical Mission Briefings

Paragraph 97 stipulates:

"APD shall require specialized tactical units to conduct mission briefings before an operation, unless exigent circumstances require an immediate deployment. APD shall also ensure that specialized tactical team members designate personnel to develop and implement operational and tactical plans before and during tactical operations. All specialized tactical team members should have an understanding of operational planning."

Methodology

During the third monitoring period the monitoring team wrote that no documentation was found that APD provided specific training in operational planning. The monitoring team, based upon case reviews, acknowledged that Tactical Sectional Commanders, Supervisors and Officers have a working knowledge of operational planning and apply that understanding and skill to actual operations. For the fourth site visit the monitoring team requested documentation from APD that supports if such training was being conducted. The monitoring team also requested any Operational Plans developed for this period.

Results

The monitoring team received sixteen (16) AAR's for the fourth site visit timeframe. Of the 16 reports, there were no cases in which mission briefings were feasible. All cases required immediate deployment.

The monitoring team received documentation indicating APD delivered an "Operational Planning Class" dated February 2, 2016. The training topic was Search Warrant Planning and Briefing. The objective of the course was for SWAT officers to gain the knowledge and understanding of how to properly plan for and brief a high-risk search warrant. An attendance sheet was part of the documentation supplied to the monitoring team, and that documentation indicates eight members of the SWAT Unit received the one-hour course of instruction. This type of training will continue to be monitored to ensure TU's have an understanding of operational planning. The monitoring team remains concerned about the level of training provided to patrol officers, supervisors, and commanders in responding to and managing critical incidents. This issue will be followed up on the next site visit in order to assess "in field" applications of training.

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

4.7.85 Assessing Compliance with Paragraph 98: Tactical Uniforms

Paragraph 98 stipulates:

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

Methodology

The monitoring team has verified Operational Compliance with this requirement by means of personal inspections, policy reviews, and discussions with the Division Commander. With the approval of all SOD policies in May-June 2016, APD is now in Policy Compliance as well. There are no significant training requirements in this paragraph.

Results

The Division conducts regular monthly inspections to ensure that officers maintain uniform, equipment, and grooming standards. The monitoring team examined selected inspection forms from several recent months to verify that the mandated inspections are being conducted.

As we note in Paragraph 90, SOD has put in place a variety of standard management practices that are important factors in achieving and sustaining CASA-related reforms. In preparation of this report the monitoring team has reviewed course of business documentation and discussed the status for each SOD paragraph with its commander and staff. Based on our review, we have

determined that SOD is in operational compliance with this paragraph.

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

4.7.86 Assessing Compliance with Paragraph 99: Force Review Board Assessments

Paragraph 99 stipulates:

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

Methodology

All of the policies pertaining to the organization, staffing, and operation of APD's tactical units were approved in May and June of 2016, bringing the Department into Primary Compliance on all of the policy-related requirements in this and other paragraphs in this section.

Results

The monitoring team attended a Force Review Board meeting during its June 2016 visit in which numerous SWAT After-action Reviews were presented. We reviewed those in Paragraph 78 of this report, finding serious issues with compliance with applicable standards on the part of patrol supervisors. SOD, however, continues to conduct highly detailed and thorough reviews of its deployments. SOD also maintains a database to track all FRB recommendations and document their ultimate resolution, which may be acquiring a new piece of equipment of conducting follow-up training. The monitoring team reviewed the Excel spreadsheet titled 2016 Use of Force Board Recommendations that SOD uses to track FRB recommendations. The SOD documents stand out in sharp contradistinction to those provided by patrol supervisors, and are extremely well done and comprehensive, and provide a field to document that follow-up actions were completed. There are many "lessons learned" opportunities in those documents for Patrol supervisors and commanders.

As we note in Paragraph 90, SOD has put in place a variety of standard management practices that are important factors in achieving and sustaining CASA-related reforms. In preparation of this report the monitoring team has reviewed course of business documentation and discussed the status for each SOD paragraph with its commander and staff. Based on our review, we have

determined that SOD is in operational compliance with this paragraph.

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

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

Paragraph 100 stipulates:

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

Methodology

The Special Operations Division, which oversees specialized tactical units, has established policies that set selection criteria for team membership and training requirements for all members. These are listed in the Bureau SOPs that cover Bomb Squad (4-03), SWAT (4-04), and K-9 (4-12) that have been approved and published. During the third monitoring period, APD Department Personnel circulars announcing openings in each of the specialized units were reviewed. Those circulars included job descriptions that described the position and listed the selection criteria. At that time, CNT policies and procedures, including the selection criteria, were incorporated into SOP 4-04. During the fourth monitoring period, there were no Department Personnel circulars to review. An annual retention review was conducted on each specialized unit member. The review consisted of Employee Work Plan review (EWP), a file review conducted by unit commanders, and a meeting with the Behavioral Science Division.

Results

This unit policy is in compliance with the requirements of paragraph 100 and constitutes a best practice in the management of tactical units and personnel. APD has incorporated the "unit policies" into its formal policies related to these functions, making it compliant with this paragraph.

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

4.7.88 Assessing Compliance with Paragraph 101: Tactical Team Training

Paragraph 101 stipulates:

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

Methodology:

APD SOP 2-42 (Hostage, Barricaded, Suicidal Subjects and Tactical Threat Assessment) was approved and published May 27, 2016. The Tactical Section SOP's were approved and published. The monitoring team has reviewed the Tactical Section training and found that all subjects required in Paragraph 101 are covered in a wide array of training contexts, including but not limited to scenario-based training. Throughout this review it became evident that CNT has become an essential operational component in tactical activations.

Training for the Tactical Section is conducted on a regular basis in accord with national standards (NTOA) for high-risk tactical operations. APD tactical teams continue to demonstrate operational success in 2016. The monitoring team is concerned that training for FSB officers, sergeants, lieutenants, and commanders is less adequate, given their responsibilities for responding to and handling the majority of these incidents. The revised SOP contains language indicating that a command-level officer will respond to these incidents. The monitoring team will assess the nature and extent of supervisory and command-level field presence in future reports. While the tactical units are in full compliance with this paragraph, Field Service Bureau units lag behind in the training and supervision necessary to serve as first-responders in such events.

Results

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

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

Paragraph 102 stipulates:

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

Methodology:

All of the policies pertaining to the organization, staffing, and operation of APD's tactical units were approved in May and June of 2016, bringing the Department into Primary Compliance on all of the policy-related requirements in this and other paragraphs in this section. The Division also conducted reviews of newly approved Unit-level policies.

Results

APD limits post-deployment reviews to cases involving apprehensions, which are fully investigated as a serious use of force by the K-9 Unit supervisor and then reviewed by the Critical Incident Review Team (CIRT). The current procedure is for CIRT to respond to the scene and accompany the supervisor throughout the field investigation. The final report is then submitted to CIRT for review and concurrence.

If APD were to do full after-action reviews of deployments, the paperwork would quickly overwhelm SOD staff. For instance, there were 71 deployments in July 2016 and 9 apprehensions, 1 of which involved a bite. Moreover, the marginal value of such reviews does not appear to warrant the investment, as the majority of deployments are routine and yield nothing novel or noteworthy. In the monitoring team's judgment, present practices provide the required oversight and accountability in K-9 operations. Additionally, all K-9 bites are reviewed by the Force Review Board as serious uses of force.

Because of the conflict between the written requirement and actual practice---notwithstanding the monitoring team's assessment---this issue requires further discussion among the parties to bring the language and practice into alignment. In this regard, it is important to note that DOJ determined that bite investigations were being conducted professionally and that K-9 operations were not flagged as an area of concern in its April 10, 2014 Findings Letter. In our judgment, this finding remains valid. In the monitoring team's opinion, the CASA's "shall continue" language does not imbue automatic compliance, otherwise the paragraph would not be in the CASA. The monitor has provisionally approved APD's canine deployment policy, pending detailed collection of deployment and bite data to better inform an informed decision regarding how those events will be classified and tracked. Obviously, training cannot commence until policy issues are resolved.

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

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

Paragraph 103 stipulates:

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

Methodology

All of the policies pertaining to the organization, staffing, and operation of APD's tactical units were approved in May and June of 2016, bringing the Department into Primary Compliance on all of the policy-related requirements in this and other paragraphs in this section. The Division also conducted training reviews of newly approved Unit-level policies.

Results

K-9 Units respond to a variety calls that the monitoring team has broken down into dispatches or call-outs, deployments, apprehensions, and bites to facilitate our analysis. If the unit's total activity were plotted within a funnel, call-outs --- the largest sub-group within the population --- would be the largest category, which would populate the opening of the funnel. Bites, as you would expect, would be the smallest category at the narrow point of the funnel.[86] For instance, in the first six months of 2016, there were 634 call-outs and only 5 bites reported. However, call-outs do not always result in the K-9 Unit being deployed for a law enforcement purpose, such as a building or area search. For that reason, deployments in 2016 (591) were fewer than the number of call-outs (634). The total deployments resulted in 31 apprehensions, of which 5 involved a bite.

During our June visit, there was a discussion between APD and DOJ about the preferred means of calculating a bite ratio, as 20% has been set as the threshold that triggers a formal review of a K-9 team's performance and unit performance overall. APD argued that calculating the bite ratio as bites to apprehensions results in an artificially high ratio that would trigger numerous EIS false positives, i.e., an alert when there is no real underlying issue. There is merit to their argument because the cell numbers are so small. For example, in July 2016 one team had a single apprehension involving a bite. Using bites to apprehensions, the ratio is 100%, which exceeds the 30% threshold. APD further argues that the bite investigation should be relied upon to evaluate the team's performance in July and not such a skewed, imprecise ratio. If, in contrast, the bites to deployments ratio is used----1 out of 14---the ratio is 7% and a better indicator of field performance in APD's view.

[86] Again, we commend SOD staff on the quality and comprehensiveness of the database that it has created to track the activity and outcomes of APD's specialized tactical units.

Interestingly, the monitoring team calculated the unit bite ratio using both calculations for the month of July 2016.[87] For the bites to apprehensions method, the bite ratio for the month is 1/9, or 11%. For the bites to deployments, the ratio is 9/71, or 13%. For January – July 2016, the two methods respectively yield ratios of 5/31, or 16%, and 5/591, or 1%. Thus, using either measure, APD would be in Operational Compliance with respect to the requirements in Paragraph 103.

Because SOD's database is timely and comprehensive, it is easy to calculate both ratios, keeping in mind that a small change in cell numbers in the bites to apprehensions method could result in dramatic fluctuations without there being an underlying problem. In other words, given the relative low numbers involved, small changes may cause inordinately large variations in the ratio, both up and down.[88] That is less likely using the second method. Overall, based upon our reviews over the course of four reports, we believe that the present level of oversight and accountability exercised within SOD is exceptionally high and effective.

The monitor has provisionally approved APD's canine deployment policy, pending detailed collection of deployment and bite data to better inform decision regarding how those events will be classified and tracked. Obviously, formal training cannot commence until policy issues are resolved.

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

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

Paragraph 104 stipulates:

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

[87] These and other statistics on K-9 Unit activity are drawn from the Division's K-9 Unit Database.
[88] Much like a city experiencing one homicide in year 1 and two in year 2, resulting in a spectacular jump of 100%, that probably is within normal variation and no cause for alarm.

Methodology:

All of the policies pertaining to the organization, staffing, and operation of APD's tactical units were approved in May and June of 2016, bringing the Department into Primary Compliance on all of the policy-related requirements in this and other paragraphs in this section. The Division also conducted reviews of newly approved Unit-level policies bringing the Department into Primary Compliance.

Results

During the reporting period, no K-9 pair had a bite ratio exceeding 20% and, therefore, no Early Intervention System (EIS) reviews were required[89]. The reader is reminded that, during this reporting period the APD unilaterally "shut down" EIS, without notice to the Parties or the monitor. Thus we have no real data on bites since any that occurred during that time were not noted to the monitoring team. In a review of this requirement with the Division Commander, he advised that he personally conducted past EIS reviews[90] to stay in touch with operational issues. If there is a problem, he then refers the matter to the officer's sergeant and lieutenant for resolution. The monitoring team certainly applauds the commander's level of engagement, but we question not involving the officer's sergeant and lieutenant at the outset, i.e., notice of the EIS Alert. Without hesitation, the commander acknowledged the point and stated that he would explore the best means of doing so.[91]

Primary: **In Compliance**
Secondary: **Not In Compliance[92]**
Operational: **Not In Compliance**

4.7.92 Assessing Compliance with Paragraph 105: Analyzing Tactical Deployments

Paragraph 105 stipulates:

"APD agrees to track and analyze the number of specialized tactical unit deployments. The analysis shall include the reason for each tactical deployment and the result of each deployment, to include: (a) the location; (b) the number of arrests; (c) whether a forcible entry was required; (d) whether a weapon was discharged by a

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[89] This highlights the severity of APD temporarily "shutting down" the EIS due to the level of alerts. We have no idea, without consulting manual records, whether any critical incidents occurred but were not reported during this shut-down.

[90] The monitoring team has reviewed a number of such memos from 2015.

[91] We view his openness to new ideas and alternative perspectives to be an important contributing factor in SOD's success in managing and leading APD's specialized tactical units. The Division continues to rep the cycle of self-assessment based upon solid data that drives learning and improvement constantly.

[92] See the comment above regarding unilateral shut-down of EIS during the reporting period.

specialized tactical unit member; (e) whether a person or domestic animal was injured or killed; and (f) the type of tactical equipment deployed. This data analysis shall be entered into the Early Intervention System and included in APD's annual reports."

Methodology

The monitoring team reviewed the Division's Tactical Unit Deployment Tracking Sheet for the time period of April 1st 2016 through July 31st 2016. Results of these reviews are reported in more detail in the table and discussion of APD SWAT activations and outcomes for the reporting period (April-July, 2016) below.

APD SWAT Activations and Outcomes April 1st 2016 through July 31st 2016[93]	
Total activations	20
Resolved without force	19
Resolved with less-lethal force	4
Police service dog	0
Bean-bag round	1
Electronic control weapon/Taser	0
Resolved with deadly force	0
Chemical munitions	4
CNT (negotiators) involved	20
Possible mental illness, drug impairment	3

Results

The monitoring team noted from their review of SOD reports that there were five tactical withdrawals that occurred after SWAT arrived on the scene and stood down because the incident fell below APD's deployment criteria. The performance statistics that the monitoring team reviewed are evidence of success, robust oversight, and accountability norms within the division. The monitoring team will continue to monitor this paragraph at future site visits.

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

4.7.93 Assessing Compliance with Paragraph 106: Specialized Unit Policies

Paragraph 106 stipulates:

[93] The numbers in the SWAT activation table are not cumulative. For example, a given "deployment" may have included an activation, use of less-lethal force, chemical munitions, and a CNT negotiator.

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

Methodology

Investigative Bureau SOP 3-01 Special Investigations Division was approved by the monitor on June 5, 2016, which brings APD in Primary Compliance on the requirements in Paragraph 106. Additionally, each subordinate specialized investigative unit has developed a unit-level handbook that sets forth standard operating procedures and incorporates APD's use of force policies.

Results

The monitoring team reviewed a prototype handbook for the Narcotics Section in late 2015 and commended the approach. We also provided extensive comments on a number of issues and several suggestions on how to improve the handbook. It is our understanding that SID has since drafted handbooks for all of its constituent units, but we have not had a chance to review any. We found the original prototype generally well done and comprehensive; however, in the next monitor's report, we will review official product to ensure that the approach was replicated in the distributed (official) handbooks.

To achieve Secondary and Operational Compliance APD must develop a training plan for each handbook and unit. This may run the gamut from on-the-job training, a formal orientation, or a partial-day training session.

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

4.7.94 Compliance with Paragraph 107: High Risk Situation Protocols

Paragraph 107 stipulates:

"APD shall prohibit specialized investigative units from providing tactical responses to critical situations where a specialized tactical unit is required. APD shall establish protocols that require communication and coordination by specialized investigative units when encountering a situation that requires a specialized tactical response. The protocols shall include communicating high-risk situations and threats promptly, coordinating effectively with specialized tactical units, and providing support that increases the likelihood of safely resolving a critical incident."

Methodology

The Investigative Bureau (IB) SOP 3-01 Special Investigations Division was approved by the monitor on June 5, 2016, which brings APD in Primary Compliance on the requirements in Paragraph 107. Additionally, each subordinate specialized investigative unit has developed a unit-level handbook that sets forth standard operating procedures and incorporates APD's use of force policies.

Results

To achieve Secondary Compliance APD must develop a training plan for IB SOP 3-01 Special Investigations Division and for each unit-level handbook. This could run the gamut from on-the-job training, a formal orientation, or a partial-day training session.

The monitoring team will schedule a meeting during its next visit to review all of the SID requirements, assess the status of each, and assist SID with achieving full compliance. Based upon our review in IMR-3, SID is in Operational Compliance with respect to the requirements in Paragraph 107, to wit, detectives requesting a specialized tactical unit activation complete a Risk Management Matrix, submit it for consideration, then coordinate closely with SWAT personnel to conduct as safe an operation as possible. These procedures are included in the unit-level handbooks (e.g., Narcotics Section Handbook, p. 18). It is unclear what training modalities SID is using to ensure that staff understand and follow the requirements in the policy (the handbooks). We will assess that further in IMR-5.

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

4.7.95 Compliance with Paragraph 108: Inspection of Specialized Units

Paragraph 108 stipulates:

"Within three months of the Effective Date, APD shall conduct an inspection of specialized investigative units to determine whether weapons and equipment assigned or accessible to specialized investigative units are consistent with the units' mission and training. APD shall conduct re-inspections on at least an annual basis."

Methodology:

The monitoring team reviewed the Special Investigation Division's annual inspection forms that were completed in January and February of 2016.

Consistent with the unit's mission and training, a review of the individual inspection forms indicated that there was proper documentation of all weapons and equipment assigned or made accessible to SID. An Interoffice Memorandum was submitted on June 21st 2016 to document SID's yearly inspection. The Memorandum, completed during the normal course of daily business, stated in part that all sworn personnel were involved and no issues of concern were located; additionally, all personnel were rated at satisfactory. The monitoring of these inspections is set to continue on at least an annual basis.

Results

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

4.7.96 Assessing Compliance with Paragraph 109: Tracking Specialized Unit Responses

Paragraph 109 stipulates:

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

Methodology

Investigative Bureau (IB) SOP 3-01 Special Investigations Division was approved by the monitor on June 5, 2016, which brings APD in Primary Compliance on the requirements in Paragraph 109. Additionally, each subordinate specialized investigative unit has developed a unit-level handbook that sets forth standard operating procedures and incorporates APD's use of force policies.

Results

The Division has created reporting procedures and a data collection-entry template to meet the reporting requirements in Paragraph 109. The monitoring team reviewed a copy of the template and also a six-page printout for March 2016 that includes all of the data fields listed in the paragraph. The Division still needs to develop and implement an intra-unit training plan to be in Secondary

Compliance, and to formalize its current adherence to all of the requirements in daily.

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

4.7.97 Assessing Compliance with Paragraph 110:

Paragraph 110 stipulates:

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

Methodology

During this reporting period, APD made changes to its organizational structure, naming an imminently qualified individual head of the newly-formed "Behavioral Health Division" (BHD). According to a revised APD organizational chart dated June 13, 2016, the BHD comprises:

- Crisis Intervention Section (formerly referred to as the Crisis Intervention Unit, or CIU
  - Crisis Intervention Team
  - Crisis Outreach and Support Team (COAST)
  - Crisis Intervention Clinicians

- Behavioral Sciences Section

Members of the monitoring team requested all policies submitted by APD regarding performance of task 110 that were completed during the third reporting period dates of April 1, 2016 – July 31, 2016. Procedural Order 1-14, entitled "Behavioral Sciences Division Support and Service" (formerly titled "Behavioral Sciences Division") was updated during this reporting period. The most recent version is marked "Effective: 4/28/16 Expires: 10/25/16 Replaces: 12/30/15."

Procedural Order 2-13, entitled "Response to Behavioral Health Issues" (formerly titled "Response to the Mentally Ill / Suspected Mentally Ill and People in Crisis,") was updated during this reporting period, with the most recent version is marked "Effective: 06/07/16 Expires: 12/04/16 Replaces: 05/25/13." This version is 29 pages and is also watermarked "Published on 06/07/16." APD also submitted documentation indicating that 2-13 had been approved on 6/5/16, and considered by the Standard Operating Procedure Review Committee (SOPRC) on July 7, 2016. The monitor is deeply concerned that, based on this record, APD is publishing (promulgating) policy before it is reviewed by the SOPRC.

The new version of 2-13 indicates that APD has worked through its response strategy for mental health-related calls, with certified responders (aka "Enhanced CIT" or "ECIT") officers taking the lead.

Procedural Order 2-42 "Hostage, Suicidal/Barricaded Subject, and Tactical Threat Assessment" was updated during this reporting period. The most recent version is marked "Effective: 05/27/16 Expires: 11/23/16 Replaces: 04/25/16." APD also submitted documentation indicating that 2-42 had been considered by the SOPRC on 4/27/16, 5/4/16, and 5/25/16 and the Policy and Procedures Review Board (PPRB) on 5/25/16. Some documents indicate this policy was approved on May 27, 2016, while others indicate it was approved on April 20, 2016. The monitoring team is concerned about these contradictory and often confusing "process stamps." Such contradictory dating protocols could, and in the monitor's experience, do create serious difficulties in defending policy and training practices in the face of civil litigation.

APD's earlier version of Procedural Order 3-06, "Criminal Investigations Division," refers to the roles and responsibilities of members of the Crisis Intervention Unit and COAST. SOP 3-06 and was submitted to the monitor for final review in May, after the close of the third reporting period. We find it remarkable that the monitoring team found difficulty locating a copy of this policy in APD's web-based policy repository. The policy 3-6 "Special Services Bureau" available electronically is dated January 16, 2016, and no longer contains any mention of CIU or COAST. The monitoring team will continue to work with the APD to get workable, updated, meaningful, integrated and effective policies developed for this task and to generate meaningful training responsive to those policies.

Results

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

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

Paragraph 111 stipulates:

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

Methodology

APD and the Albuquerque mental health community have made significant progress toward compliance with these tasks. Such progress includes:

- MHRAC is meeting monthly, conducting their meetings according to prepared agendas and producing meeting minutes, which are posted on the city's website;
- MHRAC by-laws were formally voted on and adopted on June 16, 2015;
- New co-chairs were nominated and approved by vote of the MHRAC on June 16, 2015 and have been acting in that role since that date;
- Recent meetings of the MHRAC have focused upon substantive issues, such as policy, training, and APD responses (as reflected in agendas and minutes from meeting dates April 19, 2016, May 17, 2016, June 21, 2016 and July 19, 2016.
- The MHRAC has established sub-committees to take on the important aspects of their work, as outlined in the paragraphs below;
- The sub-committees include Training, Resources and Information Sharing, each of which has a chair or co-chairs as well as other members participating.

The monitoring team reviewed materials, including MHRAC meeting agendas and meeting minutes; reviewed email traffic between the APD CIU and the MHRAC; and spoke to MHRAC and APD CIU members at in-person meetings during our June 2016 site visit and via telephone calls to determine that primary and secondary compliance have been achieved.

As we noted in IMR-3, while we acknowledge that significant progress has been made, based upon many emails that indicate confusion with the process for MHRAC to review and provide feedback to APD on both policies and training curricula, the independent monitoring team cannot confirm operational compliance at this time. We again recommend that the City reach out to MHRAC and establish written policy for clear, consistent, and workable processes for consultation, provision of timely feedback to APD regarding mental health response issues. Currently, clear policy does not guide that process, leaving the MHRAC somewhat rudderless as it attempts to smoothly mesh its processes with those of the APD policy and training processes. We do note however, that MHRAC personnel are included in the APD's policy development and revision processes through membership in OPA's newly formed policy development entities.

In addition, a more thorough documentation of discussions at MHRAC meetings and subcommittee meetings would be helpful to the monitoring team in determining compliance with this paragraph. Resolution of this issue may require some revision to SOP-2-13. We will consult with APD regarding this issue during the IMR-5 site visit.

Results

Primary:	**In Compliance**[94]
Secondary:	**Not In Compliance**
Operational:	**Not In Compliance**

4.7.99 Assessing Compliance with Paragraph 112:

Paragraph 112 stipulates:

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

[94] APD is currently consulting with MHRAC and receiving MHRAC feedback. At times the *process* is confusing or provides less than ample time for MHRAC to carefully assess proposed policies and processes prior to existing deadlines.

APD and the Albuquerque mental health community have made significant progress toward compliance with these tasks. Such progress includes:

- MHRAC is meeting monthly, conducting their meetings according to prepared agendas and producing meeting minutes, which are posted on the city's website;
- MHRAC by-laws were formally voted on and adopted on June 16, 2015;
- New co-chairs were nominated and approved by vote of the MHRAC on June 16, 2015 and have been acting in that role since that date;
- Recent meetings of the MHRAC have focused upon substantive issues, such as policy, training, and APD responses (as reflected in agendas and minutes from meeting dates April 19, 2016, May 17, 2016, June 21, 2016 and July 19,2016.
- The MHRAC has established sub-committees to take on the important aspects of their work, as outlined in the paragraphs below;
- The sub-committees include Training, Resources and Information Sharing, each of which has a chair or co-chairs as well as other members participating.

The monitoring team reviewed materials, including MHRAC meeting agendas and meeting minutes; reviewed email traffic between the APD CIU and the MHRAC; and spoke to MHRAC and APD CIU members at in-person meetings during our June 2016 site visit and via telephone calls to determine that primary and secondary compliance have been achieved.

As we noted in IMR-3, while we acknowledge that significant progress has been made, based upon many emails that indicate confusion with the process for MHRAC to review and provide feedback to APD on both policies and training curricula, the independent monitoring team cannot confirm operational compliance at this time. We again recommend that the City reach out to MHRAC and establish written policy for clear, consistent, and workable processes for consultation, provision of timely feedback to APD regarding mental health response issues. Currently, clear policy does not guide that process, leaving the MHRAC somewhat rudderless as it attempts to smoothly mesh its processes with those of the APD policy and training processes. As noted above, we are aware that MHRAC has a seat on the policy development process designed by OPA, allowing access to and input on policy development processes.

In addition, a more thorough documentation of discussions at MHRAC meetings and subcommittee meetings would be helpful to the monitoring team in determining compliance with this paragraph.

Results

Primary: **In Compliance**[95]
Secondary: **In Compliance**
Operational: **Not in Compliance**

4.7.100 Assessing Compliance with Paragraph 113

Paragraph 113 stipulates:

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

Methodology

APD and the Albuquerque mental health community have made significant progress toward compliance with these tasks. Such progress includes:

- MHRAC is meeting monthly, conducting their meetings according to prepared agendas and producing meeting minutes, which are posted on the city's website;
- MHRAC by-laws were formally voted on and adopted on June 16, 2015;
- New co-chairs were nominated and approved by vote of the MHRAC on June 16, 2015 and have been acting in that role since that date;
- Recent meetings of the MHRAC have focused upon substantive issues, such as policy, training, and APD responses (as reflected in agendas and minutes from meeting dates April 19, 2016, May 17, 2016, June 21, 2016 and July 19,2016.
- The MHRAC has established sub-committees to take on the important aspects of their work, as outlined in the paragraphs below;

[95] APD is currently consulting with MHRAC and receiving MHRAC feedback. At times the *process* is confusing or provides less than ample time for MHRAC to carefully assess proposed policies and processes prior to existing deadlines.

- The sub-committees include Training, Resources and Information Sharing, each of which has a chair or co-chairs as well as other members participating.

The monitoring team reviewed materials, including MHRAC meeting agendas and meeting minutes; reviewed email traffic between the APD CIU and the MHRAC; and spoke to MHRAC and APD CIU members at in-person meetings during our June 2016 site visit and via telephone calls to determine that primary and secondary compliance have been achieved.

As we noted in IMR-3, while we acknowledge that significant progress has been made, based upon many emails that indicate confusion with the process for MHRAC to review and provide feedback to APD on both policies and training curricula, the independent monitoring team cannot confirm operational compliance at this time. We again recommend that the City reach out to MHRAC and establish written policy for clear, consistent, and workable processes for consultation, provision of timely feedback to APD regarding mental health response issues. Currently, clear policy does not guide that process, leaving the MHRAC somewhat rudderless as it attempts to smoothly mesh its processes with those of the APD policy and training processes.

In addition, a more thorough documentation of discussions at MHRAC meetings and subcommittee meetings would be helpful to the monitoring team in determining compliance with this paragraph.

Results

Primary: **In Compliance**[96]
Secondary: **In Compliance**
Operational: **Not In Compliance**

4.7.101 Assessing Compliance with Paragraph 114:

Paragraph 114 stipulates:

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

[96] APD is currently consulting with MHRAC and receiving MHRAC feedback. At times the *process* is confusing or provides less than ample time for MHRAC to carefully assess proposed policies and processes prior to existing deadlines.

Methodology

During this reporting period, the monitoring team had several conversations with members of the Information Sharing subcommittee. The subcommittee on Information Sharing drafted an action plan (dated November 5, 2015), which the MHRAC considered and voted to adopt at their December 2015 meeting, but as of September 7, 2016, the action plan had not been fully implemented.

An important aspect of the subcommittee's proposal is a suggestion to convene all relevant stakeholders in the issue of appropriate and confidential information sharing, including: community members with lived experience; the Albuquerque City Attorney's Office; the APD / CIU; the University of New Mexico General Counsel's Office; the UNM Department of Psychiatry; the Albuquerque Fire Department; Presbyterian Hospital / Kaseman psychiatric services; 911 dispatch; Bernalillo County Sheriff's Department; Bernalillo County Fire Department; the Veterans Administration hospital; and the MHRAC Information Sharing subcommittee members. During this reporting period, no convening of the parties occurred.

According to Information Sharing subcommittee members, ongoing negotiations between the city and the University of New Mexico have occurred that may have included some of these stakeholders to discuss issues relevant to this paragraph, but a larger group meeting, designed to determine common goals and objectives, has not yet taken place.

A memo dated July 16, 2016 indicates that representatives from the city, the APD and one MHRAC co-chair (4 people in total) met to discuss the ongoing MOU negotiations and wording. The memo indicates that the latest draft of the MOU would be discussed at the MHRAC meeting on July 19, 2016, but the MHRAC meeting minutes reflect no such discussion. Emails indicate that while negotiations and explorations of other options in addition to the MOU -- such as replicating some protocols underway in Santa Fe -- were ongoing throughout this reporting period, it appears that an appropriate level of input from members of MHRAC did not occur.

Further, when an email inquiry about MHRAC's participation in the MOU negotiation was sent to city representatives on June 1, 2016, a city official responded, "It is being review (sic) internally and some negotiation needs to occur with UNM. When it is finalized and UNM attorneys are informed of its pending release I will certainly provide it to you if possible."

The monitor notes that responsibility for this process, according to the CASA, rests with the APD, "with guidance from the Advisory Committee."

MHRAC members have not actively participated in this process. "Informing" MHRAC of the proposed process "when it is finalized … and pending release" does not imbue the process with characteristics that would allow the monitor to find compliance on this issue.

Results

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

4.7.102 Assessing Compliance with Paragraph 115

Paragraph 115 stipulates:

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

Methodology

The monitoring team has tracked APD's progress on this paragraph through the requirements of paragraphs 129 and 137. During this reporting period, APD continued to refine its data tracking and reporting systems and had initial talks with data experts at the University of New Mexico toward that end. Based on evidence reviewed by the monitoring team, these data are being provided by APD to the members of MHRAC on a regular basis.

The data provided are consistent with the requirements of the CASA, and are well documented and easily understood, as evidenced by a PowerPoint presentations prepared for the MHRAC meetings on April 19, 2016, May 17, 2016, and June 21, 2016. The data presented represent a level of sophistication that makes it useable and accessible; data included in the analysis reach back to 2010 and include relevant data to the date of publication. The analysis includes: tracking the number of CIT-related calls for service over time; analyzing uses of force with people in CIU caseloads during encounters with field officers; numbers of people contacted by COAST who claim to be veterans; and monitoring the calls for service by time of day and day of week as well as capturing

the data elements required by paragraphs 129 and 137.

Furthermore, this paragraph requires the MHRAC to review the behavioral health training curriculum. This process is also taking place. According to the minutes of a MHRAC Training subcommittee meeting dated July 25, 2016, APD is indeed taking the suggestions of MHRAC members into consideration as they planned for an incoming cadet academy class. APD CIU officers also discussed the development of their enhanced CIT course with MHRAC members during the same meeting. Importantly, MHRAC members with lived experience suggested a change to a scenario-based concept, which the APD honored. Also, data indicate that members of the MHRAC have participated in the development of the enhanced CIT curriculum, which has yet to be delivered.

Results

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

4.7.103 Assessing Compliance with Paragraph 116

Paragraph 116 stipulates:

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

Methodology

The monitoring team has tracked APD's progress on this paragraph through the requirements of paragraphs 129 and 137. During this reporting period, APD continued to refine its data tracking and reporting systems and had initial talks with data experts at the University of New Mexico toward that end. Based on evidence reviewed by the monitoring team, these data are being provided by APD to the members of MHRAC on a regular basis.

The data provided are consistent with the requirements of the CASA, and are well documented and easily understood, as evidenced by a PowerPoint presentations prepared for the MHRAC meetings on April 19, 2016, May 17, 2016, and June 21, 2016. The data presented represent a level of sophistication that makes it useable and accessible; data included in the analysis reach back to 2010 and include relevant data to the date of publication. The analysis includes: tracking the number of CIT-related calls for service over time; analyzing uses of force with

people in CIU caseloads during encounters with field officers; numbers of people contacted by COAST who claim to be veterans; and monitoring the calls for service by time of day and day of week as well as capturing the data elements required by paragraphs 129 and 137.

Furthermore, this paragraph requires the MHRAC to review the behavioral health training curriculum. This process is also taking place. According to the minutes of a MHRAC Training subcommittee meeting dated July 25, 2016, APD is indeed taking the suggestions of MHRAC members into consideration as they plan for an incoming cadet academy class. APD CIU officers also discussed the development of their enhanced CIT course with MHRAC members during the same meeting. Importantly, MHRAC members with lived experience suggested a change to a scenario-based concept, which the APD honored. Also, data indicate that members of the MHRAC have participated in the development of the enhanced CIT curriculum, which has yet to be delivered.

Results

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

4.7.104 Assessing Compliance with Paragraph 117

Paragraph 117 stipulates:

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

Methodology

The monitoring team has reviewed the primary avenue the MHRAC and the APD are using to connect chronically homeless individuals and individuals in crisis with services (that avenue is a small tri-fold resource card on which organization names and telephone numbers appear). The monitoring team observes that the resource card has been updated during this reporting period. The cards appear to be handed out regularly during interactions and follow-up interactions with chronically homeless individuals and individuals in crisis.

MHRAC meeting minutes from this reporting period do not mention the MHRAC Resources subcommittee's other strategy to enhance coordination. According to the MHRAC's Initial Report: an online

database is being coordinated by the state of New Mexico's Network of Care, which identifies behavioral health and social services available in Bernalillo County. As of the end of this reporting period, the monitoring team has no indication that the database is complete, accurate or being used by APD personnel, but a quick search of the Network of Care's website (http://newmexico.networkofcare.org/mh/) produced 50 results for "mental health" listed near the Albuquerque zip code of 87102.

Results

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

4.7.105 Assessing Compliance with Paragraph 118 Behavioral Health Training

Paragraph 118 stipulates:

"APD has undertaken an aggressive program to provide behavioral health training to its officers. This Agreement is designed to support and leverage that commitment."

No evaluation methodology was developed for paragraph 118, as it is not a "requirement" for APD or City action, but simply states facts.

4.7.106 Assessing Compliance with Paragraph 119 Behavioral Health Training for all Cadets

Paragraph 119 stipulates:

"APD agrees to continue providing state-mandated, basic behavioral health training to all cadets in the academy. APD also agrees to provide 40 hours of basic crisis intervention training for field officers to all academy graduates upon their completion of the field training program. APD is also providing 40 hours of basic crisis intervention training for field officers to all current officers, which APD agrees to complete by the end of 2015."

Methodology

Members of the monitoring team continue to hold monthly teleconferences with members of the Crisis Intervention Unit responsible for this paragraph to discuss progress on this and other paragraphs. Members of the monitoring team have reviewed the basic behavioral health training curriculum delivered to all cadets in the academy. APD has continued to deliver this state-mandated training to all cadets. The monitoring team also reviewed the CIU Monthly Reports for this reporting

period. Members of the CIU instructed on CIT in the 115th academy class in April. As of this reporting period, the previous director of what is now the BSD is no longer instructing CIT for the cadets.

According to the CIU Monthly reports, a total of 459 officers in the field have received 40-hour in-service CIT training, including some sergeants and lieutenants for approximately 98%.

Results

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

4.7.107 Assessing Compliance with Paragraph 120

Paragraph 120 stipulates:

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

Methodology

Members of the monitoring team hold monthly teleconferences with members of the Crisis Intervention Unit responsible for facilitating the development of training addressing mental health issues to discuss progress. The monitoring team also reviews the CIU's Monthly Reports.

The CIU continues to utilize a training curriculum that addresses field assessment, identification, suicide intervention, crisis de-escalation, community mental health participation and scenario-based exercises and role play exercises appropriately and effectively. All training emphasizes the importance of community partnerships and appropriate referrals to services. All training provided by CIU has been updated with the newly approved relevant SOPs, including 2-13 and 2-42. As currently delivered, the training is acceptable to the monitoring team. Future reports will assess in-field compliance with policy and training.

Results

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

4.7.108 Assessing Compliance with Paragraph 121

Paragraph 121 stipulates:

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

Methodology

During this reporting period, APD continued to move away from mental health training that is developed and delivered by outside contractors) and toward mental health training developed in-house, by the Crisis Intervention Unit. The CIU has consistently indicated during conversations with the monitoring team that all mental health-related training would eventually be moved in-house, including training for the tele-communicators. During this reporting period, the CIU began planning for the development of newly revised tele-communicators training, including crafting a survey for 911 call takers and dispatchers to ask them what topics are important to emphasize in the training. No training for tele-communicators took place during this reporting period.

Results

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

4.7.109 Assessing Compliance with Paragraph 122

Paragraph 122 stipulates:

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

Methodology

The CIU has developed a 2-hour in-service training curriculum that addresses the requirements of New Mexico House Bill 93, entitled "Police Training for Mental Impairments." The law requires (among other things) two hours of "crisis management, including crisis intervention, confrontation de-escalation practicum and proper interaction with persons with mental impairments training" during in-service law enforcement training. The CIU's refresher course includes: an overview of de-escalation concepts; crisis intervention; and mental illnesses. The monitoring recommends that this curriculum be updated to reflect the new SOP 2-13.

No two-hour bi-annual training sessions for either officers or tele-communicators took place during this reporting period. Secondary compliance depends upon appropriate training for field personnel and tele-communicators, indicating that they have received training based on the newly revised policies.

Results

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

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

Paragraph 123 stipulates:

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

Methodology

APD maintains a Crisis Intervention Unit staffed with detectives housed at the Family Advocacy Center, with a total of 8 sworn officers in the CIU during this reporting period, short of the 12 recommended in the "Albuquerque Police Department Comprehensive Staffing Assessment

and Resources Study" conducted by Alexander Weiss Consulting, LLC (Final Draft Report, December 11, 2015). The study states, "We concur with the recommended staffing level of 12 full time detectives for CIU." The monitoring team will continue to assess performance on this topic in future monitor's reports.

Results

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

4.7.111 Assessing Compliance with Paragraph 124

Paragraph 124 stipulates:

The number of crisis intervention certified responders will be driven by the demand for crisis intervention services, with an initial goal of 40% of Field Services officers who volunteer to take on specialized crisis intervention duties in the field. Within one year of the Effective Date, APD shall reassess the number of crisis intervention certified responders, following the staffing assessment and resource study required by Paragraph 204 of this Agreement.

Methodology

During this reporting period, APD clarified their thinking about the distinction between "crisis intervention certified responders" and officers who are "CIT trained." In the opinion of the monitoring team, although nearly 100% of APD officers have participated in 40 hours of CIT training (the most recent officers being trained by curriculum designed by the APD CIU), APD has yet to reach its 40% initial goal of "field service officers who volunteer to take on specialized crisis intervention duties."

Throughout this monitoring period, APD's CIU worked on a new curriculum, "enhanced CIT" or "eCIT" for the purposes of designating officers who participate in eCIT "crisis intervention certified responders." The curriculum was informed by a survey of personnel conducted by CIU touching upon CIT issues and training needs. The CIU also developed a nominating system to identify volunteers who wished to participate in the eCIT course and become "crisis intervention certified responders." While no training utilizing the eCIT curriculum occurred during this reporting period, curriculum development was ongoing.

As guidance, the monitor notes the "industry standard" for "certification" is earning a certificate from a professional (or trade) organization by passing an exam that is "accredited by a professional organization or association." As of this date, it appears that the crisis-intervention field

has not established a certifying or accrediting organization that assesses general CIT response officer accreditation. Thus, no external certification process is available to APD.

Results

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

4.7.112 Assessing Compliance with Paragraph 125

Paragraph 125 stipulates:

"During basic crisis intervention training for field officers provided to new and current officers, training facilitators shall recommend officers with apparent or demonstrated skills and abilities in crisis de-escalation and interacting with individuals with mental illness to serve as crisis intervention certified responders."

Methodology

The monitoring team reviewed documents provided by APD to assess the way APD identifies and recommends officers for service as Crisis Intervention Certified Responders. The CIU continues to produce memos that note the officers who demonstrate skills in de-escalation and interacting with people in crisis. For example, a memo from an investigator to the Medial Director lists officers who are suitable candidates to become crisis intervention certified responders, but also notes that he has reached out to them and began a recruitment conversation. There is no evidence in the record provided, indicating the outreach actually occurred.

Results

Primary: **In Compliance**
Secondary: **In Compliance**
Operational: **Not In Compliance**[97]

4.7.113 Assessing Compliance with Paragraph 126

Paragraph 126 stipulates:

[97] As previously noted, APD is reminded that COB documentation must consist of normal course of business documents indicating an event has occurred, not a memorandum stating that it had occurred.

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

Methodology

The CIU did not provide 8-hour in-service "refresher" training during this reporting period. While members of the CIU were previously considering utilizing the "Mental Health First Aid USA" curriculum as a training mechanism to accomplish this CASA requirement, it seems they are opting instead, for an in-house developed 8-hour refresher curriculum. APD CIU's recently hired a curriculum developer who has been focused on crafting the enhanced CIT (eCIT) curriculum to fulfill the requirements regarding "crisis intervention certified responders" found in paragraph 124. We understand that this individual will be focusing on the 8-hour refresher training soon. The monitoring team will provide updates on this issue as they emerge.

Results

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

4.7.114 Assessing Compliance with Paragraph 127

Paragraph 127 stipulates:

"Within 18 months of the Effective Date, APD will ensure that there is sufficient coverage of crisis intervention certified responders to maximize the availability of specialized responses to incidents and calls for service involving individuals in mental health crisis; and warrant service, tactical deployments, and welfare checks involving individuals with known mental illness."

Methodology

During this reporting period, APD clarified their thinking about the distinction between "crisis intervention certified responders" and officers who are "CIT trained." In the opinion of the monitoring team, although nearly 100% of APD officers have participated in 40 hours of CIT training (the most recent officers being trained by a curriculum designed by the APD CIU), APD has yet to reach its 40% initial goal of "field service officers who volunteer to take on specialized crisis intervention duties." A new enhanced CIT curriculum was under development during this reporting period, but no training had been completed on the new eCIT curriculum toward the goal of "certified responders."

The monitoring team finds APD to be not in compliance with this CASA requirement as of its due date of this reporting period, because the distinction between *all* officers being trained on a 40-hour CIT curriculum and officers who are "crisis intervention certified responders" has been clarified. However, the necessary training has yet to take place. To come into compliance with this task APD needs to develop formal policy regarding its current plans and operations in this area, incorporating CIT and eCIT factors.

Results

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

4.7.115 Assessing Compliance with Paragraph 128

Paragraph 128 stipulates:

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

Methodology

Procedural Order 2-13, entitled "Response to Behavioral Health Issues" (formerly titled "Response to the Mentally Ill / Suspected Mentally Ill and People in Crisis,") was updated during this reporting period, with the most recent version is marked "Effective: 06/07/16 Expires: 12/04/16 Replaces: 05/25/13." This SOP governs who will take the lead on crisis calls, and was updated and finalized during this reporting period. It states: "ECIT, MCT or CIU will take the lead in interacting with individuals in a behavioral health crisis. If a supervisor has assumed responsibility for the scene, the supervisor will seek input from ECIT, MCT, or CIU on strategies for de-escalating, calming and resolving the crisis, when it is safe." Since eCIT is a concept at this time, and has not been implemented or trained, or guided by policy, these elements are not in compliance.

Results

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

4.7.116 Assessing Compliance with Paragraph 129

Paragraph 129 stipulates:

"APD shall collect data on the use of crisis intervention certified responders and CIU. This data will be collected for management purposes only and shall not include personal identifying information of subjects or complainants. APD shall collect the following data:
a) date, shift, and area command of the incident;
b) subject's age, race/ethnicity, and gender;
c) whether the subject was armed and the type of weapon;
d) whether the subject claims to be a U.S. military veteran;
e) name and badge number of crisis intervention certified responder or CIU
detective on the scene;
f) whether a supervisor responded to the scene;
g) techniques or equipment used;
h) any injuries to officers, subjects, or others;
i) disposition of the encounter (e.g., arrest, citation, referral); and
j) a brief narrative of the event (if not included in any other document)."

Methodology

Members of the monitoring team continued to communicate at least monthly via teleconference with APD CIU personnel working on compliance efforts for this paragraph to determine their status and ensure all items required are addressed. The data and analysis submitted for review to the monitoring represent a level of sophistication that is acceptable to the monitoring team; data included in analysis reach back to 2010 and include relevant data to present. Analysis includes: tracking the number of CIT-related calls for service over time; analyzing uses of force with people in CIU caseloads during encounters with field officers; numbers of people contacted by COAST who claim to be veterans; and monitoring the calls for service by time of day and day of week as well as capturing the data elements required by this paragraph. The Behavioral Health Division / Crisis Intervention team continues to work closely with outside experts on data collection, data analysis and interpretation. The monitoring team appreciates CIU's process of keeping the team "in the loop" on planned changes and processes. Operational compliance is dependent upon analysis of the "routinely and effectively" issues raised by CIU/COAST.

Results

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

To assess compliance with this paragraph, members of the monitoring team relied upon several sources of information: CIU Monthly Reports, monthly teleconferences with CIU members and data requested by the monitoring team. For this reporting period, the CIU submitted emails that indicate a level of thoughtfulness in developing scenarios for training that are inspired by actual encounters.

The APD CIU partnership with outside consultants has effectively assisted APD in identifying systemic issues that, at times, impede APD's ability to provide an appropriate responses; the data analysis that is emerging points to trends by geographic region, call outcome (transport to local facilities, for example), and characteristics of people in crisis. The monitoring team will closely observe the progress of how such data translates into operational strategies for the CIU.

Results

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

4.7.118 Assessing Compliance with Paragraph 131

Paragraph 131 stipulates:

Working in collaboration with the Advisory Committee, the City shall develop and implement a protocol that addresses situations involving barricaded, suicidal subjects who are not posing an imminent risk of harm to anyone except themselves. The protocol will have the goal of protecting the safety of officers and suicidal subjects while providing suicidal subjects with access to mental health services.

Methodology

Procedural Order 2-42 "Hostage, Suicidal/Barricaded Subject, and Tactical Threat Assessment" was updated during this reporting period. The most recent version is marked "Effective: 05/27/16 Expires: 11/23/16 Replaces: 04/25/16." Other documentation indicates that 2-42 was processed through both the SOPRC and the PPRB.

The policy addresses: assessment of need for tactical response; ensuring backup officers are present; dispatch of the on-duty field supervisor; MCT or eCIT will take the lead on interactions; obtaining information from family and friends; responding to the scene; communicating by emphasizing de-escalation; disengagement procedures; tactical threat assessment; and the use of tactical units.

APD's collaboration with the Mental Health Response Advisory Committee on this policy has been fragmented and confusing; the working relationship among all relevant stakeholders is still evolving. In tracking email traffic between the APD and the MHRAC, the monitoring team observes that there was confusion throughout this reporting period about versions of various policies as well as timing and requirements for submitting reviews and comments.

As we noted in IMR-3:

> "As one might expect, there are also operational and tactical issues related to this paragraph. In a recent conference call between the parties and the monitor, a key issue regarding the appropriate level of authority exercised by on-scene Crisis Intervention Team (CIT) specialists was discussed at some length and resolved by the adoption of several major guidelines. One guideline continues to vest overall incident command authority with either the on-scene supervisor or command-level officer. That configuration of overall authority is consistent with contemporary standards for managing high-risk tactical incidents, particularly in cities the size of Albuquerque. The second guideline requires[98] incident commanders to consult regularly with on-scene specialists and consider their inputs in making critical decisions. In particular, the guideline stresses the need to factor specialist viewpoints into the decision-making process before requesting a tactical activation. APD SWAT has demonstrated the soundness of this approach in numerous situations in which CNT inputs have been vital in its own operational planning and decision-making."

[98] This actually is cast as "shall".

> "APD SOP 2-42 Hostage, Suicidal Subjects, Barricaded Subjects, and Tactical Threat Assessment, dated March 27, 2016, was the subject of the above conference call and has yet to receive final monitor approval because of a recent misunderstanding over several provisions. This should be resolved shortly and move APD into Primary Compliance.
>
> There remains a need to reconcile SOP 2-42 with SOP 2-13 Response to Persons Affected by Mental Illness of in Crisis, dated February 12, 2016 and Bureau-level SOP 4-04 Specialized Tactical Units, dated March 28, 2016. Significant overlaps or linkages should be highlighted to assure uniformity.
>
> It will be essential to provide Field Services Bureau (FSB) officers, supervisors, and command-level officers (many departments include communications dispatchers) training in the basics of incident response, initial operations, and incident command. This is particularly important in light of APD's two-level system[99] of response to high-risk incidents, which includes suicidal subjects and assumes that FSB officers will handle the majority of incidents. We recommend that APD include data on these deployments in its Annual Use of Force Report, as these incidents sometimes escalate to the point where the use of significant or deadly force is unavoidable. It is also important to place actual tactical activations involving mentally ill persons (8 in 2015) in the context of total Level One responses, which we understand are far more numerous. "

Training on the new SOP has not yet been accomplished as of this report.

Results

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

4.7.119 Assessing Compliance with Paragraph 132 Crisis Prevention

Paragraph 132 stipulates:

APD shall continue to utilize COAST and CIU to follow up with chronically homeless individuals and individuals with a known

[99] This is the monitoring team's two-level classification scheme that we adopted to distinguish the two levels of response.

mental illness who have a history of law enforcement encounters and to proactively work to connect these individuals with mental health service providers.

Methodology

Throughout this reporting period, the monitoring team held monthly teleconferences with the APD CIU and COAST personnel. Those conversations, along with CIU Monthly Reports indicate that APD continues to maintain regular contact with individuals known to them. Furthermore, the COAST team performs weekly outreach in the city's community for the homeless and people in need. In addition to coordinating with social service agencies to participate in outreach, they hand out resource cards, food, water, and clothing.

Further, APD continues conversations with UNM's Psychiatric Department and a variety of other community mental health services to discuss community working relationships and response strategies. During up-coming site visits, members of the monitoring team will conduct "ride-alongs" with COAST officers to assess whether or not crisis prevention tactics are "routine."

Results

Primary: **In compliance**
Secondary: **In compliance**
Operational: **Not In compliance**

4.7.120 Assessing Compliance with Paragraph 133

Paragraph 133 stipulates:

COAST and CIU shall provide crisis prevention services and disposition and treatment options to chronically homeless individuals and individuals with a known mental illness who are at risk of experiencing a mental health crisis and assist with follow-up calls or visits.

Methodology

During this reporting period, members of the monitoring team kept in touch monthly with the APD Crisis Intervention Unit to discuss proactive outreach to individuals with a known mental illness. The monitoring team also reviewed the CIU Monthly Reports and the MHRAC meeting minutes for this reporting period.

APD continues to manage its caseload through CIU and COAST with consistent outreach to individuals with a known mental illness, as detailed

case-by-case in the monthly CIU/COAST reports. The monitoring team has reviewed the primary avenue the MHRAC and the APD are using to connect chronically homeless individuals and individuals in crisis with services; that avenue is a small tri-fold resource card on which organization names and telephone numbers appear. The monitoring team observes that the resource card has been updated during this reporting period. Conversations with members of the CIU and COAST indicate that the cards are being handed out regularly during interactions and follow-up interactions with chronically homeless individuals and individuals in crisis. During up-coming site visits, members of the monitoring team will conduct "ride-alongs" with COAST officers to assess whether or not crisis prevention tactics are "routine."

Results

Primary: **In compliance**
Secondary: **In compliance**
Operational: **Not In compliance**

4.7.121 Assessing Compliance with Paragraph 134

Paragraph 134 stipulates:

APD shall continue to utilize protocols for when officers should make referrals to and coordinate with COAST and CIU to provide prevention services and disposition and treatment options.

Methodology

Regular communication via monthly teleconference with the APD personnel responsible for this paragraph in the CIU and COAST indicates that APD's CIU and COAST units continue to provide referrals to treatment options. A review of the CIU Monthly Reports and the MHRAC meeting minutes for this reporting period also indicate that APD continues to assist people with mental illness in connecting with available services and treatment options.

The CIU Monthly reports provide great detail on individual cases, follow up by CIU/COAST members, and connections to services. As an example, one report outlines a case in which a person was referred to mental health court; the COAST member coordinated with local court representatives to explain the process to the person and made an appropriate "hand-off" for mental health court services. During up-coming site visits, members of the monitoring team will conduct "ride-alongs" with COAST officers to assess whether or not crisis prevention tactics are "routine."

Results

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

4.7.122 Assessing Compliance with Paragraph 135

Paragraph 135 stipulates:

"APD shall maintain a sufficient number of trained and qualified mental health professionals in COAST and full-time detectives in CIU to satisfy its obligations under this Agreement. Within three months of completing the staffing assessment and resource study required by Paragraph 204 of this Agreement, APD shall develop a recruitment, selection, and training plan to assign, within 24 months of the study, 12 full-time detectives to the CIU, or the target number of detectives identified by the study, whichever is less."

Methodology

APD has developed a "recruitment plan for CIU detectives"; the version submitted for consideration by the monitoring team is dated 7/8/16. The 3-page plan details strategies to: identify students who excel in CIT coursework and initiate discussions with them about a career path at APD; initiate discussions with sergeants about officers who excel in their interactions with people with mental illness and approach those officers; maintain an "open door policy" for recommendations for CIU detectives from any member of the APD; and explore the possibility of "trial periods" for officers considering joining the CIU by extending them a "temporary duty yonder" to join the CIU for a specific period of time.

The plan also details selection criteria for nominated/interested officers to become CIU detectives, such as the proper training (40-hour in-service CIT; enhanced CIT; ongoing mental health training); willingness to change their schedule and work hours; and two written recommendations from previous supervisors. Further, the plan documents an on-the-job training program that encourages new CIU detectives to build and maintain partnerships with the community and work with the MHRAC. Further, a memo from July 11, 2016 the CIU will utilize APD-TV to assist with recruitment efforts and included a script to reach out to interested officers and encourage supervisors to nominate suitable candidates for the CIU.

According to the July CIU/COAST monthly highlights report, there were a total of 8 sworn members of the CIU. Staffing requirements for this unit are not being realized. The unit is still short of required staffing.

Results

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

4.7.123 Assessing Compliance with Paragraph 136

Paragraph 136 stipulates:

"COAST and CIU shall continue to look for opportunities to coordinate in developing initiatives to improve outreach, service delivery, crisis prevention, and referrals to community health resources."

Methodology

Members of the monitoring team, through conversations with CIU personnel and members of the MHRAC, observed that communication and coordination is taking place, focused on improving outreach, service delivery, crisis prevention and referrals. Members of the monitoring team also reviewed the CIU Monthly reports and the MHRAC meeting minutes during this reporting period.

During this reporting period, CIU and COAST members continued to actively participate in the CIT Knowledge Network and met with the following organizations to coordinate outreach, improve service delivery, and strengthen relationships:

- Albuquerque Depression Bipolar Support Alliance (DBSA);
- Veteran Affair's Hospital (VA);
- San Juan County Sherriff's Office (SJCSO);
- Bernalillo County Sherriff's Office (BCSO);
- University of New Mexico (UNM);
- Rio Rancho Police (RRPD);
- National Alliance on Mental Illness (NAMI) Albuquerque;
- Rio Arriba Sherriff's Office (RRSO);
- U.S. Probation and Parole;
- Albuquerque Fire Department (AFD);
- Hope Christian School;
- First Nations;
- Molina Health Care; and
- Health Care for the Homeless.

In addition to conducting and participating in various meetings, CIU and COAST delivered training workshops to better inform the community about de-escalation and other topics. One such training was delivered in

April to UNM's medical students and included both classroom didactics and scenario based learning.

Results

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

4.7.124 Assessing Compliance with Paragraph 137

Paragraph 137 stipulates:

"APD shall collect and analyze data to demonstrate the impact of and inform modifications to crisis prevention services. This data will be collected for management purposes only and shall not include personal identifying information of subjects or complainants. APD shall collect the following data:
a) number of individuals in the COAST and CIU caseloads;
b) number of individuals receiving crisis prevention services;
c) date, shift, and area command of incidents or follow up encounters;
d) subject's age, race/ethnicity, and gender;
e) whether the subject claims to be a U.S. military veteran;
f) techniques or equipment used;
g) any injuries to officers, subjects, or others;
h) disposition of the encounter (e.g., arrest, citation, referral); and
i) a brief narrative of the event (if not included in any other document)."

Methodology

During this reporting period, APD CIU personnel made considerable progress toward not only data collection (see comments in paragraph 129), but also data interpretation by working closely with an outside consultant. The monitoring team will continue to observe and report on this evolving partnership with regard to data relevant to police interactions with people in crisis and people with mental illness. This data analysis strategy continues to evolve.

Results

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

4.7.125 Assessing Compliance with Paragraph 139[100]

Paragraph 139 stipulates that:

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

Methodology

APD has completed development of all policies and procedures specifically required by the CASA, and those policies, with the exception of canine deployments (see paragraphs 102-105 above) have been approved by the monitoring team and the US Department of Justice. These policies will need to be followed up with training and supervision to ensure they are followed in the field.

Results

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

4.7.126 Assessing Compliance with Paragraph 140

Paragraph 140 stipulates:

"APD policies and procedures shall be indexed and maintained in an organized manner using a uniform numbering system for ease of reference. APD policies and procedures shall be accessible to all APD officers and civilian employees at all times in hard copy or electronic format. "

Methodology

All policies required by the CASA have been approved by the monitor and the United States Department of Justice, with the exception of canine deployment (see paragraphs 102-105 above.)

Results

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

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

4.7.127 Assessing Compliance with Paragraph 141

Paragraph 141 stipulates:

"Within three months of the Effective Date, APD shall provide officers from varying ranks and units with a meaningful opportunity to review and comment on new or existing policies and procedures."

Methodology

Policy development by APD was completed during this reporting period, with the exception of the canine policy which has been placed on "hold" to for six months to allow APD to test alternate methods of calculating canine bite ratios. All policies are posted on APD's web-site.

Results

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

4.7.128 Assessing Compliance with Paragraph 142

Paragraph 142 stipulates:

"Within three months of the Effective Date, APD shall ensure that the Policy and Procedures Review Board is functional and its members are notified of the Board's duties and responsibilities. The Policy and Procedures Review Board shall include a representative of the Technology Services Division in addition to members currently required under Administrative Order 3-65-2 (2014). "

Methodology

The PPRB was observed by the monitoring team during meetings and output of the process was assessed by the team. It is currently functional and has been incorporated into the Office of Policy Analysis.

Results

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

4.7.129 Assessing Compliance with Paragraph 143

Paragraph 143 stipulates:

Within nine months of the Effective Date, the Policy and Procedures Review Board shall review, develop, and revise policies and procedures that are necessary to implement this Agreement. The Policy and Procedures Review Board shall submit its formal recommendations to the Chief through the Planning and Policy Division.

Methodology

The PPRB has been integrated into the Office of Policy Analysis. Since this change is relatively recent, the monitoring team will reassess PPRB's role within OPA on the next site visit.

Results

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

4.7.130 Assessing Compliance with Paragraph 144

Paragraph 144 stipulates:

"Unless otherwise noted, all new and revised policies and procedures that are necessary to implement this Agreement shall be approved and issued within one year of the Effective Date. APD shall continue to post approved policies, procedures, and administrative orders on the City website to ensure public accessibility. There shall be reasonable exceptions for policies, procedures, and administrative orders that are law enforcement sensitive, such as procedures on undercover officers or operations."

Methodology

The work required here was not completed within the timeline established by the CASA; however, all required policy work with the exception of the canine policy, (covered in paragraphs 102 – 105) have been completed and approved by the monitor. For the most part, new policy (with the notable exception of use of force-related policies) still needs to be trained and routinely supervised.

Results

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

4.7.131 Assessing Compliance with Paragraph 145

Paragraph 145 stipulates:

"The Policy and Procedures Review Board shall review each policy or procedure six months after it is implemented and annually thereafter, to ensure that the policy or procedure provides effective direction to APD personnel and remains consistent with this Agreement, best practices, and current law. The Policy and Procedures Review Board shall review and revise policies and procedures as necessary upon notice of a significant policy deficiency during audits or reviews. "

Methodology

Members of the monitoring team reviewed (and have approved) all first-tier policies required to implement this agreement. APD has begun its six-month reviews of those policies as of the expected date of November, 2016.

Results

Actions compliant with this paragraph were completed on-time and were reasonably designed to accomplish the requirements of this paragraph.

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

4.7.132 Assessing Compliance with Paragraph 146

Paragraph 146 stipulates:

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

Methodology

Members of the monitoring team have carefully reviewed APD's proffered policies, requiring substantive changes to some, and approving others "as written." We have found sporadic training and supervision issues in some policies, which are noted elsewhere in this report. These issues, at the current time, rise to a sufficient level to bring into question the level to which APD "holds officers accountable" for adherence to and conformance with policies, particularly with regard to use of force. We will continue to assess use-of-force supervision and discipline issues, as well as other issues germane to this section of the CASA.

Results

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

4.7.133 Assessing Compliance with Paragraph 147

Paragraph 147 stipulates

"APD shall submit all policies, procedures, manuals, and other administrative orders or directives related to this Agreement to the Monitor and DOJ for review and comment before publication and implementation."

Methodology

Members of the monitoring team have carefully reviewed APD's proffered policies, requiring substantive changes to some, and approving others "as written." To date, with one exception, all new and substantially revised policies have been submitted to the monitor and DOJ prior to promulgation and implementation. The canine policy is pending approval based on data collected during a six-month temporary implementation period to allow the Parties and the monitor to assess the efficacy of bite-ratio calculations.

Results

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

4.7.134 Assessing Compliance with Paragraph 148

Paragraph 148 stipulates:

"APD shall have 15 days to resolve any objections to new or revised policies, procedures, manuals, or directives implementing the specified provisions. If, after this 15-day period has run, the DOJ maintains its objection, then the Monitor shall have an additional 15 days to resolve the objection. If either party disagrees with the Monitor's resolution of the objection, either party may ask the Court to resolve the matter. The Monitor shall determine whether in some instances an additional amount of time is necessary to ensure full and proper review of policies. Factors to consider in making this determination include: 1) complexity of the policy; 2) extent of disagreement regarding the policy; 3) number of policies provided simultaneously; and 4) extraordinary circumstances delaying review by DOJ or the Monitor. In determining whether these factors warrant additional time for

review, the Monitor shall fully consider the importance of prompt implementation of policies and shall allow additional time for policy review only where it is clear that additional time is necessary to ensure a full and proper review. Any extension to the above timelines by the Monitor shall also toll APD's deadline for policy completion."

Methodology

To date, all policies required by the CASA that have been submitted to monitor and DOJ have been reviewed and commented on by both, and suggestions returned to APD for action. All policies required by the CASA at this time have been approved by the monitor and DOJ, with the exception of the canine policy, which has been approved provisionally to facilitate data collection designed to allow final determination on how that policy will count and analyze "deployments" and "bites."

Results

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

4.7.13 Assessing Compliance with Paragraph 149

Paragraph 149 stipulates:

"Within two months of the Effective Date, APD shall ensure that all officers are briefed and presented the terms of the Agreement, together with the goals and implementation process of the Agreement."

Methodology

The APD met the requirements to this paragraph early in the process within the two months of the effective date of the CASA. To date, two (2) APD cadet classes have graduated after the initial presentation of the terms of the CASA to APD personnel. APD class #114 received the CASA presentation via PDMS. Class #115 was given hardcopies of the CASA presentation. Receipts documenting that both classes were given the presentations were submitted to the monitoring team for review and approval. One hundred (100) % compliance was established and APD remains in compliance with this paragraph. The monitoring team will continue to monitor progress on all training elements of the CASA. The monitor finds it troubling that, in a review of CIRT case files this reporting period, we discovered a written CIRT report wherein the CIRT investigator alleges there were "no internal documents stating that officers had to comply with" the CASA. This is an observation that requires retraining, at a minimum.

Results

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

4.7.136 Assessing Compliance with Paragraph 150

Paragraph 150 stipulates:

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

Methodology

During the fourth monitoring visit the monitoring met with the Training Academy Personnel responsible for this paragraph. During the visit the monitor requested and was given a list of all approved policies for APD with the dates of approval.

Results

The monitoring team reviewed APD's relevant policies and verifications of "received and understood forms" by personnel responsive to the requirements of this paragraph.

* SOP 3-19 (Response to First Amendment Assemblies)

* SOP 3-18 (Early Intervention System)

* SOP 2-15 (Use of Force)

A review of the material to support this paragraph revealed that APD met the three-month threshold.

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

Operational: **In Compliance**

4.7.137 Assessing Compliance with Paragraph 151

Paragraph 151 stipulates:

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

Methodology

Based on the normal daily course of business (COB) documents provided to the monitoring team for this reporting period (April 1 through July 31, 2016) for training conducted by the APD, the training offered corresponds to the training schedule that had been supplied to the monitoring team and previously approved. The monitoring team reviewed the APD's "class schedule" for training development and all training elements required by the CASA are reflected in the document. Some training was delayed due to policies not being completed but conducted once policy approval was attained.

Results

The monitoring team conducted audits of training during this period on courses delivered in Department Special Order 15-103 (2016 Mandatory Use of Force Training), Department Special Order16-15 (Mandated Use of Force reporting/investigations for supervisors). Based upon the information reviewed by the monitoring team 17 sessions were scheduled and completed by June 2016. 839 members were scheduled to receive training, with various forms of uncontrollable attrition accounting for 4.65% figure for non-attendees (39 officers). The completion of the 40-hour Curriculum will enable APD to begin to provide the required 24 hours of annual use of force training starting in July of 2017 as per the requirements of this paragraph. The supervisor 24-hour course was delivered in four sessions and completed by end of May 2016. A total of 141 members were scheduled to receive training with attrition accounting for 3.55% figure for non-attendees (5 officers). The numbers trained indicate compliance; however, the quality of training was less than compliant, as we noted above. The monitoring team will continue to conduct real time audits of these training events over the coming years to ensure that the training is not only completed to national standards but completed on-time. The monitoring team will continue assess to compliance with the posted schedules during the course of the following years.

Schedule:
2017 Training
10 July – 10 November
2018 Training
9 July – 9 November

Setting Out a Schedule

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

Delivery of Training

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

4.7.138 Assessing Compliance with Paragraph 152

Paragraph 152 stipulates:

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

Methodology

During this monitoring period (April 1, 2016 thru July 31, 2016) the APD did not have any lateral hires come through the hiring process. APD maintains a specific and formalized process for the handling of lateral hires ensuring that the laterals are certified law enforcement officers and that all required training by the CASA is met. All hiring standards for lateral officers are established in SOP 6-1 Training and 6-2 Recruiting. Compliance continues based on past performance, pending future monitoring of any lateral hire processes. The monitoring team will continue to monitor this process for compliance in future site visits.

Results

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

4.7.139 Assessing Compliance with Paragraph 153

Paragraph 153 stipulates:

"APD shall maintain complete and accurate records of all training provided to sworn APD officers during pre-service and in-service training programs, including curricula, course materials, lesson plans, classroom presentations, handouts, videos, slides, recordings, and attendance records. APD shall also maintain complete and accurate records of any audit, review, assessment, or evaluation of the sufficiency or effectiveness of its training programs. APD shall make these records available for inspection by the Monitor and DOJ."

Methodology

The monitoring team met with and interviewed the Training Academy Staff responsible for this paragraph. All training records are maintained electronically and a hard copy is still maintained. The monitoring team visited the academy during this site visit and inspected random records.

The monitoring team reviewed thirty-two supervision course attendance sheets for the 2016 thirty-two-hour Supervision Course and assessed information to ensure all thresholds are met (i.e. +95% attendance). We also reviewed: Field Service Bureau Special Orders 16-17, 16-26, 16-28, 16-30, and16-34; (Phase training for 114th Cadet Class); Use of Force training course syllabus; Use of Force training written test; Use of Force training attendance sheets; Use of Force Training classroom instructor sign-in sheets, and documentation for the Foot Pursuit Course conducted on the Public Safety University (PSU) platform, including attendance sheets and quiz scores. The team also assessed April 2016 and May 2016 FTO class evaluations.

Results

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

4.7.140 Assessing Compliance with Paragraph 154

Paragraph 154 stipulates:

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

Methodology

During the monitoring time frame that was reviewed for this paragraph, (April 1,2016 thru July 31, 2016) the monitoring team found one case law change (Department Special Order 16-51, Subject: *Birchfield v. North Dakota and Blood Draws*) that affected APD. The Advance Training Unit reviewed the material and entered the changes into PDMS for department wide dissemination as per the requirements of this paragraph.

Results

Department Special Order 16-51 dated July 20, 2016 has been entered into PowerDMS. Due to this order just recently put on PowerDMS, the monitoring team will review PowerDMS records during the next site visit to ensure that all APD personnel read and acknowledged this order. APD maintains compliance with this paragraph.

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

4.7.141 Assessing Compliance with Paragraph 155

Paragraph 155 stipulates:

"APD shall supervise and manage its field-training program to ensure that new officers develop the necessary technical and practical skills required to use force in accordance with APD policy and applicable law. The field-training program should reinforce, rather than circumvent, the agency's values, core principles, and expectations on use of force and engagement with the community. Field Training Officers should demonstrate the highest levels of competence, professionalism, impartiality, and ethics."

Methodology

During the fourth monitoring visit, members of the monitoring team met the APD Training Academy personnel responsible for the Field Training and Evaluation Program (FTEP), as per S.O.P. 6-1 Training Division (dated June 14, 2016). The Field Training and Evaluation Program Manual (dated April 13, 2016) were supplied to the monitoring team as requested. The documents contained the necessary changes required to fulfill the requirements of this paragraph.

Results

The new policy clearly stipulates that supervision and management of the program is an essential element of the FTEP. Section 6-1-5 of S.O.P. 6-1 Field

Training and Evaluation Program articulates all the necessary elements required by the CASA. The monitoring team will continue to monitor the FTEP program and all the elements contained in paragraphs 156 through 161 of the CASA to ensure compliance.

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

4.7.142 Assessing Compliance with Paragraph 156

Paragraph 156 stipulates:

"APD shall revise the policies applicable to its field-training program to provide that academy graduates will receive 16 weeks of field training following the training academy and that recruits will not be released from the field-training program early."

Methodology

The Academy personnel charged with this paragraph were asked by the monitoring team to supply documentation to reflect that academy graduates receive a minimum of 16 weeks of field training. The monitoring team reviewed the material to ensure the threshold was met and that no early releases from the program were authorized.

Results

The monitoring team reviewed Field Services Bureau Special Orders 16-39 (dated July 23, 2016), 16-34 (dated June 6, 2016), 16-17 (dated March 2, 2016), 16-28 (dated April 18, 2016), 16-26 (dated April 8, 2016), and 16-30 (dated May 3, 2016). These orders reflect the four phases (four weeks each) as well as any extensions granted for remedial training to fulfill the sixteen weeks of field training as required by the CASA. One hundred percent of the recruits in the program completed a minimum of 16 weeks of training therefore achieving the 95 % or greater threshold required.

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

4.7.143 Assessing Compliance with Paragraph 157

Paragraph 157 stipulates:

"APD shall revise the qualifications for Field Training Officers to require four years of non-probationary experience as a sworn police officer and to ensure that Field Training Officers have a

demonstrated commitment to constitutional policing, ethics, and professionalism."

Methodology

Members of the monitoring team met with the Training Academy Personnel responsible for the Field Training and Evaluation Program during the fourth monitoring site visit. Members of the monitoring team have reviewed the eligibility criteria for the Field Training Officer Program. The monitoring team reviewed a sample of the FTEP Field Training Officer Application process for FTO's for the April 1, 2016 through July 31, 2016 timeframe. The monitoring team reviewed tests and test scores as well as the FTO Selection Board assessments to ensure that FTO's have a demonstrated commitment to constitutional policing, ethics and professionalism. The complete list of FTO's was reviewed to ensure that the four years of non-probationary experience as a sworn police officer was also met as required by this paragraph

Results

The 95% threshold was attained for this paragraph. The SOP for this program was approved and published, and has implemented the process in accordance with approved policy. APD is in operational compliance with this paragraph.

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

4.7.144 Assessing Compliance with Paragraph 158

Paragraph 158 stipulates:

"New Field Training Officers and Area Sergeant Coordinators shall receive at least 40 hours of initial supervisory-level training and annual in-service training in the following areas: management and supervision; constitutional, community-oriented policing; de-escalation techniques; and effective problem-solving techniques. Field Training Officers and Area Sergeant Coordinators shall be required to maintain, and demonstrate on a regular basis, their proficiency in managing recruits and subordinates, as well as practicing and teaching constitutional, community-oriented policing; de-escalation techniques; and effective problem solving. APD shall maintain records of all evaluations and training of Field Training Officers and Area Sergeant Coordinators."

Methodology

Members of the monitoring team have reviewed the documentation for FTO training received by APD personnel for the April 1, 2016 thru July 31, 2016

timeframe. The monitoring team received and reviewed Field Services Special Order 16-06 (Basic FTO Certification Course). Five members from APD received the Field Training and Evaluation Program 40-hour Basic course to become FTO certified. The roster for the courses was reviewed to ensure the students attended all five days (8 hours each day). The courses were delivered March 28, 2016 thru April 1, 2016, and May 16, 2016 thru May 20, 2016. Certificates were issued to the students indicating that they successfully completed the courses and are qualified to be FTO's for APD. As required in paragraph 157 all members that received the FTO forty-hour course met the four-year non-probationary experience as a sworn member.

Results

Members from APD received the requisite training to become FTO's and met all requirements under this paragraph. The monitoring team will continue to monitor this paragraph for compliance in future visits, particularly as it applies to annual in-service training.

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

4.7.145 Assessing Compliance with Paragraph 159

Paragraph 159 stipulates:

"Recruits in the field-training program shall be trained in multiple Area Commands and shifts and with several Field Training Officers."

Methodology

During the fourth monitoring visit, members of the monitoring team met with the Academy staff in reference to this paragraph. Documentation to support this paragraph was requested. Members of the monitoring team reviewed seven Field Training Bureau Special Orders regarding assigned Area Commands, shifts, and FTO's. Special Orders 16-39, 16-34, 16-17, 16-28, 16-26 and 16-30 were also reviewed.

Results

This process is accomplished in four phases, with each phase consisting of four weeks as well as additional time allowed for remedial training, if necessary. The documentation reviewed reflects that the 95% threshold was met for this paragraph for the monitoring period April 1, 2016 thru July 31, 2016.

Primary: **In Compliance**

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

4.7.146 Assessing Compliance with Paragraph 160

Paragraph 160 stipulates:

"APD shall provide a mechanism for recruits to provide confidential feedback regarding the quality of their field training, including the extent to which their field training was consistent with what they learned in the academy, and suggestions for changes to academy training based upon their experience in the field-training program. APD shall consider feedback and document its response, including the rationale behind any responsive action taken or decision to take no action."

Methodology

During the fourth monitor's visit, members of the monitoring team met with the Training Academy Personnel charged with the responsibility of this paragraph. Documentation to support this paragraph was requested. APD utilizes "Survey Monkey" to monitor the confidential feedback from the FTO program. The monitoring team reviewed the survey for the 114th APD Cadet Class.

Results

The review of the survey shows that out of thirty-six (36) recruits twenty-seven (27) responded to the survey. The monitoring notes that this is a high percentage (75 percent) of participation that will help the APD FTO program flourish in future classes. The survey covers various areas of training throughout the FTO program. The monitoring team reviewed the area that covered, "How consistent was your field training with what you learned in the academy?" Categories covered in this survey question: Driving Skills, Geographic Orientation Skills, Field Performance, Officer Safety, Control of Conflict, Patrol Procedures, Investigative Procedures, Radio, Knowledge of Policy and Procedures, Geographic Orientation Under Stress, Knowledge of Criminal Codes, Knowledge of Traffic Codes. In general, the survey showed responses from the recruits were positive ranging from good to excellent. There were some negative responses noted in the survey. The comments consisted of such remarks as; "Little to no training on geographical training and radio training", "Very little to no time focused on traffic code in the academy", "More scenarios that mimic typical calls would be beneficial especially before OJT", "Focus more on forms and paperwork at the academy". The monitoring team found the comments to be supportive of the program with the exceptions of a few concerns (not all concerns that are in the survey are noted in this report). These concerns are all well documented in the survey and are addressed by the APD Training Academy. The APD FTO program and Training Academy have taken responsive action to these surveys. Correspondence for these surveys is documented in the class

review of this cadet class. One example of responsive action documented in this reports deals with the category “Knowledge of Traffic Codes”. The academy is in the process of creating a specific traffic test block that addresses this issue. APD is in operational compliance with the requirements of this paragraph. The monitoring team will continue to monitor the FTO program to ensure compliance with this paragraph in future visits.

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

4.7.147 Assessing Compliance with Paragraph 161

Paragraph 161 stipulates:

“The City shall provide APD with the necessary support and resources to designate a sufficient number of Field Training Officers to meet the requirements of this Agreement.”

Methodology

The monitoring team met with the FTO training lead officer during the fourth monitoring period to discuss the FTO program staffing level. Due to the increase in cadet classes and class size, the FTO program must maintain a sufficient amount of trained FTO’s to support the program. Currently the FTO program is staffed with sixty-one (61) members.

Results

An Interoffice Memorandum was generated on November 6, 2015 to request additional staffing to meet the requirements of this paragraph. During the fourth monitoring visit the monitoring team received a copy of an Interoffice Memorandum dated May 31, 2016. The memorandum was to the APD Chief from the Mayor of Albuquerque. The subject of the memorandum was “Sufficient Numbers Of Field Training Officers.” The memo stated that the city will provide APD with the necessary support and resources in order to have a sufficient number of FTO’s to meet the department’s needs. Other than that memo, we have no indication of whether or not that additional support was or will be provided. We will re-visit this issue during IMR-5.

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

4.7.148 Compliance with Paragraph 162: Accountability for Conduct

Paragraph 162 stipulates:

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

Methodology

In assessing the overall Internal Affairs (IA) functions of the APD, members of the monitor had several meetings during the 4th site visit with personnel from the Internal Affairs Bureau (IAB) and the Civilian Police Oversight Agency (CPOA), and also attended a meeting of the Police Oversight Board (POB). The monitor also conducted visits to libraries and community centers to determine if APD Complaint or Commendation Forms and appropriate instructions for completing and filing them were displayed in these places of public access. The monitor reviewed rules, regulations and orders containing policies related to the internal affairs process as well as the CPOA Ordinance and Policies and Procedures.

The review that forms the basis of this paragraph and is commented upon in paragraphs 162-202, and 271-292, and is separate from the review pertaining to investigations of Use of Force/Serious Use of Force/Officer Involved Shootings as set forth in paragraphs 42 thru 88 of this report.

The monitor also reviewed stratified random samples of IA and CPOA investigations completed during the monitoring period, including the imposition of discipline. In this regard, it should be noted that the monitor reviewed 14 IAB cases, 7 of which were Informal Command Reports (ICR) cases, and one case that was administratively closed. The monitor selected an additional 16 CPOA cases for review, of which 5 were administratively closed. Thus, in the paragraphs below that list a "review of a stratified random sampling of IAB and CPOA cases," it is understood that this is a review of IAB and CPOA cases, for a total review of 30 cases.

Results

Paragraph 162 is the overarching paragraph pertaining to the IA function. As such, full compliance with this paragraph cannot be achieved until all paragraphs pertaining to the IAB and CPOA functions of APD are in compliance. The reader is directed to paragraphs 162-202, and 271-292, below for a paragraph-by-paragraph discussion of compliance at these two entities. Overall, however, the monitor is able to draw some critical impressions regarding IAB and CPOA

functions for this reporting period. The monitor's review during this site visit again showed improvements. First and foremost, policies regarding the internal affairs process have been completed by APD and approved by the monitor.

As noted in the previous Monitor's Reports the CPOA has made great strides in reducing its backlog (investigations that are not yet completed and are outside the 90-day mark or outside 120-day mark with an approved extension). All backlogged cases, particularly those where delays prevent discipline from being imposed due to the time limitations of the Collective Bargaining Agreement (CBA), are detrimental to the disciplinary process. Complainants who receive a notice of resolution to a complaint after an inordinate and sometimes inexplicable delay tend to lose confidence in the IA process. To its credit, CPOA has realized and addressed this problem. At the time of the site visit for IMR 4 (June, 2016) the CPOA backlog had been virtually eliminated. These statistics generally appear to be corroborated by the closed cases and findings posted on the CPOA website (POB Meeting Minutes) for the monitoring period.

In regard to the CPOA, the monitor again attended and viewed a POB meeting during this site visit. The monitor continues to be impressed with the professionalism and performance of the Chair and members of the POB, as well as the Executive Director of the CPOA and the CPOA staff, as well as the cooperation and interaction of IAB staff with the CPOA and POB. A potentially contentious issue that was raised during this reporting period involved lack of POB participation in APD policymaking. Two civilian members representing APD and the City appeared and explained past policymaking procedure and revisions for the future. The issue was handled very well by the POB and APD/City representatives. That notwithstanding, it appears there are remaining disagreements on whether POB and CPOA are included enough in APD policymaking to make a meaningful contribution. APD is currently reworking its policymaking apparatus.[95] APD contends that it has asserted that changes made via its Office of Policy Analysis have resolved these issues. The monitoring team continues to field concerns from CPOA and POB indicating those agencies do not consider the "outreach issue" resolved. We will revisit these issues during IMR-5's site visit. We will be able to describe these actions more fully in later monitoring reports.[101]

The monitor commented in the Third Monitor's Report on the fact that IAB, in response to comments in the Second Monitor's Report, had implemented a new procedure whereby it now makes investigative findings in its investigative reports. The monitor was pleased to learn during the last site visit that the old procedure had been promptly corrected. This is a much needed improvement that should work to the benefit of all who are involved in the IA process. The monitor has seen evidence of this new procedure in its review of the IAB cases.

[101] APD contends that it has asserted that changes made via its Office of Policy Analysis have resolved these issues. The monitoring team continues to field concerns from CPOA and POB indicating those agencies do not consider the "outreach issue" resolved. We will revisit these issues during IMR-5's site visit.

There are some improvements, previously recommended by the monitor, that, we believe still need to be considered by the APD. For example, the monitor recommended in the Second Monitor's Report, and again commented in the Third Monitor's Report, that each potential violation[102] be classified for purposes of the Chart of Sanctions/ Disciplinary Matrix Guidelines. The guidelines contain discipline ranges for each classification of offense, with the classifications ranging from 1 through 7. The problem is that APD has not classified every potential violation. Where a violation is unclassified, a similar violation - that is classified - is to be used as a guide. This has the potential of introducing undue complexity and subjectivity into the recommendations for imposition of discipline, as well as making it difficult to review for fair and equitable discipline. The monitor has been informed that this is a work in progress. We will assess this process in more detail in the next monitoring report.

The monitor also commented in the Second and Third Monitor's Reports that the Chart of Sanctions/ Disciplinary Matrix Guidelines failed to set out defined mitigating or aggravating circumstances. APD has completed reviewing CASA-related policies that fall within the General, Procedural, and Administrative Orders during this reporting period. Sanctions have been added, as appropriate. Policies that are not-CASA related are reviewed for sanctions when they enter the review process at SOPRC

Primary: **Not In Compliance[103]**
Secondary: **Not In Compliance**
Operational: **Not In Compliance**

4.7.149 Assessing Compliance with Paragraph 163: Duty to Report Misconduct

Paragraph 163 stipulates:

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

[102] Potential violations are contained in the General Orders Manual, Procedure Orders Manual and the Administrative Orders Manual of the APD

[103] See paragraph 169.

Methodology

The monitor specifically requested all cases completed during the monitoring period involving the failure to report or document alleged misconduct or criminal behavior by an APD officer or employee. In addition, the monitor conducted a review of stratified random samples of IAB and CPOA investigations completed during the monitoring period, and had several meetings during the site visit with IAB and CPOA personnel regarding the operations of their offices.

Results

Policy mandating compliance with this paragraph is contained in AO 3-22, which was approved by the monitor before the end of the 4th review period. As such the APD is now in primary compliance with this paragraph.

The APD claims that the requirements contained in this paragraph were addressed in the Public Service University (PSU) training and in citizen complaint intake training for the APD. The monitor will focus next site visit on the records and content of this training, at which time that Secondary Compliance will be assessed.

We also note that the following is contained on both the English and Spanish versions of the complaint and commendation forms: “OFFICE USE ONLY: Personnel who receive misconduct complaints must notify a supervisor immediately. Supervisors shall submit complaints to Internal Affairs by the end of the shift following the shift in which the complaint was received.”

The monitor considers the “immediacy” of a supervisor’s obligation to document and report misconduct as one of reasonableness under the totality of circumstances.

No investigations completed during this monitoring period were reported to the monitor involving the failure to report or document alleged misconduct or criminal behavior by an APD officer or employee. Also, a review of randomly selected IAB and CPOA investigations by the monitor during this site visit did not reveal any instances of non-compliance with this paragraph.

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

4.7.150 Assessing Compliance with Paragraph 164: Public Information on Civilian Complaints

Paragraph 164 stipulates:

“Within six months of the Effective Date, APD and the Civilian Police Oversight Agency shall develop and implement a program to

ensure the Albuquerque community is aware of the procedures to make civilian complaints against APD personnel and the availability of effective mechanisms for making civilian complaints."

Methodology

The monitor visited six libraries and two community centers during this site visit as well as the IAB and CPOA offices. The monitor conducted interviews of IA and CPOA personnel to determine if procedures are in place to inform the public of its right to lodge a complaint, the different methods and procedures for doing taking a civilian complaint, and also viewed APD and CPOA websites and relevant materials. The monitor also inquired of library and community center personnel whether they know where the APD Complaint or Commendation forms and informational materials where located. The monitor was also informed that all patrol cars have the forms available through web-based computers and printers within the car. We will evaluate that information on the next site visit.

Results

The CPOA Ordinance and POB Rules and Regulations mandate establishment of this outreach.

The CPOA publication materials include posters, brochures, and complaint forms, all of which were acceptable to the monitor in terms of format and content, subject to comments in paragraphs 165, 167 and 172. CPOA posters and brochures list TTY (Teletypewriter) and the internet as appropriate ways for the hearing impaired to interact with the Agency. Brochures and posters are available in English and Spanish.

The monitor recommends that public sites such as libraries and community centers be reminded by APD/the City to display the informational posters/brochures and Complaint or Commendation forms in a visible area, preferably at the display board typically located inside near the main entrance/exit of the facility.

The APD complaint forms and related informative materials were also acceptable to the monitor. Between the APD and CPOA websites, display of information at City Hall, IAB and CPOA, as well as adequate display at libraries and community centers, the monitor finds the APD and CPOA to be in compliance with this paragraph. We note that, during the site visit for IMR-4, the APD-City website appeared to drop the "anonymous complaint" function. Once the monitoring team brought this to the City's attention, it was made available again. It has since apparently been "dropped" again. This is a recurring issue that must be addressed reliably in order for APD to maintain operational compliance.

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

Operational: **Not In Compliance**

4.7.151 Assessing Compliance with Paragraph 165: Availability of Complaint Forms

Paragraph 165 stipulates:

"APD and the Civilian Police Oversight Agency shall make complaint forms and informational materials, including brochures and posters, available at appropriate government properties, including APD headquarters, Area stations, APD and City websites, City Hall, public libraries, community centers, and the office of the Civilian Police Oversight Agency. Individuals shall be able to submit civilian complaints through the APD and City websites and these websites shall include, in an identifiable and accessible form, complaint forms and information regarding how to file civilian complaints. Complaint forms, informational materials, and the APD and City websites shall specify that complaints may be submitted anonymously or on behalf of another person. Nothing in this Agreement prohibits APD from soliciting officer commendations or other feedback through the same process and methods as above."

Methodology

The monitor had several meetings during the site visit with persons charged with the responsibility of responding to this paragraph's tasks at the IAB and CPOA offices. The monitor also conducted unscheduled visits/inspections at two community centers and six of the ABQ libraries, visited City Hall and APD Headquarters, and reviewed the City/ APD and CPOA websites.

Results

Policy mandating compliance with this paragraph is contained in AO 3-22 and then-policy number 2-05, (now ABO 7-1) both approved by the monitor. As such, the APD and CPOA have attained primary compliance with this paragraph.

APD represented to the monitoring team that the requirements contained in this paragraph were addressed in the PSU training. The monitor will focus next site visit on the records and substance of this training.

Inspections at the libraries and community centers revealed that the APD Complaint or Commendation forms with accompanying brochures and posters were generally available. The locations differed as to whether the materials were displayed or one had to ask personnel for them. Only two libraries had the appropriate materials displayed, and at one community center the materials were not available and at the other community center only posters were available (the forms were not found). The materials that were available contain informative materials in English and Spanish relevant to the IA process. Displayed brochures were informative and user-friendly, and accurately depicted the

complaint filing and resolution process. Furthermore, websites were informative and generally user-friendly subject to comments in paragraphs 167 and 172.

The CPOA Complaint or Commendation forms, both English and Spanish versions, do not currently explain or indicate that the forms may be submitted anonymously, in fact, they give the impression that the identity and signature of the person submitting the complaint are required. Once the monitoring team brought this oversight to the City's attention, the problem was corrected. We note that the latest review of the web-site (outside the dates for this reporting period, indicates that the "anonymous" block is down again). Further, the downloadable forms available from APD's website do not include an "anonymous" form. The website does indicate that another person may submit the complaint on behalf of the complainant or on behalf of another person. In addition, the website instructions and online complaint form do not indicate that the forms can be submitted anonymously, and in fact, the online version gives the impression that the identity and electronic signature of the person submitting the complaint are required.

APD represents to the monitoring team that anonymous complaints can be filed by simply performing, what can only be considered a "hack" to the system and typing in "anonymous" in the "name" field. We saw the "hack," but the form does not say complaints can be submitted anonymously. In addition, none of this addresses the fact that the process of filing anonymous complaints seems to "come and go"--There shortly after the monitor notes it's missing, and not there when we check at a later date. We seriously question this ad hoc, hack-reliant modality, and strongly suggest the PD's website have an established, well-identified "link" to filing an anonymous complaint, both on-line and in the downloadable form.

Due to the deficiencies notes in this section the APD and CPOA are not yet in secondary or operational compliance. (See also, Results, paragraph 164). The monitoring team will continue "live assessments" during the next site visit, and will again focus on availability at non APD public sites such as City Hall, public libraries, and community centers

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

4.7.152 Assessing Compliance with Paragraph 166: Public Information on Complaint Process

Paragraph 166 stipulates:

"APD shall post and maintain a permanent placard describing the civilian complaint process that includes relevant contact information, such as telephone numbers, email addresses, and Internet sites. The placard shall specify that complaints may be

submitted anonymously or on behalf of another person. APD shall require all officers to carry complaint forms, containing basic complaint information, in their Department vehicles. Officers shall also provide the officer's name, officer's identification number, and, if applicable, badge number upon request. If an individual indicates that he or she would like to make a misconduct complaint or requests a complaint form for alleged misconduct, the officer shall immediately inform his or her supervisor who, if available, will respond to the scene to assist the individual in providing and accepting appropriate forms and/or other available mechanisms for filing a misconduct complaint."

Methodology

The monitor had several meetings during the site visit with persons charged with the responsibility of responding to this paragraph's tasks at the IAB and CPOA offices. The monitor also conducted unscheduled visits/inspections at two community centers and six of the ABQ libraries, visited City Hall and APD Headquarters, and reviewed the City/ APD and CPOA websites as well as reviewed a random selection of IAB and CPOA investigations that were completed during this monitoring period.

Results

Policy mandating compliance with this paragraph is contained in AO 3-22 and 2-05, now renumbered as 7-1 both approved by the monitor. As such the APD has attained primary compliance with this paragraph. APD states that the requirements contained in this paragraph were addressed in the PSU training. The monitor will focus next site visit on reviewing the records and content of this training.

Informational placards are located in ($\geq$.95) of the APD locations inspected. During the next site visit, the monitor will also conduct inspections of Police Vehicles for complaint forms. Other City facilities, as outlined in Paragraph 165 will continue to be assessed during the next site visit.

A review of randomly selected IAB and CPOA investigations by the monitor during this site visit did not reveal any *complaints* involving the failure to provide requested information to a prospective complainant or any instance where a supervisor was not informed when a complainant indicated the desire to make a complaint. The monitor's outreach office, likewise, has not refused to accept and forward any complaints from citizens. If APD can maintain this compliance level into the next report, we will re-visit the compliance status reported here, as this requirement may be one of those that may not require specific training for compliance.

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

4.7.153 Assessing Compliance with Paragraph 167: Duty to Accept Citizen Complaints

Paragraph 167 stipulates:

"APD agrees to accept all civilian complaints and shall revise any forms and instructions on the civilian complaint process that could be construed as discouraging civilians from submitting complaints."

Methodology

The monitor reviewed forms and instructions on the civilian complaint process, reviewed the information given to members of the public by way of APD, CPOA, City Hall, and library and community center visits, and reviewed the City/ APD and CPOA websites. During the last site visit in June, the monitor noted that the anonymous complaint section of the APD's web-site was not functioning. After being advised of this issue, APD re-activated that section; however, a check of City websites in preparation for this report shows the downloadable form for anonymous reporting has been dropped yet again.

Results

Policy mandating compliance with this paragraph is contained in AO 3-22, approved by the monitor; as such the APD is in primary compliance with this paragraph. (See also, Results, paragraph 164).

APD submits that the requirements contained in this paragraph were addressed in the PSU training. The monitor will focus next site visit on the records and contain of this training, at which time we will assess Secondary Compliance.

The revised complaints forms, information and instructions are compliant with the requirement that reporting forms do not discourage civilians from submitting complaints. We do note however that during the last site visit in June, the monitor noted that the anonymous complaint section of the APD's web-site was not functioning. After being advised of this issue, APD re-activated that section; however, a check of City websites in preparation for this report shows the downloadable form for anonymous reporting has been dropped yet again. We will continue to monitor this component closely.

The form online that can be downloaded is in both English and Spanish and states "This form can be hand delivered to the CPOA office located at the Plaza Del Sol Building, 600 2nd St. NW Room 813, Albuquerque, NM 87102, Fax: 505-924-3775; Email: cpoa@cabq.gov; Mail: CPOA, P.O. Box 1293, Albuquerque, NM 87103; TTY (800) 659-8331." The monitor recommends that the form be slightly revised to specifically state that delivery of the completed form by fax, email, or regular mail is also acceptable. The current instructions on the present

form could be construed as requiring hand-delivery. Further we note that the downloadable form does not specifically allow anonymous complaints, and recommend a workable revision to make this evident.

Operational Compliance with this paragraph is pending review by the monitor of secondary compliance submissions and observed practice regarding the "source" of complaints.

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

4.7.154 Assessing Compliance with Paragraph 168: Multi-Lingual Complaint Forms

Paragraph 168 stipulates:

"Complaint forms and related informational materials shall be made available and posted in English and Spanish."

Methodology

The monitor had several meetings during the site visit with persons charged with the responsibility of responding to the task(s) included in this paragraph, reviewed documents related to the IA process, and reviewed complaint forms and IA and civilian complaint related materials during visits to IAB, APD, CPOA, City Hall, and library and community center visits, and reviewed the City/ APD and CPOA websites.

Results

Policy mandating compliance with this paragraph is contained in AO 3-22, approved by the monitor, and in the CPOA Rules and Regulations. As such the APD is in primary compliance with this paragraph. Brochures and complaint forms were reviewed by the monitor, as were the APD and CPOA Websites. (See also, Results, paragraph 167). Complaint or Commendation forms as well as informational material were posted in English and Spanish.

The APD website Homepage has been updated and the monitor has observed that users can now access instructions for filing a misconduct complaint and obtain the complaint form directly from the APD Homepage ("Most Requested/ Report Police Misconduct"). The monitor views this as another positive step taken by APD in making the complaint and commendation process more user-friendly to the public. The monitor recommends that this window be revised to reflect that it may also be utilized to commend APD personnel. We do note, however, that during the last site visit in June, the monitor noted that the anonymous complaint section of the APD's web-site was not functioning. After

being advised of this issue, APD re-activated that section; however, a check of City websites in preparation for this report shows the downloadable form for anonymous reporting has been dropped yet again. We will continue to monitor this component closely.

The "Report Police Misconduct" window leads to a page entitled "How to: File a Police Complaint or Commendation". This page in turn adequately explains and allows for the filing of the Police Complaint or Commendation form online as well as downloading the form (both English and Spanish versions) with instructions on how to return the forms (hand-deliver, mail, fax). It also explains how to report misconduct in person (locations-CPOA, IAB, and any APD substation), gives the telephone number for reporting by telephone, and gives an email address for reporting by email.

The monitor notes favorably that the CPOA link is provided under the City Departments page on the Albuquerque City website. However, on the APD website the CPOA is not listed on the APD Homepage website or the Internal Affairs page. It is not until the page entitled "How to: File a Police Complaint or Commendation" is accessed that the link to the CPOA is provided. Due to the intertwined missions of the IAB and CPOA the monitor recommends having a link to the CPOA posted on the APD homepage or at least the "Internal Affairs" page, or both (See also, Results, paragraph 164 and 167).

Notwithstanding the above recommendations, the monitor is satisfied that adequate informational material exists for Spanish (as well as English) speaking individuals to learn how to file complaints or commendations regarding APD personnel.

Primary: **In Compliance**
Secondary: **In Compliance**
Operational: **Not In Compliance**[104]

4.7.155 Assessing Compliance with Paragraph 169: Training on Complaint Intake

Paragraph 169 stipulates:

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

Methodology

The monitor had several meetings during the site visit with persons charged with the responsibility of responding to task(s) included in this paragraph, reviewed documents related to the IA process, and reviewed APD training data.

[104] Pending resolution of noted problems with forms for filing anonymous complaints.

Results

Policy mandating compliance with this paragraph is contained in AO 3-22, approved by the monitor, as such the APD is in primary compliance with this paragraph. APD suggests that the requirements contained in this paragraph were addressed in the PSU training. The monitor will focus next site visit on the records and content of this training, at which time Secondary Compliance will be assessed.

The monitor was provided a spreadsheet, generated by the APD's PowerDMS intra-agency training platform. The document provided by the system indicates that the APD trained its personnel regarding complaint intake, classification and tracking during the time period of for this report. Data indicate that the agency trained 94.8 percent of the sworn and civilian workforce, with the remainder, those not trained, being shown on various forms of temporary duty, injury leave, military leave, FMLA leave, etc. The 94.8 percent "rounds up" to a .95 compliance rate; however, the monitoring team has expressed some concerns to APD about three issues which are currently being researched and responded to.

1. The first of these involves those full-time employees who were on leave and not tested in April and May of 2015. The monitor needs to know if any of those have returned to work, and how many of those have taken the intake training and have been tested;

2. The second issue involves a lack of test data demonstrating employee mastery of the data produced and reviewed through Power DMS (test dates, data test questions, and test scores are currently not available to the monitoring team).

3. The third involves a probable data management error that showed some participants finishing the training process before they were shown to have started.

The monitor notes that items 1-3 were mentioned in the first monitoring report, and apparently have not yet been corrected. The APD is cautioned to ensure that, whenever possible, issues addressed in one monitoring report are corrected prior to the next monitoring site visit.

In conversations with APD personnel in prefatory phases of the monitoring process, the monitoring team was informed verbally that testing outcomes, use data (how much time was spent per page of DMS product, etc.) would be available by participant. The monitor will continue to review those data during future site visits.

Primary: **Not In Compliance (Withdrawn)**
Secondary: **Not In Compliance**
Operational: **Not In Compliance**

4.7.156 Assessing Compliance with Paragraph 170: Complaint Receipt Process

Paragraph 170 stipulates:

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

Methodology

The monitor had several meetings during the site visit with persons charged with the responsibility of responding to task(s) included in this paragraph, reviewed documents related to the IA process, and reviewed a random selection of IA and CPOA investigations that were completed during this monitoring period.

Results

Policy mandating compliance with this paragraph is contained in AO 3-22, approved by the monitor. As such the APD is in primary compliance with this paragraph.

APD maintains that the requirements contained in this paragraph were addressed in the PSU training. The monitor will focus next site visit on the records and contents of this training, at which time secondary compliance will be assessed.

The monitor's review of investigations during this site visit did not show any complaints being rejected as "late," and in fact showed no time requirement/limitation being placed on the acceptance of complaints. On the other hand, complaints that are made after a significant delay from the date of incident are often difficult to investigate, with witnesses and evidence sometimes difficult if not impossible to locate, and many times complainants, subjects and witnesses having faded memories due to passage of time. These types of complaints tend to consume valuable investigative resources without a fair chance of reaching a resolution with a dispositive finding. The monitor suggests that the parties continue to assess this issue to determine whether some time limitation embodied in a revision to the CASA may be appropriate.

A review of the APD website and online written Complaint Forms neither instructed nor encouraged the filing complaints in a timely manner. Although the APD is in compliance with the task of accepting complaints regardless of when they are filed, the City is not in compliance with the task of encouraging civilians to promptly report police misconduct so that full investigations can be made expeditiously.

The monitor highly recommends that the APD and CPOA make efforts to instruct on its website and complaint forms as to the benefits of timely filing a misconduct complaint, encourage the timely filing of the complaint, while at the same time making clear that all complaints will be accepted regardless of "the age" of the complaint.

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

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

Paragraph 171 stipulates

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

Methodology

The monitor had several meetings during the site visit with persons charged with the responsibility of responding to task(s) included in this paragraph, reviewed documents related to the IA and civilian complaint/CPOA processes, and reviewed a random selection of IAB and CPOA investigations that were completed during this monitoring period.

Results

Policy mandating compliance with this paragraph is contained in AO 3-22 and 1-9, both approved by the monitor, and as such the APD is in primary compliance with this paragraph.

APD asserts that he requirements contained in this paragraph were addressed in the PSU training. The monitor will focus next site visit on the records and content of this training, at which time secondary compliance will be assessed.

A review of randomly selected IAB and CPOA investigations by the monitoring team during this site visit did not reveal any indication involving the discouraging of filing a complaint or admonitions regarding the giving of false or misleading information about filing a misconduct complaint. As such APD is in Operational Compliance with this paragraph.

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

4.7.158 Assessing Compliance with Paragraph 172: Acceptance of Anonymous Complaints

Paragraph 172 stipulates:

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

Methodology

The monitor reviewed the APD and CPOA websites, had several meetings during the site visit with persons charged with the responsibility of responding to task(s) included in this paragraph, reviewed documents related to the IA and civilian complaint process, and reviewed a random selection of IAB and CPOA investigations that were completed during this monitoring period.

Results

Policy mandating compliance with this paragraph is contained in AO 3-22 and the CPOA Ordinance, and as such the APD is in primary compliance with this paragraph.

APD contends that the requirements contained in this paragraph were addressed in the PSU training. The monitor will focus next site visit on the records and contents of this training.

The monitor reviewed investigations that were started in a variety of ways-email, telephone calls and on-site complaints. The monitor has uncovered no refusal or reluctance to accept any complaint, including anonymous and third-party complaints.

Since the last site-visit, the APD website appears to have been made more user-friendly for those seeking information on how to file a complaint or commendation. The monitor finds the information to be adequate and the process for filing a complaint online to be adequate. We will evaluate specifically acceptance and investigation of anonymous complaints during our next site visit. Parenthetically, we did notice during the last site visit that the function allowing filing of anonymous complaints was not active on the department's web-site. When the monitor notified the City of this, it was reactivated. Currently (September 22, 2016) that function is again missing from the APD's website. The City contends that anonymous complaints can be filed by a process that resembles "hacking" the system, simply typing anonymous in the "name" section.

We strongly recommend that this system be made more user friendly, as it is apparently vague enough to have caused the monitor to "miss" instructions on how to file a complaint without a name being given. We recommend a tab or link on the webpage labeled with appropriate language to allow a visitor to see how to find the proper place to file an anonymous compliant.

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

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

Paragraph 173 stipulates:

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

Methodology

The monitor specifically requested any and all cases completed during the monitoring period involving APD personnel who received a misconduct complaint and failed to immediately inform a supervisor of the misconduct complaint. In addition, the monitor conducted meetings with persons charged with the responsibility of responding to task(s) included in this paragraph, and reviewed a random selection of IAB and CPOA investigations completed during this monitoring period.

Results

Policy mandating compliance with this paragraph is contained in AO 3-22, approved by the monitor. As such the APD is in primary compliance with this paragraph.

APD contends that the requirements contained in this paragraph were addressed in the PSU training. The monitor will focus next site visit on the records and content of this training, at which time secondary compliance will be assessed and discussed.

We note that the following is contained on both the English and Spanish versions of the complaint and commendation forms: "OFFICE USE ONLY: Personnel who receive misconduct complaints must notify a supervisor immediately. Supervisor

shall submit [sic] complaint to Internal Affairs by the end of the shift following the shift in which the complaint was received." (See also, Results, paragraph 164). No cases completed during this monitoring period involved issues of compliance or non-compliance with this paragraph. In addition, a review of randomly selected IAB and CPOA investigations by the monitoring team during this site visit revealed no violations of the policy required by this paragraph.

The timeliness of submitting complaints to IAB can be discerned through a case by case analysis of the random sample; however, at this time it is not a statistic that is separately tracked by APD. APD informs us that this statistic will be separately tracked upon the installation of a new application named Blue Team, a web based application that ties into IAPro. The monitor will assess in future site visits whether this statistic can, and will, be separately tracked.

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

Methodology

The monitor had several meetings during the site visit with persons charged with the responsibility of responding to task(s) included in this paragraph, reviewed documents related to the IA process, and specifically requested to review any protocol or procedure developed to comply with this paragraph.

Results

Policy mandating compliance with this paragraph is contained in AO 3-22, which has been approved by the monitor and DOJ. APD is in primary compliance with this paragraph.

There currently is no formal system, protocol and/or practice that would ensure that such allegations made during civil or criminal proceedings would be identified and assessed. The monitor recommends that this system, which is relatively straightforward and does not appear to be complicated, be devised and implemented before the next site visit. APD has "reached out" to judicial officers, by mail, asking to be notified of behavior identified in this paragraph. To date, it

appears no "notice" has been given. We will revisit this issue in greater detail on the next site visit.

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

4.7.161 Assessing Compliance with Paragraph 175: Allegations Made by the Homeless or those in Crisis

Paragraph 175 stipulates:

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

Methodology

The monitor had several meetings during the site visit with persons charged with the responsibility of responding to task(s) included in this paragraph, reviewed documents related to the IA process, and specifically requested to review any protocol or procedure developed to comply with this paragraph. The monitor also reviewed a random selection of IA and CPOA investigations that were completed during this monitoring period and assessed the complaints to determine source and process.

Results

Policy mandating compliance with this paragraph is contained in AO 3-22 and CPOA Rules and Regulations. As such the APD is in primary compliance with this paragraph.

A review of completed investigations reveals that the individual investigations show whether a complainant is homeless or is an individual in crisis. Although all allegations of misconduct are tracked, there currently is no special tracking of misconduct complaints involving individuals who are homeless or who are (or were) in crisis. The monitor has been informed that this statistic eventually may be separately tracked upon the installation of a new application named Blue Team, a web based application that ties into IAPro. This tracking had not yet been operationalized during this site visit. The monitor will assess in future site visits whether this statistic can, and will, be separately tracked.

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

4.7.162 Assessing Compliance with Paragraph 176: Centralized Complaint Numbering System

Paragraph 176 stipulates that:

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

Methodology

Members of the monitoring team reviewed a sample of the complaints completed by IAB and CPOA during the monitoring period to determine numbering protocols. The monitor has been provided "screen shots" of data entry in inquiry screens from the APD/CPOA data management systems that show "sequencing" numbers for complaints received at APD.

Results

Policy mandating compliance with this paragraph is contained in AO 2-05, now ABO 7-1 approved by the monitor. As such the APD is in primary compliance with this paragraph.

A centralized numbering and tracking system has been implemented. Although the centralized system is utilized, the CPOA will utilize an identifier starting with "CPC" and IAB will utilize an identifier starting with "I".

The IAB manages the tracking system, and assigns the identifier to complaints investigated by IAB and CPOA. A review of randomly selected IAB and CPOA investigations by the monitoring team during this site revealed that in all cases (>.95) where complainant contact information is available, the identifier is given to complainants as well as letters to civilian complainants explaining the outcome of investigation and containing the unique numerical identifier.

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

4.7.163 Assessing Compliance with Paragraph 177: IAB Complaint Data Management

Paragraph 177 stipulates:

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

Methodology

The monitor reviewed a sample of the complaints tracked in the IAB and CPOA processes to determine tracking system protocols present or calculable, as well as documentation related to the IA process, and also had discussions with IAB and CPOA personnel during this site visit.

Results

Policy mandating compliance with this paragraph is contained in AO 2-05, now PAB 7-1, approved by the monitor. As such the APD is in primary compliance with this paragraph. The IAB tracking system has the ability to identify various pieces of relevant information and to produce data relevant to the IA function.

A review of a randomly selected sample of investigations shows that $\geq$.95 of IA/CPOA cases reflect tracking system requirements. Further, the IAB tracking system has the ability to identify various pieces of relevant information and to produce data relevant to the IA function.

In addition, the monitor also viewed an IA-PRO report that contained the allegations and case disposition for all Internal Affairs investigations closed during the monitoring period, as well as a similar CPOA report from which the monitoring team selected a stratified random sampling of investigations to review.

Secondary compliance is not yet attained, since no training information was available to the monitoring team this reporting period. Operational compliance with the tasks of this paragraph will be evaluated once the monitor is able to assess whether the system is being used for periodic assessment of compliance with APD policies and procedures and this Agreement. The monitor will focus on these tasks during next site visit.

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

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

Paragraph 178 stipulates:

"Where a supervisor receives a complaint alleging that misconduct has just occurred, the supervisor shall gather all relevant information and evidence and provide the information and evidence to the Internal Affairs Bureau. All information should be referred to the Internal Affairs Bureau by the end of the shift following the shift in which the misconduct complaint was received, absent exceptional circumstances."

Methodology

The monitor reviewed a random selection of IA and CPOA and their underlying complaints to determine receipt and processing methods, as well as conducted discussion with IA and CPOA personnel.

Results

Policy mandating compliance with this paragraph is contained in AO 3-22, approved by the monitor, and the APD is in primary compliance with this paragraph, based on the monitoring team's in field observations. APD contends that the requirements contained in this paragraph were addressed in the PSU training. The monitor will focus next site visit on the records and contents of this training, at which time Secondary Compliance will be assessed.

The timeliness of submitting complaints required by this paragraph is not a statistic that is separately tracked at the current time and can only be determined on a case-by-case review. The monitor has been informed that this statistic may be separately tracked upon the installation of a new application named Blue Team, a web based application that ties into IAPro. BlueTeam was only recently implemented; however, it appears to be designed to track this statistic routinely. The monitor recommends the time requirement for referrals contained in this paragraph become a separately tracked statistic. Parenthetically, the monitoring team has learned that Blue Team, as designed, may not meet all operational requirements of the CASA. APD is thus advised to begin considering alternative compliance modalities for CASA requirements so affected. APD contends that due to updates in BlueTeam software, the Department is "in compliance." We will revisit this issue on the next site visit

A review of randomly selected investigations by the monitoring team did not reveal any violations of this paragraph.

Primary: **In Compliance**

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

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

Paragraph 179 stipulates:

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

Methodology

The monitor reviewed a list, entitled "Complaints Received", maintained at IAB. This list collects data regarding civilian complaints made to IAB. The monitor also reviewed a random selection of IAB and CPOA investigations that were completed during this monitoring period, and assessed their underlying complaints to ensure compliance to the three-day requirement, as well as conducted discussion with IAB and CPOA personnel.

Results

Policy mandating compliance with this paragraph is contained in AO 2-05, now ABO 7-1, and APD is in primary compliance with this paragraph.

Although the IAB-to-CPOA referral time of a civilian complaint is not a statistic that is separately tracked, the timeliness of submitting complaints required by this paragraph can be easily determined by a review of the "Complaints Received" log/list maintained at IAB. This list is non-electronic (a preprinted form with handwritten information) and contains the date a civilian complaint is initially logged in at IAB and the date the complaint is transferred to CPOA. As the monitor stated in the Third Monitor's Report, this list suffices to meet the requirements of this paragraph; however, APD should assess the viability of modifying automated systems to "time" the three-day referral process, with automatic "error" reports when necessary. The monitor again cautions APD about reliance on systems that are easily tamperable, e.g., simply erasing a date or entering the wrong date on a mechanical form. The monitor has been informed that this capability may exist upon the installation of a new application named Blue Team, a web based application that ties into IAPro. The monitor will assess in future site visits whether this capability exists.

A review of the "Complaints Received" revealed no instances of late referrals, in fact in most instances the transfer to CPOA occurred the same day the complaint was logged at IAB. A review of randomly selected IAB and CPOA investigations by the monitor during this site visit likewise did not reveal any violations of the policy required by this paragraph.

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

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

Paragraph 180 stipulates:

"Internal misconduct complaints submitted by APD personnel shall remain with the Internal Affairs Bureau for review and classification. The Internal Affairs Bureau shall determine whether the internal complaint will be assigned to a supervisor for investigation or retained by the Internal Affairs Bureau for investigation. In consultation with the Chief, the commanding officer of the Internal Affairs Bureau shall also determine whether a civilian or internal complaint will be investigated criminally by the Internal Affairs Bureau, the Multi- Agency Task Force, and/or referred to the appropriate federal law enforcement agency."

Methodology

The monitor reviewed a random selection of IAB investigations that were completed during this monitoring period, and also assessed their underlying complaints to ensure proper routing and classification. In addition, we reviewed documents pertaining to the IA system and conducted meetings/discussion with IAB personnel.

Results

Policy mandating compliance with this paragraph is contained in AO 2-05[105], 3-41 and 3-43[106]. As such, the APD is in primary compliance with this paragraph.

A review of randomly selected IAB investigations by the monitor during this site visit showed that IAB accepts, reviews, and classifies internal complaints. The review further showed that in all cases ($\geq$.95) the IAB Lieutenant determines whether the matter is handled by IAB or assigned to the appropriate supervisor for investigation. The monitor finds the use of discretion in assigning these cases to be appropriate.

The review also showed no cases of potential criminality where the Chief should have been consulted by the IAB Commander to determine whether the case should be investigated criminally or whether prosecutorial authorities should have

[105] Now ABO 7-1.
[106] Now AO 3-22.

been contacted to determine the appropriateness of opening a criminal case or providing a declination of prosecution. (See also Results, paragraph 188).

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

4.7.167 Assessing Compliance with Paragraph 181: IAB Classification Protocol

Paragraph 181 stipulates:

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

Methodology

The monitor reviewed a random selection of IAB investigations that were completed during this monitoring period and their underlying complaints to determine whether complaints are routed by a protocol that is allegation based, and properly routed and classified, as well as reviewed documents pertaining to the IA system and conduct meetings/discussions with IAB personnel.

Results

Policy mandating compliance with this paragraph is contained in AO 3-22, approved by the monitor. Thus, the APD is in primary compliance with this paragraph.

Currently the decision to assign a case to the appropriate supervisor or to retain the case in the IAB is based on the nature of the allegations and the anticipated corresponding complexity of investigation. A review of randomly selected IA investigations by the monitoring team during this site visit revealed $\geq$.95 of complaints were reasonably and properly routed and classified based on nature of allegations, with no apparent instance of an abuse of discretion in determining which matters are assigned to the appropriate supervisor and which matters are handled by IAB. (See also, Results, paragraph 180).

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

4.7.168 Assessing Compliance with Paragraph 182: Prohibition from Self-Investigation

Paragraph 182 stipulates:

"An internal complaint investigation may not be conducted by any supervisor who used force during the incident; whose conduct led to the injury of a person; who authorized the conduct that led to the reported incident or complaint; or who witnessed or was involved in the incident leading to the allegation of misconduct."

Methodology

The monitor reviewed a random selection of IAB investigations that were completed during this monitoring period and assessed their underlying complaints to ensure compliance with this paragraph, as well as reviewed documents pertaining to the IA system and conducted meetings/discussions with IAB personnel.

Results

Policy mandating compliance with this paragraph is contained in AO 3-22, and 2-54, as such the APD is in primary compliance with this paragraph.

APD advises that the requirements contained in this paragraph were addressed in the Supervisory Investigation of Use of Force training. The monitor has not yet viewed the applicable training records, pending decisions by the monitoring team concerning which sections will need to be repeated, and will focus next site visit on the records and contents of this training. We have noted 17 items in APD's use of force and Supervisory Investigation of Use of Force training that need remedial processes.

A review by the monitoring team of randomly selected IA investigations during this site visit revealed that ≥.95 of complaints were reasonably and properly routed and classified based on nature of allegations, with no violations of the policy required by this paragraph. The monitoring team will not routinely judge operational compliance until secondary compliance is maintained.

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

4.7.169 Compliance with Paragraph 183: Investigations Reach Reliable Conclusions

Paragraph 183 stipulates:

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

Methodology

The monitor reviewed a random selection of IAB and CPOA investigations that were completed during this monitoring period and their underlying complaints to ensure investigations were thorough enough to reach reliable and complete findings, that complainants were interviewed and the interview was recorded and transcribed, and that officer witnesses either gave a written statement or were interviewed in the IA process. The monitor also conducted meetings/discussions with IAB and CPOA personnel.

Results

Policy mandating compliance with this paragraph is contained in AO 3-22, 2-05,[107] the CPOA Policies and Procedures, AO 2-31,[108]and 2-21. As such primary compliance with the tasks of this paragraph has been achieved.

APD states that the requirements contained in this paragraph were addressed in the Supervisor's Investigations and Use of Force training, portions of which the monitoring team recommends be repeated or otherwise remediated. The monitor will focus next site visit on the records and contents of this training, which at this time are not approved, pending retraining.

The monitor did find investigative deficiencies in three matters where credibility determinations were not articulated. In one matter where there was an accusation that the subject Officer was not helpful and was condescending, a failure to activate video lapel was found **[[IMR-4-13]]**. However, no determination was made on the behavior accusation. Without a video to make a credibility determination, some other determination of credibility must be attempted and articulated, so the behavior accusation can be adjudicated. In the absence of such alternatives, it should be so stated in the investigative record that alternatives were sought, but not available, with a listing of the actions taken. In a second matter **[[IMR-4-14]]**, no video was tagged in this case, therefore it was the complainant's word and ability to recall against the officer's denial. Although

[107] Now ABO 7-1
[108] Now PAB 7-3

the factor that drove the credibility determination was apparent (passage of time), the same or other explanation was not articulated in the report. In a third matter **[[IMR-4-15]]**, an accusation was made regarding an Officer's demeanor during a domestic violence call. There was only a partial video recording. The partial video and a recorded conversation with the dispatcher did not support the complainant's version, therefore the Monitor understands the findings of the investigator. However, the Monitor strongly suggests that were credibility determinations must be made, the determination and its basis should be articulated in the investigation report, even if it is otherwise apparent in the investigative packet. Thus, the monitor finds the thoroughness requirement to have been met in less than (<) .95 of investigations. (See also, Results, paragraph 190).

Where an investigative step is not taken, the Monitor has noticed adequate explanations in the investigative reports, including written reasons for not taking a step, were apparent in the investigative packet (e.g. unidentified witness who ran away not interviewed **[[IMR-4-16]]**); in an investigation against a responding Officer for “demeanor” in a domestic violence incident involving the complainant's neighbor, no follow-up investigation against the dispatcher for having given the responding officers a wrong address because the complainant admitted possibility of giving wrong address in telephone call **[[IMR-4-17]]**. Explanations for not taking what would normally be an appropriate investigative step are highly encouraged. Where it is not clear from the written record why a step was not taken, the Monitor will in the future cite that as a "thoroughness error" even if the Monitor agrees with the reliability of the finding.

Greater than .95 of all complaints investigated by IA and CPOA indicate a formal interview of each complainant, recorded and transcribed, unless the complainant lodged specific and formal objections to recording or otherwise was unavailable or uncooperative and the lack of availability or cooperation was documented in the investigative file.

A review of randomly selected IA and CPOA investigations by the monitor team during this site visit showed relevant officer witnesses either provided written statements or were interviewed in the IA process (≥.95).

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

4.7.170 Assessing Compliance with Paragraph 184: Investigations Documented in Writing

Paragraph 184 stipulates:

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

Methodology

The monitor reviewed a random selection of IAB and CPOA investigations that were completed during this monitoring period, and assessed their underlying complaints to ensure that all misconduct complaints were investigated and that ensuing investigations, findings, and conclusions were documented in writing in completed investigations

The monitor specifically reviewed a random selection of IAB and CPOA investigations completed during this monitoring period, including investigations that were administratively closed, and assessed their underlying complaints to ensure reasonable adherence to the criteria set forth in this paragraph. The monitor also requested a list of all cases resolved through mediation during monitoring period as well as any documentation of cases resolved informally.

The monitor also had several meetings during the site visit with persons charged with the responsibility of responding to task(s) included in this paragraph, and reviewed documents related to the IA process.

Results

Policy mandating compliance with this paragraph is contained in AO 3-22 and 2-05, the CPOA Ordinance and Policies and Procedures. As such primary compliance with the tasks of this paragraph has been achieved.

A review of randomly selected IA and CPOA investigations by the monitoring team during this site visit showed that all ($\geq$. 95) misconduct complaints were investigated and findings and conclusions, or other dispositions (cases administratively closed or resolved by mediation), are documented in writing.

The monitor reviewed a total of 5 cases that were administratively closed during the monitoring period. Of the five investigations that were administratively closed, the monitor found one **[[IMR-4-18]]** in which it could not be determined whether the administrative closure was appropriate. The file supporting this case indicated that it was successfully mediated by acceptance by the complainant of an explanation; however, the explanation was not available or readily apparent from the investigation materials. Another investigation administratively closed, **[[IMR-4-19]]**, was administratively closed due to timeline excess caused by

confusion of contract interpretation. That reason does not fit any of the reasons for administrative closure found in this paragraph.

The monitor specifically requested all cases settled by mediation during the monitoring period. No cases were resolved by formal mediation during the review period. Guidelines for what type of cases are appropriate for mediation must be developed to implement the policy called for in this paragraph. The monitor would also note that in administratively closed cases occasioned by informal mediation (generally complainant acceptance of explanation) the explanation given to the complainant or a synopsis thereof must be reliably replicated in the resulting report, in order for the monitoring team to be able to assess the appropriateness of the resolution.

The monitor reviewed seven IAB cases that were resolved informally during the monitoring period. These were internal matters that are labeled ICRs. The determination is made at the assistant chief level whether an internal issue can be handled informally. If so, the resolution is documented in memo form and assigned an ICR number. The monitor found one of these cases, involving exiting a vehicle during a vehicle pursuit, to be inappropriate for informal resolution **[[IMR-4--20]].** The monitor commendably notes that in this case specific training was ordered for the subject officer as part of the informal resolution. Thus, the compliance rate for matters resolved informally this review period (7 ICRs and 5 Administrative Closures) is <.95 (85%). We will follow-up during IMR-5's site visit to ensure that this training was administered and designed to correct the target behaviors giving rise to the internal investigation.

As pointed out in previous Monitor's Reports, the monitor highly recommends that policies regarding these case selections be developed and reduced to writing to guide the utilization of discretion in determining which matters are appropriate for informal resolution. Until such policies are developed, approved, trained and formally adopted, the APD and CPOA will not be able to obtain compliance with this paragraph. The monitor will revisit next site visit whether these policies have been developed and are being followed. APD will remain non-compliant until they are.

Primary: **Not In Compliance (Withdrawn)**
Secondary: **Not In Compliance**
Operational: **Not In Compliance**

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

Paragraph 185 stipulates:

"APD shall require personnel to cooperate with Internal Affairs Bureau and Civilian Police Oversight Agency investigations, including appearing for an interview when requested by an APD or

Civilian Police Oversight Agency investigator and providing all requested documents and evidence under the person's custody and control. Supervisors shall be notified when a person under their supervision is summoned as part of a misconduct complaint or internal investigation and shall facilitate the person's appearance, absent extraordinary and documented circumstances."

Methodology

The monitor reviewed a random selection of IAB and CPOA investigations that were completed during this monitoring period, and assessed their underlying complaints to ensure reasonable adherence to the requirement to cooperate, and also reviewed documents such as the Collective Bargaining Agreement (CBA) and policies under review by the monitoring team related to the IA process.

Results

The Collective Bargaining Agreement requires compliance with the policy of this paragraph. Policy mandating compliance with this paragraph of the CASA is also contained in AO 3-22, 2-05, and 1-4. As such primary compliance with the task of this paragraph has been achieved.

APD suggests that the requirements contained in this paragraph were addressed in the in basic (pre-service) training and the 24-hour Supervisory Training. The monitor has not yet viewed the applicable training records and will do so the next site visit. The monitor will focus next site visit on the records and contents of this training. The monitoring team has articulated to APD its specific concerns about the quality and "goodness of fit" of the 24-hour Supervisory Training. Specific pieces of that training will need to be repeated, or otherwise remediated, to comply with the CASA. Until such time as the training is repeated, or otherwise remediated, APD remains only in Primary (policy) compliance.

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

4.7.172 Assessing Compliance with Paragraph 186: Separate Administrative and Criminal Investigations

Paragraph 186 stipulates:

"APD and the City shall develop and implement protocols to ensure that criminal and administrative investigations of APD personnel are kept appropriately separate, to protect APD personnel's rights under the Fifth Amendment. When an APD employee affirmatively refuses to give a voluntary statement and APD has probable cause to believe the person has committed a crime, APD shall consult with the prosecuting agency (e.g., District Attorney's Office or USAO) and seek the approval of the Chief before taking a compelled statement."

Methodology

The monitor reviewed a random selection of IAB and CPOA investigations that were completed during this monitoring period and their underlying complaints to ensure appropriate separation of cases to administrative and criminal investigations, and to ensure appropriate consultation with prosecutorial agencies. Discussions regarding processes were also held with personnel of the IAB and CPOA.

Results

Policy mandating compliance with this paragraph of the CASA is contained in AO 2-05, as such primary compliance with the tasks of this paragraph has been achieved.

APD contends that the requirements contained in this paragraph were addressed in the Supervisory Use of Force training and in IA training. The monitor has not yet viewed the applicable IA training documents and will do so the next site visit. The monitor has 13 specific issues with the Supervisory Use of Force Training. Those issues will need to be remediated before they are considered acceptable. The monitor will focus next site visit on the records and contents of this training, at which time we will address Secondary Compliance.

In response to the monitor's request for all investigations completed during the monitoring period that involved an APD employee affirmatively refusing to give a voluntary statement, APD reported that no such cases occurred. In addition, a review by the monitor of randomly selected IAB and CPOA investigations completed during this monitoring period revealed no cases where an APD employee refused to give a voluntary statement.

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

4.7.173 Assessing Compliance with Paragraph 187: Advisement of Officer Rights

Paragraph 187 stipulates:

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

Methodology

The monitor reviewed a random selection of IAB and CPOA investigations that were completed during this monitoring period and their underlying complaints to ensure that Fifth Amendment rights are only given where there is a reasonable likelihood of a criminal investigation or prosecution of the subject employee. Discussions regarding processes were also held with personnel of the IA and CPOA.

Results

Policy mandating compliance with this paragraph of the CASA is contained in AO 3-22; as such primary compliance with the tasks of this paragraph has been achieved. The monitor recommends that any such policy address and provide guidance on potential confusion between the requirements of this paragraph ("reasonable likelihood of a criminal investigation or prosecution") and Collective Bargaining Agreement (CBA) 20.1.8, which requires *Miranda* Rights be given in accordance with "the *Miranda* Decision or applicable law." Discrepancies between *Miranda* case law and *Garrity* case law are often substantial. In the monitor's experience, *Garrity* is widely over-used at APD, being administered to witness-officers, for example. We recommend that APD conduct a complete and thorough review of all related documents, policy and training to ensure that APD's use of Garrity is modified to remain consistent with the findings in that case, not APD pattern and practice, which we find to over-reach the actual *Garrity* decision.

We note that the language of this paragraph is subject to interpretation and may require agreement by the parties, or in the absence of an agreement, a determination by the monitor or Court as appropriate. If the term "Fifth Amendment rights" includes "*Garrity* warnings" in addition to "Miranda rights", then the IAB and CPOA are not complying with this paragraph since the monitor has noticed in his review of cases that Garrity warnings are given to not only "subject employees" where there is no "reasonable likelihood" of criminal exposure (either an investigation or prosecution), but also to employee witnesses not implicated as a subject. The monitor recommends the parties reach an agreement on whether the term "Fifth Amendment rights" includes "Garrity warnings" or bring the issue to the monitor for interpretation.

A review of randomly selected IAB and CPOA investigations by the monitor during this site visit revealed no cases where an APD employee was advised of Miranda rights by IAB or CPOA.

Primary: **Not In Compliance**[109]
Secondary: **Not In Compliance**

[109] Given the issues recently noted issues with blanket *Garrity* warnings.

Operational: **Not In Compliance**

4.7.174 Assessing Compliance with Paragraph 188: Notification of Criminal Misconduct

Paragraph 188 stipulates:

"If at any time during misconduct complaint intake or investigation the investigator determines that there may have been criminal conduct by any APD personnel, the investigator shall immediately notify the Internal Affairs Bureau commanding officer. If the complaint is being investigated by the Civilian Police Oversight Agency, the investigator shall transfer the administrative investigation to the Internal Affairs Bureau. The Internal Affairs Bureau commanding officer shall immediately notify the Chief. The Chief shall consult with the relevant prosecuting agency or federal law enforcement agency regarding the initiation of a criminal investigation. Where an allegation is investigated criminally, the Internal Affairs Bureau shall continue with the administrative investigation of the allegation. Consistent with Paragraph 186, the Internal Affairs Bureau may delay or decline to conduct an interview of the subject personnel or other witnesses until completion of the criminal investigation unless, after consultation with the prosecuting agency and the Chief, the Internal Affairs Bureau deems such interviews appropriate."

Methodology

The monitor reviewed a random selection of IAB and CPOA investigations that were completed during this monitoring period and assessed their underlying complaints to ensure that investigations that may indicate criminal activity or conduct by the police employee result in prompt transfer to IA, prompt notification to the Chief of Police, and result in consultation between the Chief of Police and the appropriate federal or state law enforcement agencies, and result in a parallel track administrative and criminal investigations. Discussions regarding processes were also held with personnel of the IAB and CPOA.

Results

Policy mandating compliance with this paragraph of the CASA is contained in AO 3-22, 2-05,[110] 2-30 and the CPOA Ordinance as well as the CPOA Policies and Procedures. As such primary compliance with the tasks of this paragraph has been achieved.

A review of randomly selected IAB and CPOA investigations by the monitoring team during this monitoring period showed no cases where a concurrent criminal

[110] Now ABO 7-1

investigation was potentially implicated or warranted. (See also, Results, paragraph180).

Primary: **In Compliance**
Secondary: **Unable to Monitor**
Operational: **Unable to Monitor**

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

Paragraph 189 stipulates:

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

Methodology

The monitor had several meetings and discussions during the site visit with IAB and CPOA personnel regarding investigative processes and reviewed documents related to the IA process.

A review of a random sample of IAB and CPOA investigations files was also conducted to ensure compliance with the requirements of this paragraph

Results

Policy mandating compliance with this paragraph of the CASA is contained in AO 3-22, 2-54, and 2-31[111]. As such primary compliance with the tasks of this paragraph has been achieved.

APD has represented to the monitor that the tasks of this paragraph are covered in the basic (pre-service) training, 40 hours Use of Force Training, and 24 hours Use of Force training. The monitor will focus next site visit on the records and contents of this training; however, the monitoring team have serious issues with

[111] Now ABO 7-3.

the quality and comprehensiveness of APD Use of Force Training and Supervisory Use of Force training, as noted elsewhere in this report. A review of that training reveals that specific pieces of it will need to re-delivered, in order to come into compliance with training requirements.

A review by the monitor of randomly selected IAB and CPOA investigations completed during this monitoring period showed no cases where an APD employee invoked the Fifth Amendment or otherwise expressed a believe that a verbal or written statement would be self-incriminating.

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

4.7.176 Assessing Compliance with Paragraph 190: Considering All Relevant Evidence

Paragraph 190 stipulates:

"In each investigation, APD and the Civilian Police Oversight Agency shall consider all relevant evidence, including circumstantial, direct, and physical evidence. There will be no automatic preference for an officer's statement over a non-officer's statement, nor will APD or the Civilian Police Oversight Agency disregard a witness's statement merely because the witness has some connection to the complainant or because of any criminal history. During their investigation, APD and the Civilian Police Oversight Agency shall take into any convictions for crimes of dishonesty of the complainant or any witness. APD and the Civilian Police Oversight Agency shall also take into account the record of any involved officers who have been determined to be deceptive or untruthful in any legal proceeding, misconduct investigation, or other investigation. APD and the Civilian Police Oversight Agency shall make efforts to resolve material inconsistencies between witness statements."

Methodology

The monitor had several meetings and discussions during the site visit with IAB and CPOA personnel regarding investigative processes and reviewed documents related to the IA process.

A review of a random sample of IAB and CPOA investigations files was also conducted to ensure compliance with the requirements of this paragraph

Results

Policy mandating compliance with this paragraph of the CASA is contained in AO 2-205, 3-22 and the CPOA Ordinance. As such primary compliance with the tasks of this paragraph has been achieved.

APD has represented that the requirements contained in this paragraph were addressed in the IA and CPOA training. The monitor will focus next site visit on the records and contents of this training.

A review by the monitoring team of randomly selected IAB and CPOA investigations completed during this monitoring period that were not administratively closed or resolved by mediation (25) revealed three cases where the monitor finds a credibility determination between conflicting statements to be missing **[[IMR-4-30, IMR-4-14, and IMR-4-15]],** a compliance rate of < .95 (88%) with this task of the paragraph. Although in some case the reason for believing one conflicting statement over another is apparent in the materials, a specific articulation of the resolution of the statements by the investigator should still be included in the investigation. In this regard, the monitor would note good articulations of credibility determinations as examples in two of the cases reviewed where there was a conflict in statements. **[[IMR-4-21 and IMR-4-22]].**

Regarding relevant evidence, the monitor found no instances where relevant evidence was not obtained or where a rational explanation was not given for failing to obtain evidence. For example, in one matter, an explanation was clearly set forth why a relevant witness was not interviewed **[[IMR-4-28]].** This represents >.95 compliance with this task of the paragraph.

The review revealed no instances where a witness' statement was disregarded because the witness had some connection to the complainant or because of any criminal history. Further, the review showed no cases where an involved officer had been determined to have been deceptive or untruthful in any legal proceeding, misconduct investigation, or other investigation.

Although the findings in the reviewed cases are supported by a preponderance of the evidence, the monitoring team will continue to focus in the future on the articulation of credibility determinations. Corroboration should be made clear and inconsistencies and other factors affecting credibility judgments must be addressed and weighed. Particularly where there is a direct conflict between statements of the officer and a complainant, the monitor would prefer that the credibility determination be articulated in the investigation even if reasons for the credibility determination are otherwise apparent to the monitor or any reviewer of the investigation. It should be clear to all those who review the investigation and make recommendations, as well as to the Chief before imposition of discipline, why one statement or aspect of a statement is believed or not believed.

As stated in paragraph 162, the monitor views as a positive step the fact that IAB now makes investigative findings, and expects to observe implementation of the policy during the next site visit.

Results

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

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

Paragraph 191 stipulates:

"All administrative investigations conducted by the Internal Affairs Bureau or the Civilian Police Oversight Agency shall be completed within 90 days of the initiation of the complaint investigation. The 90-day period shall not include time for review. An extension of the investigation of up to 30 days may be granted but only if the request for an extension is in writing and is approved by the Chief. Review and final approval of the investigation, and the determination and imposition of the appropriate discipline, shall be completed within 30 days of the completion of the investigation. To the extent permitted by state and city law, extensions may also be granted in extenuating circumstances, such as military deployments, hospitalizations of the officer, and extended absences."

Methodology

The monitor reviewed a random selection of IAB and CPOA investigations that were completed during this monitoring period and their underlying complaints to ensure compliance with the time requirements of this paragraph and to ensure the Chief's signed approval of written requests for 30-day extensions. Discussions regarding IA processes were also held with personnel of the IAB and CPOA. The monitor also reviewed the CPOA Consent Agenda contained in the POB Meeting Minutes to determine the number of cases in excess of 120 days that were closed out during the meeting.

Results

The Collective Bargaining Agreement, (CBA) and the CPOA Ordinance, as well as AO 2-205, require compliance with the policy of this paragraph. This constitutes primary compliance.

A review of randomly selected IAB and CPOA investigations by the monitoring team during this site visit revealed no cases where an extension that was granted

was lacking written approval by the Chief (his initialing of the request). This constitutes a >.95 compliance with this task.

Regarding timely completion of investigations, the review revealed that of the IAB and CPOA matters that were reviewed, six failed to meet the timeliness requirements of this paragraph **[[IMR-4-24, IMR-4-14, IMR-4-29, IMR-4-22]]** all involving the investigation being completed beyond the 90 or 120-day window; **[[IMR-4-31 and IMR-4-17]]** failure to forward to the Chief within 30 days of completing the investigation]]. In another case, **[[IMR-4-32]]** there was an unexplained five-month delay in notifying the complainant of the results. Thus the total compliance rate with the timeliness requirements of this paragraph is < .95 (80%).

The monitor previously has commented (See Results, paragraph 162) about the ability of the POB to review investigations and make recommendations to the Chief within the time periods allowed for imposition of discipline, and the backlog of CPOA cases. In discussions with the Executive Director of the CPOA and the Chair of the POB, the agency has reached a solution that allows the POB to make timely recommendations to the Chief. In those instances where timely recommendations cannot be made, the Executive Director of the CPOA may make recommendations along with investigative findings, in lieu of the POB, to the subject officer's supervisory chain and ultimately the Chief.

Moreover, it also appears from these discussions, from statistics reviewed and from posted findings on the CPOA website, as well as a review of the decreasing number of cases exceeding 120 (days as reported in the POB Meeting Minutes) the agency has eliminated or nearly eliminated its backlog. The monitor will continue to monitor CPOA workflow for timeliness.

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

4.7.178 Assessing Compliance with Paragraph 192: Case Dispositions

Paragraph 192 stipulates:

"APD or Civilian Police Oversight Agency investigator shall explicitly identify and recommend one of the following dispositions for each allegation of misconduct in an administrative investigation:

- **a) "Unfounded," where the investigation determines, by clear and convincing evidence, that the alleged misconduct did not occur or did not involve the subject officer;**
- **b) "Sustained," where the investigation determines, by a preponderance of the evidence, that the alleged misconduct did occur;**

c) "Not Sustained," where the investigation is unable to determine, by a preponderance of the evidence, whether the alleged misconduct occurred;
d) "Exonerated," where the investigation determines, by a preponderance of the evidence, that the alleged conduct did occur but did not violate APD policies, procedures, or training;
e) "Sustained violation not based on original complaint," where the investigation determines, by a preponderance of the evidence, that misconduct did occur that was not alleged in the original complaint but that was discovered during the misconduct investigation; or
f) "Administratively closed," where the policy violations are minor, the allegations are duplicative, or investigation cannot be conducted because of the lack of information in the complaint."

Methodology

The monitor reviewed a random selection of IA and CPOA investigations that were completed during this monitoring period to ensure use of acceptable dispositions supported by the appropriate quantum of proof.

Results

Policy mandating compliance with this paragraph is contained in AO 3-22, 2-05, the CPOA Ordinance and the CPOA Policies and Procedures.

APD has represented that the requirements contained in this paragraph were addressed in the IA and CPOA training. The monitor will focus next site visit on the records and contents of this training, at which time Secondary Compliance will be assessed.

The monitor's review of the thirty randomly selected IAB and CPOA investigations completed during the monitoring period revealed that in all cases (> (greater than) .95), one of the required dispositions was used.

Of the five investigations that were administratively closed, the monitor found one **[[IMR-4-18]]** where it could not be determined whether the administrative closure was appropriate. The case indicated that it was successfully mediated by acceptance of the explanation by the complainant; however, the explanation was not available nor readily apparent from the packet. Another investigation administratively closed, [[**IMR-4-19**]] was administratively closed due to timeline excess caused by a confusion of contract interpretation. That reason does not fit any of the reasons for administrative closure found in this paragraph.

The review did not reveal any other matters where findings were found to be unsupported by the appropriate quantum of proof or criteria (in the case of administratively closed cases). This would constitute an 80% (< (less than).95) compliance mark with a crucial task in the IA process.

It should be noted that in cases where the Chief does not concur in total with the findings of the CPOA/POB, the approval by the monitor of the Chief's non-concurrence letter does not, per se, mean that the investigative findings were not supported by the requisite quantum of evidence. (See also, paragraph 285, Results).

One error of five cases meeting the elements of this paragraph is enough to cause a non-compliance finding. **While this may seem unfair, these are critical issues, and APD as well as CPOA need to develop policy and training to ensure that all investigators understand the criticality of this paragraph, and are vigilant to note such discrepancies during case processing and status conferences, etc.**

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

4.7.179 Assessing Compliance with Paragraph 193: Reopening Administrative Investigations

Paragraph 193 stipulates:

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

Methodology

The monitor reviewed a random selection IAB and CPOA investigations that were completed during this monitoring period to ensure appropriate review of administratively closed cases and those administratively closed cases that were later reopened. Discussions regarding IAB processes were also held with personnel of the IAB and CPOA.

Results

Policy mandating compliance with this paragraph is contained in AO 3-22 and the CPOA Ordinance.

APD has stated that the requirements contained in this paragraph were addressed in the IA and CPOA training. The monitor will focus next site visit on the records and contents of this training.

During meetings with IAB personnel the monitor specifically requested any and all administratively closed complaints that were re-opened during the monitoring period. None were re-opened. A review of randomly selected IAB and CPOA investigations by the monitoring team during this site visit did not reveal any

cases that were administratively closed and then reopened, thus the monitoring team was unable to monitor operational compliance with this paragraph.

Primary: **In Compliance**
Secondary: **Not In Compliance**
Operational: **Not 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)."

Methodology

The monitor held meetings and discussions with IAB and CPOA personnel to discuss IA processes including the identification of policy and training issues arising out of Internal Affairs and misconduct complaint matters. The monitoring team also reviewed a random selection of IAB and CPOA investigations that were completed during this monitoring period to ensure that closed cases document whether actions taken by the officer were in compliance with legal standards, officer training, or suggest a need for changes in policy, procedure, or training.

Results

Policy mandating compliance with this paragraph is contained in AO 3-22, and in 2-05 (now PAB 7-1) for Use of Force cases. APD is in primary compliance with this paragraph.

A review of the randomly selected IAB and CPOA investigations by the monitoring team during this site revealed that *in all cases* the investigation contained a completed form regarding whether the matter suggests that APD should revise strategies and tactics or indicates a need for additional training, counseling, or other non-disciplinary corrective measures. This constitutes a compliance rate of $\geq$.95 with the task of this paragraph.

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

4.7.181 Assessing Compliance with Paragraph 195: Retaliation Prohibited

Paragraph 195 stipulates:

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

Methodology

The monitor had several meetings during the site visit with persons charged with the responsibility of responding to task(s) included in this paragraph, reviewed documents related to the IA process, and also reviewed a random selection of IAB and CPOA investigations that were completed during this monitoring period to ensure prohibition of discouragement, intimidation, coercion, or adverse action, against any person who reports misconduct, makes a misconduct complaint, or cooperates with an investigation of misconduct

Results

The Albuquerque Code of Ordinances prohibits retaliation for reporting improper governmental action. Policy mandating compliance with this paragraph is also contained in GO 1-04 and AO 2-05 and 3-22. This constitutes primary compliance.

A review of randomly selected IA and CPOA investigations by the monitor during this site revealed no cases that involved intimidation and/or retaliation against a CPOA investigator. As noted in a case review in the Third Monitor's Report, the City's and APD's commitment to the obligations set forth in this paragraph are evident.

The monitor's review of materials including complaint forms and websites revealed no discouragement of making a complaint or report of misconduct.

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

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

Paragraph 196 stipulates:

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

Methodology

The monitor reviewed a random selection of IAB and CPOA investigations that were completed during this monitoring period to evaluate the handling of 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. Discussions regarding IA processes were also held with personnel of the IAB and CPOA.

Results

Policy mandating compliance with this paragraph is contained in GO 1-04, and AO 2-05 and 3-22. This constitutes primary compliance.

During this monitoring visit, the monitor specifically requested investigations involving alleged incidents of retaliation that occurred or that were investigated during the reporting period, the discipline imposed for retaliation, and supervisors' performance in addressing and preventing retaliation. (See also, Results, paragraph 195). No such cases were reported or uncovered in the monitor's review of randomly selected IA and CPOA during this site visit.

Primary: **In Compliance**
Secondary: **Unable to Evaluate**
Operational: **Unable to Evaluate**

4.7.183 Assessing Compliance with Paragraph 197: Retaliation Grounds for Discipline

Paragraph 197 stipulates:

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

Methodology

The monitor conducted a review of IAB and CPOA investigative reports for allegations of retaliation and outcomes of investigations and discipline. The monitor also had several meetings during the site visit to discuss internal affairs processes with members of IA and CPOA and reviewed SOPs and General Orders.

Results

The Albuquerque Code of Ordinances prohibits retaliation for reporting improper governmental action. Policy mandating compliance with this paragraph is also contained in in GO 1-04, and AO 2-05 and 3-22. Thus, APD is in primary compliance with this task.

APD has represented that the requirements contained in this paragraph were addressed in the PSU and Supervisor's Training. The monitor will focus next site visit on the records and contents of this training, at which time Secondary Compliance will be assessed.

Regarding cases involving retaliation, the monitor has commented in paragraphs 195 and 196.

Operational Compliance with this paragraph is pending review by the monitor of Secondary Compliance, and will be assessed in the next monitor's review.

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

4.7.184 Assessing Compliance with Paragraph 198: CPOA Staffing

Paragraph 198 stipulates:

"The City shall ensure that APD and the Civilian Police Oversight Agency have a sufficient number of well-trained staff assigned and available to complete and review thorough and timely misconduct investigations in accordance with the requirements of this Agreement. The City shall re-assess the staffing of the Internal Affairs Bureau after the completion of the staffing study to be conducted pursuant to Paragraph 204. The City further shall ensure sufficient resources and equipment to conduct thorough and timely investigations."

Methodology

The monitoring team met with IAB and CPOA on several occasions including visits to their respective offices and inspection of physical space. The monitoring team also reviewed staffing charts and assessed the timelines of investigations that were randomly selected.

Results

The COA Ordinance requires that it be given staff sufficient to carry out the agency functions contained in the Ordinance. Additional policy mandating compliance with this paragraph is also contained in GO 1-04, and AO 2-05 Now ABO 7-1 and 3-22.

Currently, the staffing of IAB appears to be sufficient as there is only one investigator vacancy. The CPOA staffing also appears to be sufficient as there are no current vacancies. No requests for additional staff have been noted.

Despite the lack of significant vacancies, in the future the monitoring team will not only review the completion times on selected investigations, but will also broaden its search to look at overall processing time statistics. The monitor will look for whether IAB staffing impacts the necessity of outsourcing of investigations to Area Commands, thereby losing the expertise of the IAB personnel and potentially impacting the consistency of investigations, and whether CPOA staffing and training of its personnel are sufficient to maintain performance and processing times.

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

4.7.185 Assessing Compliance with Paragraph 199: IA Initial Training

Paragraph 199 stipulates:

"All APD personnel conducting misconduct investigations, whether assigned to the Internal Affairs Bureau, an Area Command, or elsewhere, shall receive at least 24 hours of initial training in conducting misconduct investigations within one year of the Operational Date, and shall receive at least eight hours of training each year. The training shall include instruction on APD's policies and protocols on taking compelled statements and conducting parallel administrative and criminal investigations."

Methodology

The monitor had several meetings during the site visit with IAB Commander and his staff. Review of training records, including syllabi, video recordings of training (if any) exams (if any) related to specified training and attendance rosters were also conducted in order to complete the review and approval process of the training required in this paragraph.

Results

Policy mandating compliance with this paragraph is contained in AO 3-22, and in 2-05, and Special Order 16-24. The monitor will focus in more detail on the records and contents of this training during next site visit, at which time Secondary and Operational Compliance will be assessed.

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

4.7.186 Assessing Compliance with Paragraph 200: CPOA Training

Paragraph 200 stipulates:

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

Methodology

The monitoring team had several meetings during the site visit with the CPOA Executive Directive, Counsel and CPOA staff. A review of training records, including syllabi, video recordings of training (if any) and exams (if any) related to the specified training required by this paragraph, and attendance rosters was also conducted in order to complete the review and approval process of the training required in this paragraph.

Results

Although the CPOA Ordinance and the proposed CPOA Policies and Procedures both address training requirements for members of the POB (appointed members), they are silent on the training requirements of the non-appointed members of the CPOA. In addition, the monitor has seen no regulations or orders setting forth the requirements of this paragraph.

The monitor has again reviewed CPOA training records that show the initial training was provided for all CPOA investigators and the subsequent annual

training was completed. The monitor also reviewed the contents of the training provided by CPOA legal counsel. During the next site visit the monitor will focus on the syllabi, video recordings of training (if any) and exams (if any) related to specified training.

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

4.7.187 Assessing Compliance with Paragraph 201: Fact Based Discipline

Paragraph 201 stipulates:

"APD shall ensure that discipline for sustained allegations of misconduct is consistently applied, fair, and based on the nature of the allegation, and that mitigating and aggravating factors are set out and applied consistently."

Methodology

The monitoring team reviewed a random selection of IA and CPOA investigations that were completed during this monitoring period to ensure that discipline for sustained allegations of misconduct is consistently applied and that mitigating and aggravating factors are set out and applied consistently. The monitoring team also met with the Chief and Deputy Chiefs as well as IA and CPOA personnel to discuss the IA and disciplinary process.

Results

Policy regarding the APD disciplinary system is set forth in General Order 1-09. APD has represented that the requirements contained in this paragraph were addressed in the IA and CPOA training. The monitor will focus next site visit on the records and contents of this training, at which time it is expected that Secondary Compliance will be assessed.

Statistics regarding discipline imposed during the monitoring period showed a varied range of discipline imposed.

A review of randomly selected IAB and CPOA investigations assessed by the monitor during this site did not reveal any instances where the monitor determined the discipline imposed was unreasonable or an abuse of discretion.

The monitor will continue to assess whether there are adequate statements of reasons in instances where progressive discipline is not followed and/or punishment imposed differs from the recommendations of Chain of Command recommendations.

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

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."

Methodology

The monitor reviewed disciplinary actions and rationale for same regarding the ranges of discipline within the Chart of Sanctions/Disciplinary Matrix. The monitor also reviewed the disciplinary matrix and related documents and discussed the IA and disciplinary processes with IAB and CPOA personnel**.**

Results

Policy regarding the APD disciplinary system is set forth in General Order 1-09 and 3-45.

Seven (7) classes of violations are listed in a Chart of Sanctions/ Disciplinary Matrix and presumptive ranges of discipline are established for each class depending on whether it is a first offense, second offense or third/subsequent to third offense (frequency of occurrence). Although the policy mandates consideration of mitigating and aggravating circumstances, it fails to set out defined mitigating or aggravating circumstances.

The matrix does not require that any deviation from the use of the sanctions be justified in writing. This should be corrected. The matrix fails to provide that APD shall not take only non-disciplinary corrective action in cases in which the disciplinary matrix calls for the imposition of discipline. Further, the matrix fails to provide that APD shall consider whether non-disciplinary corrective action also is appropriate in a case where discipline has been imposed. <u>These elements are</u>

specifically required by paragraph 202 c of the CASA. They are not optional. The monitor again recommends this policy be rewritten to comply with the requirements of this paragraph, as compliance here cannot be gained until the requirements are met.

The guidelines contain discipline ranges for each classification of offense, with the classifications ranging from 1 through 7. Where a violation is unclassified a similar violation that is classified is to be used as a guide. This has the potential of introducing undue complexity and subjectivity into the recommendations for and imposition of discipline. We have repeated advised APD to correct these deficiencies. To date they have failed to do so.

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

4.7.189 Assessing Compliance with Paragraph 203

Paragraph 203 stipulates:

"To maintain high-level, quality service; to ensure officer safety and accountability; and to promote constitutional, effective policing, the City shall ensure that APD has the staffing necessary to implement the terms of this Agreement. APD shall also deploy a sufficient number of first-line supervisors to respond to scenes of uses of force; investigate thoroughly each use of force to identify, correct, and prevent misconduct; and provide close and effective supervision necessary for officers to improve and develop professionally. APD shall revise and implement policies for supervision that set out clear requirements for supervision and comport with best practices."

Methodology

APD contracted with a staffing specialist, Dr. Alexander Weiss, who has designed, executed and published a staffing study for APD's "operations" units, e.g., patrol, etc. The monitoring team and DOJ have reviewed that document, and have found it sound within the parameters assigned to Dr. Weiss. APD has "operationalized" the Weiss work in the form of plans of action for each significant component. The monitor and DOJ have reviewed that plan, and have not suggested or required any changes to APD's plan, as written. The key element at this point rests with recruiting sufficient officers to meet the plan's requirements.

Results

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

Operational: **In Compliance**

4.7.190 Assessing Compliance with Paragraph 204

Paragraph 204 requires:

"In order to successfully implement the provisions of this Agreement, APD shall assess the appropriate number of sworn and civilian personnel to perform the different Department functions necessary to fulfill its mission. APD therefore shall conduct a comprehensive staffing assessment and resource study. The study shall be the predicate for determining appropriate staffing and resource levels that are consistent with community-oriented policing principles and support the systematic use of partnerships and problem-solving techniques. The study shall also consider the distribution of officers to patrol functions as opposed to specialized units, as well as the distribution of officers with less than three years of experience across shifts and Area Commands. This staffing assessment and resource study shall be completed within one year of the Effective Date. Within six months of the completion of the staffing assessment and resource study, the Parties shall assess its results and jointly develop a staffing plan to ensure that APD can meet its obligations under this Agreement."

Methodology

APD has contracted with a staffing specialist, Dr. Alexander Weiss, who has designed, executed and published a staffing study for APD's "operations" units, e.g., patrol, etc. The monitoring team and DOJ have reviewed that document, and have found it sound within the parameters assigned to Dr. Weiss. APD has "operationalized" the Weiss work in the form of plans of action for each significant component. The monitor and DOJ have reviewed that plan, and have not suggested or required any changes to APD's plan, as written. The key element at this point rests with recruiting sufficient officers to meet the plan's requirements.

Results

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

4.7.191 Assessing Compliance with Paragraph 205

Paragraph 205 stipulates:

"First-line supervisors shall investigate officers' use of force as described in Section IV of this Agreement, ensure that officers are working actively to engage the community and increase public trust

and safety, review each arrest report, and perform all other duties as assigned and as described in departmental policy."

Methodology

The Use of Force policy as described in Section IV of the CASA has been approved and published. Supervision training was delivered to every supervisor in APD. This training was completed in late May 2016. The monitoring team requested Supervisory Reports, Use of Force reports and Commanders monthly reports for this monitoring period (April thru July). Currently there are no first-line supervisory monthly reports. APD advises that they are in the process of developing that reporting mechanism. Between April 1, 2016 through July 31, 2016, 80 Use of Force incidents were entered into the APD's tracking system. Eighteen Commanders' monthly reports were supplied for this report.

Results

A review of the Use of Force reports supplied to the monitoring team reflect that the reports are being generated by the sergeants, but, as reflected in Paragraph 53, the 72-hour timeline to submit reports is not always adhered to and that, if extensions are needed, the requests are not always reflected in the sergeant's reports. The monitoring team, under the guideline of paragraphs 50 thru 59, will monitor if the requirements for this paragraph are being met. Results for this reporting period are not reflective of the requirements because supervisors did not receive training covering all material required for this paragraph as required by the CASA until the end of May 2016. As covered in paragraph 208 of this report, Commanders' reports reflect the activity for the months covering this reporting period, but are limited to the following: Use of Force, Accidents, pursuits, officer injuries, Court info, arrests (felony, DWI etc.), written reports, citations, training and community meetings. The reports are broken down by each team's activities for the respective month.

Training/awards/workshop/classes are noted as well as achievements and commendations within the report. Neighborhood Watch/Association meetings are also captured. Until the first-line supervisory activity report is developed by APD operational compliance cannot be achieved. The monitoring team will closely monitor the progress of APD as it relates to this paragraph in future visits.

Primary: **Not In Compliance (lack of supervisory reports)**
Secondary: **Not In Compliance**
Operational: **Not In Compliance**

4.7.192 Assessing Compliance with Paragraph 206

Paragraph 206 stipulates:

"All field officers shall be assigned to a primary, clearly identified first-line supervisor and shall also report to any other first-line supervisor within the chain of command. First-line supervisors shall be responsible for closely and consistently supervising all officers under their primary command. Supervisors shall also be responsible for supervising all officers under their chain of command on any shift to which they are assigned to ensure accountability across the Department."

Methodology

Members of the monitoring team met the lead assigned to this paragraph. The monitoring team reviewed approved Policies (SOP 3-9) for this paragraph to ensure that the role of a supervisor encompasses that all field officers shall be assigned a primary first-line supervisor and report to any other first-line supervisor within the chain of command.

Results

The monitoring team visited six area commands during the fourth site visit and met with the Commanders or their designees for each command to review SOP 3-9 (Supervisory Leadership) and ensure that the requirements of this paragraph were being met. The monitoring team requested the daily roster from each command to review and ensure that a first-line supervisor was assigned to the field officers on patrol. Daily rosters reviewed by the monitoring team reflected that a supervisor was assigned to each unit that was working and when the span of control for a supervisor exceeded eight (8) an additional supervisor was assigned to that shift. This was a consistent pattern throughout all commands. One area of concern noted during the monitoring team visit was at one command, the Commander was the designated first-line supervisor for a unit because of staffing levels. The Commander was in uniform and advised the monitoring team that he was monitoring the radio and had been out in the field during the course of the day. The Commander stated that due to staffing levels this situation, although rare in occurrence, will occur occasionally until the next promotion takes place to supply more first-line supervisors to the commands. While this may be understandable given the staffing levels at APD, it is simply in violation of the requirements of this paragraph. The monitoring teams plans to closely this situation in future site visits.

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

4.7.193 Assessing Compliance with Paragraph 207

Paragraph 207 stipulates:

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

Methodology

The lead for the APD on this paragraph supplied members of the monitoring team with the current rosters for all of the area commands for the timeframe encompassing the fourth monitoring period. A review of the fifty-four (54) teams, which exist within the six (6) commands, showed that thirty-five (35) were in the range of an 8:1 (eight to one) where nineteen (19) teams did not met the criteria.

Results

Thirty-five (35) teams represent 64.8% that meet the requirements of the paragraph and nineteen (19) teams represent 35.18% that do not meet the requirements. This level of compliance does not meet the threshold of the ≥95% as required by the CASA. APD contends this requirement has been met as a result of the current bid, which the monitor has not had an opportunity to review. We will revisit this issue in IMR-5.

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

4.7.194 Assessing Compliance with Paragraph 208

Paragraph 208 stipulates:

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

Methodology

The revisions to SOP 3-2 (Command Staff Responsibilities) and SOP 3-18[112] (Supervisor's Duties and Responsibilities) were approved in April 2016 and May 2016 respectively. The monitoring team requested and received Commanders' Monthly Reports for the timeframe for this report.

[112] Now AO-3-9.

Results

The monitoring team reviewed a random sample of Commanders' reports for the fourth monitoring period. The reports reflect the activity for the month covering but not limited to the following: Use of Force, Accidents, pursuits, officer injuries, Court info, arrests (felony, DWI etc.), written reports, citations, training and community meetings. The reports are broken down by each team's activities for the respective month. Training/awards/workshop/classes are noted as well as achievements and commendations within the report. Neighborhood Watch/Association meetings are captured. Strangely, very few of the reports detailed any issues with use of force, or supervisory use of force. Given the current nature of APD's compliance with those issues, we would have expected some treatment of them in the Commanders' monthly reports. Due to the fact that APD just recently became compliant with the Policy/Procedure requirements in this area of the CASA, future reviews will need to be conducted to ensure that APD achieves operational compliance with the requirements of this paragraph.

The monitoring team has reported previously on the lack of credibility of APD's use and show of force data, and that relying on that data for purposes of determining CASA compliance will not be possible until such time that the department expends its full effort toward greater accountability in its reporting of use of force.

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

Methodology

All APD Policies and Procedures that were essential to proceed with the development of the training required for this paragraph have been approved and published. The approved policies contain all topics required by the CASA. There have not been APD personnel promoted to the rank of sergeant during the timeframe for this monitoring period. Although APD completed its planned supervisory use of force training during the reporting period, the monitoring team have found that process to be problematic, and have recommended specific changes to bring it up to levels that are compliant with accepted practices and

case law relating to use of force. See our treatment of this issues in the paragraphs on use of force, above.

Results

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

4.7.196 Assessing Compliance with Paragraph 210

Paragraph 210 stipulates:

"APD's sergeant training program shall include the following topics:

a) techniques for effectively guiding and directing officers and promoting effective and ethical police practices;

b) de-escalating conflict;

c) evaluating written reports, including those that contain canned language;

d) investigating officer uses of force;

e) understanding supervisory tools such as the Early Intervention System and on-body recording systems;

f) responding to and investigating allegations of officer misconduct;

g) evaluating officer performance;

h) consistent disciplinary sanction and non-punitive corrective action;

i) monitoring use of force to ensure consistency with policies;

j) building community partnerships and guiding officers on this requirement;

k) legal updates."

Methodology

This paragraph is an extension of paragraph 209 of this agreement. All APD policies and procedures that were required to proceed in the development of the training required for this paragraph have been approved and published. The approved policies contain all topics required by the CASA. There have not been APD personnel promoted to the rank of sergeant during the time frame for this monitoring period. Further, the monitoring team has expressed concerns about specific and critical problems with the training provided to supervisors related to

use of force review and response. These issues are dealt with specifically in other paragraphs of this report, related to supervisory training.

Results

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

4.7.197 Assessing Compliance with Paragraph 211

Paragraph 211 stipulates:

"All sworn supervisors shall also receive a minimum of 32 hours of in-service management training, which may include updates and lessons learned related to the topics covered in the sergeant training and other areas covered by this Agreement."

Methodology

The training academy oversees the requirements of this paragraph and supplied the monitoring team with "Department Special Order 16-15 Amended" requiring all supervisory personnel to complete the twenty-four-hour supervisory training course. An eight-hour supervision course was delivered in October 2015. The monitoring team conducted a random check of records to verify APD met the requirements of this agreement. The twenty-four-hour block of instruction was completed in May 2016. Documentation supplied to the monitoring team for the timeframe April 1, 2016 through July 31, 2016 was received and reviewed for compliance with the requirements of this paragraph.

Results

The approved curriculum was reviewed for content to ensure the members received training in the required areas mandated by the CASA. Random tests scores were reviewed to ensure the members took and passed the exam and the certificates issued were also recognizing successful completion of the course. Out of a total of 141 supervisors, 136 attended the training course with five members excused for approved reasons. Attendance sheets were supplied and reviewed by the monitoring team. APD met the >95% threshold for the attendance requirements of this paragraph; however, the monitoring team has some serious and consequential concerns about the *quality* of the required supervisory training actually provided. These issues are dealt with specifically in other paragraphs of this report, related to supervisory training. The monitoring team will monitor APD in future site visits to ensure compliance with this paragraph.

Primary: **In Compliance**

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

4.7.198 Assessing Compliance with Paragraph 212

Paragraph 212 stipulates:

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

Methodology

During the fourth site visit, members of the monitoring team met with the Internal Affairs and Information Technology personnel responsible for Early Intervention System development and implementation, and identified current systems development progress. The EIS policy has been approved by the monitor and the parties (February, 2016).

Results

APD continues the transition to a new EIS system--which is still being tested. Additional software—Blue Team is in "testing phase" at the Northeast Command. The monitoring team conducted a site visit and viewed a demonstration of the initial capabilities of the software, and received positive comments by an on-duty supervisor. Supervisory EIS training is dated May 27th, 2015—prior to any launch of the new EIS system and prior to an approved policy. Further documentation of training will be required to satisfy the requirements of this paragraph.

Additionally, and most troubling, the monitoring team discovered that the thresholds for the EIS had been "temporarily" removed—thus effectively shutting down the EIS-- because APD was receiving too many alerts. This is clearly in direct violation of the CASA, paragraph 219, which requires DOJ and monitor approval prior to any changes to the thresholds. More troubling, the monitor found this information quite coincidentally, as opposed to written notice by the City. Such "happenstance" discoveries are extremely troubling to the monitoring team, especially when they involve such critical components of compliance. To date, we are aware of no corrective actions taken concerning such unilateral decisions to "kill" such a critical component of

the APD compliance strategy. Reportedly, the system came back "on-line" in August, 2016.

Primary: **Not In Compliance (Withdrawn)**
Secondary: **Not In Compliance**
Operational: **Not In Compliance**

4.7.199 Assessing Compliance with Paragraph 213

Paragraph 213 stipulates:

"APD shall review and adjust, where appropriate, the threshold levels for each Early Identification System indicator to allow for peer-group comparisons between officers with similar assignments and duties."

Methodology

During the fourth site visit, members of the monitoring team met with the Internal Affairs and Information Technology personnel responsible for Early Intervention System development and implementation.

Results:

Based on a review of the new EIS system, IAPro, as planned, appears to the monitoring team to have the capabilities called for in this paragraph. However, during the fourth site visit, the monitoring team discovered that APD had removed all thresholds due to, reportedly, receiving too many alerts. The monitor finds this action extremely troubling and in violation of paragraph 219 of the CASA.

Primary: **Not In Compliance (Withdrawn)**
Secondary: **Not In Compliance**
Operational: **Not In Compliance**

4.7.200 Assessing Compliance Paragraph 214

Paragraph 214 stipulates:

"APD shall implement rolling thresholds so that an officer who has received an intervention of use of force should not be permitted to engage in additional uses of force before again triggering a review."

Methodology

During the fourth site visit, members of the monitoring team met with the Internal Affairs and Information Technology personnel responsible for

Early Intervention System development and implementation. As development proceeds, the monitoring team will continue to follow it closely and provide feedback as needed and/or as requested by the APD.

Results

APD policy requires rolling thresholds when assessing officer use-of-force events, thus necessitating a review of every officer use of force. Utilizing Blue-Team software will allow uses of force to be reviewed and assessed in "real- time." Testing of this software is ongoing in the Northeast Command, as observed by the monitoring team. In-depth assessment and planning of review triggers and time limits are being planned, and should be facilitated by the new software when it comes on line.

The monitoring team however, discovered that the thresholds had been removed because of too many alerts. In one instance, an officer had triggered an alert for three uses of force. Before these reports were reviewed, the officer had an additional four uses of force. The monitor finds this action troubling, and not in paragraph 219's requirements of the CASA.

Primary: **Not In Compliance (Withdrawn)**
Secondary: **Not In Compliance**
Operational: **Not In Compliance**

4.7.201 Assessing Compliance Paragraph 215

Paragraph 215 stipulates:

"The Early Intervention System shall be a component of an integrated employee management system and shall include a computerized relational database, which shall be used to collect, maintain, integrate, and retrieve data department-wide and for each officer regarding, at a minimum:
a) uses of force;
b) injuries and deaths to persons in custody;
c) failures to record incidents with on-body recording systems that are required to be recorded under APD policy, whether or not corrective action was taken, and cited violations of the APD's on-body recording policy;
d) all civilian or administrative complaints and their dispositions;
e) all judicial proceedings where an officer is the subject of a protective or restraining order;
f) all vehicle pursuits and traffic collisions involving APD equipment;
g) all instances in which APD is informed by a prosecuting authority that a declination to prosecute any crime occurred, in whole or in

part, because the officer failed to activate his or her on-body recording system;
h) all disciplinary action taken against employees;
i) all non-punitive corrective action required of employees;
j) all awards and commendations received by employees, including those received from civilians, as well as special acts performed by employees;
k) demographic category for each civilian involved in a use of force or search and seizure incident sufficient to assess bias;
l) all criminal proceedings initiated against an officer, as well as all civil or administrative claims filed with, and all civil lawsuits served upon, the City and/or its officers or agents, allegedly resulting from APD operations or the actions of APD personnel; and
m) all offense reports in which an officer is a suspect or offender."

Methodology

During the fourth site visit, members of the monitoring team met with the Internal Affairs and Information Technology personnel responsible for Early Intervention System development and implementation.

Results

The system development process had appeared to be proceeding at a reasonable rate, given the complexity of the proposed system. During this monitoring period, however, the monitoring team discovered that APD had removed the EIS thresholds because there were too many alerts. This action is problematic and clearly not in compliance and in direct violation with paragraph 219's requirements of the CASA. Nor is it in compliance with APD's related policies regarding EIS and supervision.

Primary: **Not In Compliance (Withdrawn)**
Secondary: **Not In Compliance**
Operational: **Not In Compliance**

4.7.202 Assessing Compliance Paragraph 216

Paragraph 216 stipulates:

"APD shall develop and implement a protocol for using the updated Early Intervention System and information obtained from it. The protocol for using the Early Intervention System shall address data storage, data retrieval, reporting, data analysis, pattern identification, supervisory use, supervisory/departmental intervention, documentation and audits, access to the system, and confidentiality of personally identifiable information. The protocol shall also require unit supervisors to periodically review Early Intervention System data for officers under their command."

Methodology

During the fourth site visit, members of the monitoring team met with the Internal Affairs and Information Technology personnel responsible for Early Intervention System development and implementation, specifically relating to EIS Strategy timelines and system "roll-outs". Discussions included "Best Practices" and references to systems in other departments.

Results

The concept of an Early Intervention Systems has been a component of Internal Affairs planning for some time. IAB personnel are aware of the benefits offered by the system, and are simply awaiting development of guidance via written procedures, protocols and training so that the system can "go live." APD EIS policy has been approved by all parties, but no Protocols for system use as required by this paragraph have been developed. The monitoring team received Power Point Slides from Supervisor EIS training, but not a training curriculum. Documentation of Supervisor EIS Training was submitted, but dated prior to an approved policy or implementation of the EIS system. During this monitoring period, all thresholds were removed from the EIS to eliminate any alerts. The monitoring team is troubled by this action and finds that APD is not in compliance with the requirements of the CASA.

Primary: **Not In Compliance (Withdrawn)**
Secondary: **Not In Compliance**
Operational: **Not In Compliance**

4.7.203 Assessing Compliance Paragraph 217

Paragraph 217 stipulates:

"APD shall maintain all personally identifying information about an officer included in the Early Intervention System for at least five years following the officer's separation from the agency except where prohibited by law. Information necessary for aggregate statistical analysis will be maintained indefinitely in the Early Intervention System. On an ongoing basis, APD will enter information into the Early Intervention System in a timely, accurate, and complete manner and shall maintain the data in a secure and confidential manner."

Methodology

During the fourth site visit, members of the monitoring team met with the Internal Affairs and Information Technology personnel responsible for Early Intervention System development and implementation.

Results

EIS data are currently planned to be held "indefinitely" by APD IA which exceeds the CASA requirements. The updated IAPro system appears to comply with these requirements. The data entry requirements are on-going and all EIS data will be maintained securely in Internal Affairs. Future site visits will include audits to determine if information has been entered "in a timely, accurate, and complete manner" and maintained securely and in a confidential manner as required, once the system actually comes on-line without interruption, as has been experienced recently. Development of an effective EIS is a remarkably complex and involved process. While APD has in place substantial plans for design, information development, and use of the EIS, recent problems involving "shutting down" the EIS without notice to the monitoring team overshadow those plans, and recent work to "change the name" of the EIS system does little to overcome those recent problems.

Primary:	**Not In Compliance (Withdrawn)**
Secondary:	**Not In Compliance**
Operational:	**Not In Compliance**

4.7.204 Assessing Compliance Paragraph 218

Paragraph 218 stipulates:

"APD shall provide in-service training to all employees, including officers, supervisors, and commanders, regarding the updated Early Intervention System protocols within six months of the system improvements specified in Paragraphs 212-215 to ensure proper understanding and use of the system. APD supervisors shall be trained to use the Early Intervention System as designed and to help improve the performance of officers under their command. Commanders and supervisors shall be trained in evaluating and making appropriate comparisons in order to identify any significant individual or group patterns of behavior."

Methodology

During the fourth site visit, members of the monitoring team met with the Internal Affairs and Information Technology personnel responsible for Early Intervention System development and implementation.

Results

EIS policies were approved in February, 2016. The training for approximately 150 supervisors is under development. The training for all employees remains to be developed. EIS Training Power Point slides were provided to the monitoring team, but no Training Curriculum for all

employees or Supervisors was available. This task will remain "not in compliance" for secondary and operational phases until such time as the training component documentation is completed and reviewed and approved by the monitoring team. Operational compliance is dependent upon effective and "by policy and training" implementation of the EIS system.

Primary: **Not In Compliance (Withdrawn)**
Secondary: **Not In Compliance**
Operational: **Not In Compliance**

4.7.205 Assessing Compliance Paragraph 219

Paragraph 219 stipulates:

"Following the initial implementation of the updated Early Intervention System, and as experience and the availability of new technology may warrant, the City may add, subtract, or modify thresholds, data tables and fields; modify the list of documents scanned or electronically attached; and add, subtract, or modify standardized reports and queries as appropriate. The Parties shall jointly review all proposals that limit the functions of the Early Intervention System that are required by this Agreement before such proposals are implemented to ensure they continue to comply with the intent of this Agreement."

Methodology

During the fourth site visit, members of the monitoring team continued to audit the progress of APD Internal Affairs personnel responsible for Early Intervention System development and implementation. Discussions continue regarding systems development processes, APD progress reports, training and expected due dates.

Results

This paragraph requires implementation/testing/use of and experience with the system before the monitoring team can assess efficacy of the planned system. However, in direct violation of the requirements of this paragraph, APD "temporarily" removed the thresholds of the EIS due to receiving too many alerts—thereby limiting the function of the EIS without a review of the proposal by the Parties or the monitoring team, as required.

Primary: **Not In Compliance (Withdrawn)**
Secondary: **Not In Compliance**
Operational: **Not In Compliance**

4.7.206 Assessing Compliance Paragraph 220

Paragraph 220 stipulates:

"To maintain high-level, quality service; to ensure officer safety and accountability; and to promote constitutional, effective policing, APD is committed to the consistent and effective use of on-body recording systems. Within six months of the Effective Date, APD agrees to revise and update its policies and procedures regarding on-body recording systems to require:
a) specific and clear guidance when on-body recording systems are used, including who will be assigned to wear the cameras and where on the body the cameras are authorized to be placed;
b) officers to ensure that their on-body recording systems are working properly during police action;
c) officers to notify their supervisors when they learn that their on-body recording systems are not functioning;
d) officers are required to inform arrestees when they are recording, unless doing so would be unsafe, impractical, or impossible;
e) activation of on-body recording systems before all encounters with individuals who are the subject of a stop based on reasonable suspicion or probable cause, arrest, or vehicle search, as well as police action involving subjects known to have mental illness;
f) supervisors to review recordings of all officers listed in any misconduct complaints made directly to the supervisor or APD report regarding any incident involving injuries to an officer, uses of force, or foot pursuits;
g) supervisors to review recordings regularly and to incorporate the knowledge gained from this review into their ongoing evaluation and supervision of officers; and
h) APD to retain and preserve non-evidentiary recordings for at least 60 days and consistent with state disclosure laws, and evidentiary recordings for at least one year, or, if a case remains in investigation or litigation, until the case is resolved."

Methodology

During the fourth site visit, members of the monitoring team met with the APD personnel responsible for On-Body Recording Systems and identified current training development progress and data source points for future site visits.

Results

The APD policy regarding On-Body Recording Devices has been approved by all parties. Training and testing, via Public Service University (PSU), was completed during this monitoring period. Sergeant's Monthly reports were discussed as a data source to determine compliance with several requirements relating to OBRD's. APD is working to automate a standard Sergeant's monthly report form for consistency throughout APD. Other processes have been discussed

but not developed, i.e.—data relating to equipment failure, discovery of failures by officer or supervisor, referrals to IA for any intentional failures to record, actions regarding supervisors failing to take proper action for recording failures, etc. Further, it is clear that supervisors do not routinely review OBRD video when assessing critical incidents such as use of force. The monitoring team have found numerous incidents of "out of policy" uses of force that were not noted by supervisors through review of OBRD video. This remains a critical concern of the monitoring team, as we have noted in the last two reports.

Primary: **Not In Compliance (Withdrawn)**
Secondary: **Not In Compliance**
Operational: **Not In Compliance**

4.7.207 Assessing Compliance with Paragraph 221

Paragraph 221 stipulates:

"APD shall submit all new or revised on-body recording system policies and procedures to the Monitor and DOJ for review, comment, and approval prior to publication and implementation. Upon approval by the Monitor and DOJ, policies shall be implemented within two months."

Methodology

During the fourth site visit, members of the monitoring team met with the APD personnel responsible for On-Body Recording Devices.

Results

The On-Body Recording Devices policy has been approved by all parties. The requirements of this paragraph relate to changes to the approved policy. No changes were discovered by the monitoring team during this monitoring period. However, the monitoring team is concerned that we have found numerous critical incidents of improper or excessive use of force over the last three monitoring reports that have not been noted by supervisory review. These issues are documented carefully in a "special report" released recently by the monitoring team earlier this year. We resorted to the "special report" so as to put APD on notice at the earliest opportunity that critical issues exist with APD's supervisory compliance to the OBRD policy and its requirements to review OBRDs as part of the supervisory process.

Primary: **Not In Compliance (Withdrawn)**
Secondary: **Not In Compliance**
Operational: **Not 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."

Methodology

During the fourth site visit, members of the monitoring team met with the APD personnel responsible for On-Body Recording Devices and identified current training development processes and the current status/progress.

Results

The On-Body Recording Device policy has been approved, and APD provided documentation for the OBRD training/testing. During the monitoring period, all but 13 excused absences and 9 unexcused personnel completed training and testing via Public Service University (PSU). Excused absences included Military, FMLA and Administrative leave, all of which will complete training upon their return to duty. Again, we are concerned with "critical misses" among APD's supervisory reviews of OBRD video in use of force incident reviews by supervisory personnel. These misses indicate that while a policy may be written, it is being ignored by some supervisory and command personnel. A policy that is not enforced is not "policy."

Primary: **Not In Compliance (Withdrawn)**
Secondary: **Not In Compliance**
Operational: **Not 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."

Methodology

During the fourth site visit, members of the monitoring team met with the APD personnel responsible for On-Body Recording Devices and identified current plans to comply with the requirements of this paragraph. APD was informed that the monitoring team will require documented functionality testing and documented failures reported in addition to the Sergeant's Monthly Reports for documentation of equipment failures found during inspection and failures reported by officers.

Results

APD Sergeants currently conduct monthly inspections of each officer under their command. Inspections include all issued equipment, including On-Body Recording Devices. APD does not yet have a standard protocol for the requirements of this paragraph. Requests have been made for the monitoring team to gain access to the automated system being developed to document Sergeant monthly reports online. All future site visits will include an audit of these monthly inspections, once it is operational.

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

4.7.210 Assessing Compliance with Paragraph 224

Paragraph 224 stipulates:

"Supervisors shall be responsible for ensuring that officers under their command use on-body recording systems as required by APD policy. Supervisors shall report equipment problems and seek to have equipment repaired as needed. Supervisors shall refer for investigation any officer who intentionally fails to activate his or her on-body recording system before incidents required to be recorded by APD policy."

Methodology

During the fourth site visit, members of the monitoring team met with the APD personnel responsible for On-Body Recording Devices and identified current accountability development processes and progress in these areas. APD was informed of the future data needs to document the requirements of this paragraph, including the number of reports and repairs, referrals for investigation, and how supervisors are being held accountable. In addition, the numbers of failures to record—whether reported or "discovered" and the resulting coaching, retraining, discipline, etc. were discussed.

Results

APD SOP 1-39 Use of On-Body Recording Devices has been approved by all parties. Supervisors will be required to test the equipment monthly, ensure personnel are using systems appropriately, review at least two recordings and incorporate any knowledge gained from this review into ongoing evaluation and supervision. Additionally, supervisors will report equipment problems and immediately repair or replace equipment as needed. Supervisors shall refer assigned personnel for investigation anyone who intentionally or repeatedly fails to activate their OBRDs during incidents required to be recorded and will be held accountable for properly investigating failures and taking appropriate action.

APD currently has not developed the process necessary to monitor these requirements. All future site visits will include an audit of these requirements as the systems/processes are developed.

The monitoring team see this as a serious deficiency, contributing, at least in part, to the failure to supervise. Policy that is not followed, and not corrected when it is contravened, is not policy.

Primary: **Not Compliance (Withdrawn)**
Secondary: **Not In Compliance**
Operational: **Not 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."

Methodology

During the fourth site visit, members of the monitoring team met with the APD personnel responsible for On-Body Recording Systems and identified current process development. Additional discussions included permissions to access recorded data by supervisors and the audit trails of any data accessed.

Results

The On-Body Recording Device Policies/Procedures have been approved by all parties. The requirements of this paragraph have been covered in the policy and training. Supervisors are required to conduct monthly inspections and reviews. Little data (one duty location via Commander's Monthly) has been submitted for equipment/video reviews, and the process for documenting reviews and referrals has not been developed. Critical failures in supervisory monitoring and review of OBRD videos have resulted in problems in APD's force monitoring system so severe that the monitoring team has written and published a special report on this issue. At the present time, this element of the CASA is in critical need of attention and modification. Having "policy" in place is useless if it is not assessed, supervised and enforced in the field. All future site visits will include an audit of this requirement once the process is in place.

Primary: **Not In Compliance (Withdrawn)**
Secondary: **Not In Compliance**
Operational: **Not 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."

Methodology

During the fourth site visit, members of the monitoring team met with the APD personnel responsible for On-Body Recording Devices and identified current development processes and progress.

Results

APD Policy 1-39 Use of On-Body Recording Devices has been approved by all Parties and training documentation has been provided to the monitoring team showing more than 95% of APD personnel have completed the training via Public Service University (PSU). The policy appears to comply with all existing laws and regulations, having been reviewed by the Parties and the monitor. The policy itself cites both US Supreme Court and NM Statutes relative to privacy and communications.

Monitoring the public disclosure of information and consent, and the collection and retention of evidence will be an ongoing process. We have

found one serious issue relating to "retention of evidence,"[113] but one incident among thousands is not enough to withdraw compliance. Nonetheless, APD should redouble its efforts to safeguard OBRD video.

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

Methodology

During the fourth site visit, members of the monitoring team met with the APD personnel responsible for On-Body Recording Devices to view the recording database, identify the storage, categorization and retrieval systems, and the progress of these requirements.

Results

APD currently uses the Taser system "Evidence.com" for the video downloads/storage. The monitoring team made observations of the video logs which contained the required categories. Upon a review of random Commander Monthly reports, one Commander conducted a counseling of a police officer related to categorizing of recordings. While this one Commander conducted many reviews of recordings and documented his findings, this is not a standard procedure across APD field operations managers. No other Commanders' reports that the monitoring team reviewed contained this data. The monitoring team made a suggestion to APD that this become a standard operating procedure. All future site visits will include system/recording/category audits. We note the apparent "loss" of one video related to a serious use of force; however, one lost video among thousands does not constitute a compliance issue statistically. Should this problem repeat itself, it will become a critical issue.

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

[113] This involved a OBRD video showing a "neck hold" in violation of policy. Eventually, this video "went missing" and could not be located by APD staff upon request by the monitoring team.

Operational: **Not In Compliance**

4.7.214 Assessing Compliance with Paragraph 228

Paragraph 228 stipulates:

"Officers who wear on-body recording systems shall be required to articulate on camera or in writing their reasoning if they fail to record an activity that is required by APD policy to be recorded. Intentional or otherwise unjustified failure to activate an on-body recording system when required by APD policy shall subject the officer to discipline."

Methodology

During the fourth site visit, members of the monitoring team met with the APD personnel responsible for On-Body Recording Devices to identify the process by which these requirements will be documented. During the next monitoring team site visit, the monitoring team will review data related to the number of failures to record, how it was that these were documented and the results, i.e.—coaching, retraining, discipline, etc.

Results

APD now has an approved policy for On-Body Recording Devices and provided documentation showing more than 95% of APD personnel have been successfully trained and tested on OBRD. The process for how APD intends to capture the required data to document compliance with these requirements is still lagging. Supervisors conduct monthly inspections, which include cameras, but the protocols and processes for how that information will be collected, acted upon and shared do not yet exist. Policy that is not followed, and not corrected when it is contravened, is not policy.

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

4.7.215 Assessing Compliance with Paragraph 229

Paragraph 229 stipulates:

"APD shall ensure that on-body recording systems are only used in conjunction with official law enforcement duties. On-body recording systems shall not be used to record encounters with known undercover officers or confidential informants; when officers are engaged in personal activities; when officers are having conversations with other Department personnel that involve case

strategy or tactics; and in any location where individuals have a reasonable expectation of privacy (e.g., restroom or locker room)."

Methodology

During the fourth site visit, members of the monitoring team met with the APD personnel responsible for On-Body Recording Devices to discuss prohibited uses of OBRD video. Additional discussions included future audits and how these requirements would be documented.

Results

The On-Body Recording System policy is now approved, and training/testing for APD personnel and supervisors has been conducted. All future site visits will include a random audit of recordings to determine if any prohibited uses exist. APD has not developed or documented their own process for determining if any prohibited uses have occurred. At this point, we are more than year into the compliance project since the "operational date," the date at which a monitoring team had been selected and was "on the job." We would expect APD to have considered how it would self-police this requirement by now, but we have no written documentation to indicate that this has occurred. We remind APD that policy that is not followed, and not corrected when it is contravened is not policy.

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

Methodology

During the fourth site visit, members of the monitoring team met with the APD personnel responsible for On-Body Recording Devices to determine if officers are properly storing recordings at the end of their shift.

Results

The APD On-Body Recording Devices policy clearly states that all recordings captured by Department issued OBRDs are the exclusive

property of APD. This policy has been approved by all parties, and training/testing has been completed. While each person issued an On-Board Recording Device has been trained in its use, and recordings are required to be stored at the end of each officer's shift, the monitoring team has noted past missing videos and several failures to record with accompanying failures to properly take supervisory action. The monitor is deeply concerned about any "loss" of important evidence stored on an OBRD recording, which indicates non-compliance with established policy. One Commander did document the counseling of an officer re proper categorizing of recordings, but this does not appear to be an SOP. Policy that is not followed, and not corrected when it is contravened is not policy. Supervision that only triggers "after the fact" that the monitoring team finds an issue and brings it to the APD's attention is not supervision. The monitoring team reviewed logs of stored recordings, and all future site visits will include audits to ensure compliance with this requirement.

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

4.7.217 Assessing Compliance with Paragraph 231

Paragraph 231 stipulates:

"The Parties are committed to the effective use of on-body recording systems and to utilizing best practices. APD currently deploys several different platforms for on-body recording systems that have a range of technological capabilities and cost considerations. The City has engaged outside experts to conduct a study of its on-body recording system program. Given these issues, within one year of the Effective Date, APD shall consult with community stakeholders, officers, the police officer's union, and community residents to gather input on APD's on-body recording system policy and to revise the policy, as necessary, to ensure it complies with applicable law, this Agreement, and best practices."

Methodology

During the fourth site visit, members of the monitoring team met with the APD personnel responsible for On-Body Recording Devices to identify processes, personnel and expected due dates for the community outreach as required above.

Results

The APD has contracted with the University of New Mexico to conduct a study with focus groups and community groups to meet the requirements of this paragraph. Timeline for compliance is "within one year of the

Effective Date" or November 14, 2015. Initial comments from the UNM study should be available during the next site visit, but was due by November, 2015. APD contends that the UNM OBRD study was completed in January, but no one from APD raised this issue with the monitoring team during its fourth site visit. Approval of a policy, under normal circumstances is sufficient for primary compliance; however, the record appears to be clear that APD supervisory personnel are not carefully and thoughtfully reviewing OBRD videos when assessing officer behavior. We continue to find out-of-policy behavior in our video reviews that, apparently, have not been noted and or corrected by supervisory personnel.

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

4.7.218 Assessing Compliance with Paragraph 232

Paragraph 232 stipulates:

"To maintain high-level, quality service; to ensure officer safety and accountability; and to promote constitutional, effective policing, APD shall develop a comprehensive recruitment and hiring program that successfully attracts and hires qualified individuals. APD shall develop a recruitment policy and program that provides clear guidance and objectives for recruiting police officers and that clearly allocates responsibilities for recruitment efforts."

Methodology

During the fourth site visit, members of the monitoring team met with Training Academy personnel responsible for the Recruitment and Hiring Plan development and implementation. The Policy and Procedures for the Recruiting Unit was approved on May 3, 2016.

Results

APD Policies/Procedures appear to meet the requirements of the CASA. APD continues to aggressively recruit via Facebook, Twitter, and "APD Online" as well as Craigslist, Police One, The Blue Line and more. Traditional outreach via TV, Radio, Newspaper and Billboard ads have all failed to return any candidates, but efforts have continued and expanded to UNM Daily Lobo, Digital Displays at Johnson Center (UNM), and *Saludos*. Recruiting continues to be relatively effective.

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

4.7.219 Assessing Compliance with Paragraph 233

Paragraph 233 stipulates:

"APD shall develop a strategic recruitment plan that includes clear goals, objectives, and action steps for attracting qualified applicants from a broad cross section of the community. The recruitment plan shall establish and clearly identify the goals of APD's recruitment efforts and the duties of officers and staff implementing the plan."

Methodology

During the fourth site visit, members of the monitoring team met with Training Academy personnel responsible for the development and implementation of a strategic recruitment plan.

Results

The APD Training Academy has provided the monitoring team with the "2016 Strategic Recruitment Plan" and continues to aggressively promote APD via web based applications with expanded emphasis on minority group sites. Additionally, APD has provided documentation of attendance at many diverse community group events including Military, Faith Based, Educational, and Sports Related. The "blind" online application process wherein an applicant can remain completely anonymous until they arrive for testing is a laudable process. The 2016 Strategic Recruitment Plan meets the requirements of Paragraph 233. The recruiting plan has been reasonably effective to date.

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

4.7.220 Assessing Compliance with Paragraph 234

Paragraph 234 stipulates:

"APD's recruitment plan shall include specific strategies for attracting a diverse group of applicants who possess strategic thinking and problem-solving skills, emotional maturity, interpersonal skills, and the ability to collaborate with a diverse cross-section of the community."

Methodology

During the fourth site visit, members of the monitoring team met with the APD Training Academy Recruiting and Selection Unit and reviewed existing process for these requirements.

Results

The University of New Mexico worked with the APD to develop a comprehensive recruiting plan. The monitoring team has received a copy of the resulting "2016 Strategic Recruitment Plan." In addition to the initial APD test with related skills questions—the background questionnaires for both a Candidates former employers and Personal References—contain questions related to the required skills/abilities in this paragraph. A random audit of applicant files found each one to contain the relevant questionnaires with answers to the specific questions related to the requirements of this paragraph.

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

4.7.221 Assessing Compliance with Paragraph 235

Paragraph 235 stipulates:

"APD's recruitment plan will also consult with community stakeholders to receive recommended strategies to attract a diverse pool of applicants. APD shall create and maintain sustained relationships with community stakeholders to enhance recruitment efforts."

Methodology

During the fourth site visit, members of the monitoring team met with APD Training Academy personnel responsible for the Strategic Recruitment Plan development and implementation, and identified current goals and objectives.

Results

The "2016 Strategic Recruitment Plan" lists a review of past strategies and enumerates goals/objectives and plans to attract a diverse pool of applicants for 2016. APD has expanded its web based advertising with more emphasis on minority group sites (National Black Officers website) in addition to the Military and the University communities. APD is continuing regular contact with board members of the Southern Christian

Leadership Council. Feedback received from a recruiting summit was a determining factor in the reduction of the college credit requirements. APD has expanded its efforts with the High School "Career Enhancement Center" in an effort to recruit students into the Public Service Aide program, and furthered that efforts process to transition from PSA into Police Officer. The APD has yet to document effective involvement of and consultation with "community stakeholders" on this issue.

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

4.7.222 Assessing Compliance with Paragraph 236

Paragraph 236 stipulates:

"APD shall develop and implement an objective system for hiring and selecting recruits. The system shall establish minimum standards for recruiting and an objective process for selecting recruits that employs reliable and valid selection devices that comport with best practices and anti-discrimination laws."

Methodology

During the fourth site visit, members of the monitoring team met with all Training Academy personnel responsible for the hiring and selection plan development and implementation.

Results

APD has developed a "blind" automated, on-line system that allows an applicant to remain completely anonymous until they arrive for testing. Recruiting and Hiring policies have been revised and approved. The monitoring team has requested, but has not yet received, the policies/procedures supporting the automated on-line process. However—existing non-automated Recruiting and Hiring policies appear to meet the requirements of Paragraph 236.

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

4.7.223 Assessing Compliance with Paragraph 237

Paragraph 237 stipulates:

"APD shall continue to require all candidates for sworn personnel positions, including new recruits and lateral hires, to undergo a psychological, medical, and polygraph examination to determine their fitness for employment. APD shall maintain a drug testing program that provides for reliable and valid pre-service testing for new officers and random testing for existing officers. The program shall continue to be designed to detect the use of banned or illegal substances, including steroids."

Methodology

During the fourth site visit, members of the monitoring team met with Training Academy personnel responsible for the recruiting and testing of Candidates for APD. The monitoring team requested and received the APD policy on drug testing.

Results

APD revised and approved its Policies/Procedures during this monitoring period and the policy meets the requirements of this paragraph of the settlement agreement. APD records showed no lateral hires during this monitoring period. Several lateral applicants were passed over due to invalid certifications, and for either not being currently employed or not having two years of employment. All training records reviewed by the monitoring team had documentation of medical, psychological and polygraph examinations. APD drug testing policy contains all the requirements of this paragraph, including steroids.

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

4.7.224 Assessing Compliance with Paragraph 238

Paragraph 238 stipulates:

"APD shall ensure that thorough, objective, and timely background investigations of candidates for sworn positions are conducted in accordance with best practices and federal anti-discrimination laws. APD's suitability determination shall include assessing a candidate's credit history, criminal history, employment history, use of controlled substances, and ability to work with diverse communities."

Methodology

During the fourth site visit, members of the monitoring team met with Training Academy personnel responsible for the collection of the data

required by this paragraph and reviewed a small random sample of personnel files.

Results

APD has revised and approved its Policies/Procedures and, they meet the requirements of this paragraph. Academy staff has added specific questions regarding a candidate's ability to work with diverse communities to its "Personal Reference Questionnaire" and "Employers Questionnaire." A training memo was issued to all investigators regarding the change. These are the questionnaires currently in use by background investigators. While all personnel files checked during the fourth site visit contained the required data, the monitoring team has seen no internal audits of this requirement--the establishment and completion of which would meet the standard of Operational Compliance.

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

4.7.225 Assessing Compliance with Paragraph 239

Paragraph 239 stipulates:

"APD shall complete thorough, objective, and timely pre-employment investigations of all lateral hires. APD's pre-employment investigations shall include reviewing a lateral hire's history of using lethal and less lethal force, determining whether the lateral hire has been named in a civil or criminal action; assessing the lateral hire's use of force training records and complaint history, and requiring that all lateral hires are provided training and orientation in APD's policies, procedures, and this Agreement."

Methodology

During the fourth site visit, members of the monitoring team met with Training Academy personnel responsible for the Recruitment/Hiring background investigations and reviewed those records regarding lateral hires.

Results

APD had no lateral hires during this monitoring period. They received 47 applications and four qualified, but had not yet been tested. Seven lateral applicants withdrew and others were disqualified. The reasons for disqualification included applicants who failed to have the minimum law enforcement experience or were not currently employed in law

enforcement. All training records reviewed by the monitoring team met the requirements of this paragraph. To date, the monitoring team has seen no internal audits of this requirement--the establishment and completion of which would meet the standard of Operational Compliance.

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

4.7.226 Assessing Compliance with Paragraph 240

Paragraph 240 stipulates:

"APD shall annually report its recruiting activities and outcomes, including the number of applicants, interviewees, and selectees, and the extent to which APD has been able to recruit applicants with needed skills and a discussion of any challenges to recruiting high-quality applicants."

Methodology

During the fourth site visit, members of the monitoring team met with Training Academy personnel responsible for the Annual Recruiting Report.

Results

The APD 2015 Annual Recruiting Report contains all the information required by Paragraph 240 and the monitoring team expects that all future reports will contain this information as well.

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

4.7.227 Assessing Compliance with Paragraph 241

Paragraph 241 stipulates:

"APD shall develop and implement fair and consistent promotion practices that comport with best practices and federal anti-discrimination laws. APD shall utilize multiple methods of evaluation for promotions to the ranks of Sergeant and Lieutenant. APD shall provide clear guidance on promotional criteria and prioritize effective, constitutional, and community-oriented policing as criteria for all promotions. These criteria should account for experience, protection of civil rights, discipline history, and previous performance evaluations."

Methodology

During the fourth site visit the monitoring team met with APD parties responsible for the development of the promotion plan and discussed the process, legal findings, pending lawsuits, and deliverable dates.

Results

APD has developed and approved a new Promotional Plan that will enable compliance with the requirements of this paragraph. The monitor requested data relating to training developed for this policy including the curriculum, syllabi, training rosters, exams and their results including pass/fail rates, officers repeating tests and any analytical data developed to assess the quality of training. Data responsive to this has not yet been developed or provided to the monitoring team.

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

4.7.228 Assessing Compliance with Paragraph 242

Paragraph 242 stipulates:

"APD shall develop objective criteria to ensure that promotions are based on knowledge, skills, and abilities that are required to perform supervisory and management duties in core substantive areas."

Methodology

During the current monitoring period (after the fourth site visit), APD developed and approved a new Promotional Practices Policy (July 19, 2016). The monitoring team had provided APD with templates for acceptable needs assessment and training outline processes, which we would expect to be followed as this process continues.

Results

APD has approved a new Promotions Plan, but has not yet provided the monitoring team with any data or documentation of training, curriculum, syllabi, exams, results or analytic data used to assess the quality of the training. This will be the focus of the next monitoring site visit.

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

4.7.229 Assessing Compliance with Paragraph 243

Paragraph 243 stipulates:

"Within six months of the Effective Date, APD shall develop and implement procedures that govern the removal of officers from consideration from promotion for pending or final disciplinary action related to misconduct that has resulted or may result in a suspension greater than 24 hours."

Methodology

During the fourth site visit, the monitoring team met with APD personnel responsible for the development and implementation of a new promotional plan. The plan was approved on July 19, 2016. Additional data requests were made by the monitoring team relating to training and analysis of training data.

Results

The monitoring team has provided APD with templates for acceptable needs assessment and training outline processes, which we would expect to be followed as this process continues. One promotion and two "appointments" took place during this monitoring period, but prior to implementation of the new policy. The monitoring team found no evidence in training files that would have violated the requirements of this paragraph. This requirement was due by November 14, 2015.

Data requests for training documentation related to this policy have gone unmet. The monitoring team will focus on this data during the next site visit. Course descriptions, syllabi, training, exams and results including exam analytic methods and results and any data used to assess quality of the training will be requested. The monitoring team is more than a bit concerned about APD's failure to respond to direct requests for information, such as requests for training documentation related to specific CASA requirements. Until normal course of business data are provided, APD will remain out of compliance for this task. We remind APD that, in the opinion of the monitoring team, policy that is not followed, and not corrected when it is contravened is not policy. APD disagrees with our findings here. They will be revisited during IMR-5's site visit. Until we have clearly written policy requiring compliance with this paragraph (not *ad hoc* "Special Orders" regarding same) we are hesitant to agree with APD's assertion of compliance.

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

4.7.230 Assessing Compliance with Paragraph 244

Paragraph 244 stipulates:

"APD shall develop and implement fair and consistent practices to accurately evaluate the performance of all APD officers in areas related to constitutional policing, integrity, community policing, and critical police functions on both an ongoing and annual basis. APD shall develop objective criteria to assess whether officers meet performance goals. The evaluation system shall provide for appropriate corrective action, if such action is necessary."

Methodology

During the fourth site visit, members of the monitoring team met with personnel responsible for the Performance Evaluation development and implementation and then attended the Talent Management training with APD supervisors of all levels.

Results

APD has now provided training to all levels of supervisors, and plans for the first "checkpoint" to begin October 1, 2016. Supervisors will meet with employees to discuss the evaluation and develop work plans that address performance expectations, areas in which performance needs improvement, and areas of particular growth and achievement during the rating period. The next site visit by the monitoring team will permit an audit of that initial process.

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

4.7.232 Assessing Compliance with Paragraph 245

Paragraph 245 stipulates:

"As part of this system, APD shall maintain a formalized system documenting annual performance evaluations of each officer by the officer's direct supervisor. APD shall hold supervisors accountable for submitting timely, accurate, and complete performance evaluations of their subordinates."

Methodology

During the fourth site visit, members of the monitoring team met with personnel responsible for the Performance Evaluation development and

implementation, and attended Talent Management training with all levels of APD supervisors.

Results

APD policy and training for the new performance evaluation system has been completed and observed by the monitoring team. Upon promulgation, it will comply with all of the requirements of the CASA. The "First Checkpoint" will be October 1, 2016, during the timeframe for IMR-5. This will allow the monitoring team the ability to audit the initial steps taken by APD during our next site visit in November, 2016.

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

4.7.233 Assessing Compliance with Paragraph 246

Paragraph 246 stipulates:

"As part of the annual performance review process, supervisors shall meet with the employee whose performance is being evaluated to discuss the evaluation and develop work plans that address performance expectations, areas in which performance needs improvement, and areas of particular growth and achievement during the rating period."

Methodology

During the fourth site visit, members of the monitoring team met with the personnel responsible for the Performance Evaluation development and implementation, and attended the training provided to all levels of the APD supervisory staff.

Results

APD policy and training for the new performance evaluation system utilize the exact wording of the requirements of this section of the CASA. The monitoring team is always concerned about verbatim translation of requirement-to-policy, as it tends to show, in our opinion, a lack of thought and "internalization" of the CASA requirements. The "First Checkpoint" which contains all of the above requirements will begin on October 1, 2016. This will enable the monitoring team to audit the progress of APD Performance Evaluations during the November, 2016 site visit.

Primary: **In Compliance**

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

4.7.234 Assessing Compliance with Paragraph 247

Paragraph 247 stipulates:

"To maintain high-level, quality service; to ensure officer safety and accountability; and to promote constitutional, effective policing, APD agrees to provide officers and employees ready access to mental health and support resources. To achieve this outcome, APD agrees to implement the requirements below."

Methodology

During the fourth monitoring visit, the members of the monitoring team met with the lead for this paragraph, the Medical Director of the Behavioral Health Division (B.H.D). S.O.P. 1-14 Behavioral Sciences Support and Service was approved and published on April 28, 2016The new lead for this paragraph recently took over as the Medical Director and during his short tenure, the restructuring of the Behavioral Health Services took place. The former BSD is under the same umbrella as the Crisis Intervention Section. The Division will encompass the former BSD and CIS and will thus be renamed the Behavioral Health Division.

The Medical Director in the BHD plans on introducing major changes; these changes will be submitted through the chain of command for all approvals required under the CASA. Currently SOP 1-14 as approved provides APD and employees ready access to mental health and support services.

Counseling, therapy, psychological services, and support groups for APD officers and their families are provided by BSD. Additionally, the BSD provides referrals to peer-support, chaplains, city EAP, and city health and outside mental health providers. APD BSD is on-call 24 hours a day all year for internal health related crisis and/or critical incidents.

The new director has moved the program forward considerably in a positive direction since his recent installment into this position. The new director has forward thinking ideas and offers great potential to put teams together in order to ensure that the program will be a success. We will continue to monitor progress in this area carefully.

Results

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

Operational: **Not In Compliance**

4.7.235 Assessing Compliance with Paragraph 248

Paragraph 248 stipulates:

"APD agrees to develop and offer a centralized and comprehensive range of mental health services that comports with best practices and current professional standards, including: readily accessible confidential counseling services with both direct and indirect referrals; critical incident debriefings and crisis counseling; peer support; stress management training; and mental health evaluations."

Methodology

During the fourth monitoring site visit the members of the monitoring team met with the lead for this paragraph. New developments include:

- A pre-existing list of counseling services was made available to the monitoring team, indicating the availability for both direct and indirect referrals;
- Peer Support program SOP-110 was approved and published but the development of training and a training schedule are still pending;
- The initial steps to put the program into action is currently in progress;
- The Peer Support Coordinator Job Announcement was posted on July 25th 2016;
- A syllabus and a course curriculum was made available to the monitoring team for review;
- Stress management training was given to the cadet class (116) by the Medical and Clinical Directors;
- Mental health evaluations are being conducted before officers can return to work; and
- Documentation to support these evaluations were given to the monitoring team via a spreadsheet, including but not limited to the hours utilized to accomplish this task.

Training on these new processes is not yet complete.

Results

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

4.7.236 Assessing Compliance with Paragraph 249

Paragraph 249 stipulates:

"APD shall provide training to management and supervisory personnel in officer support protocols to ensure support services are accessible to officers in a manner that minimizes stigma."

Methodology

The monitoring team discussed with the director the progress of the training of management and supervisory personnel as required by this paragraph. To date, the monitoring team has not received the curriculum for the training specifically pertaining to management and supervisory personnel. Although this program has been through a significant change and the SOP 1-14 has been approved, more changes have been recommended. The delay in formalized training has been due to the delay in submitting the SOP, which has only recently been finalized and the director does not wish to teach unapproved or outdated SOPs. Also, during this time, two of the four therapists resigned, thus cutting the contracted hours almost in half. A new therapist has been hired to further accommodate officers. The director is in search of ways to standardize supervisory training. Until the training aspects for this paragraph are shown to be routinized, operational compliance cannot be assessed.

Results

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

4.7.237 Assessing Compliance with Paragraph 250

Paragraph 250 stipulates:

"APD shall ensure that any mental health counseling services provided APD employees remain confidential in accordance with federal law and generally accepted practices in the field of mental health care."

Methodology

During the monitors' fourth visit members of the team met with the newly assigned director of BHD. He has begun to incorporate the requirements of this paragraph at all compliance levels. BHD uses evidence-based treatment such as Support Psychotherapy to deliver professional and confidential treatment consistent with Best Practices. Confidentiality forms are signed by patients and are maintained by the BHD. These

forms are a method for patients to understand the assurances, boundaries, and limitations of confidentiality that is in accordance with Best Practices in the field of mental health care.

All operational BHD staff are qualified, independently licensed mental health professionals. **Training and day-to-day adherence/performance will be assessed during IMR-5, as artifacts of those processes as designed by the new Director, were not available to the monitor during IMR-4.** The reader is urged to note that findings of compliance are only declared after the monitoring team has had sufficient information, time and records supporting implementation to do so. Until that point, all APD systems start "not in compliance."

Given the brief period of time the new Director has been "on the job" it is not reasonable to expect secondary or operational compliance. (The reader should note that the monitoring team has made no secret of the fact that the previous incumbent in this position was reluctant to meet with monitoring personnel, or share operational functionality with the monitoring team).

The new Director has taken the opposite approach: reaching out to the monitoring team in an open and collaborative way. Based on our conversations with the new director of BHD, policy, procedures, and practices will be revised, with the intent of having them conform to "best practices" in the field in the future. Discussions the monitoring team have had with the new Director indicate that he is more than fully conversant with current state of the art practices in the field, and intends to bring that understanding to APD BHD's day-to-day practice.

Results

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

4.7.238 Assessing Compliance with Paragraph 251

Paragraph 251 stipulates:

"APD shall involve mental health professionals in developing and providing academy and in-service training on mental health stressors related to law enforcement and the mental health services available to officers and their families."

Methodology

The BSD has supplied the monitoring team documentation to support the requirements of this paragraph for the monitoring period (April 1, 2016 through July 31, 2016). The documentation included: BSD Syllabus for the 115th Cadet Class consisting of fifty-seven hours of instruction, CIT Training curriculum, dates for the CIT training, Officer Stress Management course "Super Chicken", Stress Management and Emotional Health for Law Enforcement.

Results

The Medical Director and his staff of clinical directors delivered training offered by the BHD. BHD continues to refine its programs and ensure that all services are readily available to officers and their families. Classes focus on mental health stressors related to law enforcement. Family night was held at the academy to help officers prepare for the difficulties they will encounter in the life of a police officer and how the demands on an officer can affect their loved ones. The new director has moved this program in a positive direction and is moving to implement new ideas and add new courses in the future. The monitoring team will monitor the progress of this program in future site visits in the coming years. Once documentation exists that BHD and its components, and officers in the field, are adhering to newly-revised protocols and policies, the monitors will re-evaluate operational compliance levels.

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

4.7.239 Assessing Compliance with Paragraph 252

Paragraph 252 stipulates:

"APD shall develop and implement policies that require and specify a mental health evaluation before allowing an officer back on full duty following a traumatic incident (e.g., officer-involved shooting, officer-involved accident involving fatality, or all other uses of force resulting in death) or as directed by the Chief."

Methodology

During the fourth monitoring site visit, the monitoring team met with the lead for this paragraph. BHD has incorporated the requirements of this paragraph at all compliance levels. BHD providers are on call 24 hours a day, 7 days a week, 365 days a year and they respond to critical incidents including, but not limited to, officer-involved shootings (OIS).

Support is rendered at the scene if possible. The monitoring team requested and received documentation sustaining that BHD providers are accessible to line personnel. Given the timeline for appointment of the new Director, and the short time the new Director has been "on the job," we will reserve findings on this paragraph until the new Director has had time to assess his priorities and begin changing BHD process and practice.

Results

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

4.7.240 Assessing Compliance with Paragraph 253

Paragraph 253 stipulates:

"APD agrees to compile and distribute a list of internal and external available mental health services to all officers and employees. APD should periodically consult with community and other outside service providers to maintain a current and accurate list of available providers."

Methodology

During the monitoring team's fourth site visit, the team reviewed material necessary for APD compliance with this paragraph. The monitoring team visited six area commands as well as the Training Academy and Headquarters (APD Administration Building), to ensure documentation (flyers) were properly posted for *all* employees to have easy access to read and obtain the information. Referrals are made available to all cadets and supervisor as well as all APD personnel upon request.

Results

As a result of these visits, documentation required by this paragraph was found to be properly displayed. All materials were acceptable in terms of format and content. BHD consults with CIU clinicians who are formal, discharge planners from UNN to continually keep these lists current. The monitoring team will continue to measure the implementation of this paragraph to ensure that all documentation required under this policy is the most current and accurate information available.

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

4.7.240 Assessing Compliance with Paragraph 255[114]

Paragraph 255 stipulates:

"APD agrees to ensure its mission statement reflects its commitment to community oriented policing and agrees to integrate community and problem solving policing principles into its management, policies, procedures, recruitment, training, personnel evaluations, resource deployment, tactics, and accountability systems."

Methodology

Members of the monitoring team reviewed APD's revised and posted mission statement and accompanying narrative that elaborates on principles articulated in the mission statement. Monitoring team member met with APD Communications and Outreach staff on March13,2016 and April 15,2016, and June 13, 14,2016 for further updates. Monitoring team continues to monitor APD website for any posted changes.

Results

The revised APD mission statement was posted prior to the end of the second reporting period. The revised mission of the APD references "working in partnership with the community … to maintain order, reduce crime, and the fear of crime through education, prevention, and enforcement." In an accompanying narrative, APD elaborates on this partnership and states that it "seeks to expose the root causes of crime and disorder and to eradicate such conditions through aggressive enforcement of laws, ordinances and City policies through positive community elaboration." The accompanying "Vision Statement" adds the following: "The Albuquerque Police Department envisions a safe and secure community where the rights, history, and culture of each citizen are valued and respected. We will achieve this vision by proactively collaborating with the community to identify and solve public safety problems and improve the quality of life in Albuquerque." These revisions address the requirement of having a mission statement reflecting a commitment to community oriented policing. Integration of community and problem solving principles into APD's management systems, policies, procedures, recruitment, training, personnel evaluations, resource deployment systems, tactics, and accountability systems is currently ongoing and more directly addressed in other paragraphs of the CASA. There were no additional actions taken during the fourth reporting period, and the monitoring team awaits the appearance of artifacts of the policy and training elements within in-field services.

[114] Paragraph 254 is not evaluated as it is subsumed in 255 and following.

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

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

On-site interviews were conducted with APD communications and community outreach staff on August 20, 2015, and November 4, 5, 2015. Members of the monitoring team were present to observe the staffing analysis briefing of APD executive staff by the staffing study's author, Dr. Alexander Weiss. Further, monitoring team members made follow up telephone conference calls regarding staffing on December 17, 2015 and January 8, 2016. Monitoring team members met with APD staff on March 14, and April 15 and June 13,14, 2016 for updates. Monitoring Team members reviewed "Police and Community Together" (PACT) plan and documentation concerning pilot projects.

Results

A staffing analysis was completed by an outside consultant in the first reporting period and released on December 14, 2015. The staffing analysis calls for community policing teams in each area command to focus on supporting community- and problem-oriented policing. APD developed a plan entitled PACT which decentralizes some police functions and would add officers to area commands based on actual workloads. The PACT plan was completed during the third report and internally briefed. Surveys concerning scheduling were initiated as well. In this reporting period APD planned a pilot project in one area command area. The Pact plan and staffing study will also be presented to the CPCs for review and community input. At this point, the monitoring team considers PACT an in-progress element, still in a pilot-program status pending further evaluation and implementation. Once implemented, compliance status will be revised accordingly.

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

Monitoring team members conducted interviews with APD communications and outreach staff on, August 17,2015 and November 5,2015. They also reviewed APD issued Special Order 15-13, and attended at problem oriented policing session on June 22, 2015. Monitoring staff reviewed agendas for Problem-Oriented-Policing (POP) sessions during second reporting period. Monitoring staff also previously reviewed APD documentation on distribution of "new bid packets" to APD officers, and conducted telephone interviews with Communications and outreach staff on January 8, 2015. A monitoring team member met with Communications and Outreach staff on June 13 and 14, 2016 for further updates including review of POP projects.

Results

APD issued Field Services Bureau Order 15-13 on May 6, 2015 to comply with paragraph 257 of the settlement agreement. The order requires the distribution and completion of a "New Bid" packet to assist sworn personnel in "identifying the geographical areas they serve, identifying community leaders, engage in problem solving practices, and work proactively with other city departments to address these quality of life issues." Sworn personnel are provided a signature page that they then sign, acknowledging receipt of the packet. The signature page will be retained for auditing purposes for a minimum of three years. APD has provided documentation including signed signature pages of officers who have been provided with the packets. Distribution of packets to APD personnel was completed during the third reporting period.

As the monitoring team have noted directly to APD command personnel, we are not fully comfortable with "acknowledge and understand" packets as an evaluative technique. More often than not there is no testing involved with such practices to ensure that "receipt" turns into "read and understand" at the operational level. Such a process leads to the agency bearing the brunt of any misunderstandings or inabilities to translate "policy" into action, not to mention any liability that may accrue for failure to implement policy. It is a watered-down version of "received and understood," a widely disavowed "training" technique in the field of law enforcement.

There were Problem-Oriented Policing initiatives continued during this reporting period where sworn personnel working with other city agencies and community members collaboratively addressed quality of life issues in Albuquerque's neighborhoods. APD currently is expanding officer participation in such projects.

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

4.7.243 Compliance with Paragraph 258: Officer Outreach Training

Paragraph 258 stipulates:

"Within 12 months of the Effective Date, APD agrees to provide 16 hours of initial structured training on community and problem oriented policing methods and skills for all officers, including supervisors, commanders, and executives this training shall include:

a) Methods and strategies to improve public safety and crime prevention through community engagement;
b) Leadership, ethics, and interpersonal skills;
c) Community engagement, including how to establish formal partner ships, and actively engage community organizations, including youth, homeless, and mental health communities;
d) Problem-oriented policing tactics, including a review of the principles behind the problem solving framework developed under the "SARA Model", which promotes a collaborative, systematic process to address issues of the community. Safety, and the quality of life;
e) Conflict resolution and verbal de-escalation of conflict and;
f) Cultural awareness and sensitivity training.

These topics should be included in APD annual in-service training."

Methodology

Monitoring Team member conducted a detailed review of initial and revised COP curriculum using contemporary community policing concepts and trainings as benchmarks for assessing the APD COP curriculum compliance. Part of that review included a review of current best practices in this training area and consultation with other training experts. Monitoring team members participated in a series of conference calls with settlement party representatives, senior APD staff including training staff leadership to discuss compliance requirements. Monitoring was briefed in June by training staff on current iteration of training.

Results

APD developed curriculum to address the community policing training requirement in the CASA. A proposed training curriculum was delivered to the monitoring team for an initial review during the second reporting period. An initial review of proposed curriculum materials revealed that elements of the content requirements required in the CASA were not adequately addressed. Items apparently omitted included: cultural awareness and sensitivity, and establishing/maintaining effective community partnerships. Additionally, the monitoring team suggested that APD should use a broader selection of source documentation to develop training curriculum content (more current source material and sources that address building community trust and policing in communities of color or with special populations). APD submitted a revised version during the third reporting period. The revised revision did address many of the concerns raised by the monitoring team, but these revisions fell short in some important areas. A monitoring team member reviewed the revised version and generated comments based on knowledge and understanding of contemporary concepts and trainings in community policing.

As further guidance to help ensure that the proposed training attains minimal compliance thresholds the monitoring team suggested that APD incorporate the following specific changes to the APD COP training:

1) A major theme throughout the settlement agreement requirements is engaging in constitutional policing practices that that lead to greater trust between APD and the community members it serves. The USDOJ COPS Office, recognized a need to infuse police training with information about how to build that trust developed specific training materials for police departments across the nation to help meet this important policing objective. These materials which include actual training modules are available and can be found in the 2014 Department of Justice COPS Office publication entitled “Building Relationships of Trust.” These materials provide concepts on building relationships of trust and trust’s importance to gaining police legitimacy and crime reduction in a community. The materials also identify best practices for building relationships of trust for line officers, and outlining potential challenges in building trust and how to overcome them.

2) APD should update its “Evolution of Policing” Module with the 2014 updated definitions and concepts of Community policing. The current documentation is outdated (2002). The updated definitions can be located in a 2014 published revision by the Department of Justice COPS office.

3) A source for some of this information can be found in a 2016 Department of Justice COPS office publication entitled, “How to Serve Diverse Communities” (Number 2).

4) In response to CASA paragraphs 257, 259, and 263, APD initiated policy and procedural changes regarding police officer outreach, community stakeholder contacts, attending community meetings, and tracking participation in community events. APD COP training should reflect and train to these changes.

In this reporting period APD began to respond to this guidance and made substantial progress in addressing training curriculum shortcomings. The updating of some relevant source materials and a more focused approach in response to cultural awareness and cultural sensitivity requirements remain as outstanding or pending tasks at the end of this reporting period.

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

4.7.244 Assessing Compliance with Paragraph 259: Measuring Officer Outreach

Paragraph 259 stipulates:

"Within six months of the Effective Date, APD agrees to develop and implement mechanisms to measure officer outreach to a broad cross-section of community members, with an emphasis on mental health, to establish extensive problem solving partnerships, and develop and implement cooperative strategies that build mutual respect and trusting relationships with this broader cross section of stakeholders."

Methodology

On-site interviews were conducted with communications and outreach staff during the reporting period. Reviews of meeting agendas and attendees' lists for meetings with mental health and other advocacy groups were also assessed. The monitoring team also reviewed other collaborative meeting agendas and minutes, and reviewed APD memoranda relating to their progress in implementing paragraph 259. A monitoring member met with APD public information and communications staff on June 13,14, 2016 for further updates and to review additional documentation.

Results

The ABQ Collaborative on Police-Community Relations, launched by the City's Office of Diversity and Human Rights (ODHR), identified 25 stakeholder groups and conducted facilitated discussions in order to provide opportunities for input on improving police community partnerships. As a result of these meetings, APD is developing a proposed plan for ongoing outreach and partnerships with

community stakeholders. The plan has been updated and finalized, and some of the recommended actions are being implemented. A monitoring team of community stakeholders will be set up to track progress on implementation. Additionally, plans call for all actionable recommendations from the ODHR process to be forwarded to Community Policing Councils (CPCs) for further consideration. The reader is advised that the "shelf life" of the CPCs is rapidly approaching. APD should consider what to do about extending these valuable entities past the original two-year timeline, as, effectively, they have yet to hit their strides as a community input function for APD. APD is also working to establish a community calendar that will capture community outreach events and data pertaining to attendance, topics discussed, recommendation made and stakeholders identified. Current plans call for tracking data from the community calendars to be cross-referenced with the area command tracking sheets and the Monthly Report Tracking Sheets used to track individual officer requirements for attendance and participation in community meetings. APD plans to also have officers add notes in the Monthly Report Tracking Sheets to reflect concerns raised and issues that were addressed during these meetings. These mechanisms to measure officer outreach to a broad section of community members were modified during the third and fourth reporting period based in part on feedback from the second monitoring report.

While much progress has been made, system implementation was still underway by the end of the fourth reporting period. Frankly, this element of CASA compliance lags significantly behind and requires more direct attention from APD as a source of information, outreach, and integration of policing practices and community expectations.

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

4.7.245 Compliance with Paragraph 260: PIO Programs in Area Commands

Paragraph 260 stipulates:

"APD shall develop a Community Outreach and Public Information program in each area command."

Methodology

Members of the monitoring team conducted on-site interviews with community outreach and public information staff. Team members also conducted telephone interviews with public information staff. Thee interviews were designed to assess the status of activities related to this paragraph. Team members met with Communications and Outreach staff on June 14-15 2016. Team members continue to monitor APD website and activities.

Results

During the fourth reporting period, APD has continued its work on enhancing websites for each of the six command areas. During this reporting period the command websites have launched a chat feature where the Area Commander and/or Crime Prevention Specialist can directly answer questions and address concerns interactively. These sites previously and currently capture crime information, crime prevention materials, photographs of commanders and officers that work in that area command, schedule of upcoming events, other news items, how to report crimes, and how to file complaints or recommendations for officer commendations. APD has also established social media outreach that includes Facebook, Twitter, and netdoor.com. APD reported that the Twitter account now reports up to 30,000 followers during the third reporting period with about 80,000 impressions each month. The APD Facebook page reached nearly 23,000 followers during the third reporting period. Through Facebook, at the recommendation of the monitoring Team, APD has opened the site's messaging feature and is directly communicating with individuals and addresses known community concerns. APD has established the "coffee with a cop" program in each command area as well. ADP is currently developing a process that will capture the number and nature of police issues identified by the community and the resolutions of those issues. The monitoring team considers inclusion of tangible community feedback an important aspect of community outreach, and continues to encourages the PD use of CPCs to help accomplish this objective.

We have yet to see evidence of tangible programming based on these processes.

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

4.7.246 Compliance with Paragraph 261: Community Outreach in Area Commands

Paragraph 261 stipulates:

"The Community Outreach and Public Information program shall require at least one semi-annual meeting in each Area Command that is open to the public. During the meetings, APD officers from the Area command and the APD compliance coordinator or his or her designee shall inform the public about the requirements of this Agreement, update the public on APD's progress meeting these requirements, and address areas of community concern. At least one week before such meetings, APD shall widely publicize the meetings."

Methodology

Members of the monitoring team scheduled and conducted outreach meetings with CPC participants to assess levels of compliance with the paragraph. During those meeting the monitoring team focused on updating CPC members' perceptions of progress for APD community outreach efforts.

Results

Work remains to be done regarding outreach on the requirements of the decree and updates on APD's progress. All CPC meetings are "noticed" well in advance of the scheduled meeting dates, and are supported with "shall meet on the second Wednesday of each month" language. Not all CPC are in the same stage of development. Some have been formed much longer than others, and are further along the growth cycle.

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

4.7.247 Compliance with Paragraph 262: Community Outreach Meetings

Paragraph 262 stipulates:

"The Community Outreach and Public Information meeting shall, with appropriate safeguards to protect sensitive information, include summaries, of all audits and reports pursuant to this Agreement and any policy changes and other significant action taken as a result of this Agreement. The meetings shall include public information on an individual's right and responsibilities during a police encounter."

Methodology

Members of the monitoring team have conducted on-going on-site interviews with APD communications and community outreach staff since the inception of this project. Follow-up telephone interviews with communications and outreach staff were also conducted. Team members met with Communications and Outreach staff on June 14-15 2016. Monitoring team members continue to access the APD website for postings of relevant information.

Results

APD has scheduled a series of meetings utilizing the CPCs as hosts in each of the six area commands during the month of August (outside the dates for this report) to coincide with the regularly scheduled CPC

meetings. APD is using a range of media tools and outlets to publicize these meetings. APD indicates that meetings will include APD senior officials and the internal compliance monitors. These meetings are designed to review CASA requirements, note progress made in attaining compliance, and address any related community concerns. The meetings were planned, but did not transpire during this reporting period. Active integration of CPCs into APD planning modalities has yet to occur in any substantive way. We note the specificity of this paragraph in requiring transmissions of summaries of "audits and reports" to the CPCs. We would, therefore, expect APD or the City to forward monitor's reports, and other salient results of any "audits" or other reports addressing APD CASA-related performance to the various CPCs. APD lags sufficiently behind in these critical communications requirements at this point.

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

4.7.248 Compliance with Paragraph 263: APD Attendance at Community Meetings

Paragraph 263 stipulates:

"For at least the first two years of this Agreement, every APD officer and supervisor assigned to an Area command shall attend at least two community meetings or other meetings with residential, business, religious, civic or other community-based groups per year in the geographic area to which the officer is assigned."

Methodology

Members of the monitoring team conducted on-site interviews with APD communications and community outreach staff. The team also reviewed SOP 3-02-01, related to this requirement, and reviewed APD postings on implementation of paragraph 263 of the CASA. A monitoring team member met with Communications and Outreach staff on June 14-15, 2016. Team members also reviewed postings of excel spreadsheets documenting when officers are attending these meeting, where the meetings occur, and with what groups, relating to implementation of this paragraph.

Results

APD previously drafted SOP 3-02-1 that establishes both the requirement and the tracking mechanisms needed to implement this requirement. The SOP requires all area commanders to ensure their sworn, uniformed personnel attend community meetings in uniform and document time and attendance of meeting, duration of meeting, and issues concerns and or

any positive input provided by community members. This information is to be documented on the Officers' Monthly Report and tracked through excel spreadsheets kept by each area commander. In addition, this information will be crosschecked with data collected from reports resulting from use of community calendars. The compilation of this data will also appear and be kept in other appropriate data bases and compiled as part of APDs annual report that will provide data on the number of contacts, content and quality of those contacts, stakeholders identified and collaborative opportunities achieved. APD will also include attendance details in future monthly reports. With the exception of publication of the SOP, all of these activities are "planned" during this reporting period. No data from the field were available to the monitoring team for this report period. We find it seriously concerning that, this late into the CASA, these "public-focused" elements appear to be foundering.

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

4.7.249 Compliance with Paragraph 264: Crime Statistics Dissemination

Paragraph 264 stipulates:

"APD shall continue to maintain and publicly disseminate accurate and updated crime statistics on a monthly basis."

Methodology

Members of the monitoring team conducted on-site interviews with APD communications and community outreach staff and met with communications and outreach staff on June 14-15, 2016. The monitoring team also continues on-going review of the APD website**,** and review of supervisory review documentation, as well as routine personal contact with members of APD responsible for this task.

Results

Monitoring team reviews indicate that APD continues to provide crime information on the City/APD website, and reportedly at monthly community meetings, through press releases, and in each area command. The information also maps locations of crimes in near time, and is, in the monitoring team's opinion, an excellent display of up-to-date information on the web. The monitoring team will continue to assess secondary and operational issues. Some form of impact measure is expected from APD.

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

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

4.7.250 Compliance with Paragraph 265: Posting Monitor's Reports

Paragraph 265 stipulates:

"APD audits and reports related to the implementation of this Agreement shall be posted on the City or APD website with reasonable exceptions for materials that are legally exempt or protected from disclosure."

Methodology

Members of the monitoring team conducted on-site interviews with APD communications and community outreach staff and follow up telephone interviews with APD staff were conducted. A member of the monitoring team met with communications and outreach staff on March 14, April 15, June 14,15 2016. The monitoring team continues on-going review of APD website, and a **r**eview of guidelines for reasonable exceptions to posting audits and reports. Monitor's reports are routinely available on the City's web-site.

Results

APD posted the CASA on their web-site and the monitoring reports from the previous reporting periods. We are pleased to note that the monitor's reports are now listed as such on the APD's website, as opposed to classifying them as "DOJ" reports. APD has developed guidelines for determining any reasonable exceptions to posting audits and reports relating to the CASA. The monitoring team will continue to assess secondary and operational issues. The recently completed "Special Report" on use of force supervision practices, published by the monitor in mid-September, 2016, also is posted on the department's web-site.

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

4.7.251 Compliance with Paragraph 266: CPCs in Each Area Command

Paragraph 266 stipulates:

"The City shall establish Community Policing Councils in each of the six Area Commands with volunteers from the community to facilitate regular communication and cooperation between APD and community leaders at the local level. The Community Policing Councils shall meet, at a minimum, every six months."

Methodology

Members of the monitoring team conducted on-site interviews with APD communications and community outreach staff and performed follow up telephone interviews with APD staff. The monitoring team also reviewed communications and other artifacts related to this paragraph, and attended CPC meetings and interviewed participants in CPC meetings held by APD. Monitoring member met with the APD communications and outreach team on June 14-15, 2016. A monitoring team member also met with CPC chairs and some voting members. Monitoring team members participated in several other conference calls with select CPC members and APD staff as well.

Results

Community policing Councils have been established in each of the six Area commands since November, 2014. During this and prior reporting periods each of the six Councils met once a month. APD reports that the establishment of the Councils was widely communicated and that volunteer members were solicited from throughout the community. Some community members dispute this and complained about the lack of broad notification of meeting times and locations in prior reporting periods. There were similar complaints voiced by community members during the fourth reporting period. Attendance and participation in CPCs have not met the goals of APD, by their own admission. During the third reporting period, attendance was uneven across the six command areas. That continues to be the case for the fourth reporting period. Actual documentation of attendance and background information on participants was not consistently available, although efforts were initiated to enhance collection of that information. CPCs, during the fourth reporting period, continued to improve in their regular communication and cooperation between APD and community leaders at the local level. APD staff asked for technical assistance during the third reporting period to assist CPCs in outreach efforts, and to improve overall operations. During this reporting period, APD sponsored two week-ends of training for CPC members to specifically provide guidance on conducting CPC activities, and implementing more effective outreach and communications in alignment with the CASA requirements. The trainings and follow-up work began to immediately increase communication and coordination of activities and actions among the CPCs. Working groups began addressing topics ranging from branding and communication to operating procedures for meetings, and membership outreach and criteria. Several CPC's also initiated meetings during this period with key stakeholder groups seeking their input and support. And several CPCs began renewed efforts to recruit new and more diverse voting members. Attendance improved slightly based on staff observations during this reporting period.

There continues to be increased activity, and the monitoring team will continue to closely monitor further maturation and development.

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

4.7.252 Compliance with Paragraph 267: Selection of Members of the CPCs

Paragraph 267 stipulates:

"In conjunction with community representatives, the City shall develop a mechanism to select the members of the Community Policing Councils, which shall include a representative cross section of community members and APD officers, including for example representatives of social services providers and diverse neighborhoods, leaders in faith, business, or academic communities, and youth. Members of the Community Policing Councils shall possess qualifications necessary to perform their duties, including successful completion of the Citizen Police Academy."

Methodology

Members of the monitoring team conducted on-site interviews with APD communications and community outreach staff and also have participated various CPC meetings. Follow up telephone interviews were conducted, and the monitoring team conducted a review of meeting agendas, and minutes from Council meetings where available the third reporting period. A monitoring team member met with APD outreach and communications staff and with CPC chairs and voting members on April 16, 2016, and held meetings with APD outreach staff on June 14,15 2016. Monitoring team members also reviewed APD developed guidance on review of CPC recommendations, available minutes, agendas and attendance sheets for CPC meetings.

Results

Applications for Council membership were posted on line on the City's and APD's website. Apparently, only those persons with criminal histories were eliminated from consideration for membership. Initially ABQ city employees and representatives from select stakeholder groups interviewed prospective members. Currently, there remains a lack of clarity about the membership appointment process, although APD has issued guidance allowing each CPC more flexibility in establishing membership criteria. APD has repeatedly emphasized identifying and selecting members with people skills. Each member is required to do a ride along, and as stipulated in the CASA, and must complete the Police Citizen Academy (PCA). The 12-week requirement for PCA is still

posing a hardship for many members to complete and APD is considering a modified schedule to accommodate members.

APD acknowledges a need to gather more background information on members and prospective members to help ensure and promote a cross-sectional representation of voting members and participants. The CASA also requires that the selection mechanism be developed in conjunction with community members, and APD has worked with CPCs to modify the CPC voting membership requirements, including the number of voting members. CPCs are attempting to expanding membership, to conducting additional outreach to ensure a greater cross section of community representation. In fact, APD requested technical assistance that was provided during the third reporting period helped to devise strategies to expand CPC voting membership and participation and make it more representative of the communities they represent. For this reporting period, cross sectional representation remained a challenge. There are major efforts underway by the CPCs with APD support to expand and diversify voting membership as required by the CASA.

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

4.7.253 Compliance with Paragraph 268: Resourcing the CPCs

Paragraph 268 stipulates:

"The City shall allocate sufficient resources to ensure that the Community Policing Councils possess the means, access, training, and mandate necessary to fulfill their mission and the requirements of this Agreement. APD shall work closely with the Community Policing Councils to develop a comprehensive community policing approach that collaboratively identifies and implements strategies to address crime and safety issues. In order to foster this collaboration, APD shall appropriate information and documents with the Community Policing Councils, provided adequate safeguards are taken not to disclose information that is legally exempt or protected from disclosure."

Methodology

Members of the monitoring team conducted on-site interviews with APD communications and community outreach staff and also participated in various CPC meetings. Follow up telephone interviews were conducted and team members also reviewed CPC minutes, where available, for reporting period. They also reviewed APD posted information entitled" Community Policing Council Recommendation Process." Team members met with APD communications and outreach staff and met with CPC chairs and voting members and outreach staff on June 14-15 2016.

Results

The City has allocated meeting space, and, during this report period, contracted with a facilitator support for the CPCs. The contracted facilitator ensures that each meeting is conducted in an orderly fashion and that meeting objectives are attained. In this reporting period, APD issued a Strategic Plan for CPCs, in which they reported that to further grow and sustain CPCs, they plan to:

- Hire an Assistant Community Outreach Director;
- Advertise CPC meetings via city water bills;
- Advertise CPC meetings on digital bill boards;
- Create email newsletter, monthly press releases, brochures and flyers; and
- Conduct outreach on behalf of CPCs to University Student organizations

The City continues to provide some administrative support but "not enough" according to some CPCs. The City has also created websites for each CPC. The CPCs have both increased and broadened the nature and scope of recommendations this reporting period and will continue to be encourage by the monitoring team to move in this direction as required by CASA. They will also need to consider recommendations regarding policing approaches, strategies, and even policies. APD supported the delivery of technical assistance for CPCs that provided some clarity to the CPC recommendation development and review process. Issues remain with consistent and ongoing support including provision of supplies, and web-based development. CPCs are exploring other support options such as the Office of Neighborhood Services to assist in outreach efforts. APD has developed a more formalized process that primarily focuses on the internal review of the recommendations developed by CPCs. The process requires a written response to the chairperson of the CPC submitting the recommendation from APD. Both the recommendation and the APD response are then posted on the APD CPC website, which is a much improved version in recent months. CPCs, during this report period, began to review and modify their own internal processes in considering and arriving at recommendations and or resolutions to articulated issues within a given CPC's area. While APD enhanced support for CPCs during this reporting period, additional support may still be required for CPCs to help them meet CASA requirements.

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

4.7.254 Compliance with Paragraph 269: APD-CPC Relationships

Paragraph 269 stipulates:

"APD shall seek the Community Policing Councils assistance, counsel, recommendations, or participation in areas including:

a) Reviewing and assessing the propriety and effectiveness of law enforcement priorities and related community policing strategies, materials, and training;
b) Reviewing and assessing concerns or recommendations about specific APD policing tactics and initiatives;
c) Providing information to the community and conveying feedback from the community;
d) Advising the chief on recruiting a diversified work force
e) Advising the Chief on ways to collect and publicly disseminate data and information including information about APDs compliance with this Agreement, in a transparent and public –friendly format to the greatest extent allowable by law."

Methodology

Members of the monitoring team conducted on-site interviews with APD communications and community outreach staff and also reviewed CPC minutes during the second reporting period, where they were available. The monitoring team reviewed proposed recommendations from each CPC during the second reporting period. Telephone interviews with APD Communications staff and outreach staff were conducted, and monitoring team members have met with APD communications and outreach staff and CPC voting members. They also met with APD outreach staff on June 14-15, 2016, and reviewed APD and CPC websites.

Results

During the second reporting period CPCs began to generate some recommendations for consideration by APD. These recommendations included the following:

1) Development of a system to coordinate mental health resources to include hospitals, charities, and other mental health resources, and to include knowledgeable and experienced APD representatives from the very beginning and through-out the process the planning process.
2) Appropriate continuing advertising of alarm system registration requirements should be directed to allow more new owners installing their own systems to understand and comply with the ordinance.
3) That APD appoint an agency or individual to monitor active news stories that involve officers in a positive manner. Once identified the officer would

be contacted for their approval and input to prepare the timely news release.

4) That the Albuquerque City Council, the Mayor's office and APD petition the state legislature to exempt the City from the upcoming changes to PERA regulations regarding undermanned public safety departments

For the third reporting period, there were additional recommendations made by CPCs, and many under consideration. While the monitoring team is aware of most of these recommendations through direct feedback from CPCs, there was no posting of all of them in this reporting period. A current review the APD website for this reporting period reveals the absence of a list of all of the proposed recommendations, current status, and a record of any actions taken. Such information is important for public awareness and transparency. During this reporting period, CPC themselves have included recommendations in their posted minutes and some of these recommendations have begun to address some of the areas highlighted in the CASA agreement. Recommendations from the Southeast area command included:

- Clearer markings of addresses on all buildings, homes, and businesses
- Promote use of non-emergency police lines so officers will have more time for community policing
- Purchase smart gun technology that automatically activates an officer's body worn camera once it is un-holstered
- Re-configure substations to provide assistance in improving neighborhood life

The monitoring team continues to encourage the CPCs to address issues concerning policing practices, strategies, training and community outreach as required in the CASA. The monitoring team is also encouraged by progress made by CPCs in this reporting period including a greater interest in broadening the nature and scope of their recommendations. While recommendations are forthcoming from the CPCs (we consider this a good sign) the recommendations are not tailored directly to the requirements of this paragraph. APD may need to provide some form of technical assistance to the CPCs in addressing all elements of this paragraph.

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

4.7.255 Compliance with Paragraph 270: CPC Annual Reports

Paragraph 270 stipulates:

"The Community Policing Councils shall memorialize their recommendations in annual public report that shall be posted on

the City website. The report shall include appropriate safeguards not to disclose information that is legally exempt or protected from disclosure."

Methodology

The monitoring team conducted interviews with APD communications and outreach staff on August 20, 2015. Monitoring team member met with communications and outreach staff on June 15-16. The monitoring team also routinely monitors the APD website for annual reports and other information related to community outreach.

Results

No progress was reported or apparent during our site visit for this report, in completing annual reports for all six CPCs and having them posted on the APD/City website. Annual reports from all CPCs were made available to the monitoring team on August 2, 2016, outside the dates for this reporting period. Several CPCs have started and/or completed annual reports but APD has not posted them on the APD website. Personnel interviewed were cognizant of the established timeline, and appear committed to meeting the deadlines as established. Auditable work has yet to be produced, as of the end of this reporting period.

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

4.7.256 Compliance with Paragraph 271: CPOA Implementation

Paragraph 271 stipulates:

"The City shall implement a civilian police oversight agency ("the agency") that provides meaningful, independent review of all citizen complaints, serious uses of force, and officer-involved shootings by APD. The agency shall also review and recommend changes to APD policy and monitor long-term trends in APD's use of force."

Methodology

The monitor reviewed CPOA's posted mission statement and website, had several meetings with CPOA personnel during the fourth site visit, visited the CPOA office, and reviewed CPOA literature, training records and documents related to the civilian complaint and CPOA process. The monitor also had a meeting with the POB Chair and attended a POB meeting. In addition, we reviewed a random selection of CPOA investigations that were completed during this monitoring period.

Results

Albuquerque has implemented the CPOA by Ordinance 9-4-1-14. The monitor has received and approved the CPOA Policies and Procedures. The City is in primary compliance with this paragraph.

The monitor notes that the CPOA mission statement highlighted on its website provides:

The Mission of the Civilian Police Oversight Agency and purpose of new revisions to Police Oversight pursuant to City Law Sections 9-4-1-1 through 9-4-1-14 are to:

(A) Foster and perpetuate policing policies and practices that effectively maintain social order and which at the same time foster mutual trust and cooperation between police and civilians;

(B) Ensure that the civilian police oversight body functions as independently as possible from the executive and legislative branches of government of the City of Albuquerque;

(C) Provide civilians and police officers a fair and impartial system for the investigations and determinations on civilian police complaints;

(D) Gather and analyze data on trends and potential issues; and

(E) Provide policy guidance to the City Council, the Mayor and the Chief of Police

A review by the monitor of randomly selected CPOA investigations completed during this monitoring period revealed independent review of citizen complaints. As noted previously in the Third Monitor's Report, based on the mission statement cited above, meetings with CPOA personnel and visits to the CPOA office, as well as attendance at the POB monthly meeting, the monitor finds CPOA to be committed to meaningful, independent review of citizen complaints.

In previous reports, the monitor has pointed out in paragraph 162 the problem with backlogged cases and untimely CPOA investigations. The monitor has observed improvement in this area and a near-elimination of the backlog, as well as improved procedures enabling the POB to approve the Executive Director's recommendations to the Chief in time for the imposition of discipline.

Another positive step for the CPOA is the hiring of an analyst to monitor long-term trends in APD's use of force and to review and recommends changes to APD policy. The monitor will focus in future site visits on CPOA's efforts to assess long term trends and need for policy changes. During the next site visit,

the monitor will review information, documents, etc. that provide a demonstration of the CPOA's ability to train assigned staff effectively, and to review and to recommend changes to APD policy and monitor long-term trends in APD's use of force. Based on our review of CPOA's mission statement and samples of CPOA's investigative work, they are in primary compliance with this task. The current workflow, oversight practices, and work product indicate that the CPOA is a much-improved agency over that which was found early-on in this project. Cases are received, assessed, and processed in a professional and appropriate manner.

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

4.7.257 Assessing Compliance with Paragraph 272: Independence and Accountability of CPOA

Paragraph 272 stipulates:

"The City shall ensure that the agency remains accountable to, but independent from, the Mayor, the City Attorney's Office, the City Council, and APD. None of these entities shall have the authority to alter the agency's findings, operations, or processes, except by amendment to the agency's enabling ordinance."

Methodology

The monitor had several meetings during the site visit with members of the CPOA and visited the CPOA office, reviewed the CPOA Ordinance, and literature and documents related to the civilian complaint and CPOA process, and attended a POB meeting.

Results

A review of the applicable Ordinance and observations by the monitor demonstrates that the CPOA remains accountable to, but independent from, the Mayor, the City Attorney's Office, the City Council, and APD.

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

The monitor reviewed the CVs and backgrounds of the appointed members of the CPOA (POB members) and the CPOA Ordinance, had several meetings during the site visit with members of the CPOA, and had a meeting with the POB Chair and attended a POB meeting in which the monitor met members of the POB.

Results

The Ordinance sets forth the requirements of this paragraph for members of the Police Oversight Board.

The monitor was able to review the CVs and background of members of the POB, as well as observe them in a POB meeting. The monitor finds their background and commitment to be in compliance with this paragraph.

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

4.7.259 Assessing Compliance with Paragraph 274: CPOA Pre-Service Training

Paragraph 274 stipulates:

"Within six months of their appointment, the City shall provide 24 hours of training to each individual appointed to serve on the agency that covers, at a minimum, the following topics:

- **a) This Agreement and the United States' Findings Letter of April 10, 2014;**
- **b) The City ordinance under which the agency is created;**
- **c) State and local laws regarding public meetings and the conduct of public officials;**
- **d) Civil rights, including the Fourth Amendment right to be free from unreasonable searches and seizures, including unreasonable uses of force;**
- **e) All APD policies related to use of force, including policies related to APD's internal review of force incidents; and**
- **f) Training provided to APD officers on use of force."**

Methodology

The monitor reviewed training records of the appointed members of the CPOA (POB members) and the CPOA Ordinance, had several meetings during the site visit with members of the CPOA and visited, and inspected the CPOA office, met with the POB Chair and attended a POB meeting in which the monitor met all members of the POB. The monitor also reviewed, relative to a previous site visit, a PowerPoint presentation proposed by legal counsel to the CPOA of civil rights and Fourth Amendment training and the CASA.

Results

The Ordinance sets forth the initial training requirements (within the first six months of the member's appointment) required by this paragraph, although it does not specify that these training requirements must equal 24 hours.

The monitor's review of CPOA training records shows that the appointed members of the CPOA (POB members) are in compliance with the training requirements of this paragraph, including the 24-hour training requirement.

The monitor finds the proposed Civil Rights, Fourth Amendment and CASA training is professional and appropriately addresses the subject matter required by the CASA.

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

4.7.260 Assessing Compliance with Paragraph 275: CPOA Annual Training

Paragraph 275 stipulates:

"The City shall provide eight hours of training annually to those appointed to serve on the agency on any changes in law, policy, or training in the above areas, as well as developments in the implementation of this Agreement."

Methodology

The monitor reviewed training records of the appointed members of the CPOA (POB members), had several meetings during the site visit with members of the CPOA and visited and inspected the CPOA office, met with the POB Chair and attended a POB meeting in which the monitor met all members of the POB. The monitor also reviewed, relative to a previous site visit, a PowerPoint presentation proposed by legal counsel to the CPOA, of civil rights and Fourth Amendment training and the CASA. (See also, Methodology, paragraph 274).

Results

The CPOA is in compliance with the annual training requirement for members of the POB (appointed members of the agency).

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

4.7.261 Assessing Compliance with Paragraph 276: CPOA Ride-alongs

Paragraph 276 stipulates:

"The City shall require those appointed to the agency to perform at least two ride-alongs with APD officers every six months."

Methodology

The monitor had several meetings during the site visit with members of the CPOA and visited the CPOA office, reviewed the CPOA Ordinance and literature and documents related to the civilian complaint and CPOA process, and reviewed CPOA training records.

Results

The Ordinance forming and empowering the CPOA sets forth the requirements of this paragraph for members of the POB (appointed members). The monitor reviewed training records (kept during the normal course of daily business) demonstrating operational compliance with this paragraph during this site visit.

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

4.7.262 Assessing Compliance with Paragraph 277: CPOA Authority and Resources to Make Recommendations

Paragraph 277 stipulates:

"The City shall provide the agency sufficient resources and support to assess and make recommendations regarding APD's civilian complaints, serious uses of force, and officer- involved shootings; and to review and make recommendations about changes to APD policy and long-term trends in APD's use of force."

Methodology

The monitor had several meetings during the site visit with members of the CPOA and visited the CPOA office, reviewed the CPOA Ordinance and literature and documents related to the civilian complaint and CPOA process, and reviewed training records and staffing of the CPOA.

Results

The Ordinance empowering the CPOA requires that the agency employ "such staff as necessary to carry out its functions . . . subject to budget sufficiency ..." The Ordinance further authorizes and directs CPOA compliance with the tasks of this paragraph. The monitor again visited the CPOA offices and assessed the sufficiency of office space, equipment, and other facilities. The office was appropriately housed in a facility separate from the City of Albuquerque/Bernalillo Government Center, the APD and APD substations. The office appeared to contain adequate space for conducting business.

The monitor reviewed a Table of Organization for the Agency, and observed that the Community Outreach position has been filled and all CPOA positions were filled as of the time of the site visit.

The monitor notes as another positive step that the hiring of an analyst in CPOA to monitor long-term trends in APD's use of force and to review and recommends changes to APD policy. The monitor has expressed concern about the APD's inclusion of CPOA into the APD policymaking function. The monitor will focus in future site visits on CPOA's efforts to assess long term trends and need for policy changes which we judge as still "pending" at this time. We realize that APD has revised its policy development process to include CPOA membership, but as that change is new, we have not seen the "operational results" of same.

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

4.7.263 Assessing Compliance with Paragraph 278: CPOA Budget and Authority

Paragraph 278 stipulates:

"The City shall provide the agency a dedicated budget and grant the agency the authority to administer its budget in compliance with state and local laws. The agency shall have the authority to hire staff and retain independent legal counsel as necessary."

Methodology

Members of the monitoring team had several meetings during the site visit with members of the CPOA, visited the CPOA office, and reviewed the CPOA Ordinance, table of organization and training records.

Results

The Ordinance empowering the CPOA sets forth the requirements of this paragraph. Funding is required to be, at a minimum, ½% of APD's annual operation budget. Independent legal counsel has been hired for the CPOA, and observations of the CPOA and interviews of the CPOA Director and staff demonstrates full compliance with this paragraph. (See also, Results, paragraphs 271 and 272).

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

4.7.264 Assessing Compliance with Paragraph 279: Full-Time CPOA Investigative Staff

Paragraph 279 stipulates:

"The agency shall retain a full-time, qualified investigative staff to conduct thorough, independent investigations of APD's civilian complaints and review of serious uses of force and officer-involved shootings. The investigative staff shall be selected by and placed under the supervision of the Executive Director. The Executive Director will be selected by and work under the supervision of the agency. The City shall provide the agency with adequate funding to ensure that the agency's investigative staff is sufficient to investigate civilian complaints and review serious uses of force and officer-involved shootings in a timely manner."

Methodology

The monitoring team had several meetings during the site visit with members of the CPOA and visited the CPOA office, reviewed the CPOA Ordinance and documents related to the civilian complaint and CPOA process, and reviewed CPOA table of organization. The monitor also reviewed a random sample of CPOA investigations completed during the monitoring period and attended a POB meeting.

Results

The Ordinance establishing the CPOA sets forth the requirements of this paragraph. Funding is required to be, at a minimum, ½% of APD's annual

operation budget. Observation of the CPOA, interviews of the CPOA Director and staff, and review of completed CPOA investigations indicate primary compliance with this paragraph.

Based on observation of the CPOA and interviews of the CPOA Director and staff, and the reduction in backlogged investigations, this budget appears to be adequate as of this site visit. The monitor has observed and commented on the improvement in backlog reduction this monitoring period. (See also, Results, Paragraph 162). CPOA is organized and staffed in accordance with this CASA provision.

The monitor will continue to focus next site visit on the timeliness of investigations, and the ability of having POB approving the recommendations of the Executive Director and forwarding to the Chief in accordance with the time requirements of imposing discipline.

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

4.7.265 Assessing Compliance with Paragraph 280: Receipt and Review of Complaints by CPOA

Paragraph 280 stipulates:

"The Executive Director will receive all APD civilian complaints, reports of serious uses of force, and reports of officer-involved shootings. The Executive Director will review these materials and assign them for investigation or review to those on the investigative staff. The Executive Director will oversee, monitor, and review all such investigations or reviews and make findings for each. All findings will be forwarded to the agency through reports that will be made available to the public on the agency's website."

Methodology

The monitor reviewed the CPOA Ordinance and website, had several meetings during the site visit with members of the CPOA and visited the CPOA office, attended a POB meeting and reviewed a random sample of CPOA investigations completed during the monitoring.

Results

The existing CPOA Ordinance sets forth the requirements as stipulated in this paragraph. The monitor finds the Executive Director to be fully compliant with the tasks of this paragraph.

The findings (in proper redacted form to protect the privacy of complainants as well as subjects and witnesses) are made available to the public through the CPOA website/POB meeting agenda and meeting minutes.

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

4.7.266 Assessing Compliance with Paragraph 281: Prompt and Expeditious Investigation of Complaints

Paragraph 281 stipulates:

"Investigation of all civilian complaints shall begin as soon as possible after assignment to an investigator and shall proceed as expeditiously as possible."

Methodology

Members of the monitoring team had several meetings during the site visit with members of the CPOA and visited the CPOA office, reviewed the CPOA Ordinance and documents related to the civilian complaint and CPOA process, and reviewed a random selection of CPOA investigations that were completed during this monitoring period. The monitor also reviewed statistics supplied by the CPOA regarding the reduction of the CPOA backlog.

Results

The Ordinance sets forth the requirements of this paragraph in an acceptable manner.

A review by the monitor of randomly selected CPOA investigations completed during this monitoring period reveals investigations are assigned to an investigator within a reasonable time of receipt of the complaint.

The monitor has commented on the backlog of CPOA investigations and the current reduction of backlogged cases and the improvement in the timeliness of completing investigations and having the recommendations of the Executive Director - approved by the POB – to the Chief in time for the imposition of discipline. (See also, Results, paragraphs 279, 285).

A review of a stratified random sample of CPOA investigations completed during the monitoring period by the monitor revealed five CPOA of sixteen investigations that did not meet the requisite timeliness requirements **[[IMR-4-1-14]], [[IMR-4-29]]** and **IMR-4-22]]** all involving the investigation being completed beyond the 90 or 120-day window **[[IMR-4-31]] and [[IMR-4-15]]** failure to forward to the Chief within 30 days of completing the investigation. Thus the total compliance rate with the timeliness requirements of this paragraph is <.95 (69%).

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

4.7.267 Assessing Compliance with Paragraph 282: CPOA Access to Files

Paragraph 282 stipulates:

"The City shall ensure that the agency, including its investigative staff and the Executive Director, have access to all APD documents, reports, and other materials that are reasonably necessary for the agency to perform thorough, independent investigations of civilian complaints and reviews of serious uses of force and officer-involved shootings. At a minimum, the City shall provide the agency, its investigative staff, and the Executive Director access to:

a) all civilian complaints, including those submitted anonymously or by a third party;
b) the identities of officers involved in incidents under review;
c) the complete disciplinary history of the officers involved in incidents under review;
d) if requested, documents, reports, and other materials for incidents related to those under review, such as incidents involving the same officer(s);
e) all APD policies and training; and
f) if requested, documents, reports, and other materials for incidents that may evince an overall trend in APD's use of force, internal accountability, policies, or training."

Methodology

The monitor reviewed the CPOA Ordinance, had several meetings during the site visit with members of the IAB and CPOA, visited the CPOA office, attended a POB meeting, and reviewed a random sample of CPOA investigations completed during the monitoring period.

Results

The Ordinance provides that the CPOA Director "shall have access to any Police Department information or documents that are relevant to a civilian's complaint, or to an issue which is ongoing at the CPOA." This language is broad enough to encompass subparagraphs a through f of this paragraph.

Based on observation and interviews, it continues to appear that the IAB and CPOA work cooperatively. There were no complaints lodged with the monitor of the CPOA regarding not having access to needed information, and completed investigations certainly indicate the CPOA has had appropriate access.

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

4.7.268 Assessing Compliance with Paragraph 283: Access to Premises by CPOA

Paragraph 283 stipulates:

"The City shall provide reasonable access to APD premises, files, documents, reports, and other materials for inspection by those appointed to the agency, its investigative staff, and the Executive Director upon reasonable notice. The City shall grant the agency the authority to subpoena such documents and witnesses as may be necessary to carry out the agency functions identified in this Agreement."

Methodology

The monitor had several meetings during the site visit with members of the IAB and CPOA, reviewed CPOA literature and documents related to the civilian complaint and CPOA process, and reviewed the CPOA website and ordinance as well as a random selection of CPOA investigations that were completed during this monitoring period.

Results

Although the Ordinance provides that the CPOA Director shall have access to any Police Department information or documents that are relevant to a civilian's complaint or to an issue that is ongoing at the CPOA, it is silent on subpoena power or the authority to compel the presence of witnesses.

The CPOA's authority to subpoena documents and witnesses is contained in the CPOA Policies and Procedures, approved by City Council and the monitor. We are of the opinion that this can be interpreted as "the City" granting the agency that authority, as the City must also approve CPOS's and IAB's policies and procedures.

It appears that the CPOA has reasonable access required by this paragraph. (See also, Results, paragraph 282).

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

4.7.269 Assessing Compliance with Paragraph 284: Ensuring Confidentiality of Investigative Files

Paragraph 284 stipulates:

"The City, APD, and the agency shall develop protocols to ensure the confidentiality of internal investigation files and to ensure that materials protected from disclosure remain within the custody and control of APD at all times."

Methodology

The monitor had several meetings during the site visit with members of the IAB and CPOA, reviewed the CPOA Ordinance and draft policies regarding the CASA, and reviewed a random selection of IAB and CPOA investigations that were completed during this monitoring period.

Results

The Ordinance requires the POB to review confidential and *Garrity* material only in closed sessions and to maintain confidentiality of such materials. In addition, policy mandating compliance with this paragraph is also contained in AO 2-05, approved by the monitor.

A review of IAB and CPOA investigations randomly selected by the monitor during this site visit did not reveal any instances of non-compliance with the confidentiality requirements.

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

4.7.270 Assessing Compliance with Paragraph 285: Authority to Recommend Discipline

Paragraph 285 stipulates:

"The Executive Director, with approval of the agency, shall have the authority to recommend disciplinary action against officers involved in the incidents it reviews. The Chief shall retain discretion over whether to impose discipline and the level of discipline to be imposed. If the Chief decides to impose discipline other than what the agency recommends, the Chief must provide a written report to the agency articulating the reasons its recommendations were not followed."

Methodology

The monitor reviewed the CPOA Ordinance and the CPOA website with posted findings and Chief's non-concurrence letters, had several meetings during the site visit with members of the CPOA, visited and inspected the CPOA office, had meetings with the Chief and his senior staff, and conducted a review of a random selection of CPOA investigations that were completed during this monitoring period.

Results

The Founding Ordinance sets forth the policy and authority for the CPOA, POB and Chief to act in compliance with this paragraph.

Also, the Executive Director's authority to make recommendations is contained in the CPOA Policies and Procedures, approved by City Council and the monitor.

The Executive Director's recommendations are required to have the approval of the agency (POB). Based on observations and interactions with the CPOA, the monitor notes that evidence supports the existence of a system, now in place, that allows for the Executive Director to obtain POB approval of the Executive Director's recommendations within the time guidelines required by the collective bargaining agreement (CBA) with the Albuquerque Police Officers' Association, for the imposition of discipline, and further allows for the Executive Director to make recommendations directly to the Chief in those instances where the matter cannot be presented at a monthly POB meeting and still meet the time requirements of the CBA.

A review by the monitor of the random selection of CPOA investigations completed during the monitoring period revealed two (2) instances where the Chief did not concur with the disciplinary recommendation of the Executive Director. In the first matter, **[[IMR-4-15]]**, the CPOA recommended an 8-hour suspension based on a sustained failure to activate the officer's OBRD (1-39-2B) and noted that it was the 3rd level 6 violation within a year. The Chief imposed a written reprimand and "on body device training" noting that it was the Officer's first level 6 violation within a year and the officer did not receive three level 6 violations as stated by CPOA. There was no written report to CPOA articulating his reasons for not following the disciplinary reasons, although the reasons for not following the disciplinary recommendations were evident on the Chief of Police Final Recommendation Form and attachments. The monitor would also note that although the Chief directed training for the subject officer, the training recommendation form noted no such training. In the second matter, **[[IMR-4-31]]**, a violation for failure to utilize a vehicle with good judgment (1-19-2) was sustained, and the Executive Director recommended a written reprimand noting it was the second Level 7 offense within a year. The Chief imposed a verbal reprimand only, referring to the Supervisors Recommendation Form that noted

that there was no documentation of a Level 7 offense within the last year. Although the reasons for not concurring in the CPOA recommendations were apparent, there was no written report back to CPOA.

The monitor is concerned that both instances of non-concurrence were occasioned by differing interpretations of the subject employee cards. The interpretation of the employee card should be a fairly straightforward endeavor. Secondly, the employee card is not contained in the materials given to the monitor, so it is difficult to determine whether the use of the disciplinary matrix is proper when discipline is imposed. Most importantly in terms of this paragraph, the monitor is concerned that in these instances, reports are not going back to CPOA articulating the reasons for non-concurrence. Even if the reasons for such non-concurrence are obvious, a report articulating the reasons must still be forwarded so the CPOA becomes aware of the Chief's analysis and reasoning in imposing discipline. It should be noted that in cases where the Chief does not concur in total with the findings of the CPOA/POB, the approval by the monitor of the Chief's non-concurrence letter does not, per se mean, that the investigative findings were not supported by the requisite quantum of evidence. The monitor realizes that the Chief shall be the final arbiter of discipline within the APD, and reasonable minds can disagree on findings as they relate to the same evidence. Where, however, the monitor feels there has been an abuse of discretion in cases where there is an issue with the Chief's non-concurrence, either by the CPOA or the Chief, the monitor will cite finding as not supported by the requisite quantum of evidence. (See also, Results, paragraph 192). Failure of the administrative apparatus of APD to conform to the requirements of this paragraph that APD send to CPOA a written report on the Chief's reasons for varying from recommended discipline, resulted in a loss of secondary compliance on this issue. To the monitoring team, this seems a bit unfair. The "fault" lies with APD, yet CPOA "pays the price." We recommend that APD work diligently to resolve this issue during the coming reporting period.

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

4.7.271 Assessing Compliance with Paragraph 286: Documenting Executive Director's Findings

Paragraph 286 stipulates:

"Findings of the Executive Director shall be documented by APD's Internal Affairs Bureau for tracking and analysis."

Methodology

The monitor had several meetings with IAB and CPOA personnel during this site visit and observed IAB's tracking method and records, as well as reviewed IAB and CPOA annual reports.

Results

The requirements of this paragraph are contained in AO 2-05, approved by the monitor. As such the City is in primary compliance with this paragraph.

Based upon observation and interview of IAB and CPOA personnel, as well as annual reports and data selection statistics and records, it is clear that IAB captures the findings of the CPOA for tracking and analysis purposes.

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

4.7.272 Assessing Compliance with Paragraph 287: Opportunity to Appeal Findings

Paragraph 287 stipulates:

"The City shall permit complainants a meaningful opportunity to appeal the Executive Director's findings to the agency."

Methodology

The monitor reviewed the Ordinance and had several meetings during the site visit with members of the CPOA and visited the CPOA office, and reviewed a random selection of CPOA investigations that were completed during this monitoring period.

Results

The Ordinance contains the policy required by this paragraph, and permits a complainant to request reconsideration in the form of a hearing when dissatisfied with the findings and/or recommendations of the POB (findings of Executive Director to and approved by the POB). The Ordinance also permits an appeal by the complainant to the Chief Administrative Officer of the final disciplinary decision of the Chief of Police.

No instances of complaint appeals were reported to the monitor during this monitoring period. A review by the monitor of randomly selected CPOA investigations by the monitoring team did not show any instances of requests for reconsideration or appeals.

A review of the CPOA website shows POB meeting minutes wherein appeals of CPOA findings and recommendations are listed with disposition of appeals. It appears from the minutes that the City is in full compliance with this paragraph; however, in the future, the monitor will assess individual appeals in order to determine whether "a meaningful opportunity to appeal" exists.

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

4.7.273 Assessing Compliance with Paragraph 288: CPOA Recommendations Regarding APD Policies

Paragraph 288 stipulates:

"The agency shall make recommendations to the Chief regarding APD policy and training. APD shall submit all changes to policy related to this Agreement (i.e., use of force, specialized units, crisis intervention, civilian complaints, supervision, discipline, and community engagement) to the agency for review, and the agency shall report any concerns it may have to the Chief regarding policy changes."

Methodology

Members of the monitoring team had several meetings during the site visit with members of the CPOA, visited and inspected the CPOA office, reviewed CPOA literature and documents related to the civilian complaint and CPOA process, and reviewed the CPOA website and public reports contained thereon, as well as a random sample of CPOA investigations that were completed during this monitoring period.

Results

The Ordinance provides CPOA with the authority to carry out the tasks of this paragraph. CPOA's authority is also contained in the CPOA Policies and Procedures, approved by City Council and the monitor.

A review of recent completed CPOA cases found none that resulted in recommendations to the Chief of Police regarding changes to APD policy and training.

No recommendations regarding APD policy and training, or concerns regarding policy changes, made by CPOA to the Chief were reported to or obtained by the monitor for this monitoring period.

Regarding the submission by APD to CPOA of all changes to policy related to the CASA, the CPOA has one seat on the APD SOP Review Committee and two

seats on the APD Policies and Procedures Review Board. There is an issue whereby the CPOA/POB does not feel it has adequate involvement in the APD policymaking process. The monitor will focus next site visit on whether the CPOA participation in these processes suffices to meet the requirements of this paragraph. We realize that APD has revised its policy development process to include CPOA membership, but as that change is new, we have not seen the "operational results" of same.

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

The monitor reviewed the Ordinance, CPOA website and POB meeting minutes and agenda, had several meetings during the site visit with members of the CPOA and visited the CPOA office, and had meetings with the Chief during this site visit, and reviewed a random selection of CPOA investigations that were completed during this monitoring period.

Results

The Ordinance provides CPOA with the authority to carry out the tasks of this paragraph. CPOA's authority is also contained in the CPOA Policies and Procedures, approved by City council and the monitor.

A review of a sample of CPOA cases did not find any cases that resulted in recommendations to the Chief regarding changes to APD policy and training, nor were there any instances reported to or uncovered by the monitor relative to CPOA making such recommendations to the Chief or the Chief failing to address CPOA concerns expressed about changes to policy. The POB has discussed these difficulties in open meetings observed by the monitoring team. We will continue to monitor this process.

A review of the meeting minutes for POB meetings during this monitoring period revealed no such recommendations.

Primary: **In Compliance**

Secondary: **In Compliance**
Operational: **Not In Compliance** (no instances found)

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 monitor attended a POB meeting, and has reviewed the APD and CPOA websites regarding the meetings schedule and agenda, and had several meetings during the site visit with members of the CPOA.

Results

The Ordinance requires the POB to conduct regularly scheduled public meetings in compliance with the New Mexico Open Meetings Act, and further requires each meeting to have a prepared agenda distributed in advance to the Mayor, City Council, Police Chief, and City Attorney that complies with the New Mexico Open Meetings Act. However, the Ordinance does not require the agendas to be made available to the public via the websites of the City, City Council, CPOA or APD.

A review of the CPOA website indicates that the time, date and place of meetings are publicized as well as the meeting agenda. The CPOA also provides meeting minutes, and the Annual Report lists when POB meetings and sub-committee meetings were held.

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

The monitor had several meetings during the site visit with members of the CPOA, visited and inspected the CPOA office, and reviewed CPOA Table of Organization, staffing and administrative records.

Results

The Ordinance empowering the CPOA requires the agency to develop and implement a Community Outreach program, and requires the Executive Director of the CPOA to play an active role in the community and in community outreach efforts of the Agency. The newly created Community Outreach position within the CPOA Table of Organization was filled during the 3rd monitoring period.

The monitor observed a POB meeting that involved input from community members but otherwise was unable to observe any CPOA Community outreach events during the site visit.

The CPOA 2015 Report details the Executive Director's community outreach efforts in 2015.

A Community Outreach Subcommittee was formed and its meeting agenda and minutes are posted on the CPOA website. The minutes reflect the CPOA outreach efforts. It is noted that the subcommittee and CPOA have focused its efforts on the upcoming National Association of Civilian Oversight of Law Enforcement (NACOLE) conference to be held in Albuquerque in late September, 2016, while allowing the agency's newly hired Community Outreach specialist to handle the agency's outreach efforts.

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

4.7.277 Assessing Compliance with Paragraph 292: Semi Annual Reports to Council

Paragraph 292 stipulates:

> **"The City shall require the agency to submit semi-annual reports to the City Council on its activities, including:**
>
> **a) number and type of complaints received and considered, including any dispositions by the Executive Director, the agency, and the Chief;**
> **b) demographic category of complainants;**
> **c) number and type of serious force incidents received and considered, including any dispositions by the Executive Director, the agency, and the Chief;**

d) number of officer-involved shootings received and considered, including any dispositions by the Executive Director, the agency, and the Chief;
e) policy changes submitted by APD, including any dispositions by the Executive Director, the agency, and the Chief;
f) policy changes recommended by the agency, including any dispositions by the Chief;
g) public outreach efforts undertaken by the agency and/or Executive Director; and
h) trends or issues with APD's use of force, policies, or training."

Methodology

The monitor reviewed the APD and CPOA websites and reports contained therein, had several meetings during the site visit with members of the CPOA, and visited and inspected the CPOA office, and reviewed CPOA literature and documents related to the civilian complaint and CPOA process.

Results

The Ordinance requires the semi-annual reports to City Council with the information set forth in this paragraph.

The monitoring team review of the CPOA website revealed 2015 reports, as well as annual and semi-annual reports from prior years. The 2015 Annual Report contains an Officer Involved Shooting (OIS), Serious Use of Force Complaints, CPC Data and Statistics section. (See also Results, paragraph 291).

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

4.7.279 Assessing Compliance with Paragraph 320: Notice to Monitor of Officer Involved Shootings

Paragraph 320 stipulates:

"To facilitate its work, the Monitor may conduct on-site visits and assessments without prior notice to the City. The Monitor shall have access to all necessary individuals, facilities, and documents, which shall include access to Agreement-related trainings, meetings, and reviews such as critical incident review and disciplinary hearings. APD shall notify the Monitor as soon as practicable, and in any case within 12 hours, of any critical firearms discharge, in-custody death, or arrest of any officer."

Methodology

The monitor has reviewed dates for all known officer-involved shootings and compared the dates on that list to the dates of known officer-involved shootings.

Results

Notifications of OIS continue to be made as required by the CASA.

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

5.0 SUMMARY

The City's performance on tasks due as of the date of this report is meaningful. The APD and the City are in compliance for all of the five tasks formally due as of the operational dates for the fourth monitor's report, IMR-4, dated (April, 2016 through July, 2016). Compliance areas, to date, are all in tasks that reasonably are prefatory, as follows:

Primary Compliance: 232 of 278, or 83 percent;
Secondary Compliance: 114 of 278, or 41 percent; and
Operational Compliance: 70 of 278, or 25 percent.

Thus, the City's and APD's compliance ratio for the fourth reporting period is 100 percent of tasks currently due (the two- three- and six-month requirements). APD is reminded that they can lose compliance on these requirements. For example, we note elsewhere that our review of CIRT documentation for this reporting period revealed a CIRT investigator had excused a use of force error stating there were no internal APD documents requiring compliance with the CASA. Paragraph 149 clearly states: "Within two months of the Effective Date, APD shall ensure that all officers are briefed and presented the terms of the Agreement, together with the goals and implementation process of the Agreement." That a CIRT investigator would take such a position nearly 18 months after the CASA was finalized is problematic enough. That no one in a command function caught this error, leaving it instead for the monitoring team's review is exceptionally problematic. We consider it strong evidence of deliberate indifference at the investigator and failure to supervise at the command level. Overall, current status indicates compliance was achieved in **232 of 278 primary tasks**. This constitutes a Primary compliance rate of **83 percent**. Current status indicates Secondary compliance was achieved with **114 of 278 secondary tasks**, constituting a secondary compliance rate of **41 percent**. Operational compliance was achieved in **70 of 278 operational tasks** constituting an operational compliance rate of **25 percent**. At the end of the fourth reporting period, the CASA has been "in-effect" since November of 2014. Based on a delay in getting the monitoring team "contracted," and securing reliable funding for the monitoring team, the full team has been engaged with APD since June, 2015. Thus, in effect, the APD has been under monitor's review and assessment for fourteen months, as of the end of the reporting period. There are currently 278 requirements to be implemented by the APD. This monitoring project is set to expire in October of 2018. In order to meet the planned four-year timeline for the compliance project, APD must be in operational compliance with 95 percent of the tasks due by November 14, 2016. Given the developing exigencies involved in this project at this time, the monitor has revised the reporting format for his periodic reports, deciding to report more than just "past events," and adding recommendations for changes in planning, development and process activities for future implementation by APD and the City.

As the CASA process builds momentum in the coming months, the APD needs to carefully consider its priorities, and develop effective mechanisms to change existing behavior on the street and in its supervisory processes.

The monitoring team sees the critical pressure points at this time continuing to be:

1) **An apparent failure of APD to actually read and internalize the findings of the monitors reports.**

The monitoring team has "withdrawn" primary compliance on 18 paragraphs this reporting period due to APD's failure to identify, assess, and act on specific notice by the monitor of critical issues that had been specifically noted, in writing and in some cases in-person. Some of these issues were noted specifically as problematic in three consecutive monitor's reports, yet APD apparently did nothing to remedy the problems noted.

2) **Continuing development of effective policy reflective of the United States Constitution and best practices in the field.**

While policy development has improved this reporting period, it still lags behind expectations--Policy, as we have noted since the inception of this process, is the critical piece, as all later developments in training, supervision, discipline, and self-assessment depend on effective policy. The monitor has approved policy that represents "acceptable" not "model" requirements for implementation, supervision, and managerial oversight.

3) **Creation of strong training development and delivery of processes based on approved policy.**

Training is the critical "next step" in APD's organizational development and planned change processes. The monitoring team have already expressed concern with the training modalities deployed by APD (both in this report and in earlier reports). Policies have been inadequately "translated" into training, with the original "first efforts" at training (Use of Force training for all officers) receiving marginal approval by the monitoring team, and with training for supervisors regarding implementation of "supervisory use of force investigation" that training appears to the monitoring team to be of marginal quality, requiring re-training on as many as 17 paragraphs.

Based on the monitor's preliminary assessment of training academy policies and staffing levels, the academy appears not have an

adequate number of staff to support the added workload APD has committed itself to under the CASA. It appears to the monitoring team, based on our review of the first two training requirement deliveries, that the need for additional staff accrues to managerial, supervisory and "content" levels of the training process. We strongly believe the academy would benefit from outside consultants, familiar with current practice in training modalities. Currently we note a serious deficiency in either understanding those "accepted practices" or in the academy's ability to plan, organize, develop and implement those practices in current training content. This may be due to the apparent understaffing at the academy.

4) Building effective supervisory skills and abilities among sergeants and lieutenants.

All three monitor's reports and the recently submitted Special Report document issues with development of effective and reliable systems of supervision and progressive DISCIPLINE, designed to identify critical points of deviation from articulated policy and to remedy behavior that is not consistent with policy, is, as of this time, not consistently present in APD's supervisory and management cadre. The monitoring team has observed repeated instances of "supervisory review" process that appeared to not be based on the very same video evidence that the monitoring team used to note problematic behavior. (In some cases, the supervisory review reports are so vague, we question whether video evidence was reviewed at all in their assessments). In multiple instances, even problematic use of force events that are specifically brought to APD's attention by the monitoring team are not remediated when they are assessed again by the monitoring team in subsequent site visits. Serious change needs to be structured, mandated, trained and evaluated.

5) The APD will eventually need to build a strong self-assessment and self-reporting ethos among command and management staff.

One fact remains certain: the monitoring team will eventually finish its job and leave. Before that can happen, APD will need to develop, train, implement and oversee a strong self-assessment and self-reporting ethos among command and management staff. Instances of inadequate supervision, such as that the monitoring team noted this reporting period, will need to be noticed, assessed, remedied, and monitored by APD command and management staff before the monitoring team can sign off on compliance and leave its duties in the hands of APD management.

6) **Finally, the APD will need to exhibit a strong, honest, and committed community outreach strategy, designed to shed light on internal operational processes, consult with the consumers of APD's tactics, processes, and strategies, and eventually share some degree of decision-making with the communities APD serves.**

During this site visit, members of the monitoring team began to hear "rumblings" of discontent from many of their contacts at the POB, CPOA, MHRAC and other representatives of "the community." Community engagement cannot be just "paper based," but must consist of meaningful outreach to identify issues, and tangible steps to address those issues, followed up by evaluation, assessment, and, if necessary, revision and "re-sets." Again this requires, in the monitor's experience, strong, meaningful community outreach and a willingness to receive, process, assess and consider the information gained in that process to the point that departmental systems can be modified to address the concerns articulated. The City has "up-funded" technical support for its community outreach processes, and that technical assistance is being provided. It is incumbent on APD to show that it has received, assessed and decided whether or not to act on that input. If those decisions are in the negative, it indicates a need to work further with the community to ensure that APD and the communities it serves understand each other to the point that implementable recommendations are being made by the various communities served by APD, so that APD can take concrete and measurable steps to address those concerns.

These are basically the same items for the "to do" list as were identified during the last monitor's report. The monitoring team has simply provided a bit more guidance on how to go about meeting the requirements of the CASA. Further adding to the already significant pressures on APD is the fact that the City has agreed to take the steps necessary to incubate and nurture effective organizational development and planned change strategies at the APD in an accelerated time frame.

The APD continues to have significant hills to climb regarding developing clear, concise, understandable policy guidance (and following that guidance), assessing needs for training and overseeing one of the most complex organizational development and planned change process ever undertaken by American managers.

In the coming months, the monitor will continue to work with APD's leadership, supervisors, and line officers to ensure they understand the requirements of the

planned-change project that confronts them, and are successful in meeting their commitments to the residents of the City of Albuquerque.

We cannot emphasize enough the need for APD to "dissect" carefully each monitor's report, to develop strong, clear, specific guidance from the executive level to the operational level about:

1. **What problems were noted in the monitor's reports?**
2. **What priorities exist for rectifying issues noted in the monitor's reports?**
3. **What mechanisms are best suited for addressing identified problems?**
4. **What measurement and assessment mechanisms will best identify if progress is being made in addressing those issues?**
5. **Who is responsible for design, assessment, implementation and evaluation of the modalities selected to respond to the monitor's concerns?**
6. **How will those assessment processes be communicated to command and executive personnel and the community? and**
7. **How will APD know when an identified problem has been "corrected?"**

At the present time, it appears that no such "after-action" assessment process occurs.

Without tight, executive-level "command and control" it appears that these steps will not be taken. If this is so, the final result will be monitor report after monitor report that identify over and over the same issues preventing compliance. **We see this as a critical issue.**