

Monitor's First 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 first 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 six sections:

1. Introduction;
2. Executive Summary;
3. Findings Regarding Two-, Three- and Six-Month Submissions;
4. Baseline Status;
5. Methodology; and
6. Summary.

On November 14, 2014, the United States Department of Justice entered into a settlement agreement (SA) with the City regarding changes the Parties agreed to make in the management and operations of the APD. This agreement consisted of 280 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). 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 280 individual requirements of the CASA. The monitoring team's proposed methodology was submitted to the parties (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 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 first site visit. As usual, the monitor's first report, in effect, represents a "baseline" from which improvements can be crafted. Full disclosure of the report will be

made by in-person discussions with the Parties, publication of the report on the Web, provision of hard-copy versions of the report in the Albuquerque City Public Libraries, and through discussion of the findings of the first report by monitor-sponsored public meetings throughout the City. The reader is reminded that this document is a "first 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 280 specific tasks required of the City and the APD over the coming years. The reader is reminded that this is literally the first step of a four-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. Literally, the first report is the most critical of all the reports, as it identifies each and every point of improvement necessary for the APD to come into compliance with the CASA, and thus to conform with nationally accepted standards and practices in American policing. Thousands of man-hours have gone into the development of this report in the form of planning, data collection, data analysis, report writing, staffing and production. The report serves as a baseline for organizational development over the remaining life of the CASA.

2.0 Executive Summary

Complex institutional change is never simple or fast. It cannot be rushed. Good policies take time to write; training based on those policies must be developed with care; and ensuring that those policies and training are put into practice in the field requires observation, supervision, data collection, and analysis over a period of time. The City of Albuquerque has demonstrated a commitment to effective change, but much work lies ahead. Change will indeed come, and, when it does, the public will be able to see it, because it will be documented and reported impartially in this and the other monitor's reports to come.

This is the first of several monitor's reports. Under the Court-Approved Settlement Agreement (CASA), the monitor is to issue public reports on the City's progress every four months for the first two years of the CASA, and then every six months for the subsequent two years, by which point the City aims to have reached substantial and sustained compliance with all provisions of the CASA. This report covers the time period February 1, 2015 through May 31, 2015.

As this report discusses in detail, great challenges lie ahead for the Albuquerque Police Department and the City of Albuquerque, but there are many indications of APD's and the City's strong commitment to this effort. This executive summary provides an overview of what the monitoring team has observed so far in these very early stages and a fuller discussion of 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 recently made 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 demonstrated a commitment to reform. It has begun the process of revising policies, creating new tracking and accountability systems, and putting other critical components into place that will serve it well in the years to come. Nevertheless, a tremendous amount of work lies ahead, and this report necessarily reflects that reality. APD has taken only 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 Training;
- VIII. Officer Assistance Programs; 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

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. Doing so will eventually involve an array of components, all working in tandem: 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 problems arise; accountability systems that appropriately address where they arise; and community engagement that fosters collaboration between officers and the communities they serve.

APD is still developing all of these components. The monitoring team reviewed a random sample of 16 reports of uses of force by APD officers that occurred during the reporting period, out of a total of 50 such reports that were generated during that period. The monitoring team requested videos from the involved officers' on-body recording systems, but due to identification and retrieval issues (discussed at greater length in section 2.52 of the report), APD provided those videos too late for the monitoring team to review all of them in time. Nevertheless, the monitoring team was able to complete a meaningful review of two of the 16 incidents, each of which raised concerns.

In the first incident, an officer fired his electronic control weapon, or Taser, at a fleeing suspect and stuck him in the head. Intentionally targeting a suspect's head is expressly prohibited by APD's use of force policy and the CASA. However, the supervisor who investigated the officer's use of force failed to identify the head strike as an issue, as did the entire chain of command that reviewed the supervisor's investigation. We made no determination of whether the head strike was intentional or not; that is the role of the investigating supervisor. This incident, occurred prior to the time that APD's new Use of Force

Policy was written or trained (in fact, as of the writing of this first report, the APD's use of force policy is still not complete). This incident does, however, constitute a strong indication of how important progress is on departmental policy. In the monitoring team's experience, without strong, well-written, clear policy, training will be ineffective. Without strong policy-based training, supervision is, at best, difficult and at worst, impossible. In addition, based on the monitoring team's experience, without effective supervision, positive change is all but impossible.

The second incident was more problematic and also involved failures by supervisors and the chain of command to identify significant issues. Officers responded to a report of an armed robbery, and police lieutenant came across someone matching the suspect's description. The suspect fled, and the lieutenant chased him on foot. The suspect eventually stopped, and the lieutenant ordered him to get on the ground, but he refused to do so. Instead the suspect came towards the lieutenant, who warned him that he would use his Taser if the suspect did not get on the ground. When the suspect continued to advance, the lieutenant fired his Taser. The suspect tried to pull the Taser's wires off, and the officer cycled his Taser a second time. Two more officers arrived and also tried giving commands to get on the ground to no avail. One of the officers fired his Taser at the suspect and also cycled it twice. A fourth officer arrived and helped handcuff the suspect, who was then face-down on the ground and violently resisting the officers. At one point, it appears that one officer placed his knee on the man's neck in a way that may have constituted a neck hold, which is categorized by the CASA as lethal force.

Finally, the investigation conducted by APD should have considered whether lethal force—the possible neck hold—was used, and, if so, if lethal force was warranted under the circumstances.

This incident does, however, constitutes a strong indication of how important progress is on departmental policy, both regarding use of force and investigations of use of force. In the monitoring team's experience, without strong, well-written, clear policy, training will be ineffective. Without strong policy-based training, supervision is, at best, difficult and at worst, impossible. In addition, based on the monitoring team's experience, without effective supervision, positive change is all but impossible. As of the date this first report was drafted, APD had not yet developed, written, and had approved a suitable use of force policy. Nor had it produced an Internal Affairs policy, as required by the CASA. Both policies are considered by the monitoring team to be **critical** if APD is to move forward successfully in its attempt to comply with the requirements of the CASA.

These two incidents reflected current APD practice, guided by policy critically needs to be assessed and revised. These incidents indicate the extreme importance of APD's development of policy congruent with the requirements of the CASA. The monitoring team have twice worked with the APD to provide

guidance regarding the pending APD use of force policy. As of yet, no use of force policy has been developed that can be approved by the monitor.

2.1.2 Specialized Units

APD's tactical units—the SWAT unit, the canine unit, and the bomb squad—have taken significant steps toward incorporating the requirements of the CASA into their operations. These units train on an ongoing basis, and they report that they have incorporated 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 balanced 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.

Likely as a result of these improvements, APD saw commendable results from its tactical operations, many of which were resolved without any force being used. The monitoring team reviewed 18 tactical operations, all of which involved violent crimes. Crisis negotiators directly resolved six of these incidents and played a significant role in most other incidents. In one case involving a suicidal subject, SWAT personnel withdrew from the scene because there was no basis for further action, and the suicidal person posed no risk to others. These actions avoided a potentially fatal encounter without creating significant risk to the general public. We found that incident commanders exhibited great skill and control in the incidents we reviewed, fostering coordinated decision-making that contributed to the use of de-escalation techniques and to there being no need to use force.

In the CASA, APD committed to disbanding the Repeat Offender Project (ROP), which it has done. That unit had operated much like a tactical unit when its mission and training were focused on conducting investigations. By disbanding ROP, APD has ensured that it will deploy the most aggressive weapons and tactics only in the extreme circumstances that warrant them and only in the hands of the officers best suited to use them.

2.1.3 Crisis Intervention

The CASA requires the City to establish a Mental Health Response Advisory Committee made up of various stakeholders in the mental health field. The Committee is designed to review policies, training, reports, and data on officers' interactions with individuals with mental illness and, based on those reviews, to provide guidance to APD on how it can improve those interactions.

Even though this provision of the CASA falls into the category of requirements that are not yet due, the City has already established the Committee and placed APD staff on it who are actively engaged and supportive.

It appears from the minutes of the Committee's meetings that it has been forming subcommittees, developing a website, and focusing on other logistics, all of which are critical for this new effort in its early stages. Representatives from the Committee visited the Portland, Oregon police department to learn more about their approaches to incidents involving individuals in mental health crisis. The Committee has also begun developing scenario-based training for officers on these kinds of encounters. We are encouraged by this enthusiastic beginning to this project.

2.1.4 Policy and Training

The adoption of policies that comply with the CASA and comport with best practices will be the foundation of APD's reform. Until good policies are in place, little else can be accomplished. As is discussed below in the section of this summary on where we are in the process, none of the deadlines for policies required by the CASA expired during the reporting period, so the monitor has made no findings of compliance or noncompliance with regard to policies.

Although no policies were due, APD did provide drafts of policies that it developed during and after the reporting period, and the monitoring team can offer some observations based on those drafts and on our assessment of APD's policy development systems. In short, policy development processes at APD are in need of significant and immediate revision. Responsibilities for policy writing, dissemination, revision, and assessment are disjointed and disorganized. APD has a Policy and Procedures Review Board (PPRB), as required by the CASA, but documentation of its activities does not indicate the degree to which the PPRB is involved in crafting and revising policies. In addition, APD has created a way for all officers to review and comment on proposed policies, again as required by the CASA, but it is not clear to the monitoring team how that system is being used. This may simply be a reflection of the fact that, as of the effective dates for this report (February 1-May 31, 2015) no critical APD policies had been re-written and "implemented" through training, supervision and discipline.

In terms of the policies that APD has drafted so far, they have been difficult to understand, poorly organized, and apparently written piecemeal, without an overarching understanding of the function of policy in guiding officer conduct and forming the basis for APD's training program. For example, the monitors gave failing marks to critical policy elements on their initial reviews, finding fatal flaws in APD's policies covering use of force, internal affairs, supervision, and other areas.

Because policy is the foundation of training, the deficiencies in APD's policy development must be worked out before APD's training program will be able to function properly. Any training developed and delivered absent a strong and resilient policy system is virtually guaranteed to fail to deliver a training

product that maintains consistent performance reflective of organizational values and operational requirements. Fortunately, there is time to correct the deficiencies in policy development because most of the training that is required under the CASA is not due until a year or a year and a half after the court approved the CASA — June and December 2016. APD thus has an opportunity to correct its course on policy development in time to ensure a solid foundation for training.

Another key component of developing training is a needs assessment, which must be done so that APD knows what its training program needs to include and how training should be delivered. APD has no routinized system for assessing its needs with regard to training; in conjunction with the lack of effective policies, APD faces two fatal flaws in developing its training program, no matter how well intentioned or effectively managed that program is.

The monitoring team and command staff have discussed these issues and agreed that a brief hiatus in some training is appropriate, which will give APD time to perform a meaningful needs assessment and develop all of the necessary policies. Some training (such as use of force, use of On-Body Recording Devices (OBRD) and internal affairs processes) has therefore been put on hold pending development of an internal training planning process that is more likely to be successful than the one that existed at the time the monitoring team first began working with APD.

APD has moved forward on some training requirements that do not require policies to be finalized beforehand. It has developed a schedule of training that incorporates all training required by the CASA, and it has briefed all officers on the CASA. Nearly all of these briefings involved command staff, representatives from the City's legal team, and representatives from the Department of Justice, giving officers an opportunity to learn about the CASA from the people who created it.

2.1.5 Internal Investigations and Adjudication

APD's "universe" related to internal investigations and adjudication is separated into three components: APD's Internal Affairs Division (IAD), the Citizen Police Oversight Agency (CPOA), and the Police Oversight Board (POB). Members of the monitoring team reviewed the operation of these three entities during its initial site visit in June, 2015, and have found, as could be expected in any human system, room for improvements. These findings have been provided to the APD IAD, and POB through conversations with each entity's "command," the Chief of Police, the Executive Director of the CPOA, and the Chair of the POB. A new staff attorney and a new Executive Director of CPOA are "on task," as is a new Chair of the POB.

2.1.6 Staffing, Management and Supervision

Issues related to APD staffing, management, and supervision were basically put “on hold” by the APD until a contract with Alexander Weiss and Associates was developed, funded and executed. Dr. Weiss was tasked with identifying the levels of staffing required for the APD to meet its requirements of delivering timely police services to the citizens of Albuquerque, and delivered his preliminary findings to the APD during the monitoring team’s second site visit, executed during the first week of November, 2015. Full written results of Dr. Weiss’ work are expected shortly, after which, APD will begin melding the recommendations of Dr. Weiss with the requirements of the CASA. The monitoring team stands ready to provide technical assistance as needed to ensure that decisions made by APD in response to Dr. Weiss’ recommendations are responsive to the requirements of the CASA.

2.1.7 Recruitment, Selection and Promotions

Many of the elements of APD’s response to the requirements of the CASA related to recruitment and selection and promotions of officers are also policy intensive. Work continues on policies and procedures supporting these elements of APD personnel sub-systems, and when they have been finalized, the monitoring team will review them fully in a subsequent report. No substantive work product was submitted to the monitoring team for review regarding this topic for this reporting period (January, 2015-through May 2015).

2.1.8 Officer Assistance Programs

Formative steps have been taken by APD to meet the requirements of this section of the CASA. In fact, many of the areas addressed here had already been addressed in one form or another by APD. As with the other parts of the APD management oversight system, the requirements stipulated in these sections of the CASA are not yet due, although APD *has* begun implementation and compliance activities designed to develop systems that will meet or exceed the stipulations of this section of the CASA.

2.1.8 Community Engagement and Oversight

Issues related to community oversight are addressed partially in section 2.1.5, above. In addition to those findings, the following are important findings of the monitoring team related to community engagement. The APD has reached out to the community via establishment of six “Community Policing Councils” CPCs, one for each operational area command of APD’s patrol structure. During the initial site visit, the monitoring team found and documented some “growing pains” with the engagement and oversight component of the CASA.

By the end of the first reporting period, most members had completed the one required “ride-along,” and 25 percent had completed the 12-week Citizens’ Police Academy. As a result of the issues of meeting required standards, APD has acknowledged the need to expand the number of voting members to ensure a representative cross section of participants. Meeting space has been allocated and APD has provided a contracted facilitator to support each CPC. The City also has developed websites for each CPC. A great deal of maturation with the CPC is expected. It is early in the process, and the expectations of the CPCs are high. The CPC process is still basically in the organizational stages, getting the ground-rules down, and beginning to think about future issues. Interestingly, information about the CASA and APD’s compliance efforts are not yet being shared with the CPCs. An Annual Report for the CPCs is expected by the end of 2015.

2.2 Overview

This first monitor’s report is being issued more than a year after the CASA was signed by the City, APD, and the Department of Justice (DOJ). A number of factors led to this delay. First, the City and DOJ endeavored to jointly select the monitor, a process that took longer than anticipated but far less time than if the parties had not been able to reach a consensus candidate and had to resolve the issue in court. Fortunately, the City and DOJ agreed on the candidate—Public Management Resources (PMR)—that was the top choice of an outside group, APD Forward, a broad-based coalition of nine community groups formed to advocate for reform of APD. After selecting PMR, however, funding issues caused further delays, and secure, predictable funding for this undertaking was obtained on May 21, 2015. The monitoring team—currently made up of the monitor, eight subject-matter experts, and a director of operations—made its first full site visit in June.

Due to the monitoring team’s late start, conversations that should have been had early on were not had until relatively late in the initial stages of APD’s planning and implementation, and some false starts were made. To its credit, APD attempted to forge ahead without substantial guidance and oversight from a fully funded monitoring team. While laudable, many of these early efforts were not in line with the standards later articulated by the monitoring team to the command staff of APD. Policies had to be revised, rewritten, and reassessed with the monitoring team’s input and feedback. Training—which, as a matter of nationwide practice, cannot begin until the policy that under-girds the training is written, evaluated, and approved—has been justifiably delayed, as discussed above. Officers cannot be held accountable for performance until they are trained in the implementation of the articulated policy. Supervisors cannot be held accountable for enforcing policy among their subordinates until policies are written and promulgated, and then officers trained on them.

The monitoring team is committed to assisting APD's command staff, if so desired, in overcoming this late start by going the extra mile, including, if necessary, working closely with APD in forging new (and revising old) policies, articulating clear guidelines and practices for APD's intensive training of departmental supervisors and managers, assisting APD in building assessment tools designed to identify problematic behaviors, and advising on best 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 monitoring team has agreed to have a series of structured conversations with command staff designed to ensure joint understanding of critical concepts relating to implementation of the CASA. While not directly constituting training, these sessions will illuminate the road in front of us, ensure joint understanding and communication, and remove some of the natural uncertainty in the process that lies ahead.

The City, DOJ, the Monitor, and the Albuquerque Police Officers' Association (APOA)—the labor union that represents APD officers—have also agreed on modifications to the CASA that will make implementation more orderly and the deadlines going forward more realistic. Under these modifications, deadlines for compliance will be based not on when the parties signed the CASA in November 2014—as the deadlines had originally been set—but instead on when United States District Court Judge Robert Brack (the judge presiding over this case) approved the CASA and made it court-enforceable in June 2015. Judge Brack approved these modifications in September 2015.

As noted above, this report covers February through May 2015. Because of the deadline modifications made by the Parties and approved by the Court, only the two- and three-month deadlines of the CASA expired during this period. Nevertheless, between November 2014 and May 2015, APD made progress in meeting the CASA's original deadlines, and this report discusses APD's efforts in reaching established deadlines under the CASA. It should be noted—and is noted repeatedly in the body of the report—that only the City's or APD's two- and three-month deadlines expired during the period covered by this report. As new deadlines come due in the months and years to come, all requirements will be discussed in future monitor reports.

3.0 Findings Concerning APD Compliance on Two- Three- and Six-Month CASA Requirements

Based on the agreement of the Parties, and the approval of the Court, only those tasks with two- and three-month deadlines are “due” as of the writing of this report. The monitoring team’s findings on these “due now” tasks are outlined below, with two-month tasks treated first, then three-month tasks. Six-month tasks are not yet due, as the court-established deadlines for six-month tasks do not accrue until December 2015.¹ Findings by the monitor on requirements that are evaluable are classified as either “Not in Compliance,” “In Compliance,” or “Not Yet Due.”

The reader is reminded that, of necessity, the monitor’s reports are virtually always “behind the curve” in depicting actual performance timelines. This is due to the fact that it takes weeks for the monitoring team to collate the data it receives from APD and other sources; review it; draft a first report; “staff” the report with the parties; revise the report, when necessary; and prepare a copy for filing with the Court.

Data collected by the monitor were of two types:

- Data collected by use of a random sampling process; or
- Selection of ***all*** available records of a given type or source for the “effective date” of the given report.

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

Data for this report were selected by May 31, 2015, allowing time for APD to identify, collect and respond to the data requests, and to allow members of the monitoring team ample time to sort, organize, assess and evaluate the data provided prior to writing this first report. The same process will be followed in all following reports. Follow-up requests were made where necessary.

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

¹ At the request of the Parties, and with the support of the independent monitor, the Federal District Court for the District of New Mexico authorized a reset of the operational date for the six-month submissions to December, 2015.

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 or other personnel 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.

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 as a whole, 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.

Timelines: Compliance determinations are discussed below for the tasks due at the CASA’s two-, three-, and, in some cases six-month timelines. Although none of the six-month requirements are due until December, 2015, they are reported here as *some* of them are deemed currently in compliance by the monitoring team. The paragraphs of the CASA below are organized by “due date,” with two month requirements reported first, followed by three-month requirements, and then six-month requirements to which the APD and the City have attained early compliance status.

3.1 Compliance with Two-Month Tasks

One task identified by the CASA is due within two-months of the operational date, requiring completion by August 14, 2015: Paragraph 149, which calls for all officers to be briefed on the terms of the CASA, including its goals and its implementation process. Compliance with this paragraph is discussed immediately below.

3.1.1 Compliance with Paragraph 149, Briefing on CASA Requirements

Paragraph 149 requires:

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

Based on normal daily course of business (COB) documents provided to the monitoring team, a series of presentations were made to all APD personnel consisting of a briefing of the requirements of the CASA and a depiction of the implementation plan established by APD to meet the required "briefing" process. There appears to be some question as to the coverage of one of the elements required by the CASA; however, given the number of elements in the CASA, even if that one element were omitted or not exactly what the CASA required, it constitutes much less than a 0.05 error. The monitoring team will continue to monitor progress on *all* training elements of the decree.

Results

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

Task 149 was the only two-month task identified in the CASA.

3.2 Compliance with Three-Month Tasks

Two tasks established by the CASA are due within three months of the operational date, requiring completion by September, 2015.

3.2.1 Compliance with Paragraph 141: Opportunity for Rank and File to Review and Comment on Policies

Paragraph 141 stipulates that:

Within three months of the Effective Date, APD shall provide officers from varying ranks and units with a meaningful opportunity to review and comment on new or existing policies and procedures.

Methodology

APD has developed an application for PowerDMS that allows posting of all

proposed policies, and has the ability to “mark up” those proposed policies in electronic format. The system, as designed, meets the requirements of this paragraph. As policy development progresses, the monitoring team will assess the APD’s process for collecting and acting upon input received through this PDMS system.

Result

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

3.2.2 Compliance with Paragraph 142: Implementation of the PPRB

Paragraph 142 stipulates that:

Within three months of the Effective Date, APD shall ensure that the Policy and Procedures Review Board is functional and its members are notified of the Board’s duties and responsibilities. The Policy and Procedures Review Board shall include a representative of the Technology Services Division in addition to members currently required under Administrative Order 3-65-2 (2014).

Methodology

APD has published “Administrative Order 3-65 Policy and Procedures Review Board,” which details the responsibilities of PPRB as of May 2012. The Department has also provided the monitor with agenda for the PPRB, all dated after or immediately before the monitoring team’s first official site visit in June 2015. While it may not be required by APD policy and process, the monitoring team has not seen clear input of PPRB work product. Given the status and quality of many of the draft policies received by the monitoring team over the past weeks, if the PPRB is actually assessing and actively critiquing and causing change in APD draft policy, it is not reflected in the policies reviewed by the monitoring team. The monitoring team has not seen any evidence, in the policies it has reviewed, of input from the PPRB. This may be due to the fact that, it appears, the PPRB is ether-based, and its notes for change are reflected somewhere in PowerDMS. If that is the case, APD will need to make provisions to “port” that documentation over to the MONITORING TEAM, using an auditable date-based reporting method. A secondary “fix” is to require a PPRB “signature/approval page” on all new or revised APD policy submitted by and approved by the PPRB. Upon direct request, the APD has provided the monitoring team with daily course of business evidence of the work-product of the PPRB in the form of meeting agenda. The monitoring team observed, during the first site visit in June, 2015, a meeting of the PPRB, and found it to be

concerned mainly with operational issues such as nomenclature, redundancies, and ensuring that policy actually reflects actual practice. The monitor found sparse evidence that the group screens for conformance to established pattern and practice in the field, or that it screens for compliance with the CASA.

Secondary and Operational compliance remains pending until evidence exists that the PPRB personnel have been trained in their role as members of the board and that PPRB is part of a process that routinely (i.e., 95 percent of the time) assists in producing policies that are approvable by the monitoring team.

Results

Primary: In Compliance

Secondary: **Not Yet Due**

Operational: **Not Yet Due**

3.3 Paragraph 149: Compliance with Six-Month Tasks

Eight Tasks identified in the CASA accruing to the City and APD had six-month deadlines. Compliance with those tasks is discussed below.

3.3.1 Paragraph 151: Itemized Training Schedule

Paragraph 151 stipulates that:

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

Methodology

The monitoring team reviewed the APD's "class schedule" for training development and found all training elements required by the CASA to be reflected in that document, which lists, for each training development cycle, the "task lead," the date of the last CASA paragraph update related to each training element, a narrative of the title and status of the training element, the time development started, elapsed time for development, and finish date. The monitoring team will conduct "real time" audits of these training events over the coming years to ensure that training is not only completed to national standards but is completed on-time. The APD is currently in compliance with time parameters for setting out a schedule for training, as required by this task. Completion of the APD's 18-month training calendar is currently "pending."

Results

Setting out A Schedule

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

Delivery of Training

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

Compliance with 3.3.2 Paragraphs 164-168: Awareness Program by APD and CPOA

Paragraphs 164-168 stipulate:

164. 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. The requirements below shall be incorporated into this program.

165. 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. The various paragraph require the following actions of APD and CPOA.

166. 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.

167. 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.

168. Complaint forms and related informational materials shall be made available and posted in English and Spanish.

Methodology

Members of the monitoring team requested policy documents related to the above requirements for their review and comment. These were not available during the first reporting period, as they were still under development by the newly-appointed counsel to the CPOA. While on-site for their first monitoring team visit to Albuquerque, members of the monitoring team assessed compliance levels related to these elements of the CASA. The team found that, as of the June, 2015 site visit, the City had made substantial progress in coming "on-line" with these outreach and informational aspects of the civilian complaint process. While "not yet due," the team noted, for example, community outreach through advertisements, posters and placards describing the civilian complaint process, and the existence of complaint forms and other informational materials in English and Spanish (as well as other languages). The required websites were up and operational. Training regarding officer's required responses had been scheduled, but outside the operative timelines established.

Results

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

3.3.3 Compliance with Paragraph 169 Complaint Intake, Classification and Tracking

Paragraph 169 stipulates:

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

Methodology

Members of the monitoring team were 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 February through June, 2015. Data indicate that the agency trained 94.8 percent of its 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. The monitoring team, however, has expressed some concerns to APD about several issues which are currently being researched and responded to;

- The first of these involves those full-time employees who were on leave and not tested in April and May of 2015. The monitoring team 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;
- 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);
- The third involves a probable data management error that showed some participants *finishing* the training process *before* they were shown to have started.

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 review those data as they come available.

Results

Primary: **Not Yet Due**

Secondary: **Not Yet Due**

Operational: **Not Yet Due**

3.3.4 Compliance with Paragraph 176: Centralized Numbering System for IAB and CPOA Complaints

Paragraph 176 stipulates:

Within six months of the Effective 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

The monitoring team 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. Policies to support this data system, and that allow APD, CPOA and the monitoring team to assess the "shall be provided to the complainant" portion of this requirement are as of this date, pending.

Results

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

3.3.5 Compliance with Paragraph 196: Anti Retaliation Policy

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

Data "in the record" at APD indicates that the agency has revised its policies to reflect the required changes and has conducted an internal audit to find allegations of retaliation and to assess the efficacy of the internal investigations of those allegations. The monitoring team has reviewed the APD's results, and find them to be, from the record, fair, impartial, and fact-based. The monitoring team will continue to monitor this facet of the CASA as the monitoring process continues over the years.

Results

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

3.3.6 Compliance with Paragraph 220: Use of On-Body Recording Devices (OBRD)

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

The monitoring team has reviewed 16 use of force incidents reported to APD that should have contained, by existing policy, video taken using officer OBRDs. That review indicated that, as with any new system, not all incidents required to be recorded were actually recorded, and that *locating and retrieving* data that was recorded was still a developing art at APD. The monitoring team's request for video from the 16 incidents resulted in two submissions: one containing a few OBRD videos and a second containing many more, a few weeks later. Obviously, the team has not

been able to conclude its substantive review of these recordings at this time; however, it is clear the OBRD data are being maintained, indexed and are accessible. The monitoring team has yet to review policies and/or training associated with all eight of the above requirements at this time. This will be addressed in a full monitor's report at a later date. Obviously, a system that can support full administrative review of only two of sixteen selected cases is not fully capable of meeting the requirements of this paragraph of the CASA. Complete functionality relative to this paragraph is not due until December 24, 2015.

Results

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

3.3.7 Compliance with Paragraph 243: Prohibition from Participating in Promotional Exams

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

The monitoring team has reviewed COB documents that indicate that as far back as 2012 APD had and was enforcing such a policy during its promotional testing processes, and that since 2001 similar policies had been in effect. Further, despite the fact that no current formal policy documentation was evident requiring same, APD as late as 2014 appeared to be implementing a similar policy. Status on this requirement is not approved until the apparently **pending** "re-fresh" of APD's latest policy documents on this topic. Such action was submitted for approval in 2014, and was slated for completion, based on APD records, in May 2015. Unfortunately, the record available to the monitoring team at this time indicate that no such action has occurred.

Results

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

3.3.8 Compliance with Paragraph 259: Measurement of 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

The monitoring team has reviewed COB documents that indicate that APD is **active** in the area of officer outreach, but as of this date the department has generated few if any **metrics** on this activity. At a minimum, one would expect an analysis of the number of hours spent and the number of citizens contacted. Ideally, measurement would include “problems identified,” “problem addressed (and how), and “problems solved or prevented.” Until such time as the APD identifies how it plans to measure and report this activity, the monitoring team cannot assess it.

Results

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

3.4 Summary

The City and APD have eighteen policy areas in which the Settlement Agreement allowed six months (or less) for them to achieve compliance. As of this date, the monitoring team have received COB data for ten of these areas. The remaining eight will be evaluated during the second reporting period, after all six-month submissions are due. Of the ten reviewed items due as of the “six-month” or less deadline, the City and APD are currently considered in compliance with **five** paragraphs and the remaining five have work pending. The monitor has accepted without need for further documentation the APD’s work in paragraphs 141, 142, 149, 151, and 196, as constituting primary compliance with the requirements of the CASA. All remaining paragraphs are considered “pending” further documentation by APD as articulated in the individual paragraph’s narrative in this document. **A compliance rate of three of three requirements, due as of the first reporting period (February-May, 2015) constitutes an active compliance rate of 100 percent.**

Only a bit more than a quarter of all tasks due within six months (December, 2015) are judged to be fully “in compliance” at this time.

Of the paragraphs due at the time of development of this report, i.e., all two- and three-month due sections of the CASA have been met successfully by the City and APD. The monitoring team strongly suggest that all pending tasks related to **policy development and promulgation** on high-risk critical tasks (use of force, internal affairs, pursuits, tactical deployments, handling persons in crisis, domestic violence, deployment and operation of On-Body Recording Devices (OBRD), and supervisory processes) be a priority of the APD in the coming weeks.

4.0 BASELINE STATUS

As part of the monitoring team's normal course of business, it has established a base-line assessment of *all* paragraphs of the CASA in an attempt to provide the Parties with a snap-shot 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.

4.1 Overall Status Assessment

As can be expected with a project that has experienced significant start-up issues, e.g., delayed funding of the monitoring team, resulting in an inability of the monitoring team to be "on-the-ground" early in the process, and thus not able to participate with APD early on identifying key "pressure points" of organizational development and planned change and resulting in a minor delay in provision of defined methodologies for measurement of compliance, the APD has gotten off to a problematic start in building compliance systems. As an effect of this late start, compliance efforts have been less effective than they might have been.

4.2 Dates of Project Deliverables

Project deliverables are defined by the Agreement governing the parties response to the CASA, (DOJ, the City of Albuquerque, the Albuquerque Police Department, and the Albuquerque Police Officers' Association (APOA)).

4.3 Format for Compliance Assessment

The Monitor's Reports are organized to be congruent with the structure of the CASA, and specifically reports, in each section, on the City's and APD's compliance levels for each of the 280 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 Programs;
- IX. Community Engagement and Oversight;

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

4.4.1 Structure of the Task Assessment Process

Members of the monitoring team have collected data concerning the APD's compliance levels in a number of ways: through on-site observation, review, and data retrieval; through off-site review of more complex items, such as policies, procedures, testing results, etc.; 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 directly by APD in response to the requirements of the CASA, those data were **never** used as a sole source of determination of compliance, but were instead used by the monitoring team as explanation or clarification of process. All data collected by the monitoring team were one of two types:

- Data 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 of 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 first report were selected by May 31, 2015, 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 first 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 as a whole, 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.

As is true, in the monitor's experience, with all of these complex organizational change projects, change is never simple or quick. A great deal of work lies ahead. The APD's command staff is committed to effective change, and, working with the monitoring team, change will indeed come—and will be documented and reported impartially in this and the monitor's reports that will follow. Substantial delays have already occurred. Funding issues delayed the monitoring team's arrival¹. As a result conversations that should have been had early on were not had until relatively late in the initial stages of APD's planning and implementation. As a result false starts were made. To its credit, APD forged ahead without substantial guidance and oversight from a fully funded monitoring team, and, while laudable, many of these early starts were not in line with the standards later articulated by the monitoring team to the command staff of APD. As a result, policies had to be revised, rewritten, and reassessed, after the APD received input and feedback from the monitoring team. Training, which, as a matter of nation-wide practice, cannot begin until the policy that under-girds the training is written, evaluated, and approved. Officers cannot be held accountable for performance until they are trained in the implementation of the articulated policy. Sergeants cannot be held accountable for enforcing policy among their subordinates until operative policy is written, promulgated and trained. The same is true for lieutenants' oversight of sergeants, captains' and majors' oversight of lieutenants, etc. The monitoring team is committed to assisting APD command staff, if so desired, in overcoming this unavoidable "late start" by going the extra mile, including, if necessary, working closely with the APD in forging new, and revising old policies, articulating clear guidelines and practices for APD's intensive training of departmental supervisors and managers, assisting APD in building assessment tools designed to identify problematic behaviors, and advising on "best practices" that can be adapted by APD as it moves forward in its efforts to meet the individual and global requirements of the CASA.

4.6 Operational Assessment

The following chapter of the Monitor's First Report articulates processes and findings related to each of the 280² active elements of the CASA.

¹ Secure, predictable funding for the project was not obtained until May 21, 2015, and the first full monitoring team site visit did not occur until the following month.

² Tasks accruing to the United States or the Monitor were not included in this methodology, as the monitor sees his role as evaluating APD and the City entities supportive of APD in meeting its responsibilities under the CASA.

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

4.6.1 Methodology

The monitor assessed the City and APD's compliance using the *Monitor's Manual*, included in Appendix A, below. The manual identifies each task required by the CASA and stipulates the methodology used to assess compliance.

4.7 Assessing Compliance with Individual Tasks

The monitoring team has assessed in detail the APD's compliance efforts for each articulated task that is "due" as of the date of the report. Each of the requirements of the CASA is discussed relative to its compliance level in the paragraphs the follow.

4.7.1 Assessing Compliance with Paragraph 14^{3,4}

Paragraph 14 of the CASA stipulates the requirements for officers' use of force, stating:

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;**

³ Paragraph 11 is not evaluated as it is a policy statement noting the City's intent to "eliminate the Repeat Offender Project within three months. This action was taken within the time frame allowed.

⁴ Paragraph 13 is not evaluated, as it is a policy statement, intended to introduce the operational paragraphs that follow concerning use of force.

- 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.

Pursuant to CASA requirements, APD submitted a new use of force policy---Procedural Order 2-52 Use of Force (December 4, 2014)--- to the DOJ and the monitoring team for review. The results of the two reviews were communicated to APD in both writing and during a June meeting, after reconciliation of the DOJ and monitoring team reviews. The draft was returned for major re-work, ranging from improved organization, greater clarity, elimination of redundancies, and full, clear explication of the more restrictive use of force standard required by the CASA. Pursuant to the monitor's return of the initial document, APD completed a second draft of the policy dated July 2, 2015 and submitted it to the monitoring team on September 2, 2015 (which was outside the time parameters for the first monitor's report effective dates). This did not allow sufficient time for the monitoring team to review the second draft for evaluation this reporting period. However, the monitoring team did conduct a limited review and found that APD has made numerous improvements to bring the draft closer to compliance. To the extent possible, the monitoring team has incorporated comments on a number of significant improvements in the second draft during this review.

It appears from a review of the documents available to the monitoring team, that APD did not route the first draft of its "Use of Force" policy through its Policy and Procedures Review Board (PPRB) established by Administrative Order 3-65 "Policy and Procedures Review Board (May 10, 2012)"; nor, it appears, did the agency consult with APD subject matter experts and instructors on the use of force. The involvement of the PPRB in the policy development process is expressly mandated in

Paragraph 142 of the CASA, and is viewed of paramount importance by the monitoring team. The monitoring team continues to express concern that APD fails to engage either entity in the policy development process.

APD has a number of other orders that are related to the overarching use of force directive. As an example, Procedural Order 2-31 Investigation of Shootings and the Use of Deadly Force Involving Departmental Personnel (March 20, 2015) which also needs to be reviewed and updated to ensure that it aligns with other use of force policies. Based upon apparent significant improvements in the second draft, the monitoring team believes that APD can achieve policy compliance with further refinement and several enhancements. APD staff overseeing the drafting process has demonstrated a sincere commitment to meeting CASA requirements and producing directives that conform to general standards for policy development and draftsmanship. They have also been especially receptive to feedback from the monitoring team. The monitoring team will provide timely feedback on the second draft to expedite final approval. This input will, by necessity, come during the second reporting period, from June to November, 2015. Initial (informal) feedback has already been provided to APD command staff.

APD recognized the need to consult with outside police agencies in order to advance their efforts to meet CASA requirements. As a demonstration of their commitment, a contingent of APD representatives traveled to New Jersey to meet with representatives of the New Jersey State Police, who themselves were successful in meeting the requirements of their own consent decree. A monitoring team representative was present for the initial kickoff meeting on August 3, 2015, at the NJSP Division HQ. APD personnel were given access to command and front line personnel from a variety of areas including the NJSP academy, Field Operations Section, Internal Affairs (Office of Professional Standards), Special Operations, policy development representatives and members of the Management Accountability and Personnel Performance System (MAPPS) Unit. Over the course of three days they received information on best practices in each of these specific areas, including areas concerning law enforcement risk management. Finally, they met with the Superintendent of the NJSP, who successfully led the NJSP to full compliance, and received the perspective of a law enforcement commander who understands the importance of reform and the steps that must be taken to affect organizational change. APD is commended for taking this important step and is encouraged to continue meeting with agencies who have demonstrated superior standards and have established business processes that promote the sustainability of that reform.

The monitor has classified APD efforts in this area as “not yet due” for the primary phase of developing a responsive Use of Force policy. Secondary compliance, which first requires primary compliance, is also classified similarly. The same holds true for Operational compliance.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

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

Paragraph 15 of the CASA stipulates:

APD shall develop and implement an overarching agency-wide use of force policy that complies with applicable law and comports with best practices. The use of force policy shall include all force techniques, technologies, and weapons, both lethal and less lethal, that are available to APD officers, including authorized weapons, and weapons that are made available only to specialized units. The use of force policy shall clearly define and describe each force option and the factors officers should consider in determining which use of such force is appropriate. The use of force policy will incorporate the use of force principles and factors articulated above and shall specify that the use of unreasonable force will subject officers to discipline, possible criminal prosecution, and/or civil liability.

Methodology

Members of the monitoring team reviewed multiple copies of APD proposed Use of Force Policies, and subjected them to best established pattern and practice in the field, and to the requirements stipulated in the CASA. In addition, members of the monitoring team reviewed On-Body Recording Device (OBRD) video covering 16 APD incidents of use of force, reviewed the official reports prepared by officers relating to those uses of force, reviewed supervisory responses to the incidents, and reviewed other supporting documentation such as APD’s “Use of Force Data Sheet.”

Results

Existing policy and the first draft of the new policy fail to provide the foundation for effective training and supervision of use of force by APD officers. Further, the new policy was inconsistent with best practices in the field, and did not serve as an effective base for requiring actions in the field consistent with the CASA.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

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

Members of the monitoring team have carefully reviewed the first version of the Use of Force policy provided by APD, and have scanned the second version, submitted to the team in September, too late to be included in a comprehensive review of the policy and its implications. The following results and conclusions have been gleaned from those two policy reviews.

Results

The first policy was deemed inadequate, and returned to APD with comments suggesting a full-rewrite of the document. Unfortunately, the APD's rewrite of the second policy was not submitted, as required by paragraph 147, to DOJ for review. Thus, the monitoring team will not accept the policy draft until it has been submitted to DOJ as required by the CASA. This communication failure was repeated by the city on numerous other policy products by the APD. The error has since been remedied (by transmission to DOJ of all new CASA-related policies), and the monitor will comment on those policies once DOJ has been given ample time to review them.

The monitoring team will provide in-depth feedback to APD staff on the new separate order on Electronic Control Weapons (ECW), which was completed too late to be included in the Team's current evaluation of use of force issues. The monitoring team will also review the question of how best to handle policy and procedures on individual tools, including standardized subject headings, and will share its conclusions with the APD SMEs and command staff during the second site visit in November, 2015.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

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

Members of the monitoring team have reviewed policy 2-52 (Use of Force) as it applies to paragraph 17. Based on records available from the department, compliance with this paragraph is attained during the process of state-mandated qualification processes, and are required by State certification practices. Members of the monitoring team will revisit these training and equipping issues on the second site visit in November, 2015. No on-site inspections were conducted during the first reporting period, although such visits ***will be conducted*** during follow-up visits, after departmental policy and training have had time to impact officer, supervisory and command activity.

Results

From a practical standpoint, the APD's operative policy for this paragraph was 2-52-2 at the time of the monitoring team's review. This policy was not in compliance with the requirements of paragraph 17 relating to policy. That policy's section "I" defines a firearm as a "tool" and states at paragraph A, "Officers will use only those tools and techniques with which they have been trained unless the threat escalates so rapidly the officer must use any means necessary to defend themselves or another." This policy does not comply with the intent of paragraph 17 in the opinion of the monitoring team.

No detailed analysis will be provided until such time as DOJ has had an opportunity to review and comment on related proposed policy.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

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

Members of the monitoring team reviewed APD policies regarding approved firearms and ammunition provided by the APD as part of their normal course of daily business. By the end of May, 2015, 787 of 965 officers had been trained and or re-trained and had qualified as required by the State of New Mexico. Based on the monitoring team's familiarity with police requalification, it is highly likely that the 178 officers not trained in the January-May time period had been trained and qualified late in the previous year. Members of the monitoring team will revisit these training and equipping issues on the second site visit in November, 2015.

Results

From a policy standpoint, the APD's operative policy for this paragraph at the time of the monitoring team's review was 2-22, dated 12-11-14. This policy defines "Duty Handguns" as those handguns the "department will furnish [to] each officer..." and further states "This is the only handgun authorized to be carried on duty" 2-22-3 at 1 a. This policy complies with the intent of paragraph 17 in the opinion of the monitoring team.

On future visits, members of the monitoring team will personally visually monitor on-duty weapons carried by officers through the process or roll call attendance, ride-alongs, and other unscheduled and unannounced observations.

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

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

The monitoring team reviewed normal COB records kept by the APD reflecting firearms qualifications for the year 2015. Between February 1, 2015 through March 31, 2015, the APD "requalified" 721 of its officers on their approved on-duty firearms, at which time the officers' "on-duty" weapons are verified to meet the requirements of policy 2-22, and hence also paragraph 19 of the CASA. As of the date of this first report, however, APD has yet to develop, as required by the CASA, an approved use of force policy, which is a required part of the compliance process for this task. The monitor is concerned that the delay in successful development of this policy will hinder the APDs ability to train, supervise, and, where necessary, retrain, officers in topics related to use of force. This policy is an integral part of the weapons requalification process. This CASA task is not yet due.

Results

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

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 monitoring team reviewed the in-effect policy regarding this provision, APD Procedural Order 2-22 "Firearms and Ammunition Authorization," which requires annual qualification for "any weapon" carried by APD personnel. The newly revised 2-22 requires officers to qualify with their duty handguns "on the course of fire established by the

NM Department of Public Safety,” and also requires qualification each calendar year with “every firearm currently carried on duty, off duty, or as a backup.”

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.8 Assessing Compliance with Paragraph 21: Firearms Training

Paragraph 21 stipulates:

APD training shall continue to require and instruct proper techniques for unholstering, drawing, or exhibiting a firearm.

Methodology

The currently active procedural order on use of firearms (2-52-6) includes guidance on when to un-holster, draw and/or exhibit a firearm. This policy should be revisited by APD once the agency’s Use of Force policy is completed, to insure that 2-52-6 conform to the revised use of force requirements. Current policy holds APD personnel to the higher standard of “only when deadly force can be reasonably anticipated” for drawing or exhibiting a firearm. Training on this policy has yet to commence for reasons described in the previous paragraph.

Results

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

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 monitoring team carefully reviewed the second draft of Procedural Order 2-52 Use of Force with respect to the requirements pertaining to discharging a firearm at or from a moving vehicle.

The monitoring team found that the draft language of APD's current Use of Force Policy falls short of compliance because of one omission and additional language that permits action that seems to place APD policy in direct conflict the language of this paragraph's requirement. Specifically, the draft does not include the language "...other than the vehicle itself..." in the first sentence, which changes the meaning. The draft then continues with language that officers may respond with lethal force against the driver of a vehicle if the driver is using a vehicle itself as lethal force, though the language appears to distinguish between shooting to disable a vehicle and shooting at a driver using the vehicle as a deadly weapon.

Results

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

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

APD is building a comprehensive Early Intervention System (EIS) to accommodate this task. As of the monitoring team's last contact with the individuals responsible for this task, the EIS and accompanying policies regarding its operation, use, and functions were "under development."

Results

No tangible outputs were available for review by the monitoring team as of this time.

Primary: **Not Yet Due**

Secondary: **Not Yet Due**
Operational: **Not Yet Due**

The APD has decided to remove the sections dealing with Electronic Control Weapons (ECWs) from the departmental Use of Force policy (PO 2-52) and recast it as a stand-alone directive. The monitoring team has not discussed this decision with those responsible for policy at APD, but as the original Use of Force policy, in the opinion of the monitoring team, needed substantial revision, developing a stand-alone ECW policy may be beneficial, so long as the final two policies (Use of Force and Electronic Control Weapons) are clear that the use of ECWs *is* a controlled use of force, subject to the requirements established generally by the department's final Use of Force policy.

4.7.11 Assessing Compliance with Paragraph 24: Use of ECWs

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

PO 2-53, "Electronic Control Weapons" dated July 2, 2015 was provided to the monitoring team on September 2, 2015, which did not provide the monitoring team with adequate time to review, critique, and staff and prepare comments on the proposed policy before writing of the draft Independent Monitor's Report (IMR) 1 commenced. Thus compliance with this paragraph will be discussed in future monitor's reports.

Results

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

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

PO 2-53, "Electronic Control Weapons" dated July 2, 2015 was provided to the monitoring team on September 2, 2015, and is currently under review by the monitoring team and DOJ.

Results

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

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

PO 2-53, "Electronic Control Weapons" dated July 2, 2015 was provided to the monitoring team on September 2, 2015, which did not provide the monitoring team with adequate time to review, critique, staff and prepare comments on the proposed policy before writing of the draft IMR-1 commenced in early September, 2015. This policy is currently under review by the monitoring team and DOJ.

Results

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

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

PO 2-53, "Electronic Control Weapons" dated July 2, 2015 was provided to the monitoring team on September 2, 2015, which did not provide the monitoring team with adequate time to review, critique, staff and prepare comments on the proposed policy before writing of the draft IMR 1 commenced in early September, 2015. The policy will be reviewed and annotated thoroughly after it is developed fully by APD and submitted to the monitoring team and DOJ. The monitoring team will report on these policies during its second monitoring report.

Results

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

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

PO 2-53, "Electronic Control Weapons" dated July 2, 2015 was provided to the monitoring team on September 2, 2015, which did not provide the monitoring team with adequate time to review, critique, staff and prepare comments on the proposed policy before writing of the draft IMR 1 commenced in early September, 2015. The policy will be reviewed and annotated thoroughly after it is developed fully by APD and submitted to the monitoring team. The monitoring team will report on these policies during its second monitoring report.

Results

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

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

PO 2-53, "Electronic Control Weapons" dated July 2, 2015 was provided to the monitoring team on September 2, 2015, which did not provide the monitoring team with adequate time to review, critique, staff and prepare comments on the proposed policy before writing of the draft IMR 1 commenced in early September, 2015. The policy will be reviewed and annotated thoroughly after it is developed fully by APD and submitted to the monitoring team and DOJ. The monitoring team will report on these policies during its second monitoring report.

Results

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

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.

Methodology

PO 2-53, "Electronic Control Weapons" dated July 2, 2015 was provided to the monitoring team on September 2, 2015, which did not provide the monitoring team with adequate time to review, critique, staff and prepare comments on the proposed policy before writing of the draft IMR 1 commenced in early September, 2015. The policy will be reviewed and annotated thoroughly after it is developed fully by APD and submitted to the monitoring team and DOJ. The monitoring team will report on these policies during its second monitoring report.

Results

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

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

PO 2-53, "Electronic Control Weapons" dated July 2, 2015 was provided to the monitoring team on September 2, 2015, which did not provide the monitoring team with adequate time to review, critique, staff and prepare comments on the proposed policy before writing of the draft IMR 1 commenced in early September, 2015. The policy will be reviewed and annotated thoroughly after it is developed fully by APD and submitted to the monitoring team and DOJ. The monitoring team will report on these policies during its second monitoring report.

Results

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

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

PO 2-53, "Electronic Control Weapons" dated July 2, 2015 was provided to the monitoring team on September 2, 2015, which did not provide the monitoring team with adequate time to review, critique, staff and prepare comments on the proposed policy before writing of the draft IMR 1 commenced in early September, 2015. The policy will be reviewed and annotated thoroughly after it is developed fully by APD and submitted to the monitoring team and DOJ. The monitoring team will report on these policies during its second monitoring report.

Results

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

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

PO 2-53, "Electronic Control Weapons" dated July 2, 2015 was provided to the monitoring team on September 2, 2015, which did not provide the monitoring team with adequate time to review, critique, staff and prepare comments on the proposed policy before writing of the draft IMR 1 commenced in early September, 2015. The policy will be reviewed and annotated thoroughly after it is developed fully by APD and submitted to

the monitoring team and DOJ. The monitoring team will report on these policies during its second monitoring report.

Results

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.21 Assessing Compliance with Paragraph 34: ECW Annual Certification

Paragraph 34 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

PO 2-53, "Electronic Control Weapons" dated July 2, 2015 was provided to the monitoring team on September 2, 2015, which did not provide the monitoring team with adequate time to review, critique, staff and prepare comments on the proposed policy before writing of the draft IMR 1 commenced in early September, 2015. The policy will be reviewed and annotated thoroughly after it is developed fully by APD and submitted to the monitoring team and DOJ. The monitoring team will report on these policies during its second monitoring report.

Results

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.22 Assessing Compliance with Paragraph 35

Paragraph 35 stipulates:

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

Methodology

PO 2-53, "Electronic Control Weapons" dated July 2, 2015 was provided to the monitoring team on September 2, 2015, which did not provide the monitoring team with adequate time to review, critique, staff and prepare comments on the proposed policy before writing of the draft IMR 1 commenced in early September, 2015. The policy will be reviewed and annotated thoroughly after it is developed fully by APD and submitted to the monitoring team and DOJ. The monitoring team will report on these policies during its second monitoring report.

Results

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

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

PO 2-53, "Electronic Control Weapons" dated July 2, 2015 was provided to the monitoring team on September 2, 2015, which did not provide the monitoring team with adequate time to review, critique, staff and prepare comments on the proposed policy before writing of the draft IMR 1 commenced in early September, 2015. The policy will be reviewed and annotated thoroughly after it is developed fully by APD and submitted to the monitoring team and DOJ. The monitoring team will report on these policies during its second monitoring report.

Results

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.24 Assessing Compliance with Paragraph 37: ECW Safeguards

Paragraph 38 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

PO 2-53, "Electronic Control Weapons" dated July 2, 2015 was provided to the monitoring team on September 2, 2015, which did not provide the monitoring team with adequate time to review, critique, staff and prepare comments on the proposed policy before writing of the draft IMR 1 commenced in early September, 2015. The policy will be reviewed and annotated thoroughly after it is developed fully by APD and submitted to the monitoring team and DOJ. The monitoring team will report on these policies during its second monitoring report.

Results

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

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

PO 2-53, "Electronic Control Weapons" dated July 2, 2015 was provided to the monitoring team on September 2, 2015, which did not provide the monitoring team with adequate time to review, critique, staff and prepare comments on the proposed policy before writing of the draft IMR 1 commenced in early September, 2015. The policy will be reviewed and annotated thoroughly after it is developed fully by APD and submitted to

the monitoring team and DOJ. The monitoring team will report on these policies during its second monitoring report.

Results

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

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

Members of the monitoring team reviewed General Order 1-46 Emergency Response Team (ERT) (January 23, 2014), Procedural Order 2-45 Use of Canine Unit (June 22, 2015), Procedural Order 2-52 Use of Force (June 4, 2014), and Draft Procedural Order 2-52 Use of Force (December 12, 2014) in our initial review. Subsequently, we located four additional policies: Field Services SOP Manual 4-12 K-9 Unit (December 5, 2013), Draft Procedural Order 2-45 Use of Canine Unit (August 6, 2015), Draft Order 4-12 K-9 Unit (undated), and Administrative Order 3-19 Response to Demonstrations (July 8, 2015). The version we received of the last order is a single-page document that is more responsive to sub-tasks a), b), and c). The monitoring team believes that there may be additional pages in the order, however, and will check on this issue in its November visit. The July 8, 2015 order is far more responsive to sub-tasks a), b), and c) in Paragraph 39, but the monitoring team is unable to determine if it complies with the requirement in 39. d) until we receive additional pages (assuming they exist). The monitoring team will report on these policies during its second monitoring report.

The Field Services version includes a section heading Crowd Control, which ***specifically authorizes both canine presence and deployment in crowd control situations. This provision conflicts directly with the requirements of CASA.*** The monitoring team notes that this appears to be a Bureau-level policy in contrast to an agency-level policy. APD should consider conducting an end-to-end review of its policy directives system to eliminate such conflicts and minimize the number of policy directives in circulation that have a common subject matter. It also should consider examining the alignment of different policy-generating sources and install some means of coordination and oversight to minimize confusion, eliminate conflicts and inconsistencies, and reduce inefficiencies.

General Order 1-46 Emergency Response Team (ERT) (January 23, 2014), which includes “demonstrations” within its scope, fails to clearly describe APD’s mission during such events in the opening policy section, set forth specific strategies for “encouraging the peaceful and lawful gathering of individuals”, and describe “crowd control techniques that safeguard the fundamental rights of individuals to gather and speak out legally.”

General Order 1-46 also permits deployment of canines in crowd control situations under certain conditions (See 1-46-8 and 1-46-10), in direct conflict with the CASA. Again, the City failed to provide DOJ with the revisions, as per the requirements of paragraph 147. The monitoring team will report on these policies during its second monitoring report.

Relative draft policies reviewed by the monitoring team (Order 4-12 K-9 Unit and Procedural Order 2-45 Use of Canine (June 22, 2015)) appear to be silent on the use of police canines in crowd control situations.

Frankly, the existence of multiple, inconsistent versions dealing with the same subject suggests that APD’s policy development process is in general disarray. There is little conformity to standard policy drafting conventions, such as clearly marking each version as a DRAFT, including a current date to facilitate tracking, indicating the total number of pages, and noting the source (either a person or unit). In addition, major problems with organization, content, and draftsmanship plague the review and approval process. If the current process is allowed to continue, it stands to delay primary compliance and hinder the design of policy-based training programs to implement critical project requirements and achieve secondary compliance. The monitoring team will report on these policies during its second monitoring report.

It is unclear if any of the draft versions have taken effect. None have been reviewed and approved by the independent monitor or DOJ. Several of the

orders listed are clearly no longer in effect. In this respect, APD's official web site was last updated in August 2014; thus, some of the policies listed may no longer be current or even in effect. In one instance, we found that the same index number had been assigned to two different policies, though at different organizational levels, according to the web site.

Results

Given the contradictions in APD's crowd control policies at different levels of the organization, and the internal inconsistencies evident in the policy process for this topic, the agency currently is judged not to be in compliance with this paragraph, although the final policy is not yet due.

Primary: **Not Yet Due**

Secondary: **Not Yet Due**

Operational: **Not Yet Due**

4.7.27 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

The monitoring team reviewed General Order 1-46 "Emergency Response Team (ERT)" dated January 3, 2014 and found that it includes no provision for mandatory after-action reviews following deployments in crowd control situations. There is no indication that this policy is under revision to include the after-action review requirement. The monitoring team also reviewed Field Services Bureau Order 3-9 "Response to Demonstrations" dated July 8, 2015. The order provided was only a single page, but it is unclear if more exists. The page provided no mandatory requirement for after-action reviews. This order also has not yet been reviewed and approved by the monitoring team and DOJ. The monitoring team will report on these policies during its second monitoring report.

Results

Primary: **Not Yet Due**

Secondary: **Not Yet Due**

Operational: **Not Yet Due**

4.7.28 Compliance with Paragraph 41: Use of Force Reporting Policy

Paragraph 41 stipulates:

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

Methodology

The monitoring team's original review was based, for the most part, on policy orders that were dated before July 2, 2015, when APD staff apparently completed the second draft of Procedural Order 2-52 Use of Force. The second draft now appears to have incorporated most of the revisions and enhancements recommended in the DOJ and monitoring team reviews of the first draft. As a result most of the monitoring team's earlier findings and recommendations are now dated and don't take into account the progress that APD has made in the second draft. Accordingly, the monitoring team has dropped its original responses to all but Paragraph 45 and will proceed with a timely review of the second draft to provide updated findings and recommendation to APD, which should enable the Department to achieve compliance.

Because the second draft was not submitted to the monitoring team until September 2, 2015, the monitoring team has had insufficient time to conduct an in-depth review during this report period. The monitoring team will report on these policies during its second monitoring report. This delay is unavoidable because draft Procedural Order 2-52 contains extensive procedures for force reporting. The monitoring team's intent is to get feedback to the Parties as soon as practicable, so that APD can begin adapting its policy-training-supervision-discipline continuum accordingly.

APD is not yet in compliance with paragraph 41 as of this date, although it is not yet due.

Results

Primary: **Not Yet Due**
Secondary: **Not Yet Due**

Operational: **Not Yet Due**

4.7.29 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 did not receive, in a timely fashion, policy revisions developed by the APD that would allow an assessment of this paragraph.

Results:

APD is not in compliance with paragraph 42 as of this date.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.30 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 monitoring team requested APD files on 16 randomly selected use of force incidents from the 50 such incidents occurring and reported by APD during the four months comprising the first reporting period (February-May, 2015). These data requests comprised a 32% sample, and included a request for all videos captured by officers' On-Body Recording Devices (OBRD), as well as for supporting data such as arrest reports, use of force

reports, written supervisory reviews of the use of force (if any) and other supporting documentation. APD responded with two "sets" of data and video. The first wave consisted of approximately 20 percent of the available OBRD videos. The monitoring team's second request for OBRD videos resulted in an 8-fold increase in the number of supplied videos, again, arriving too late to allow a complete review and analysis in time for full inclusion in the monitoring report.

As a result, the monitoring team is unable to report full results of the OBRD review for the first reporting period.

Results

None of the videos that could be reviewed and analyzed by the monitoring team indicated an injury to a suspect that was not reported. However, the issue of lack of full effective compliance with the monitoring team's data request--the arrival of "late data" led to difficulty monitoring this paragraph.

The reader should note that it is the monitoring team's opinion that none of these omissions were deliberate, but were the artifact of "new systems," and lack of familiarity with systems that led to a finding of not in compliance for this paragraph. These results do raise questions about the flexibility and utility of the APD's video management system, its ability to index and retrieve salient video, and the significant increase in sergeants' time that will need to be committed to effective video review if the OBRDs are to be an effective supervisory and management mechanism.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.31 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

Information regarding the APD's current version of its Use of Force policy cannot be compiled, as the revised draft policy was not submitted in time to allow the monitoring team to review, annotate, suggest changes, staff, proof and return to APD in time to be included in this report.

Results

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.32 Compliance with Paragraph 44: Medical Services and Force Injuries

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

The monitoring team requested APD files on 16 randomly selected use of force incidents from the 50 such incidents occurring and reported by APD during the four months comprising the first reporting period (February-May, 2015). These data requests comprised a 32% sample, and included a request for all videos captured by officers' On-Body Recording Devices, as well as for supporting data such as arrest reports, use of force reports, written supervisory reviews of the use of force (if any) and other supporting documentation. APD responded with two "sets" of data and video. The first wave consisted of approximately 20 percent of the available OBRD videos. The monitoring team's second request for OBRD videos resulted in an 8-fold increase in the number of supplied videos, again, arriving too late to allow a complete review and analysis in time for full inclusion in the monitoring report.

As a result, the monitoring team is unable to report full results of the OBRD review for the first reporting period.

Results

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

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 monitoring team conducted a review of information from 16 Supervisory Force Investigations during the first reporting period. Based on APD records, APD officers reported 50 cases of uses of force that, by the requirements of the Agreement, required a supervisory review. These 50 cases involved 69 officers. The monitoring team selected a stratified random sample of 16 of these 50 incidents, ensuring that the sample included various types of use of force. The APD's initial response to the request for records of the 16 randomly selected cases resulted in submissions that appeared to be problematic to the monitoring team. To be certain of having all the required information to make an assessment of this (and other) paragraphs, the monitoring team made a second request to the department, which resulted in a substantial increase in the numbers of videos provided in response to the request. Those videos arrived too late to allow a full review. The results of the team's limited review are based on a careful review of the original submission (and because of the late discovery of additional videos, a preliminary assessment of the additional supporting documentation) in order to determine whether sufficient information existed to complete a meaningful assessment of the Department's supervisory force investigations. The team found it possible to develop a meaningful review of only two such cases, **both of which report incidents that took place prior to the agency's development and training of revised use of force policies and procedures.**

The first case, involved a deployment of an Electronic Control Weapon (ECW) against a suspect in a domestic violence incident. In that incident, which took place in a darkened rear yard, and involved a fleeing suspect, the suspect was struck in the back and the head by the officer's ECW, resulting in immediate control. Intentional use of an ECW targeting a suspect's head is expressly prohibited by APD policy (SOP 2-53, dated September 2, 2015). This issue was neither identified nor resolved by the (sergeant) investigator, as policy development and training at APD had yet to "catch up" with stipulations of the CASA. Subsequent reviews up the chain of command also failed to identify the head-strike as an issue and return the investigation for further work as policy development and training at APD had yet to "catch up" with stipulations of the

CASA. The monitoring team does not conclude that the head-strike was intentional or unintentional. That will be the role of the primary investigator and chain of command supplemental reviews once the APD's policy development and training at APD "catches up" with stipulations of the CASA. .

The second incident reviewed by the monitoring team was similar. In this incident APD officers were dispatched to a reported armed robbery where a basic physical description of the subject was provided. An APD lieutenant reported to the area and encountered a male suspect who matched the basic description that was given across police radio. The lieutenant initiated contact, and eventually the male subject began to run across a busy street with the lieutenant pursuing on foot. The chase continued along residential streets and into an open lot between two residential yards where the subject stopped. Numerous orders were given to the subject to get onto the ground, but he refused to comply and even advanced toward the lieutenant. The subject was warned he would be "Tased" if he did not comply, and the lieutenant attempted to maintain his distance. The lieutenant maintained composure and was professional with his actions to this point, and when the subject continued to move toward him he deployed his Taser. The subject attempted to pull off the wires and started moving away and it was at that time a second ECW cycle was employed. Two officers arrived to assist and engaged the subject by giving commands to get onto the ground, which were not followed. While attempting to gain custody of the subject, one of the officers deployed two (2) additional ECW cycles. Eventually, a fourth officer arrived on the scene and assisted with handcuffing the subject.

In addition to the two cases documented above, the monitoring team was able to make a number of general observations concerning the quality of supervisory investigations and the performance of involved officers. These included:

1. A small percentage of officers used "police-speak" or boilerplate language to describe incidents, a violation of Paragraph 42 of the CASA. For instance, one officer used the phrase "I felt it necessary to deploy my lethal force in preparation...." He was in fact simply un-holstering his firearm because of the threat he saw developing. Another officer noted that he used the "technique of the mandibular angle."
2. Few supervisors used their lapel video to record witness statements. In one instance, the supervisor simply handed a statement form to the suspect and told her to drop it off at the area station. Her statement was not found in the investigative file. This was a lost opportunity to create a clear, irrefutable record of her involvement.

3. Few supervisors analyzed incidents to identify specific behaviors that could be classified as attempts at de-escalation or assess whether officers used the minimum amount of force necessary. Both assessments are required by Paragraph 53, sub-task d) in the CASA and in newly drafted SOP 2-52-7, Sub-section A. 4. d. (pending the monitor's and DOJ's review and final approval). These should be major areas of emphasis in any training on conducting supervisory force investigations.
4. The "blank sheet" approach to both supervisors' and reviewers' narratives is seriously deficient. It leads to major inconsistencies and wide variations in the quality of these reports. For instance, presence or absence of various "Graham" factors is an important aspect of any force investigation. Specific headings should be provided to structure the reporting on critical issues after the investigator provides a brief synopsis of the incident. Additional headings should include Encounter Dynamics, De-escalation (if feasible), Video Evidence (see the following item on this issue), Warnings (if feasible), Risk Management, and Tactics.
5. The existence of video is indicated by a relatively small, obscure check box on the Use of Force Data Report. Hence, it is not immediately clear what video evidence should or does exist. Because of the emphasis placed on the use of video by APD officers, this topic should be featured far more prominently on the form. Further, given the APD's response to the monitoring team's request for related video, it is clear to the monitoring team that, at this point in time, the ability to search for, locate and organize video associated with a given incident is limited.
6. Several investigators prepared their reports in small fonts, single-spaced, and organized in a single multi-page paragraph, which made review extremely difficult. While this appears to be a monitoring team-related issue, the same report format that makes assessment of an incident for the monitoring team would also make it difficult for supervisors tasked with review, assessment and follow-up on use of force-related incidents at APD.
7. In one instance, an officer's abrasive demeanor was obvious in the related video. This issue was identified in the subsequent reviews by APD supervisors, and resulted in remediation (it's unclear if the remediation was commensurate with the officer's performance history). **This truly represents the most effective type of early intervention.**

The reader should note that the events described above were observed prior to completion of the APD's pending Use of Force policy (and

associated policy) concerning operation of officers' OBRDs. The same holds true for training in the new policy. In short, what the monitoring team reviewed this reporting period was behavior not guided by new policy or training required by the CASA. In the opinion of the monitor, this underscores the need for immediate action by APD in completing a meaningful and acceptable use of force policy and related training for officers, supervisors and managers regarding that (and related) policy.

Results

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.34 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

The policy controlling supervisory force investigations has not been effect for a sufficient period of time to allow for review of promotions of supervisory personnel to determine if the quality of these reviews is part and parcel of the promotional process for higher-ranking officers.

Results

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.35 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 monitoring team reviewed the APD's initial Use of Force policy and found that, overall, it fell short of the full requirements of the CASA related to use of force issues. The policy submitted complied with the requirements of this section, in that it identifies at least two categories of use of force that determine the type of investigation required (non-lethal force, investigated by the officers' immediate supervisors and potentially lethal force, investigated by the IAB). Supplemental policies on Use of Force were not submitted in time to determine if those applicable provisions were carried over.

While proposed policy addresses the requirements of this paragraph (APD has two categories of force), the policy is not complete and has not been approved by the monitoring team.

Results

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.36 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

Members of the monitoring team reviewed policies proposed by APD in response to this paragraph, and found them to be insufficient in terms of their guidance and

operational requirements. Those policies were returned to APD for further work

Results

The agency's policies provided to the monitoring team to this point are not sufficiently responsive to the use of force and to Internal Affairs Bureau (IAB) responsibilities related to use of force investigations. Additional policy product on this topic was not submitted to the monitor in sufficient time for to allow assessment of their acceptability prior to reporting deadlines for the first monitoring report.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.37 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

Given the difficulty of establishing data transmission protocols early in the monitoring process, the monitoring team was able to review fully only a very small sample of OBRD videos available to APD supervisory personnel. What video that was transmitted to the monitoring team dealt with incidents that occurred prior to the time that APD policy on use of force and supervision and investigation of use of force incidents could be commented on by the monitoring team

Results

The agency's policies provided to the monitoring team to this point are not sufficiently responsive to the use of force and to Internal Affairs Bureau (IAB) responsibilities related to use of force investigations. Additional policy product on this topic was not submitted to the monitor in sufficient time for to allow assessment of their acceptability prior to reporting deadlines for the first monitoring report.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**

Operational: **Not Yet Due**

4.7.38 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

Given the difficulty of establishing data transmission protocols early in the monitoring process, the monitoring team was able to review fully only a very small sample of OBRD videos available to APD supervisory personnel. The video that was transmitted to the monitoring team dealt with incidents that occurred prior to the time that approved revised APD policy existed concerning use of force and supervision and investigation of use of force incidents.

Results

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.39 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

Members of the monitoring team reviewed APD use of force reports provided in response to their request for a stratified random sample of the use of force reports filed by APD personnel during the reporting period. Based on the team's experience in reviewing use of force reports and the expected volume of officers involved given the nature of the force reports provided, it was clear to the monitoring team that they had not been provided a complete sample in response to the first request for OBRD video. A second request was made, resulting in an 8-fold increase in the number of OBRD videos located by the APD. A review of accessible OBRD videos yielded a sufficient number of flaws to give the members of the monitoring team serious concerns about the training, supervisory, and audit processes implemented by the APD to control and utilize the information available from the OBRD system.

Results

This paragraph, by its nature, is a complex behavioral issue requiring, in the opinion of the monitoring team, a fair degree of experience, training, organization and supervision before supervisory personnel can become accustomed to adhering to all of its provisions. Given the difficulty obtaining OBRD video, described above, it is clear that work remains to be done in several areas to come into compliance with this task: handling, processing, storage and

retrieval systems need to be refined and improved; training of supervisors in policy relative to policy controlling officer use of force needs to be improved, training of supervisors regarding OBRD review needs improvement; a system of oversight of OBRD video and video review needs to be implemented and refined. The APD is not in compliance with this task at this time, and completion of this task is not yet due.

Results

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.40 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

Members of the monitoring team reviewed available OBRD video for indication of compliance with this task. Incidents recorded by OBRDs for the sample selected were tested against the requirements of this paragraph of the CASA. As with any new system, the finer aspects of supervisory review needs fine tuning to bring APD field supervisory review into compliance.

This fine-tuning will require revision to the APD OBRD policies governing supervisory processes of reviewing of OBRD videos, and investigating field force applications. The monitoring team did note the occasional use of “boilerplate” language (which should have been caught and corrected by field supervisors reviewing the given use of force incident reports, but were not); noted occasions during which field supervisors did not use their OBRD to video witness statements; observed that few supervisors appeared to analyze use of force incidents for opportunities to use de-escalation techniques to **avoid** the need for use of force; both the supervisory assessments and the field use of force reports are “blank page” documents rather than carefully thought out **systems** designed to specifically collect information necessary to improve use of force decision-making and processes employed by field personnel; the existing use of force reporting system is flawed in that it does not clearly note, identify, and locate the existence of video available to supervisors, managers and policy-makers to critique, strengthen, and improve APD use of force practices. For example a “one key” search for all available OBRD video for a given incident, either by arrest report number, offense number, or other unique identifier would drastically reduce the number of supervisory man-hours required to implement and use the OBRD system. As it stands, the system would be, at best, difficult for supervisors to use.

Results

Primary: **Not Yet Due**

Secondary: **Not Yet Due**

Operational: **Not Yet Due**

4.7.41 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

Members of the monitoring team reviewed available OBRD video for indication of compliance with this task. Incidents recorded by OBRDs for the sample selected were tested against the requirements of this paragraph of the CASA.

Results

The monitoring team saw no indication of an active “chain of command” presence in the process of supervisory reporting of uses of force by APD personnel. Too many procedural, reporting, and context errors (e.g. reports exhibiting a lack of precedent for a given use of force, etc.) existed in the field reporting process of same to indicate a serious, well-trained,

and vigilant management cadre (see the discussions in the paragraphs immediately proceeding). In fact, the monitoring team is of the opinion that the current use of force system is too cumbersome to allow meaningful managerial review (see the comment above about unique incident identifiers that can be used to recover all OBRD videos for a given incident).

Primary: **Not Yet Due**

Secondary: **Not Yet Due**

Operational: **Not Yet Due**

4.7.42 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

Members of the monitoring team reviewed use of force reports provided pursuant to requests documented in paragraphs 52-54 above. Those uses of force occurred prior to departmental policy being developed, staffed, and provided to the monitor for review and comment. As such, the monitor cannot opine about the effectiveness of policy or supervision related to this paragraph.

Results

Primary: **Not Yet Due**

Secondary: **Not Yet Due**

Operational: **Not Yet Due**

4.7.43 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

Unable to evaluate

Results

The current use of force evaluation system is too new to include artifacts of "repeated deficient supervisory force investigations." More data over a longer period of time will be required to assess the "repeatedly" portion of this paragraph.

Primary: **Not Yet Due**

Secondary: **Not Yet Due**

Operational: **Not Yet Due**

4.7.44 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 monitoring team found insufficient reportage indicating that the requirements of this paragraph have resulted in Force Review Board findings. Assessment of this paragraph is reserved for future monitoring reports.

Results

Primary: **Not Yet Due**

Secondary: **Not Yet Due**

Operational: **Not Yet Due**

4.7.45 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

None of the use of force events reviewed by the monitoring team this reporting period indicated that the Chief of Police intervened by re-assigning a force investigation to another supervisor for further investigation. The monitoring team was unable to evaluate this paragraph this reporting period, but will continue to review use of force investigations in which the Chief has exercised this authority.

Results

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.46 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 monitoring team reviewed a sample of completed supervisory force investigations completed by APD personnel for incidents that would be applicable under this paragraph. None of the use of force events reviewed by the monitoring team this reporting period indicated that the APD found, during the supervisory investigation, that a use of force violated policy. APD's revised policy on use of force and supervisory review of reports of use of force were pending at the time of this review. Thus supervisory response to this paragraph could not be evaluated at this time.

Results

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.47 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

The monitoring team is cognizant of the fact that the APD internal affairs process, and thus its supporting policies and procedures, are under significant revision by the APD. As a result, we have not addressed the "policy" aspect of this paragraph for the first monitoring report. That review will be conducted as part of the second monitoring report.

Results

The IA policy, Use of Force policy and other related policies, based on the reviews by the monitoring team, are incomplete at this time, and require further work prior to being approved by the monitoring team.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.48 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

The monitoring team has reviewed and commented upon existing drafts of the Internal Affairs policy and related policies. At this point, the team has not

approved the IA policy, as it is not responsive to requirements established by the CASA. In addition, the team finds the policy to be difficult to read and understand, and by extension difficult to train. The monitoring team will continue to work with the Parties to develop an acceptable policy formation process that results in clear, concise, "trainable" and enforceable policy.

Results

Primary: **Not Yet Due**

Secondary: **Not Yet Due**

Operational: **Not Yet Due**

4.7.49 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

The monitoring team has reviewed and commented upon existing drafts of the Internal Affairs manual and related policies. At this point, the team has not approved the IA policy manual. In addition, the team finds the policies themselves to be difficult to read and understand, and by extension difficult to train. The monitoring team will continue to work with the Parties to develop an acceptable policy formation and documentation process that results in clear,

concise, "trainable" and enforceable policy, articulated successfully in the IA policy manual.

Results

Primary: **Not Yet Due**

Secondary: **Not Yet Due**

Operational: **Not Yet Due**

4.7.50 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

The monitoring team has reviewed and commented upon existing drafts of the Internal Affairs policy and related policies. At this point, the team has not approved the IA policy, as it is not responsive to requirements established by the CASA. In addition, the team finds the policy to be difficult to read and understand, and by extension difficult to train. Absent sufficient policy, staffing is a moot question. The monitoring team will continue to work with the Parties to develop an acceptable policy formation process that results in clear, concise, "trainable" and enforceable policy.

Results

Primary: **Not Yet Due**

Secondary: **Not Yet Due**

Operational: **Not Yet Due**

4.7.51 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

Members of the monitoring team reviewed IA policies and procedures, training, and cross-linkages with the Force Investigation Teams (FIT) and Critical Intervention Review Teams (CIRT). They were also advised that the APD has been in close contact with the Las Vegas Metropolitan Police Department and has had the benefit of their experiences in writing, training and implementing some of the better IA/Use of Force policies currently in practice in the United States. Unfortunately, the Use of Force policies, necessary for development, training and implementation of these state of the art practices within APD have yet to be reasonably translated (through training and supervision) to APD patrol, specialized unit, and IAB functions, because they have not yet been written by the APD in a form that can be approved by the monitoring team. Training of personnel before execution and promulgation of effective (and approved-by-the-monitoring-team and DOJ) policies is a problematic practice. This is exactly why the monitoring team suggested to APD that some training be postponed until relevant policy issues are ironed out, and training needs assessments are articulated.

Results

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.52 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

Draft Procedural Order 2-31 Investigation of Officer-Involved Serious Use of Force and In-Custody Deaths (undated) provides for such referrals. The reconciliation of all organizational policies, and the completion of the IA Division

Manual, and submission of these revisions to the monitoring team and to DOJ for approval will be required to meet compliance with this paragraph.

Results

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.53 Compliance with Paragraph 66: MATF Assistance to IAB

Paragraph 66 stipulates:

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

Methodology

Draft Procedural Order 2-31 Investigation of Officer-Involved Serious Use of Force and In-Custody Deaths (undated) provides for such referrals. The reconciliation of all organizational policies, and the completion of the IA Division Manual, and submission of these revisions to the monitoring team and to DOJ for review approval will be required to meet compliance with this paragraph.

Results

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.54 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

Members of the monitoring team reviewed a randomly selected sample of 16 use of force incidents for indications of any uses of force indicating apparent criminal conduct. No uses of force by APD officers were noted which rose to the level of criminal conduct. Importantly, however, existing (in effect) use of force policies fail to stipulate the requirement for the Chief to notify and consult with the requisite persons regarding use of force indicating use of force which may indicate apparent criminal conduct by an officer.

Results

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

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

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

Methodology

Members of the monitoring team reviewed a randomly selected sample of incidents for indications of any case that was selected to institute a criminal investigation. None of the selected cases involved an investigation that should have resulted in criminal charges or should have resulted in compelled statements.

Results

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.56 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

Members of the monitoring team reviewed a randomly selected sample of incidents for indications of any case that was required by policy to be classified as a use of serious force, and, thus required to be assigned to IAB for investigation. Further, critical

elements of the policy continuum are unenforceable until clear, meaningful, and enforceable policy is promulgated by the APD controlling critical issues such as those articulated in this paragraph.

Results

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.57 Compliance with Paragraph 70: Use of Force Data Reports

Paragraph 70 stipulates that:

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

Members of the monitoring team reviewed a randomly selected sample of incidents for indications of any case that was required by policy to be classified as a use of serious force, and, thus required to be assigned to IAB for investigation. Further, critical elements of the policy continuum are unenforceable until clear, meaningful, and enforceable policy is promulgated by the APD controlling critical issues such as those articulated in this paragraph.

Results

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.58 Compliance with Paragraph 71: IAB Investigative Timelines

Paragraph 71 stipulates that:

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

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

Methodology

Members of the monitoring team reviewed a randomly selected sample of incidents for indications of any case that was required by policy to be classified as a use of serious force, and, thus required to be assigned to IAB for investigation. Further, critical elements of the policy continuum are unenforceable until clear, meaningful, and enforceable policy is promulgated by the APD controlling critical issues such as those articulated in this paragraph.

Results

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.59 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

Members of the monitoring team reviewed a randomly selected sample of incidents for indications of any case that was required by policy to be classified as a use of serious force, and, thus required to be assigned to IAB for investigation. Further, critical elements of the policy continuum are unenforceable until clear, meaningful, and enforceable policy is promulgated by the APD controlling critical issues such as those articulated in this paragraph.

Results

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

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

Paragraph 73 stipulates that:

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

Members of the monitoring team reviewed a randomly selected sample of incidents for indications of any case that was required by policy to be classified as a use of serious force, and, thus required to be assigned to IAB for investigation. Further, critical elements of the policy continuum are unenforceable until clear, meaningful, and enforceable policy is promulgated by the APD controlling critical issues such as those articulated in this paragraph.

Results

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.61 Compliance with Paragraph 74: IAB Quality Control

Paragraph 74 stipulates that:

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

Members of the monitoring team reviewed a randomly selected sample of incidents for indications of any case that was required by policy to be classified as a use of serious force, and, thus required to be assigned to IAB for investigation. Further, critical elements of the policy continuum are unenforceable until clear, meaningful, and enforceable policy is promulgated by the APD controlling critical issues such as those articulated in this paragraph.

Results

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.62 Compliance with Paragraph 75: IAB Reports Sent to Force Review Board

Paragraph 75 stipulates that:

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

Members of the monitoring team reviewed a randomly selected sample of incidents for indications of any case that was required by policy to be classified as a use of serious force, and, thus required to be assigned to IAB for investigation. Further, critical elements of the policy continuum are unenforceable until clear, meaningful, and enforceable policy is promulgated by the APD controlling critical issues such as those articulated in this paragraph.

Results

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

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

Paragraph 76 stipulates that:

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.

No actions by the Chief of Police resulting in referrals to the MATF or the FBI were noted this reporting period.

Results

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.64 Compliance with Paragraph 77: Discipline on Sustained Investigations

Paragraph 77 stipulates that:

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

Use of Force incidents reviewed by the monitoring team for this reporting period did not result in completed IAB investigations. Thus, the monitoring team was unable to assess compliance with the CASA at this time. The team will continued to monitor APD IAB work product to determine whether or the Chief of Police utilizes this avenue for resolving use of force investigations. The monitoring team noted that the extant policy on Internal Affairs does not note this provision; however, IAB policy is currently under revision. The team would expect this permissive provision to be reflected in any new policy submissions.

Results

Primary: **Not Yet Due**

Secondary: **Not Yet Due**

Operational: **Not Yet Due**

4.7.65 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

Policies regarding the use of the Force Review Board are pending, and cannot be evaluated until APD completes policy development and other paragraphs of this section of the CASA are brought in line with articulated requirements.

Results

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.66 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

The monitoring team requested information from APD that would demonstrate their compliance with this paragraph. In response to that request APD produced four (4) specific pages extracted from their organization-wide 2014 Annual Report. APD's current practice is to include operational statistics, including uses of force, in its Annual Report. The 2014 Report, for example, includes statistics, principally in graphic form, on service calls, crime (9-year span), arrests, use of force incidents, incident demographics, types of force incidents, firearms discharges, and SWAT deployments.

For the most part, little in-depth analysis accompanies the material displayed in the Annual Report, though some gross multi-year trends are obvious in a number of the graphics. It is clear that APD has considerable on-point statistical data that will serve as a foundation for building a system that eventually will enable it to achieve compliance. The next step for the agency is to not only compile aggregate data on organizational-wide and officer uses of force, in specific response to the requirements of this task, but to analyze it to determine what all the information means. Collecting and reporting data have certain commonalities with analysis, but it's the latter that will provide the most benefit to APD supervisors and commanders. It is in the subtle differences that APD will distinguish itself as an organization that not only collects data for statistical purposes, but also finds the obvious and hidden meanings within it. Analysis will provide a basis for policy and training development and appropriate foundations for accountability. An intelligence-led decision making process will provide long-term benefits to the identification and/or avoidance of unwanted trends.

APD has implemented an innovative and comprehensive data collection and reporting system plan that will enable it to comply with the requirements of this paragraph. The present system lacks the necessary data fields to do so. To date, insufficient policies or procedures are in place to guide the development of this system, which, in effect means that the *system* may wind up guiding the policy and procedures. The monitoring team stands ready to consult with the APD to ensure the system as designed will meet the requirements of paragraph 79.

Results

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.67 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.

Methodology

During its last site visit, members of the monitoring team spent a substantial amount of time consulting with APD personnel responsible for building and maintaining systems responsive to this task. The fulfillment of requirements in this paragraph depends in great part on the system enhancements referred to under the preceding paragraph. Accordingly, the monitoring team will review these issues once again when it meets with APD staff to assess progress on the data enhancement project in early November 2015. We learned that supervisory use of force investigations are completed in a program called MRIAD and then re-submitted into their IAPro database. This duplication in work opens opportunities for mistakes and creates mass inefficiencies. It is the monitoring team's understanding that upgrades to IAPro are expected resolve some of the issues being encountered.

The quality of the APD tracking system will be reliant on the quality of the inputs that exist for that system. The current manner of collecting and documenting use

of force, specifically the lack of nimbleness in separating officer data within the Supervisory Use of Force Data Reports and any accompanying reports, needs attention. In the limited review the monitoring team conducted of supervisory use of force investigations during this reporting period, we observed that the collection of accurate data requires a careful and time consuming review of report narratives to identify each officer's actual and potential use of force. It then requires a cross check with OBRD videos to be most accurate. As layers of review occur up to and including the Force Review Board, APD will have to identify a means of capturing data where a higher-level review identifies different or additional types of force being used by an officer during the same event.

The current Use of Force Data Report is a good first step and demonstrates APD's commitment to documentation. With a reworked, automated reporting system APD would create a means of easily documenting each officer who uses force during an incident and the different types of force they used. The narrative would then be a means of a supervisor resolving the force as either appropriate or not.

The tracking system that is ultimately implemented must include capabilities to capture dispositions of use of force cases where an officer is commended, counseled, disciplined or trained. This manner of tracking will benefit APD in that it will demonstrate and ultimately showcase the organization's business processes surrounding use of force.

The monitoring team requested, but has not yet received, policy documents that capture the APD tracking mechanisms.

Results

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.68 Compliance with Paragraph 81: MATF Participation by APD

Paragraph 81 stipulates that:

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

Methodology

Members of the monitoring team reviewed archival data kept in the normal course of business, indicating APD is a signatory to the current Memorandum of Understanding (MOU) that creates a Multi-Agency Task Force (MATF) to conduct specific types of investigations. The scope of work includes officer-involved shootings, other serious uses of force, and in-custody deaths. Other signatories are the New Mexico Department of Public Safety, the Bernalillo County Sheriff's Office, and the Rio Rancho Police Department. The MOU sets forth detailed policies and procedures for MATF operations. APD formally joined the MATF on September 22, 2014. There is no provision regarding training for MATF personnel in the Memorandum of Understanding (MOU) governing the MATF; however, given the performance of APD personnel in particular and the MATF in general, it appears that the personnel assigned to the MATF are familiar with their duties and expectations. The monitoring team will continue to monitor MATF activities, and, it may be that staff familiarity with MATF policy and practice is sufficient to allow this in-service training to be considered secondary compliance.

Results

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.69 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

Members of the monitoring team reviewed the requirements of the CASA and compared the operational artifacts generated by the MATF in its normal course of daily business. There is no provision regarding training for MATF personnel in the Memorandum of Understanding (MOU) creating the MATF; however, given the performance of APD personnel in particular and the MATF in general, it appears that the personnel assigned to the MATF are familiar with their duties and expectations. The monitoring team will continue to monitor MATF activities, and, it may be that staff familiarity with MATF policy and practice is sufficient to allow this in-service training to be considered secondary compliance.

Results

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.70 Compliance with Paragraph 83: Coordination with MATF

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.

Methodology

Members of the monitoring team reviewed the current MATF MOU and found that it includes provisions for the public release of information, although the release of video recordings is not mentioned specifically. The MOU places final decision authority for the release of any information with the Head of the Lead Agency. APD will need to ensure that its own policies for the operation of the MOU empowering the MATF clearly state the processes by which and the situations under which video recordings will be released. For the purposes of this paragraph, that guidance should be reduced to writing.

Results

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.71 Compliance with Paragraph 84: Briefings with MATF

Paragraph 84 stipulates that:

APD agrees to participate in all briefings of incidents involving APD personnel that are investigated by the Multi-Agency Task Force.

Methodology

Members of the monitoring team reviewed "course of business" records for this paragraph, and found that APD continues to be an active member of the MATF, and that the policy of the MATF requires that participating agencies participate fully in all activities of the Task Force, including regular briefing. At this point, the monitoring team has no access to MATF records that would substantiate APD's full participation. Issues of secondary and

operational compliance will be followed up during upcoming monitoring team activities.

Results

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.72 Compliance with Paragraph 85: Expiration of MOU re MATF

Paragraph 85 stipulates that:

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

Members of the monitoring team reviewed the MATF MOU and found that while the MOU remains in force, that document allows a specific agency to withdraw at any time. Further, this paragraph is "contingent," and can only be monitored if APD withdraws from the MATF. All elements of compliance are therefore considered met until such time that the APD were to withdraw from the MATF or the MATF were to be disbanded.

Results

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

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

Paragraph 86 stipulates that:

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

The monitoring team has been working closely with APD to facilitate the effective generation of numerous policies directly related to applicable sections of the CASA. To date, progress has been made; however substantial work remains to be done relative to use of force processes.

Results

As of the date of this report, APD has not developed an acceptable use of force policy.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.74 Compliance with Paragraph 87: Use of Force Training Based on Constitutional Principles

Paragraph 87 stipulates that:

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

Members of the monitoring team have reviewed planned APD policy and training processes regarding use of force in all its aspects. The team's findings include the following.

While most of the listed subjects are included in APD's current force training program in differing degrees and with varying emphases, there are significant revisions and enhancements required by the CASA. Of particular importance are: the emphasis upon de-escalation skills, APD's higher standard governing the use of force, enhanced use of force reporting and investigation, the management of encounters with those in crisis, and incident management principles. As APD shifts its emphasis from policy development to the design of training curricula to link policy to field practice, the monitoring team will conduct in-depth audits of any proposed training material to ensure that it fulfills specific force-related requirements of the CASA. The monitoring team will also work closely with APD SMEs by providing technical assistance on different strategies and techniques to transform policy into high-quality, relevant, and practical training.

In order to come into compliance with the CASA, and the standard training protocols established in the field of policing, training development should also contemplate specific comments and feedback that is provided through the periodic reports that are prepared by the monitoring team. It remains to be demonstrated by APD that specific, relevant organizational entities (i.e. FRB/CIRT) have established business processes and feedback loops that result in training development or revisions. In future site visits those type of training programs will be requested for review.

The rubric established by the monitoring team, and reflected by standard practice in the field, is that sound policy development must occur first to create sound training platforms. As noted in this report, APD is actively engaged in the important function of policy development.

Results

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

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

Paragraph 88 stipulates that:

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

Members of the monitoring team have consulted with the APD concerning training modalities that, the monitoring team considers, would be effective, and meet nationally accepted standards and practices. The monitoring has offered to have a "conversation" with command staff to identify elements of nationally accepted training practice that can be adapted by APD to ensure that training is "on policy," and consistent with nationally accepted standards regarding training process. APD has created an omnibus class schedule to reflect all of the training requirements required in the CASA. As this training comes on line, the monitoring team will conduct real-time audits to ensure that all force-related training complies with CASA requirements and national standards for police training and practice. The monitor notes that **part** of the delay in bringing APD training practices "on-line" is attributable to the monitor's decision to require conformance with national practices **prior** to initiating training, and thus avoid the need to repeat training designed, planned, and "calendared" prior to the monitor's arrival.

Results

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.76 Compliance with Paragraph 89: Annual Firearms Training

Paragraph 89 stipulates that:

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

Members of the monitoring team reviewed existing and planned Firearms Training practices. The monitoring team reviewed APD Procedural Order 2-22 Firearms and Ammunition Authorization (December 11, 2014) and determined that it provides for annual qualification in “any weapon carried on duty, off duty, or as backup”, requires qualification under low-light conditions, and provides for timely, definitive remediation in the event of qualification failures.

The regular use of scenario-based training under authentic conditions should be required at least annually (more frequently if feasible). Such training should stress decision-making, continuous threat assessment, and tactical regrouping to accommodate changed circumstances. It should also stress sound tactical decision-making in the time preceding an encounter to emphasize de-escalation and to prevent instances of “officer-created danger” or reckless provocation.

Real time audits of training programs will be accomplished in future monitoring visits.

APD is approaching primary compliance with the requirements in Paragraph 89, though certain provisions should be made more explicit in its firearm policy and training program. This includes force decision-making, self-management strategies and techniques while under stress, continuous threat awareness, tactical “smarts”, de-escalation, and situation awareness.

Results

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.77 Compliance with Paragraph 90: Management of Specialized Units

Paragraph 90 stipulates that:

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.

The monitoring team finds this to be a statement of high-level intent, consistent with an effective statement of policy; however, policy must be accompanied by procedures designed to effectively implement the intended policy. There are no specific paragraphs of "procedure" associated with this policy statement, based on what has been provided to date.

The APD **has** taken specific steps with its respect to its tactical units, including discontinuation of the use of Department of Energy curricula for training. As a result of foregoing these types of training facilities and practices,

APD has formally disposed of several military surplus vehicles that were not particularly well suited for civilian police operations, and has repainted the remaining, better-suited vehicles blue instead of military brown and has signage on the vehicles indicating "rescue" to distinguish them from military vehicles. Further, tactical team members have completed the department's 40-hour Critical Incident Team course, which provides an emphasis on **de-escalation** techniques. Further, it appears that the Unit Commander of the tactical services group has instituted a policy prohibition on using police canines for crowd control, although this prohibition is not yet part of official APD department wide policy.

APD tactical have also reportedly incorporated tactical scenarios in its on-going training that emphasize de-escalation and the use of minimum amount of force necessary. A risk assessment matrix has been developed to assist supervisors and commanders in the field in deciding whether a tactical activation is justified. A policy on non-threatening barricaded suspects has been developed and implemented, requiring a careful risk assessment prior to executing or continuing tactical response

Results

While APD SWAT have operationally changed a great deal of their doctrine to reflect the requirements of the policy statement responsive to this paragraph, resulting operational procedures have yet to be promulgated by the agency and

provided to the monitor for review. The monitoring team applauds SWAT for taking the lead, and awaits final global APD written procedures responsive to the specific requirements of this paragraph reflective of K-9 and bomb squad/ Explosive Ordnance Disposal (EOD).

Primary: **Not Yet Due**

Secondary: **Not Yet Due**

Operational: **Not Yet Due**

4.7.78 Compliance with Paragraph 91: Composition of Specialized Tactical Units

Paragraph 91 stipulates that:

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

APD's Special Operations Division consists of the three distinct functional groups listed in Paragraph 91. The three units, according to policy, function as an integrated team, which is able to deploy special capabilities and resources in response to high-risk incidents. Draft Support Services Bureau Procedural Order 4-04 SWAT (revision date of February 12, 2015) establishes eligibility qualifications and training requirements for SWAT team members. Two related orders--- Procedural Order 4-03 Explosive Ordnance Disposal Unit (Bomb Squad) (undated) and Procedural Order 4-12 K-9 Unit (December 5, 2013) --- define similar requirements, but omit eligibility qualifications. It should be noted that the cited policies originated at different organizational levels and sources. APD Procedural Policy 2-45 Use of Canine Unit (June 22, 2015), for example, is an agency-wide policy, while Procedural Order 4-12 K-9 Unit (December 5, 2013) is a Bureau-level order. It is unknown how these localized policies are woven into the wider organizational policy development system, and whether these policies were ever vetted through the PPRB. However, the policies contain several appropriate and meaningful sections that are consistent with this standard.

More work will be required to ensure the policies are a part of a cohesive and comprehensive policy development system. As noted elsewhere in this report, the state of policy development within APD is, in general, problematic.

The monitoring team was provided with Department Personnel Circular 14-47, dated December 29, 2014, which is an announcement for positions within the APD SWAT Unit. The Circular lays out minimum qualifications, automatic

disqualifying factors, and requirements of the position within SWAT. This circular represents evidence of pre-established standards for selection to the SWAT Unit. Similar evidence must be provided for the K-9 and Bomb Squad/EOD. Then selection results will have to be reviewed along with appropriate training records

Results

While SWAT leads the way in compliance with the requirements of this paragraph, other tactical units will need to follow. Until such time as all specialized tactical units can point to good policy and effective operations based on that policy, compliance will be elusive.

Primary: **Not Yet Due**
Secondary: **Not Yet Due**
Operational: **Not Yet Due**

4.7.79 Compliance with Paragraph 92: Training of Specialized Tactical Units

Paragraph 92 stipulates that:

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

The monitoring team learned that SWAT training encompassed all of these topics, but we were provided no COB documentation, with one exception, which was the New Mexico state-approved Tactical Operator's Course. The monitoring team reviewed that curriculum and supporting documents, and concluded that it did not address the requirements in Paragraph 92 adequately. The course appeared overly tactical, with particular emphasis upon dynamic entries. To an extent, those narrow foci are understandable in a basic SWAT course. If this course, however, is augmented by additional training that fills in these gaps (as we anticipate they will), strikes a crucial balance between the use of non-force and force options, and addresses critical requirements in the CASA, the overall training may be in compliance. To assess this, the monitoring team will meet with APD staff in its upcoming November visit to explore the full range of training provided to SWAT personnel, including supervisors and commanders, and assess the extent to which it fulfills CASA requirements and conforms to best practices in the field.

APD has created an omnibus class schedule to reflect all of the training

requirements required in the CASA. This schedule was approved by the monitor in September 3, 2015. As this training comes on line, the monitoring team will conduct real-time audits to ensure that all force-related training complies with CASA requirements and national police practice standards.

Results

Primary: **Not Yet Due**

Secondary: **Not Yet Due**

Operational: **Not Yet Due**

4.7.80 Compliance with Paragraph 93: Tactical Unit Missions and Policies

Paragraph 93 stipulates that:

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

Members of the monitoring team conducted a thorough review of tactical units training, command and control, containment, entry, apprehension and rescue functions. Current APD policy sets forth clearly defined missions and duties for specialized units in three separate orders: Bureau Procedural Order 4-04 SWAT (June 26, 2009), which is currently undergoing revision; Bureau Procedural Order 4-03 Explosive Ordinance Disposal Unit (Bomb Squad) (undated); and Bureau Procedural Order 4-12 K-9 Unit (December 5, 2013), which is also undergoing revision.

While each order provides detailed unit administrative and operational procedures, none explains clearly how APD's use of force policies apply to unit and division operations. This is critically important for several reasons. First, APD has agreed to a higher use of force standard in the CASA, which consists of two prongs---the Graham test of objective reasonableness and the standard of the minimum amount of force necessary. Second, APD has instituted major policy changes in force reporting, force investigations, and force oversight.

Once use of force policies are resolved from an organizational perspective, more localized policies such as those relating to SWAT, K-9 and EOD will have to incorporate the new standards relating to use of force, force reporting and force investigations. The mere fact that SWAT is operating under a procedural order dated back to 2009 is, in and of itself, problematic. Critical procedures such as SWAT, K-9 and EOD should be **reviewed annually**, assessed in light of critical failures (if any), and nationally accepted standards, and revised accordingly.