

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,)	CASE NO.: 1:15-CV-01046
)	
Plaintiff,)	
)	JUDGE SOLOMON OLIVER, JR.
vs.)	
)	
CITY OF CLEVELAND)	
)	<u>MOTION RECOMMENDING</u>
Defendant.)	<u>APPROVAL OF OFFICE OF</u>
)	<u>PROFESSIONAL STANDARDS AND</u>
)	<u>POLICE REVIEW BOARD MANUALS</u>

Pursuant to Paragraphs 193 through 249 of the Consent Decree and the Updated First-Year Monitoring Plan in the above-captioned matter, manuals outlining the administrative rules, processes, procedures, protocols, and related standards for the operations of the Office of Professional Standards (“OPS”) and Police Review Board (“PRB”) have been developed (the “Manuals”) (attached hereto as Exhibit A and Exhibit B). The Manuals were finalized pursuant to a comprehensive process that involved the direct participation and input of the Cleveland Division of Police (“CPD,” “CDP,” or the “Division”), Community Police Commission (“CPC”

or the “Commission”), the United States Department of Justice (“DOJ”), Cleveland’s police officer organizations, staff and personnel of OPS and PRB, other representatives of the City of Cleveland, additional community organizations, as well as the Monitoring Team.

On paper, it would appear that Cleveland’s systems of accountability and civilian oversight are adequate and appropriate. OPS – led by a civilian Administrator and staffed by civilian investigators – is the entity that receives and investigates externally-generated complaints (e.g., complaints from civilians or individuals who are not CPD personnel) about potential officer misconduct. Completed complaint investigations go to the PRB, an all-civilian city panel that reviews OPS investigations and makes recommendations to the Chief of Police and/or the Director of Public Safety (“Public Safety Director” or “Director”) about adjudication and discipline. In theory, Cleveland has had - since voters authorized the creation of the PRB in 1984 – the type of community involvement in police accountability that has been the subject of much longer debate and more recent action in other cities.¹

In practice, the local system for the investigation and adjudication of civilian complaints has been, at best, a paper tiger. At worst, it has been an active impediment to the abilities of CPD command staff to manage the department, of officers to have confidence that the disciplinary system affords them due process, and of community members to know that all complaints are investigated thoroughly and adjudicated fairly. The experience of the Monitoring Team in its first year overseeing Consent Decree implementation leads it to conclude that the

¹ See, e.g., MARK KRASOVIC, THE NEWARK FRONTIER: COMMUNITY ACTION IN THE GREAT SOCIETY 99–105 (The University of Chicago Press 2016) (recounting initial consideration of creating a police review board, officially created in early 2016, in Newark, New Jersey in the early 1960s); Jan Ransom, *New Police Review Board Recommended to Mayor*, BOSTON GLOBE (May 11, 2016) (outlining plans for police review board); Rowena Shaddox, “*Stockton Mayor Anthony Silva Announces Police Review Board*,” Fox40.com (Sep. 8, 2016) <http://fox40.com/2016/09/08/stockton-mayor-anthony-silva-announces-citizens-police-review-board/> (outlining plans for creation of police review board).

DOJ's 2014 conclusion that Cleveland's "civilian complaint system, as a whole, is disorganized and ineffective" was, in many ways, a diplomatic understatement. U.S. Department of Justice, "Investigation of the Cleveland Division of Police" (Dec. 4, 2014) [hereinafter "2014 Findings Letter"] at 42.

Thus, the creation of detailed operations manuals for OPS and PRB provide an initial and foundational opportunity for the City of Cleveland to break past practices and transform both entities into hubs of dynamic, professional, fair, thorough, and objective consideration of civilian complaints of officer misconduct. The Manuals represent an important milestone in re-establishing trust among CPD personnel and community members alike in Cleveland's internal and administrative treatment of civilian complaints about the police.

The Monitoring Team has closely reviewed the finalized OPS and PRB Manuals. For the reasons set forth below, the Monitor concludes that the Manuals are consistent with the Consent Decree and its specific provisions because, if fully and faithfully implemented, they will assist in ensuring that "allegations of officer misconduct . . . alleged by a civilian[]" are fully, fairly, and efficiently investigated," Dkt. 7-1 ¶ 176, and that discipline for officers "comports with due process, . . . is consistently applied, fair, and based on the nature of the allegation," *id.* ¶ 245; *see id.* ¶¶ 176, 193–249. Subject to the conditions set forth in Section VI, the Monitor therefore approves the OPS and PRB Manuals and requests that this Court order them effective.

I. SUMMARY OF CONSENT DECREE REQUIREMENTS REGARDING THE INVESTIGATION AND ADJUDICATION OF CIVILIAN COMPLAINTS

The Department of Justice's 2014 investigation concluded that the City of Cleveland's "civilian complaint system, as a whole, is disorganized and ineffective." 2014 Findings Letter at 42. Contrary to the City of Cleveland's Charter, OPS was not conducting a "full and complete

investigation” of all civilian complaints about police conduct. Dkt. ## at 38 (quoting Charter of the City of Cleveland, § 115-4, Investigation and Disposition of Complaints). The 2014 investigation reported that the problems the DOJ found with OPS in its previous 2004 investigation – including “untimely” investigations, limited “access to the complaint process,” and uninvestigated complaints – had “remain[e]d and, in some cases, have worsened.” 2014 Findings Letter at 39. It concluded that civilian complaints were too “difficult . . . to successfully make in the first instance,” subject to “frequently substandard” investigations by OPS, and inadequately reviewed by the Police Review Board. 2014 Findings Letter at 40–41.

The Consent Decree outlines a host of provisions aimed at ensuring that “allegations of officer misconduct . . . alleged by a civilian[] are fully, fairly, and efficiently investigated,” with investigative findings well-supported and well-documented and “officers . . . held accountable pursuant to a disciplinary system that is fair, consistent, and provides due process.” Dkt. 7-1 ¶ 176. It provides that OPS “will investigat[e] all civilian complaints it receives,” with the exception of complaints of apparent criminal conduct – which “will be referred back to OPS” in those instances where “a determination is made that no criminal conduct occurred.” *Id.* ¶ 193. It sets forth specific qualifications for the OPS Administrator as well as the *id.* ¶ 194 qualifications and training requirements for OPS investigators. *Id.* ¶¶ 193–197. The Decree requires that OPS “have its own budget, separate from the administrative budget for the Department of Public Safety,” with the Monitor reporting to the Court “as to whether it affords sufficient independence and resources, including sufficient staff and training to meet the terms of” the Decree. *Id.* ¶ 199.

To ensure access to the complaint process, a host of specific provisions relate to how complaints that civilians make are filed. *Id.* ¶¶ 201–15. The Consent Decree broadens the mechanisms by which civilians can make complaints by allowing complaints to be: verbal or

written; in-person, by phone, or electronic complaints; by a complainant or “someone acting on his or her behalf”; “anonymously”; and “with or without a signature from the complaint.” *Id.* ¶ 202. Civilians can make complaints with OPS, CPD, or at other City offices using complaint forms available widely and in multiple languages. *Id.* ¶¶ 204–9. OPS must specifically track and categorize the complaints that it receives. *Id.* ¶¶ 210–15.

The Consent Decree requires the classification of civilian complaints “to one of two tracks: standard [or] complex.” *Id.* ¶ 216. OPS’s investigation of standard complaints must “be completed within 45 days.” *Id.* The investigation of complex complaints must “be completed within 75 days.” *Id.* The Decree makes clear that OPS’s overall workload cannot be artificially reduced by investigations being “terminate[d] . . . simply because the complainant seeks to withdraw the complaint or is unavailable, unwilling, or unable to cooperate within an investigation.” *Id.* ¶ 217. Indeed, to cure the “troubling pattern of OPS inappropriately rejecting complaints that may have warranted an investigation” through the use of so-called “administrative dismissals,” 2014 Findings Letter at 39, the Consent Decree describes only four classes of instances that “may be assigned the disposition of administratively dismissed.” Dkt. 7-1 ¶ 217.

The Decree also outlines some specific investigatory parameters and principles that OPS must use during its inquiry into civilian complaints. *Id.* ¶¶ 218–27. Most generally, OPS must “ensure that investigations of complaints are as thorough as necessary to reach reliable and complete findings that are supported by the preponderance of the evidence.” *Id.* ¶ 218. This includes the use of appropriate investigative techniques, including “ha[ving] timely access to all reports related to the incident” generated within CPD itself, *id.* ¶ 219, and to “any relevant disciplinary information in the record of an officer who is the subject of a current investigation,”

id. ¶ 222; “consider[ing] all relevant evidence, including circumstantial, direct, and physical,” *id.* ¶ 223; appropriately weighing officer and civilian statements, *id.*; and “mak[ing] all reasonable efforts to resolve material inconsistencies between witness statements.” *Id.* OPS must “document in writing the investigation of each complaint, including all investigatory steps taken, and OPS’s findings and conclusions,” which must be situated in terms of one of five disposition categories and must be “supported by a preponderance of the evidence.” *Id.* ¶ 225–26. Complainants must be contacted at various, pre-identified intervals and receive updates on the status and outcome of their complaints. *Id.* ¶¶ 228–29.

The Consent Decree outlines a number of similar requirements for the PRB. That entity must review OPS investigations and recommend “dispositions . . . based on a preponderance of the evidence,” with the Board “set[ting] forth its conclusion and an explanation of its reasons and supporting evidence in writing.” *Id.* ¶ 237. “[W]here PRB is recommending a sustained disposition, in whole or in part, PRB will include a recommendation as to disciplinary or non-disciplinary corrective action.” *Id.* ¶ 238. When forwarding its recommendations to the Chief of Police or Public Safety Director, the PRB should also assess implications for CPD “policies, strategies, tactics, or training.” *Id.* ¶ 239. To adequately effectuate their duties, PRB members must receive training on a host of core subjects. *Id.* ¶ 233–34. Like OPS, the PRB must “have its own budget, separate from the administrative budget for the Department of Public Safety,” which the Monitor must certify to the Court as “afford[ing] sufficient independent and resources” to adhere to the Consent Decree’s requirements. *Id.* ¶ 233.

The Consent Decree required that the City:

[D]evelop an ordinance to place a Charter Amendment on the ballot that would ensure that the members of PRB are appointed in a transparent manner, are representative of the diverse communities within Cleveland, and allow the chair

and a vice chair of PRB to each serve for a term of one year, to be selected from among the members by majority vote of PRB's membership.

Id. ¶ 230. Voters in Cleveland approved a Charter Amendment through the passage of Cleveland Issue 33 in November 2016. That Amendment clarified how PRB members are appointed, with the Mayor appointing five members and the City Council appointing four, and how any vacancies must be filled. Charter of the City of Cleveland, § 115-2, Civilian Police Review Board. It provided for greater diversity, with new requirements that at least one Board member reside in each of Cleveland's five police districts and at least one Board member be between the ages of 18 and 30. *Id.* It requires the Board to designate a Chair and Vice Chair. *Id.* The PRB must also "have its own budget separate from the budget for the Department of Public Safety." *Id.*

The City is required to "ensure that discipline for sustained allegations of misconduct comports with due process" and "is consistently applied, fair, and based on the nature of the allegation" *Id.* ¶ 245. "[T]o ensure consistency in the imposition of discipline," CPD must make certain that its disciplinary process, among other things: "prohibits consideration of the officer's race, gender, national origin, age, ethnicity, familial relationships, or sexual orientation"; "prohibits consideration of the high (or low) profile nature of the incident"; and provides avenues for "non-disciplinary corrective action" where appropriate. *Id.* ¶ 246. Thus, to the extent that the PRB and OPS have functions related to the imposition of discipline upon a finding that officer misconduct occurred, those functions must help to ensure the basic fairness and consistency of such discipline.

II. PROCEDURAL HISTORY AND THE PROCESS USED TO DEVELOP THE OPS & PRB MANUALS

To effectuate the host of requirements relating to OPS and the PRB, the Consent Decree required that, within 180 days of the Consent Decree becoming effective on June 12, 2015 (or December 9, 2015), OPS “develop a revised operations manual.” Dkt. 7-1 ¶ 200. Among other things, that manual needed to include: (1) “a mission statement that defines OPS and PRB’s core values, mission, and authority”; (2) definitions of “relevant terms”; (3) procedures for investigations, writing reports, and collecting and processing evidence; (4) procedures for “when complaints may be administratively dismissed” and mechanisms for “ensur[ing] that complaints are not prematurely or unnecessarily dismissed”; (5) “the duties and practices of PRB,” including how OPS presents cases to the Board, how the PRB reviews OPS findings, the standard of PRB review, how disciplinary recommendations are determined, and what information the PRB “will make available to the public”; and (6) “an explanation of possible dispositions and outcomes of complaints.” *Id.*

The OPS Administrator purported to provide the City’s Department of Law with a manual responsive to the Consent Decree’s requirements on December 9, 2015. The City indicated that OPS had “developed a revised operations manual” in its initial status report to this Court. Dkt. 34 at 6. The OPS Administrator provided the Monitoring Team and Department of Justice with this draft “OPS/CPRB Operations Manual” on January 12, 2016. The City of Cleveland provided the CPC with this version of the manual on February 9, 2016 for comment. The Department of Justice provided initial recommendations on March 15, 2016. The Monitoring Team provided a memorandum outlining its feedback on March 17, which observed that “[a] significant amount of work, in fundamental areas, remain[ed] to ensure that the Manual meets the requirements of the Consent Decree . . .” Memorandum from Matthew Barge, et al to Damon Scott, et al re: Office of Professional Standards and Police Review Board Manual Draft

(Mar. 17, 2016) at 2. As the Monitoring Team previously reported to the Court, the March 17 draft “lacked rigor, contained inaccurate information, failed to address numerous Consent Decree requirements, and omitted a host of material details.” Dkt. 65 at 47. The CPC also provided comprehensive recommendations to the manual on March 17, 2016.

On March 17, the OPS Administrator requested an extension of time to continue work on the OPS Manual. Memorandum from Damon Scott to Matthew Barge, et al re: Monitoring Team Feedback on Initial Draft of OPS/CPRB Manual (Mar. 17, 2016). Ultimately, the City of Cleveland asked to extend the deadline for a new draft to May 5, which this Court approved. Dkt. 58 at 2; Dkt. 59.

A revised draft ultimately provided on April 28 constituted a mild improvement but still failed to adequately address the Consent Decree requirements. Consequently:

[I]t became clear to the Parties and Monitor that, before an effective Manual . . . can be seriously contemplated, a comprehensive and intensive organizational assessment of OPS must be conducted to determine how OPS is currently functioning, why few cases are investigated, and what specific reforms must be instituted on an expedited basis to ensure both that new complaints of officer misconduct are fully and fairly investigated and that the enormous backlog of incomplete investigations is addressed.

Dkt. 65 at 47. The Monitor observed in its First Semiannual Report that such a process, and the development of a finalized operations manual, would require “the provision of . . . in-depth [technical] assistance [that] goes well beyond what the Parties initially expected.” *Id.* at 48. The Monitoring Team’s assessment of OPS’s past and current practices began in May 2016.

Meanwhile, and also in May 2016, “OPS and PRB initiat[ed] steps . . . to review and dispose of long-incomplete investigations,” with the entities “suddenly complet[ing]” and reviewing “122 long-running cases in a span of just a few weeks.” Dkt. 65 at 7. The Monitor reported to the Court in June 2016 that it was unclear “whether the decisions to end and

adjudicate [these] outstanding cases were made according to a codified, fair, and rigorous procedure.” *Id.* at 47. Because the PRB has never had an operating manual or other systemized administrative rules, no definitive certification could be made as to the integrity of prior adjudications.

By early July 2016, the Monitoring Team and Department of Justice had, pursuant to a series of working sessions with OPS and PRB personnel and other Consent Decree stakeholders, assembled a Provisional Operations Manual (the “Provisional Manual”). *See* CPC Initial Recommendations: Civilian Police Review & Office of Professional Standards Operations Manual (Mar. 17, 2016) at 11 (attached hereto as Exhibit C) (recommending that PRB and OPS personnel “ha[ve] ample opportunity to provide their knowledge and expertise” in the development of procedural manuals). The Provisional Manual outlined step-by-step guidelines for the intake and investigation of new complaints. The goal was to establish a clear, codified set of working guidelines and processes to guide the reception of any civilian complaints made to OPS during the Republican National Convention (“RNC”) in a systematic, thorough, and fair manner. The Provisional Manual became effective on July 15, 2016.

After the RNC, work continued to create permanent, finalized Manuals – one for OPS and a separate manual for the PRB, given the distinct composition and functions of those independent entities. A diverse array of community stakeholders was directly involved. Specifically, the CPC provided detailed comments on advanced working drafts of the OPS and PRB Manuals in October 2016. Feedback was also provided by representatives of the Cleveland Police Patrolmen’s Association (“CPPA”). The Departments of Public Safety, Law, and Finance; OPS; PRB; and CPD were all involved in discussions about that feedback and about

various iterations and drafts of the Manuals. Work was completed on finalized operations manuals for OPS and the PRB on November 23, 2016.

III. STANDARD OF REVIEW

“As an agent of the Court,” the Monitoring Team must “assess and report whether the requirements” of the Consent Decree “have been implemented.” Dkt. 7-1 ¶ 351; *accord id.* ¶ 352 (requiring the Monitor to “review . . . policies, procedures, practices, training curricula, and programs developed and implemented under” the Decree). The task of the Monitor here is to determine whether the OPS and PRB Manuals comply with the Consent Decree’s requirements. *Id.* ¶¶ 176, 193–249; Dkt. 83 at 13.

“[I]n some instances, the evaluation of whether the policies include what the Decree requires is relatively mechanical.” Dkt. 83 at 14. For instance, the Decree limits instances in which OPS may conclude an investigation via an “administrative dismissal” to four specific circumstances. Dkt. 7-1 ¶ 217. The task of the Monitoring Team in evaluating the OPS Manual, then, is to determine whether such dismissals are expressly restricted to, and only to, the four circumstances expressly outlined in the Decree.

“However, in other instances, the [Manuals] must comply with more general provisions or provide more significant detail than the Consent Decree provides.” Dkt. 83 at 14. Indeed, the OPS Manual provides substantially more granular detail about the day-to-day operations of OPS than the Decree expressly provides. For example, the Consent Decree requires that OPS “ensure that investigations of complaints are as thorough as necessary to reach reliable and complete findings that are supported by the preponderance of the evidence.” Dkt. 7-1 ¶ 218. The specific protocols, mechanisms, or standards that would allow OPS to do so are not codified.

Accordingly, “the task of the Monitor is to determine whether this additional material is consistent with the Consent Decree’s overriding guidelines, requirements, and principles.” Dkt. 83 at 14. As always, the Monitoring Team’s assessment of these elements is informed substantially by the policy and procedure manuals of similar entities in the cities of Seattle, Las Vegas, Durham, and others; the resources and work of the National Association for Civilian Oversight of Law Enforcement (“NACOLE”); decades of legal, academic, and civic study of oversight mechanisms²; and the substantial experience in accountability and oversight mechanisms among Monitoring Team experts.

As the Monitor has noted previously, the Decree requires that all policies are not only developed but also effectively implemented. Dkt. 83 at 13; Dkt. 7-1 ¶ 351. The Manuals “must exist not simply on paper but in practice such that” OPS is “affirmatively comply[ing] with them, day in and day out.” Dkt. 83 at 13. This is especially critical in the context of OPS and the PRB. OPS purportedly had a ten-page Manual in the early 2010s that was produced to the Monitoring Team only several months after work began on a manual and, in any event, was not something that OPS and its Investigators followed. The PRB does not appear to have followed any codified rules or procedures for its operations. Thus, the Monitoring Team will be providing ongoing, technical assistance to help both entities adhere, for the first time, to clear operational rules for

² See, e.g., NATIONAL INSTITUTE OF JUSTICE, REPORT OF THE NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS 310 (1968) (listing among the causes of 1960s urban disorder “the almost total lack of effective channels for redress of complaints against police conduct”); James R. Hudson, *Organizational Aspects of Internal and External Review of the Police*, 63 J. CRIM. L., CRIMINOLOGY & POLICE SCIENCE (1972) (describing early police oversight boards in the 1950s and 1960s in Philadelphia); Samuel Walker & Vic M. Bumphus, *The Effectiveness of Civilian Review: Observations on Recent Trends and New Issues Regarding the Civilian Review of the Police*, 11 AM. J. OF POLICE 1 (1992) (outlining issues and practices regarding police oversight); Christopher Stone & Merrick Bobb, *Civilian Oversight of the Police in Democratic Societies*, VERA INSTITUTE OF JUSTICE (2002) (same); POLICE ASSESSMENT RESOURCE CENTER, REVIEW OF NATIONAL POLICE OVERSIGHT MODELS FOR THE EUGENE POLICE COMMISSION (2005).

how each discharges its critical duties and important public service – and evaluating the extent to which both are ensuring fair investigation and thorough review of civilian complaints.

IV. ANALYSIS OF THE PROPOSED OPS MANUAL

A. Introductory Matters

The OPS Manual outlines that the purpose of the Manual is to provide OPS, CPD, and “members of the Cleveland community with express standards, expectations, and processes for the receipt and investigation of public complaints about police performance or conduct regarding CDP employees.” Ex. A at 2. It also defines key terms. *Id.*; accord Dkt. 7-1 ¶ 200(b)

B. Mission, Jurisdiction, Ethical & Employment Requirements

Taken together, the various provisions of Section 100 *et seq.*, captioned “Mission, Jurisdiction, Ethical & Employment Requirements,” adequately “defines OPS[’s] . . . core values, mission, and authority.” Dkt. 7-1 ¶ 200(a). Consistent with feedback from CPC, Ex. C at 5, the Manual includes an enhanced mission and values statement. Ex. A at 2–3. This enhanced mission statement emphasizes that “OPS is not a part of the Cleveland Division of Police” but that OPS is a critical component of “increase[ing] accountability and improve[ing] public confidence in the police by receiving and fairly, thoroughly, and objectively investigating complaints in a timely manner . . .” *Id.* at 2.

The Manual specifically outlines the types of misconduct complaints over which OPS has jurisdiction from the City of Cleveland Charter. Ex. A at 3. The Manual then sets forth a number of ethical requirements, including the express incorporation of the NACOLE Code of Ethics. Ex. A at 3–5. Most importantly, “[a]ll OPS employees, staff, contractors, or other agents

have an affirmative duty to ensure that all OPS investigations are fair, thorough, unbiased, comprehensive, and timely.” Ex. A at 5.

To ensure OPS’s actual independence and the perception of independence among the Cleveland community and within CPD, the Manual provides that “[n]o OPS personnel may be current or former members of CDP.” Ex. A at 6. Further, the Manual includes provisions outlining CPD personnel’s existing duties to “cooperate with an OPS investigation” and to not retaliate against individuals for filing a complaint or participating in the complaint, investigative, or adjudicative process. Ex. A at 6.

B. General Intake Process

A significant portion of the Manual’s remainder sets forth, with significant specificity, the “investigative procedures” that OPS and its personnel must employ to ensure that its investigations are fair, thorough, objective, and timely. Dkt. 7-1 ¶ 200(c). Section 200 *et seq* sets forth how OPS interacts with members of the public and takes complaints.

First, regardless of how a matter comes to the attention of OPS, the OPS Manual now requires that every constituent contact at the intake and assessment of a complaint, inquiry, or concern be thoroughly documented, assigned a unique tracking number, and reviewed regardless of whether a formal complaint investigation results. Ex. A at 7–9. The purpose for such detailed documentation and oversight is to ensure that thorough and accurate information is captured pertaining to all constituent contacts, the reason for those contacts, and the way in which OPS responds to or otherwise resolves a constituent’s complaint or inquiry. This process also serves to ensure that OPS is not discouraging or turning away individuals whose issues rise to the level of a complaint. New requirements that OPS provide monthly statistical reports regarding the

intake process to the PRB and Public Safety Director aim to ensure transparency in the complaint collection process. Ex. A at 9.

Currently, the voluntary agreement between the City and the CPPA provides that “[a]ll complaints filed by a citizen against [officers] shall be submitted by the complainant in his or her own handwriting.” Collective Bargaining Agreement Between the City of Cleveland and Cleveland Police Patrolmen’s Association (CPPA), Non-Civilian Personnel [hereinafter “CPPA Contract”], Article VIII (m) at 11. The Consent Decree requires that the City “work with the police unions . . . to allow civilian complaints to be submitted to OPS verbally or in writing; in person, by phone, or on[-]line; by a complainant, someone acting on his or her behalf, or anonymous; and with or without a signature” Dkt. 7-1 ¶ 202.

Accordingly, the OPS Manual expressly provides that “[a] signed complaint form is NOT required for any further action to be taken by OPS in an effort to resolve the constituent’s complaint” Ex. A at 8. OPS will take the complaint, complete a full investigation, and forward the investigation to the PRB for review – in the same manner as the CPPA Contract currently provides for complaints “filed more than six (6) months after the date of the alleged event.” CPPA Contract, Article VIII(m) at 11 (indicating that employee in such circumstances “may be ordered to respond to the complaint and to the investigation, but shall not be subject to disciplinary action for that complaint”). To ensure that individuals are aware of the implications of filing an anonymous complaint the Manual provides that “complainants must be advised that, for reasons unrelated to OPS rules and regulations, officers may not be able to be disciplined for conduct that is alleged in unsigned and/or anonymous complaints, even if OPS and the CPRB make a finding of misconduct.” Ex. A at 8.

A significant number of major police departments take anonymous complaints without exception and permit such complaints to form the basis of disciplinary action, including, but not limited to: Mesa, Arizona; Bakersfield, California; Los Angeles, California; Long Beach, California; Aurora, Colorado; Miami-Dade, Florida; Jacksonville, Florida; Atlanta, Georgia; Honolulu, Hawaii; Baltimore County, Maryland; Montgomery County, Maryland; Raleigh, North Carolina; Las Vegas, Nevada; Albuquerque, New Mexico; Tulsa, Oklahoma; Pittsburgh, Pennsylvania; Memphis, Tennessee; Virginia Beach, Virginia; and Washington, D.C. An academic survey from nearly 30 years ago found that some 96 percent of the 101 departments surveyed “investigate anonymous complaints, if not as a matter of routine, then if there is any other supportive information.” Paul West, *Investigation of Complaints Against the Police: Summary Report of a National Survey*, 7 AM. J. POLICE 101 (1988).

Furthermore, because individuals with physical disabilities and mobility impairment may be excluded from the ability to fill out and sign complaint forms, the Monitor has significant concerns that the current CPPA contract provision providing that complaints may only result in discipline if an individual physically is able to, and does, physically write out his or her complaint and sign his or her name may run afoul of the Americans with Disabilities Act (“ADA”), 104 Stat. 328, 42 U.S.C. § 12101 *et seq.*, and the equivalent Ohio state statute, O.R.C. § 4112.01 *et seq.* The ADA, and its Ohio analogue, apply to the City of Cleveland’s programs and activities, including its interactions with civilians through OPS, and require the City to “make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability.” 28 C.F.R. § 35.130(b)(7) (1991); *Title II Technical Assistance Manual* § II-3.6100, at 14. Consequently, the Monitor will expect that the City and CPPA will work expeditiously to ensure that the provisions of the Consent

Decree, generally-accepted practice, and compliance with the ADA and equivalent Ohio state law are harmonized with the CPPA Contract.

C. Complaint Intake

The OPS Manual outlines the variety of mechanisms through which civilians may make complaints. Ex. A at 9–11. It assigns specific duties to OPS upon receiving a complaint. Ex. A at 11–12. Among other things, received complaints must be assigned to a “standard” or “complex” track based on their overall complexity and a generalized complaint category “based solely on the content of the complaint,” such as “biased policing” or “harassment.” Ex. A at 12. OPS’s intake Coordinator subsequently gathers basic information relating to the content of the complaint, and the complaint is forwarded within three (3) business days to the OPS Administrator for review and assignment to an Investigator within 24 hours of receipt from the Intake Coordinator. Ex. A at 13, 16. These and other specific, new time-related rules in the OPS Manual are intended to hold all OPS personnel strictly accountable for ensuring timely investigations. OPS must also provide notice both to the complainant that it has received a complaint and, in almost all circumstances, to implicated CPD personnel. Ex. A at 16–17.

The Consent Decree recognizes that it is important that “allegations of officer misconduct, *whether internally discovered or alleged by a civilian*, are fully, fairly, and efficiently investigated” Dkt. 7-1 ¶ 176 (emphasis added). Going forward, internally-discovered misconduct – or misconduct allegations made or identified by CPD personnel – will be investigated by CPD’s Internal Affairs, which will soon “be headed by a qualified civilian.” *Id.* ¶ 177. Further, some classes of officer performance, such as use of force, will be subject to standardized, post-incident administrative inquiry. Dkt. 7-1 ¶¶ 93–130. Externally-reported

misconduct – or misconduct allegations made or identified by non-CPD personnel – will be investigated by OPS. However, it is readily conceivable that some incidents will generate a civilian complaint to OPS and an internal investigation of some type, whether automatic or related to possible misconduct. Accordingly, the OPS Manual provides specific procedures and guidance to OPS about how its inquiries should proceed when a criminal or administrative investigation is already underway within CPD. Ex. A at 14–16. Work is underway on policies and a manual for Internal Affairs, which will include rules that conform to the understandings memorialized in the OPS Manual.

The OPS Manual provides that “[i]n order to ensure a thorough investigation, OPS Investigators may need access to any and all relevant disciplinary information in the record of an officer who is the subject of a current investigation.” Ex. A at 29. This conforms to the Consent Decree requirement that “OPS Investigators . . . have access to any relevant disciplinary information in the record of an officer who is the subject of a current investigation.” Dkt. 7-1 ¶ 222. For purposes of both the Manual and subsequent evaluation of whether OPS has sufficient access to disciplinary information, the Monitor, as well as the OPS Manual, credits the definition of “relevant” familiar to this Court and operative in the State of Ohio. Fed. R. Evid. 401 (“Evidence is relevant if: (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action.”); Ohio R. Evid. 401 (“‘Relevant evidence’ means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.”); Ex. A at 2. Because the Public Safety Director has authority over both OPS and CPD, the Monitoring Team expects that the Director will ensure that OPS has direct, automatic, and real-time access to information about completed

internal investigations – and that, in turn, CPD will have the same direct, automatic, and real-time access to information about completed OPS investigations. The Monitoring Team will be watching closely to certify that no information or records are withheld either from OPS or from CPD on the grounds that they are not substantively relevant when they do meet the definitions provided by the OPS Manual. The Monitor will also be evaluating closely whether information about past officer performance is appropriately and non-prejudicially considered by OPS and CPD.

D. Complaint Investigation Process

The OPS Manual provides, for the first time, granular instruction to OPS personnel on how to initiate, plan, conduct, and complete a fair and comprehensive investigation of complaints. Ex. A at 17–30. Specifically, it outlines procedures for OPS Investigators to interview the complainant, Ex. A at 18–19; identify and secure evidence, Ex. A at 19–20; create a comprehensive investigatory plan, Ex. A at 20–23; evaluate evidence uncovered during the investigation, Ex. A at 24, 29; conduct interviews, Ex. A at 24–29; and prepare a comprehensive summary report of the investigation. Ex. A at 29–30. This specific, standardized guidance on the day-to-day duties and step-by-step tasks of OPS Investigators sets forth, essentially for the first time, the express expectations of OPS personnel and the standards that their work must meet.

E. Timeliness & Milestones

A significant concern has been the length of time that it takes for OPS to complete thorough and fair investigations. As the OPS Manual now observes:

The timeliness of an investigation is a measure of how efficient the Investigatory process functions. It also helps to instill public confidence in the citizen complaint and investigation process.

Ex. A at 30. The OPS Manual memorializes the Consent Decree's requirement that "Standard" complaint investigations be resolved within 45 days and "Complex" investigations be concluded within 75 days. *Id.* The Parties and Monitoring Team are mindful, and the OPS Manual expressly contemplates, that "[a] number of factors influence how swiftly an investigation may be completed"; however, issues that impact timeliness, including OPS's workload and the pace of resolution of complaints by the PRB, "are the responsibility of the OPS to effectively manage and resolve to ensure that citizen complaints are not impeded." *Id.* at 31.

F. OPS Administrator's Review of the Investigative File & Finalizing Civilian Police Board Action

The OPS Administrator must review all completed investigations, identify and address any deficiencies, and make a final recommended finding by applying the preponderance of the evidence standard. Ex. A at 32. The categories of findings included in the OPS Manual differ somewhat from the Consent Decree in terms of the names and associated definitions of the findings. *Compare* Dkt. 7-1 ¶ 224 *with* Ex. A at 32–33. However, because the definitions themselves conform closely to those found within the Consent Decree, and the Parties have agreed to the minor modifications memorialized in the Manual, the Monitoring Team does not object to the revised categories of findings outlined in the Manual.

The OPS Administrator makes findings as to adjudication but "shall not make any recommendations as to potential discipline." Ex. A at 33. Once its investigation is complete OPS notifies the complainant "that the investigation has been concluded and the date that the CPRB will convene to review the matter." *Id.* The case is forwarded "to the CPRB in sufficient

time for CPRB to consider [it]no later than the second regularly scheduled CPRB meeting following the completion of the investigation.” *Id.*

G. Administrative Dismissals & Finalizing Police Review Board Action

The Manual provides significant detail about when complaints may be “administratively dismissed.” Ex. A at 33–36. This seeks to ensure that the dismissal of a complaint without a full investigation is contemplated only in clear and “limited instances.” *Id.* at 33; *accord* Dkt. 7-1 ¶ 200(d).

The Manual also outlines procedures that OPS must use after the PRB has made a recommendation on a given case to the Chief of Police or Public Safety Director. Specifically, OPS has the duty of ensuring that the PRB’s decision and the ultimate “disciplinary outcome” are communicated to the complainant. Ex. A at 36–37.

H. Duties of OPS and OPS Personnel

For the first time, the OPS Manual spells out specific duties, tasks, standards, and expectations for OPS personnel, including the OPS Administrator, *id.* at 37–39; OPS Investigators, *id.* at 39–41; OPS administrative personnel, *id.* at 41–42; and OPS’s Research Analyst, *id.* at 42. It specifically requires at least annual training on investigative skills and CPD rules and policies for OPS personnel. *Id.* at 43. The Monitor will expect that the City, through the ongoing oversight of the Director of Public Safety, will ensure that all OPS personnel adhere to the Manual’s requirements.

The Manual also requires that OPS “prepare a detailed, analytical and comprehensive annual report” covering a variety of specific types of information and issues. That report must

be “completed and submitted” to various City entities by March 31 of each calendar year. *Id.* at 42–43.

I. Changes to the Operating Manual

The Manual’s rules and procedures “may only be modified, revised, amended, replaced, or otherwise changed” via an express process that involves the Director of Public Safety and the PRB. *Id.* at 43–44. “During the pendency of the Consent Decree, . . . any and all modifications . . . to th[e] Manual must be approved by the Court” *Id.* at 44.

V. ANALYSIS OF THE PROPOSED PRB MANUAL

Since voters approved the creation of a PRB (or Police Review Board) in 1984, with the approved changes to the City of Cleveland Charter becoming effective in 1988, the PRB has not functioned with clear rules for its day-to-day operations – despite the Charter’s express contemplation that, “[s]ubject to the approval of the executive head of the police force, the Police Review Board shall make rules providing for the procedure of the Board” Charter of the City of Cleveland § 115-3, Powers and Duties of Board.

A. Purpose of the Board, Purpose of the PRB Manual, and Duties & Responsibilities of the Staff

The PRB Manual’s initial sections provide that “[t]he purpose of these procedures is to facilitate the operation of the [Board], including the review of public complaints . . . as authorized by the City of Cleveland Charter.” Ex. B at 1. The Manual makes clear that the PRB has “the power to receive, cause investigation of, and recommend, and in some cases determine, the resolution of public complaints regarding” CPD misconduct. *Id.* It outlines specific “duties and responsibilities” of the Board, PRB members, and contemplated staff. *Id.* at 1–2.

B. Organization & Meetings

The Manual codifies the recent changes to the City Charter that Cleveland voters approved on November 8, 2016, which expanded the PRB's membership to "nine members who are representative of the diverse communities within Cleveland" – with "at least one member who resides" in each police District and at least one member "between the ages of 18 and 30" – appointed by either the Mayor or City Council. *Id.* at 3. Member terms are four years, with individuals limited to serving two consecutive four-year terms. *Id.* at 3–4. The Board will select a member to serve as Chair and another to serve as Vice-Chair. *Id.* at 5. Board members will receive training on constitutional and other relevant law, police practice and procedure, administrative investigations, and other pertinent topics. *Id.* at 6–7.

Importantly, the Manual sets clear expectations regarding the attendance and participation of Board members at PRB meetings. *Id.* at 4–5. The Monitoring Team will expect that Board members indeed "use best efforts to attend all regularly-scheduled Board meetings." *Id.* at 4. The Manual indicates that Board members "shall receive compensation as may be established by the Council." *Id.* at 5. To the extent that the scope of the commitment required by the PRB will be more significant than it was previously, some degree of compensation may well be appropriate, fair, and necessary – and set forth as part of the Board's "own budget separate from the budget of the Department of Public Safety" and of OPS. *Id.* at 5. That Budget must also include resources for the Board to "hire and/or appoint support personnel." *Id.* at 8.

All PRB "meetings shall be open to the public," with the general "order of business" outlined in the Manual. *Id.* at 7. Quorum and voting requirements are expressly provided. *Id.* at 8.

C. Authority, Jurisdiction, Duties, Responsibilities, and Review of Complaint

Consistent with Cleveland's Charter, the PRB Manual clarifies that:

The Board has the power to receive, cause investigation of, and recommend resolution of any and all complaints filed with it alleging misconduct by officers and non-sworn employees of the Cleveland Division of Police, regardless of their duty status, when such misconduct is directed toward any person who is not a CDP employee. On its own complaint, the Board may direct the OPS Administrator to conduct an investigation of any incident involving the use of deadly force by members of the police force and any incident resulting in the injury or death of persons in the custody of the police force.

Id. at 9. The Manual outlines the process by which the PRB typically receives completed investigations from OPS and by which the PRB might receive complaints or “cause an investigation of incidents involving the use of deadly force” or “incidents resulting in the injury or death of persons in custody of the police force.” *Id.*

The Manual contemplates that “Board members may make written inquiries of the OPS Administrator” after reviewing a given complaint investigation file “to obtain additional information, documents, or other evidence.” *Id.* at 11. The Board must “allow complainants or subject employees” present at PRB meetings “to speak after the case is called by the Board” *Id.* “Board members may” also “ask follow-up questions of any person who has addressed the Board.” *Id.* If individuals involved in complaint investigations are insufficiently forthcoming or willing to voluntarily cooperate, “[u]pon majority vote” and notification of the Public Safety Director and Police Chief, “the Board has the power to subpoena and require the attendance of witnesses, the production of documents, and/or the production of other papers pertinent to its adjudications” *Id.* at 12.

The administrative rules that the Manual establishes outline procedures for consideration of certain categories of complaint investigations by a three-member panel (a “Panel”) rather than

by the “full Board.” *Id.* at 12. Specifically, complaints “classified as Demeanor, Rudeness, and Improper Tow, with no other type of alleged conduct, shall be assigned for review by a Panel” unless the Chair determines otherwise. *Id.* “[C]omplex investigations shall be assigned to the full Board for review.” *Id.* Other types of complaints “shall be assigned by the Chair for review by either a three-member panel or by the full Board.” *Id.* (emphasis in original). These rules work to ensure that all cases can be comprehensively considered but that the Board’s full meetings can focus on the most significant, difficult, or complex cases as appropriate. Although this procedure is not expressly contemplated in the Charter, no specific rules about how the Board reviews, deliberates, or makes decisions about complaint investigations are provided in the Charter. *See* Charter of the City of Cleveland §§ 115-2, 115-3, 115-4, 119. The standard of review that the Board applies, the information that the Board must consider during its deliberations, and even the number of members that must agree for a given determination to be considered to be that of the full Board are not covered by the Charter. Instead, the Charter expressly contemplates that the Board will establish “rules providing for the procedure of the Board and for the review of complaints” *Id.* § 115-3. Upon approval of the PRB Manual by the Public Safety Director and the publication of the Manual in the *City Record*, these rules become effective through the authority of the City Charter. *Id.*

D. Hearing Procedures

The Manual provides a host of specific procedures that the Board must follow when hearing and considering cases at its regular, public meetings. “The purpose of [a] hearing is to review the case . . . in order to reach a disposition and a recommendation on discipline for each allegation identified by OPS or by Board members during their review of the case.” *Id.* at 13.

Complainants and subject employees must receive notice of when a case involving them will be considered by the Board. *Id.* at 20.

Under the Consent Decree, and under the new Manual, there are four categories of dispositions: (1) sustained, where the “[p]reponderance of the evidence supports a finding that the alleged conduct occurred and the officer’s actions were inconsistent with law or CDP policy, procedure, or training”; (2) exonerated, where the “[p]reponderance of the evidence supports a finding that the alleged conduct occurred but the officer’s actions were,” in fact, “consistent with law or CDP policy, procedure, or training”; (3) unfounded, where the “[p]reponderance of the evidence supports a finding that the alleged conduct did not occur”; and (4) insufficient facts, where the “[p]reponderance of the evidence fails to establish whether or not the conduct occurred.” *Id.* at 16. During the Board’s review of any complaint investigation, “[n]o finding with respect to an allegation of a case shall be sustained unless it is proven by a preponderance of the evidence,” or “the greater weight of evidence.” *Id.* at 13. Although “[t]he Board shall give weight to the OPS Administrator’s recommended disposition, and shall justify in writing any departure from it,” the PRB “is not bound by the OPS Administrator’s recommendation and shall reach its own conclusions regarding the appropriate disposition.” *Id.*

The Manual further provides that where the PRB votes to recommend a “sustained” disposition, the Board also is to consider recommended discipline or “other remedial action.” *Id.* at 14. When doing so, it should apply a standard of “just cause.” *Id.* at 14. The Manual provides a process for making recommendations regarding revisions in CPD “policies, strategies, tactics, or training” and for “identify[ing] officer or employee performance that is commendable, superior, noteworthy, or otherwise deserving of special and positive recognition” and

recommends to the Chief of Police or Public Safety Director that CPD personnel receive a commendation where appropriate. *Id.* at 18.

The Manual provides step-by-step guidance to the Board, and to the Cleveland community, about how cases are presented and how the PRB must deliberate on them. This includes Board member completion of a review checklist before any hearing, , as well as the completion by the Board of a specific checklist during the hearing that compels the Board to outline findings and evidence tending both to support and to not support OPS's recommendation, relevant law and CPD materials relating to the case, whether the Board ultimately indicates that "the OPS investigation tends to support the allegation by a preponderance of the evidence," and "[i]ndividual Board member recommendations." *Id.* at 15–16. The Manual outlines procedures for when the Board may go into Executive Session to discuss a case and its potential dispositions or "to deliberate on a recommendation regarding appropriate discipline or other remedial action." *Id.* at 17. Generally, a three-member Panel of the PRB will review cases that OPS has concluded through administrative dismissals – which are restricted to the same four categories outlined in the Consent Decree and OPS Manual. *Id.* at 19.

Ultimately, the PRB delivers a written "Final Summary prepared for each complaint adjudicated as 'sustained' to the Chief of Police and/or the Director of Public Safety, as appropriate, within fourteen calendar days" of the hearing. *Id.* at 20. Subsequently, the Chief or Director "hold[s] a due process hearing, as required by law, at which involved officers may present testimony or other evidence." *Id.* at 20. As the Consent Decree process addresses other elements of the disciplinary process, the Monitoring Team will need to ensure that PRB's recommendation is given a full, fair, comprehensive, and objective representation during such a

hearing. It will also expect that, because the Chief and Director will have uniformly compelled CPD personnel to cooperate with OPS investigations..

E. Action of the PRB Following Hearing by the Chief of Police

The PRB Manual before the Court outlines, for the first time, a specific and codified process for the PRB to fulfill one of the central duties granted to it by Cleveland's Charter: overriding the determination of the Chief of Police. The PRB was created by an amendment to the Cleveland City Charter that was approved by voters in 1984.³ Then-Mayor George Voinovich and then-City Council President George Forbes drafted the amendment language as an emergency ordinance "for the immediate preservation of the public peace, property, health, and safety" in the wake of significant public unrest over the relationship between CPD and Cleveland residents. Charter of the City of Cleveland (1984).

Pursuant to Charter Section 119, where a suspension is for less than ten (10) days, the Chief's decision is final. *Id.* If the Chief determines that a suspension for more than ten (10) days is appropriate, Section 119 provides that the matter must be referred to the Public Safety Director, who will hold a hearing and render the final judgment in the matter. Thus, the Chief may suspend officers for only up to ten days, with the Director suspending officers for more than ten days.

The Charter establishes exceptions to this disciplinary regime for matters in which a complaint has been filed with OPS and heard by the PRB. In effect, it places the PRB's

³ The amendment did not become effective immediately, due to injunctions issued in connection with litigation that Cleveland's police union filed. The case was ultimately decided against the Union, and the injunction was lifted in 1988.

disciplinary authority on equal footing with the Chief of Police.⁴ Section 115-4 indicates that, if the PRB determines that discipline should be imposed, it will forward its recommendation to the Chief of Police. The Chief must then notify the PRB whether or not s/he intends to impose discipline, and if so, what that discipline will be. Under Section 115-4, if the PRB disagrees with the Chief's decision or with the length of his/her proposed discipline, "*the Board, notwithstanding the provisions of Section 119 of this Charter to the contrary, may suspend the officer or employee.*" *Id.* (emphasis added). Essentially, while this provision creates a path through the Chief in PRB matters, by allowing the PRB to override the Chief it also grants the Board its own power to impose discipline in cases before it.

One view is that the Charter means what it says – namely that, with respect to the Chief's discipline decisions (which involve suspensions of ten or fewer days), the Board "may suspend the officer or employee" if it "does not concur with the period or cause of suspension decided upon by the Chief." *Id.* Under this reading, "suspend" means "to debar temporarily especially from a privilege, office, or function." MERRIAM-WEBSTER ONLINE DICTIONARY, <http://www.merriam-webster.com/dictionary/suspend> (last visited Nov. 28, 2016). The Board, as the subject entity in the Charter section, has the authority to effectuate such a suspension.

Section 115-4 provides that when the PRB exercises its authority to override the Chief's decision, regardless of the length of the suspension it imposes, it must certify the matter to the Public Safety Director, "who shall proceed in accordance with the provisions of Section 119 of

⁴ Section 119 further underscores the Charter's intent to afford the Chief and the PRB equal disciplinary power by mandating that:

Prior to suspending any officer or employee of the police force, the Chief of Police shall ascertain whether a complaint on file with the Police Review Board relates to the conduct of the officer or employee in question. If so, the Chief of Police shall not suspend the officer or employee unless the Police Review Board concurs with the Chief's decision, in accordance with Section 115-4 of this Charter.

this Charter.” This means that the Director will hold a hearing if the PRB has found that a suspension of longer than ten days is warranted, but when the PRB’s decision is a shorter period, its decision is final. If the PRB has made a decision that differs from the Chief of Police but involves a suspension of ten days or fewer, the Public Safety Director does not, under the plain language of the statute, have any further role.

The City disagrees, contending that “in accordance with the provisions of Section 119” means that the Public Safety Director must hold a hearing and render final judgment in all matters in which the PRB overrides the Chief, even for suspensions of fewer than ten days. According to the City, the basis for doing so is the “notwithstanding the provisions in Section 119 to the contrary” language in Section 115-4. Under this interpretation, the Board may determine that an officer should be suspended, despite the Chief of Police’s prior action, but the decision – per the “notwithstanding language” and reference to Section 119 – must be sent to the Public Safety Director for a subsequent hearing and final review.

Problematically, however, Section 119 does not say anything about the Public Safety Director holding a hearing specifically regarding the PRB’s decisions. It speaks only to matters in which discipline is to exceed ten days, regardless of where that determination originates. The City’s interpretation therefore requires reading into Section 119 that the PRB’s authority to “suspend,” despite the Chief’s prior determination to the contrary, is tantamount to the authority to “recommend a different outcome to the Public Safety Director.”

Likewise, the word “notwithstanding” would not seem, by itself or in the context of accompanying Charter language, to insert into the Charter an entirely new hearing procedure for officer discipline. It appears more reasonably interpreted as a qualification of Section 119’s grant of the “exclusive right” to impose discipline to the Chief, in recognition of the PRB’s

concurrent disciplinary authority. *See Jurcisin v. Cuyahoga County Board of Elections*, 1986 WL 11509, *5 (Cuyahoga County, Oct. 2, 1986) (“We find that the purpose of [the notwithstanding] language was to allow the board to impose discipline despite the ‘exclusive right’ granted to the chief of police under section 119.”)

Indeed, Section 115-4’s requirement of certification to the Public Safety Director in all cases where the Board overrides the Chief could be interpreted in a way that is not in tension or conflict with what Section 119 actually provides – namely, that the Board’s certification of its override of the Chief is simply a method for placing the PRB’s decision on discipline within CPD’s chain of command via the Public Safety Director, who is the executive head of the police force. Although Section 115-4 grants the PRB the same power the Chief has to impose discipline, the PRB remains a civilian body, without an employer/employee relationship with the Division’s personnel. Thus, while the PRB can determine whether an officer should be disciplined and for how long, it remains up to an entity with supervisory authority – such as the Public Safety Director – to actually carry out that discipline. Certifying to the Director the PRB’s decision to override the Chief accomplishes this.

The City has pointed out that some past arbitration decisions have suggested that discipline may not be sustained where the PRB has voted to override the Chief of Police’s determination and forwarded this determination on to the Public Safety Director. These arbitration decisions have indicated that such a process would violate the current CPPA collective bargaining agreement. However, this issue has already been resolved, with the CPPA and City of Cleveland as Parties, by the Ohio State Supreme Court. In 1988, that Court held that Cleveland’s “charter amendment that would establish a police review board to investigate charges of police misconduct . . . does not conflict with the collective bargaining agreements

entered into by the appellant unions.” *Jurcisin v. Cuyahoga County Board of Elections*, 35 Ohio St. 3d 137, 145 (1988). This is because the charter amendment creating the PRB process does “not affect the grievance procedures found in the collective bargaining agreements,” and “[m]embers of the appellant unions would still be protected by the procedural rights designated in the agreements.” *Id.* at 144. The Court continued:

We agree with the observation that a public review board that serves as a forum for allegations regarding police misconduct in the performance of their duties provides a procedure for those who are not represented at the bargaining table to raise issues with respect to police conduct . . . [T]he issues to be resolved in a grievance proceeding initiated by a police officer would usually be different from the issues raised in a complaint filed with a public review board.

Id. at 145. Consequently, any arbitration decisions to the contrary would be facially erroneous.

Some case law supports the view that the Charter grants the PRB the ability to impose discipline without a subsequent hearing by the Safety Director. Indeed, a lower court in the *Jurcisin* matter considered the CPPA’s argument that the ballot language that voters considered did not accurately describe the PRB’s power because it did not inform voters that the PRB could impose discipline unilaterally, without any review by the Safety Director. That court rejected this argument, noting that the language in Section 115-4 requiring the Safety Director to act “in accordance with the provisions of Section 119” did, in fact, mean simply there would be a “review of suspensions for more than 10 days.” *Jurcisin*, 1986 WL 11509 at *5.

Similarly, in 2003, the Cuyahoga County Court of Common Pleas cited the PRB’s power to discipline officers for up to ten days without a hearing when it granted the CPPA’s application to vacate an arbitration award. The arbitrator had ruled that the PRB’s power to subpoena officers to testify before it did not violate due process rights. The court found that the arbitrator had improperly failed to consider an Ohio Supreme Court decision which held that due process must be afforded to officers called to testify in investigations by internal affairs units. *In re: Civ.*

Serv. Charges & Specs. Against Piper, (2000), 88 Ohio St. 3d 308, 311–12; *Cleveland Police Patrolmen’s Association v. City of Cleveland*, Case No. CV-440137, 3–4 (Cuyahoga County Common Pleas Sept. 9, 2003). The Court rejected the arbitrator’s finding that the PRB was merely a “citizen complaint review board,” and therefore not analogous to an internal affairs unit, because the PRB “can suspend an officer for up to ten days.” *Id.* at 4.

However, the Ohio State Supreme Court, in holding that the PRB and its authority did not run afoul of the CPPA contract, described the authority of the Board to override the Chief’s determinations as follows:

If the police review board did not agree with the chief’s decision, then the board itself could initiate disciplinary action against the police officer. However, all charges initiated by the board would be certified to the Director of Public Safety, *who is required to hold a hearing and render judgment . . .* [T]he Director of Public Safety could decide that no discipline is warranted, or he could suspend, reduce in rank, or dismiss the officer.

Jurcisin, 35 Ohio St. 3d at 138 (emphasis added). Further, the Court concluded that a disciplinary process involving the PRB overruling the Chief of Police does not impinge on the CPPA contract because “a police officer who would be disciplined by the Director of Public Safety *as a result of a recommendation from the police review board* would have the same right to file a grievance to appeal such a disciplinary action” *Id.* at 144 (emphasis added). Thus, the Court’s holding that the Charter Amendment “does not conflict with provisions of [the] collective bargaining agreement” of the CPPA – such that Ohio R.C. 4117.10(A) “giv[ing] collective bargaining agreements precedence over conflicting laws” in the State of Ohio does not apply – is situated in the view that the police review board’s authority to override the Chief’s decision and “suspend” an officer is sufficiently accomplished by the power to make a “recommendation” to the Public Safety Director and that Director then holding a hearing and providing a final determination.

For the reasons outlined above, the Monitor tends to credit the view that the plain language of the City Charter provides that “the Board . . . may suspend” an officer when it disagrees with the Chief of Police about discipline (which, for the Chief to be making a decision in the first instance, would involve discipline of ten days or fewer) – without any subsequent involvement of the Director. Charter of the City of Cleveland §115-4. Had then-Mayor Voinovich and then-Council President Forbes intended for the Board to override the Chief’s decision by making a recommendation to the Safety Director to impose different discipline than the Chief imposed, they could and should have used the word “recommend,” not “suspend.” “[W]hen the statute’s language is plain, the sole function of the courts . . . is to enforce it according to its terms.” *Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.*, 530 U.S. 1, 6 (2000). Even when a law “is awkward, and even ungrammatical,” “quirks” in language or statutory construction do not obviate the need for the law’s text to be “read, nonetheless, for their plain meaning.” *Lamie v. United States Trustee*, 540 U.S. 526, 531, 534–35 (2004). Restricting the PRB’s authority to being a body that merely “recommends” is contrary to the plain language of the statute.

Nevertheless, the Monitoring Team is mindful of the need for the PRB to dramatically overhaul its processes and protocols. It is worried about how far the Board would be able to get with complying with the Consent Decree and the terms of the PRB Manual if a significant portion of its authority – the ability to evaluate the Chief of Police’s disciplinary decisions – is left muddled, indeterminate, or unclear. The Team also harbors concerns that substantial amounts of officer discipline would be left unresolved for a lengthy period as appeals or challenges to the PRB’s authority to suspend officers, rather than recommend discipline to the Public Safety Director, are addressed. Cleveland’s police officers, community, and complainants

of officer misconduct need a sound, stable process sooner rather than later. In short, because it could be argued in good faith that the Ohio Supreme Court affirmed the PRB making recommendations to the Director but not making ultimate decisions on suspensions, the Monitor has substantial concerns about the potential lack of determinacy and clarity for officers, the PRB, and wider Cleveland community as litigation on this issue wound its way through this or other courts.

The threat of protracted indeterminacy would also unduly distract from the fact that the PRB now may, for the first time and under the proposed PRB Manual, decide to override the Chief and force the Public Safety Director to act. Currently, the Director would only act on the Chief's decisions if a police officer grieved the ultimate disposition. The PRB acting to conduct discipline directly via the Director compels a type of action and review that has not occurred before, in a body that has been mandated by the Charter since 1984, and provides the civilian-composed PRB with the ability to elevate decisions to the executive head of the police force – who, under the terms of the Manual, will need to “provide a written explanation for [a] decision to the Chair” of the Board “[i]f the Director does not accept the decision of the CPRB.” Ex. B at 22. It is clear from all case law that the PRB has, and may exercise, the authority to review the Chief of Police's decisions about discipline and decide, where appropriate, that different discipline is warranted. To the extent that the proposed PRB Manual unambiguously establishes this authority and duty, it travels a significant distance toward the City finally implementing the full scope of the City Charter's provisions about the PRB – some 32 years after voters approved them.

Accordingly, the PRB Manual provides a process for the Board to consider overriding the Chief of Police's disposition and discipline. Any Board member may “move the Chair for

reconsideration of the matter by the full Board” after the Chair has presented the Chief’s “written explanation for the departure” of the Chief’s determination from the Board’s prior recommendation. Ex. B at 21. The Board must consider “whether the evidence and explanation for [the Chief’s] departure [from the Board’s prior determination] tends to support or tends to not support” the Chief’s determination and “whether there is still just cause to make a finding and/or impose discipline in light of the explanation” *Id.* For the Board to override the Chief, “two-thirds of the Board’s permanent members must vote that there is just cause to impose its original recommendation regarding suspension and/or the term of suspension.” *Id.* Thus, it should be noted that the Board’s override of the Chief does not result in a new adjudication or discipline inconsistent with its prior findings; instead, it is a reinstatement of the Board’s original recommendation.

When the Board “votes to impose its original adjudication and/or recommendation regarding discipline or other remedial action,” it completes an “Amended Final Summary explaining its rationale” in detail. *Id.* at 21–22. That Summary is forwarded to the Director, with the Director serving, at the present time, as the “ultimate adjudicator of discipline for the [CDP].” *Id.* at 22.

The Monitor is only comfortable with the PRB Manual’s provisions on the Board overriding the Chief of Police because the Public Safety Director, when he or she “does not accept the decision of the CPRB,” must “provide a written explanation for this decision.” *Id.* at 22. Such written explanation must be made public at the same time. *Id.* This will allow for the PRB, complainants, and the Cleveland community to know when the Director rejects the determination of two-thirds of the Board’s members. In turn, the Director’s ability to outline the reasons for why he or she may depart from the PRB’s conclusion provides the Director an

opportunity to explain his/her decision in those instances in which there are reasonable grounds for the Director to believe that the Board's process was unfair or inappropriate. In this way, the Cleveland community and the community-based representatives of the Board can hold the Director accountable, and the Director can, in turn, hold the Board accountable for fair, thorough, and objective decision-making.

Thus, because the PRB Manual now provides codified, clear rules and regulations for how the PRB may override the Chief of Police's discipline decisions, the Monitor recommends approval of the Manual with its provisions relating to overriding determinations by the Chief. However, the Monitoring Team will be closely scrutinizing the Board's use of its now-codified ability to override the Chief of Police's determinations and the Public Safety Director's actions after the Board has sent the Director a case in which it has overridden the Chief. If, systemically, the Board's process is not sufficient, or if the Director too uniformly ignores the Board's determinations, the Manual's administrative regulations – required by the City Charter and requiring the Public Safety Director's approval – will need to be re-visited to ensure that “all allegations of officer misconduct . . . are fully, fairly, and efficiently investigated; that all investigative findings are supported by a preponderance of the evidence . . . ; and that all officers who commit misconduct are held accountable pursuant to a disciplinary system that is fair, consistent, and provides due process.” Dkt. 7-1 ¶ 176.

VI. CONDITIONS TO APPROVAL OF THE OPS AND PRB MANUALS

The Monitor's approval of the proposed OPS and PRB Manuals are subject to the following, specific conditions.

A. The Public Safety Director Will Approve the PRB Manual, the Manual Will Be Published in the *City Record*, and the Manual Will Become Fully Effective Under the Laws of the City of Cleveland.

Under Cleveland's Charter, the executive head of the police force – the Public Safety Director – is to approve “rules providing for the procedure of the [Police Review] Board and for the review of complaints filed with it,” with the rules “tak[ing] effect fifteen (15) days after their publication in the *City Record*.” Charter of the City of Cleveland, § 115-3, Powers and Duties of the Board. Consequently, the Monitor's approval is subject to the Public Safety Director expressly approving the PRB Manual, the Manual being published in the *City Record*, and, in any event, the Manual becoming fully effective under the laws of the City of Cleveland.

B. The Monitoring Team Will Closely Scrutinize the PRB's Use, and Public Safety Director's Response, to Its Authority to Override Discipline of the Chief of Police.

As outlined in Section V-E, *supra*, the Monitoring Team will be closely reviewing how the PRB uses the clear rules and processes relating to its review, and ability to potentially override, the Chief of Police's findings and discipline recommendations, which will, by definition in the City Charter, relate to discipline of ten or fewer days. It will also closely review the Public Safety Director's subsequent actions in instances where the PRB, by a vote of two-thirds of its members, elects to override the Chief's decision. If the Board does not adhere to the provisions of the Manual and to the requirements of due process, and/or if the Public Safety Director unduly or without reasonable grounds rejects the Board's override, the provisions of Section L(2) of the PRB Manual will need to be revised in order for the City to comply fully with paragraphs 176 through 249 of the Consent Decree.

VII. CONCLUSION

The task of the Monitor was to duly consider whether the new operational manuals for OPS and the PRB sufficiently reflect, embody, and adhere to the requirements of the Consent Decree. The Monitor and the Monitoring Team have determined that the Manuals, attached hereto as Exhibits A and B, adequately do so. Accordingly, the Monitor approves the OPS Manual and the PRB Manual, both subject to the conditions outlined in Section VI, and requests that this Court order them effective.

Respectfully submitted,

/s/ Matthew Barge

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CERTIFICATE OF SERVICE

I hereby certify that on November 29, 2016, I served the foregoing document entitled Motion Recommending Approval of Office of Professional Standards and Police Review Board Manuals via the court's ECF system to all counsel of record.

/s/ Matthew Barge
MATTHEW BARGE

EXHIBIT A



OFFICE OF PROFESSIONAL STANDARDS

CLEVELAND, OHIO

OPERATING MANUAL AND PROCEDURES

Last Amended: November 23, 2016

000. INTRODUCTORY MATTERS

001. **MANUAL OBJECTIVE.** The purpose of this Operations Manual (the “Manual”) is to provide Office of Professional Standards (“OPS”) Investigators and staff, Cleveland Division of Police (“CDP” or “Division”) employees, and members of the Cleveland community with express standards, expectations, and processes for the receipt and investigation of public complaints about police performance or conduct regarding CDP employees.

002. **DEFINITIONS.**

“Allegation” refers to a charge or claim made by a complainant that, if established as true, could constitute a violation of a specific provision of CDP policy.

“Preponderance of the evidence” refers to a determination that, based on all of the evidence, a fact or allegation sought to be proved is more probable than not.

“Relevant” means evidence having a tendency to make the existence of any fact that is of consequence to the investigation of a given complaint more probable or less probable than it would otherwise be without the evidence.

“Timely” means within a reasonable span of time in light of the circumstances.

“Members” refers to sworn officers employed by the City of Cleveland Division of Police.

100. MISSION, JURISDICTION, ETHICAL & EMPLOYMENT REQUIREMENTS

101. **MISSION.** To ensure constitutional, lawful, accountable, effective, and respectful policing and to have a safe community, there must be trust between police and those they serve. For that reason, the City established the Office of Professional Standards (“OPS”), an agency within the City of Cleveland Department of Public Safety and independent of CDP, for the purpose of investigating non-criminal complaints filed by members of the public against sworn and non-sworn Cleveland Division of Police employees. OPS is not a part of the Cleveland Division of Police. It is, instead, a separate agency charged with providing a civilian oversight function of CDP.

OPS’s mission is to increase accountability and improve public confidence in the police by receiving and fairly, thoroughly, and objectively investigating complaints in a timely manner made against Cleveland Division of Police employees, making findings about these complaints, and recommending action on these complaints to the Civilian Police

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Review Board (“CPRB”). As part of its mission, OPS is also empowered to make policy recommendations that will improve the citizen complaint process, increase understanding between the public and CDP employees, reduce the incidence of misconduct and reduce the risk of the use of force by CDP officers. OPS investigations are to be conducted in a fair, objective, impartial, timely, and comprehensive manner by the OPS investigative staff, which is composed entirely of civilian employees. OPS is committed to providing the community with an accessible and safe environment in which to file complaints.

102. JURISDICTION. Under the Charter of the City of Cleveland ((§ 115-1, 115-4), OPS has jurisdiction over the following types of complaints of misconduct that are made against personnel of the Cleveland Division of Police:

- i. Harassment complaints, to include those alleging bias, discrimination, and profiling;
- ii. Excessive Force complaints;
- iii. Unprofessional Behavior/Conduct complaints;
- iv. Improper Procedure complaints, including improper arrest, improper citations, and improper search;
- v. Improper Stop;
- vi. Improper Tow;
- vii. Service complaints, including insufficient CDP employee service, and no CDP service;
- viii. Property complaints, including missing property and damage to property; and
- ix. Misconduct related to the receipt of a Uniform Traffic Ticket or Parking Infraction Notice if the Parking Infraction Notice was issued by personnel in the Division of Police.

103. ETHICAL REQUIREMENTS.

(a) All OPS employees, staff, contractors, or other agents must acquit themselves of the duties outlined here in a manner that is consistent with the following statement of ethics (adopted from the National Association for Civilian Oversight of Law Enforcement (“NACOLE”) Code of Ethics). (*See Attachment A.*)

1. OPS employees and staff have a unique role as public servants overseeing the conduct of law enforcement officers. The community, government, and law enforcement have entrusted members of the OPS to conduct their work in a professional, fair and impartial manner. This trust is earned through a firm commitment to the public good, the mission of the OPS, and to the ethical and professional standards described herein.

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2. These standards are intended to be of general application. The spirit of these ethical and professional standards should guide OPS employees and staff in adapting to individual circumstances, and in promoting public trust, integrity and transparency.
3. Personal Integrity: OPS employees and staff will demonstrate the highest standards of personal integrity, commitment, truthfulness, and fortitude in order to inspire trust among OPS stakeholders, and to set an example for others.
4. Avoid conflicts of interest: OPS employees and staff are expected to conduct themselves in a fair and impartial manner and recuse themselves when significant conflicts of interest arise. OPS members and staff will not accept gifts, gratuities or favors that could compromise their impartiality and independence or that have a substantial and improper influence upon the performance of her or her duties. As public officials, OPS employees are bound by the City and State ethics laws.
5. Independent and Thorough Oversight: OPS employees and staff are expected to conduct all investigations and reviews with diligence, an open and questioning mind, integrity, objectivity and fairness, and in a timely manner. OPS employees and staff are expected to rigorously test the accuracy and reliability of information from all sources and consider and present facts and findings without regard to personal beliefs or concern for personal, professional or political consequences.
6. Transparency and Confidentiality: OPS employees and staff are expected to conduct their activities openly and transparently (as permitted by applicable policy and law), to include providing explanation of OPS and CPRB procedures and practices to as wide an audience as possible. OPS employees and staff must maintain the confidentiality of information that cannot be disclosed by law and policy and protect the security of confidential records.
7. Respectful and Unbiased Treatment: OPS employees and staff must treat all individuals with dignity and respect, and without preference or discrimination including but not limited to the following protected classes: age, ethnicity, culture, race, disability, gender, gender identity, religion, sexual orientation, socioeconomic status or political beliefs.
8. Outreach and Relationships with Stakeholders: OPS employees and staff are expected to disseminate information and conduct outreach activity in the community as permitted by law and policy. OPS employees and staff pursue open,

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candid, and non-defensive dialogue with all stakeholders and seek to educate and learn from the community.

9. Self-examination and Commitment to Policy Review: OPS employees and staff seek continuous improvement in the effectiveness of civilian oversight of law enforcement programs in Cleveland. OPS employees and staff gauge their effectiveness through evaluation and analysis of their work product and seek to emphasize policy review aimed at substantive organizational reforms that advance law enforcement accountability and performance.
 10. Professional Excellence: OPS employees and staff seek professional development to ensure competence. OPS employees and staff seek to acquire the necessary knowledge and understanding of the policies, procedures and practices of the Cleveland Division of Police (CDP) and the Department of Safety and keep informed of current legal, professional and social issues that affect the community, the CDP, the OPS and the Police Review Board (CPRB).
 11. Primary Obligation to the Community: At all times, OPS employees and staff place their obligation to the community, their duty to uphold the law and the goals and objectives of the OPS, above personal self-interest.
- (b) All OPS employees, staff, contractors, or other agents have an affirmative duty to ensure that all OPS investigations are fair, thorough, unbiased, comprehensive, and timely. This includes taking all reasonable steps to ensure the following:
- (i) INDEPENDENCE. Although OPS is an office within the City's Department of Public Safety, the integrity of the accountability process relies on the independence of OPS. No CDP personnel will have any active role in OPS investigations. OPS will not allow CDP personnel to participate in OPS functions for the purposes of influencing the outcome of OPS investigations or operations. With respect to any OPS investigation or other OPS matter, OPS employees take direction from the OPS Administrator and other OPS supervisors, not any member of CDP command staff or supervisors.
 - (ii) CONFIDENTIALITY. OPS personnel must maintain the highest degree of confidentiality concerning matters related to OPS complaints and investigations. Only the OPS Administrator or his or her designee is authorized to disclose or confirm to anyone outside of OPS, other than authorized CDP personnel and the Police Review Board (CPRB), whether a complaint has been made or an investigation is being conducted, including the identity of complainants and names of witnesses and employees. Complaint and investigative information must

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not be left unattended in areas accessible by non-OPS personnel. OPS personnel will be required to sign an agreement regarding confidentiality. The OPS Administrator may authorize appropriate OPS personnel to make public announcements to locate potential witnesses to incidents under investigation by the OPS.

(iii) NO CONFLICTS OF INTEREST. Any potential, actual or apparent conflict of interest with the parties or subject matter in any investigation should immediately be brought to the attention of OPS supervisors. If any relationship or previous experience with anyone involved in a complaint might materially impact (or have the appearance of impacting) neutrality in handling OPS matters, the issue of whether a conflict exists should be reviewed and decided by OPS supervisors. Final determination in such cases, to include re-assignment of the investigation where deemed appropriate, rests solely with the OPS Administrator.

(c) OPS will treat all individuals with dignity and respect, and without preference, bias, or discrimination.

104. EMPLOYMENT REQUIREMENTS. No OPS personnel may be current or former members of CDP.
105. BUDGET. OPS has its own budget, separate from the administrative budget for the Department of Public Safety. The OPS Administrator will oversee the budget and has the duty to responsibly advocate for a proposed budget that affords sufficient independence and resources, including sufficient staff and training opportunities to fully and effectively effectuate the terms of this Manual.
106. CDP PERSONNEL COOPERATION WITH OPS INVESTIGATIONS. Pursuant to Division policy, CDP personnel who witnessed or participated in an incident that is the subject of an OPS complaint are required to cooperate with an OPS investigation, including by responding to OPS written questions and participating in OPS interviews. The failure to fully, fairly, truthfully, and timely cooperate with an OPS investigation may result in employment consequences, including but not limited to termination. As such, OPS employees must bring any false statements or material omissions on the part of a CDP employee to the attention of the OPS Administrator who will, in turn, bring such information to the attention of the Chief of Police and the Director of Public Safety.
107. NO RETALIATION. Retaliation in any form by CDP members or other City employees against individuals for the filing of a complaint, or for participation in the complaint, investigative, or adjudicative process is strictly prohibited by the CDP and the City and

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may constitute grounds for discipline. Actions which would be considered retaliatory can take many forms, including, but not limited to, the malicious filing of a criminal or civil action, threats or harassment in any form, undertaking any adverse action against any person involved in the filing, investigation, or adjudication of a complaint, or decisions affecting an employee's hiring, promotion or assignment. In addition to such retaliation being a violation of CDP policy, it may also constitute a criminal act.

If OPS personnel are made aware of facts indicating possible retaliation by CDP members or other City employees against a complainant, witness, OPS employee, or CPRB member, it shall be immediately brought to the attention of the OPS Administrator, who in turn will immediately bring the facts to the attention of the Director of Public Safety.

200. GENERAL INTAKE PROCESS

201. **OBJECTIVE OF THE INTAKE AND COMPLAINT DOCUMENTATION PROCESS.** Regardless of the manner in which a complaint, inquiry, or concern is presented, it shall be the policy of OPS to thoroughly document and track all constituent contacts regardless of whether a formal complaint investigation results. The purpose of this documentation is to ensure that thorough and accurate information is captured pertaining to constituent contacts, the basis for such contacts, and the manner in which the OPS responds to or otherwise resolves a person's complaint, inquiry, or concern.

The process undertaken by OPS to properly address matters brought by a constituent typically has three distinct phases: (1) the intake phase, (2) the investigative phase, and (3) the adjudication phase. Subsequent sections of this Manual specifically address the second (investigative) and third (adjudicative) phases of the OPS process.

The purpose of the initial intake stage is to capture constituent contact information and to conduct an initial assessment of the complaint solely to determine whether it falls within the purview of OPS's jurisdiction and investigative authority.

202. **DOCUMENTATION OF ALL CONSTITUENT CONTACTS.** All constituent and/or community member contacts, regardless of whether the contact results in a complaint being made against CDP employees or relates to a complaint that has been previously made against CDP employees, will be thoroughly, timely, and accurately documented using the Intake Reporting Form. (*See Appendix B*).

Every effort will be made to ensure that the Intake Reporting Form is completed in its entirety. If a constituent refuses to provide information that is prompted by the various

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elements contained within the report, the OPS member completing the report will enter “DECLINED TO PROVIDE” (“DTP”) in the appropriate space.

A signed complaint form is NOT required for any further action to be taken by OPS in an effort to resolve the constituent’s complaint, inquiry, or concern. However, complainants must be advised that, for reasons unrelated to OPS rules and regulations, officers may not be able to be disciplined for conduct that is alleged in unsigned and/or anonymous complaints, even if OPS and the CPRB make a finding of misconduct. The purpose of OPS providing this information is not to unduly pressure or compel complainants to provide their name and signature on the complaint form. Instead, the purpose of such information is so that complainants can be fully informed about the practical ramifications of a decision to provide an anonymous and/or unsigned complaint.

203. **ASSIGNMENT OF CONTACT NUMBER.** Upon completion of the Intake Reporting Form, an OPS contact number will be assigned and the constituent’s name, contact information, the name of the OPS representative completing the form, and the referral or disposition information shall be entered into OPS’s IPro database (the “IPro database” or “database”) for electronic tracking purposes. The OPS Administrator (the “Administrator”) or his or her assigned designee will review the form to ensure that it is complete and accurate, and the matter falls within OPS’s jurisdiction. The Intake Reporting Form shall be scanned into the IPro database and a hard copy shall be maintained at OPS in accordance with state records retention laws.
204. **CONTACTS CLASSIFIED AS COMPLAINTS.** In instances where the facts as alleged taken with all reasonable inferences would, if established as true, constitute misconduct, constituent contacts may be properly classified as a “complaint.”

Where a contact articulates a complaint, the Intake Reporting Form shall be assigned an OPS complaint number and handled in accordance with the complaint procedures set out in this Manual. The contact number shall be cross referenced with the complaint number in the database, and a copy of the Intake Reporting Form shall be maintained in the OPS investigative file.

OPS shall consider whether a claim, if true, would constitute a complaint against CDP personnel of the type enumerated in Section 102 of this Manual. For purposes of any jurisdictional determination or inquiry, OPS shall not make any determinations about or otherwise consider the truthfulness, adequacy, plausibility, or credibility of any claims, allegations, or facts asserted. Instead, OPS shall consider only whether the claims, if true, would give rise to a complaint that OPS is authorized to investigate.

205. **CONTACTS NOT CONSTITUTING A COMPLAINT OR OUTSIDE THE JURISDICTION OF OPS.** Some contacts may involve claims or allegations that do not constitute a complaint enumerated in Section 102 of this Manual. In such instances, the

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claims may, upon the constituent's approval, be forwarded to the entity that is best suited to handle or otherwise address the nature of the constituent's concern, and/or the constituent shall be provided the information necessary to contact the appropriate entity. The forwarding of these claims to the appropriate entity shall be done within three (3) business days of the constituent's approval.

Inquiries regarding police policy, procedure, or service delivery that are not within OPS's jurisdiction, shall, upon the constituent's approval, be forwarded to the appropriate element within CDP for resolution. A copy of the Intake Reporting Form shall be forwarded to the Bureau of Integrity Control in a timely fashion. If the constituent does not approve forwarding of the inquiry to the appropriate element within CDP for resolution, the fact that the constituent declined the forwarding shall be logged into the IAPro database. In cases where the constituent declines to have information forwarded, the OPS Administrator may approve forwarding the inquiry to CDP for information only while protecting the identity of the constituent.

206. DUTY TO UPDATE COMPLAINANTS. A complainant may contact OPS at any time to determine the status of his or her complaint. OPS must provide a complainant inquiring about the status of his or her complaint with as much information as is feasible given the progress and/or status of the investigation.
207. PREPARATION OF MONTHLY STATISTICAL REPORT REGARDING INTAKE PROCESS. The Administrator or his or her assigned designee shall prepare a monthly statistical report regarding the Intake reporting process that delineates information in the following manner: contacts that result in a complaint investigation delineated by CDP district, unit, or bureau; inquiries regarding police policy, procedure, or service delivery that do not rise to the level of a complaint delineated by CDP district, unit, or bureau; and contacts that are outside OPS jurisdiction and are referred to agencies other than CDP for additional follow up. The Administrator shall forward this report to the CPRB and the City's Director of Public Safety. The Administrator shall assess the monthly statistical report for patterns and trends and make recommendations to CDP where warranted.

300. COMPLAINT INTAKE

301. COMPLAINTS. Matters come to the attention of OPS in a variety of ways. Anyone may file a complaint with OPS, including but not limited to the subject of a police incident, recipient of police service, a witness to a police incident, a bystander of police service, a third party (such as a parent or spouse of the subject), a legal representative, an anonymous subject, the OPS Administrator, or a member of the CPRB.

The substance of a complaint may be logged on a complaint form. The OPS complaint form shall not contain any language that could reasonably be construed as discouraging

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the filing of a complaint, including but not limited to warnings about the potential criminal consequences of filing false complaints. Nor shall OPS intake staff attempt to dissuade anyone from the filing of a complaint.

Complaint forms, as well as all related informational materials, will be made available, at a minimum, in English and Spanish. OPS will use best efforts to ensure that complainants who speak other languages (including sign language) and have limited English proficiency can file complaints in their preferred language. The fact that a complainant does not speak, read, or write English, or is deaf or hearing impaired, will not and cannot be grounds to decline to accept or investigate a complaint.

Complaint forms will be made available at the OPS office and distributed by the OPS on a regular basis to the following locations to ensure the accessibility of the complaint process to all members of the community:

- Cleveland City Hall through the Mayor's Action Center ("MAC") or the Director's Action Center ("DAC"),
- the five (5) CDP District Stations, and
- The CDP Patrol Division (to make available to all CDP officers traveling in a Zone Car).

In addition, Complaint forms will be available for downloading from the OPS webpage. Complaint forms will also be made available, upon request by postal mail or facsimile, or electronically via email. OPS will make complaint forms available online, either in a fillable format that may be mailed to OPS or that may be electronically submitted.

Completed complaint forms may be submitted to OPS in person, by phone, by postal mail, facsimile, or electronically. Complaints also may be submitted at any of the five (5) CDP District Stations, or at Cleveland City Hall through the MAC, or DAC. The constituent should be able to obtain assistance in completing the form at OPS or any other location where the complaint form may be obtained.

Complaint forms filed at the Mayor's Action Center, Director's Action Center, CDP District Stations, or any other City agency or office are expected to be forwarded to OPS via electronic mail within 24 hours of filing. Nothing within this provision removes the OPS's obligation to take anonymous complaints, unsigned complaints, third party complaints, or complaints received by any electronic or written format regardless of how the complaint is received or otherwise transmitted.

The current hard-copy OPS complaint form is a triplicate form. (*See Appendix C*). The white copy is the original and is maintained at OPS. The yellow copy is designated for

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the CDP District or location where the incident occurred. When a complaint is filed at OPS, the complainant will receive the pink copy of his or her complaint. When a complaint form is filed at all other locations, a copy will be sent to the complainant once it is received by OPS.

302. DUTIES OF OPS UPON RECEIVING A COMPLAINT.

- (a) EXPLANATION OF COMPLAINT PROCESS TO COMPLAINANT. Any OPS employee or staff charged with interacting with individuals who come to the OPS office will fully explain the complaint process to those individuals who make contact and are interested in filing a complaint. OPS will provide a translator for those individuals who have limited English proficiency, as well as a qualified interpreter for those who are deaf or hearing impaired. OPS shall not request that friends or family members serve as translators or interpreters; however, OPS shall not object if a constituent requests that a friend or family member provide such assistance. OPS will ensure that all individuals with any sort of disability are reasonably accommodated.
- (b) RULES FOR WALK-IN COMPLAINTS. For individuals who walk-in to make complaints in person at the OPS office, the OPS Intake Coordinator shall check the IAPro database to determine whether the individual has already filed a complaint about the allegation with OPS. If no complaint has been filed, the Duty Investigator shall then offer to interview the complainant at that time. If the complainant agrees to be interviewed and an interview takes place, the interview shall be conducted in accordance with Section 400 of this Manual.

OPS staff must provide a written statement form, (*see* Appendix D), a “Rights and Responsibilities” form, (*see* Appendix E), and a document that details OPS/CPRB investigation and adjudication processes to those persons who file or are interested in filing an OPS complaint.

When a walk-in complainant alleges excessive force or injuries resulting from contact with a CDP employee, the Intake Coordinator or Duty Investigator will take steps to properly photograph and document any and all injuries and request that a Release of Medical Information Form be signed. (*See* Appendix F). If the walk-in complainant has in his or her possession photographs, video, text messages or other evidence relating to his or her complaint, the Intake Coordinator or Duty Investigator will make efforts to obtain from the complainant any such evidence or copies of the evidence.

- (c) ASSIGNMENT OF COMPLAINT NUMBER TO COMPLAINT. The Intake Coordinator will assign the complaint form an OPS complaint number, scan the

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complaint form into IAPro and enter all information pertaining to the allegation into the database as soon as practicable, but, in any event, no later than the close of the next business day. The Intake Coordinator shall also create an investigative file, which shall contain the complaint form and all other investigative documents related to the case.

- (d) ASSIGNMENT OF INITIAL CATEGORY TO TRACK. The Intake Coordinator, in consultation with the Administrator, will determine whether the complaint should be classified as “Standard” or “Complex.” Categorization may change based on information discovered through the course of the investigation, and as approved by the Administrator.

A “Standard” investigation is one where the facts, circumstances, number of involved parties or witnesses, number of potential allegations, or other factors suggest that a full, fair, thorough, and unbiased investigation can be completed within 45 days.

A “Complex” investigation is one where the facts, circumstances, number of involved parties or witnesses, number of potential allegations, or other factors suggest that a full, fair, thorough, and unbiased investigation will take more than 45 days to complete.

The Intake Coordinator will assign a generalized complaint category to the complaint based solely on the content of the complaint. The initial categorization of the complaint may include one or more of the following:

- (1) Biased policing;
- (2) Unlawful Investigatory stop,
- (3) Unlawful search,
- (4) Unlawful arrest;
- (5) Excessive and/or improper force;
- (6) Harassment;
- (7) Service Complaints;
- (8) Property Complaints; and
- (9) Improper Procedure.

Additionally, the Intake Coordinator will identify each specific allegation of misconduct made by the complainant which will ultimately require adjudication by the Police Review Board and the CDP.

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The OPS Administrator is responsible for ensuring that all complaint categories and each allegation of misconduct correctly represents the full content of the complaint.

- (e) ACQUISITION OF BASIC MATERIALS. Upon review of the complaint, the Intake Coordinator, or a designee specifically assigned to this task, will initiate the process of acquiring divisional reports and related materials that may be of assistance during the investigative process (the “initial investigative materials”).

Such materials may include, but may not be limited to, the following:

- i. Incident Reports;
- ii. Supervisory Investigations related to the incident, including completed Internal Affairs investigations and Force Review Board reports;
- iii. Arrest Reports;
- iv. Uniform Traffic Ticket;
- v. Parking Infraction Notice;
- vi. Daily Activity Reports;
- vii. Daily Duty Assignment Report;
- viii. Body Worn Camera (BWC) download;
- ix. Dash Camera download;
- x. 911 Call Information;
- xi. Computer Aided Dispatch (CAD) Report;
- xii. Accused Officer’s Prior Complaint and Disposition history; and
- xiii. Complainant’s prior contacts with OPS and the nature of those contacts.

- (f) COMPLETION OF INVESTIGATION COMPLAINT CHECKLIST. The Intake Coordinator will denote on the Investigation Complaint Checklist (*see* Appendix G) that is contained in the OPS investigative file the reports/materials requested, from whom those reports/materials were requested, and the date, time, and status (if known) of those requests.

303. NEW COMPLAINTS FORWARDED TO OPS ADMINISTRATOR. Upon completion of the intake process and within three (3) business days of receiving the complaint, the Intake Coordinator shall forward the investigative file to the OPS Administrator, containing all investigative materials received to date, for review and assignment.

It will be the responsibility of the Administrator to ensure that:

- (a) each complaint is within the jurisdiction of OPS;

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- (b) each complaint has been properly classified and each allegation identified; and that
- (c) all preliminary information requested from CDP is either contained in the file or there is documentation stating that the information has been requested and OPS is awaiting CDP's response.

304. COMPLAINTS ALLEGING VIOLATION OF CRIMINAL LAW. Complaints that contain allegations, claims, or factual assertions that, if true, may constitute a violation of criminal law will be referred to CDP's Internal Affairs Unit. The OPS Administrator will use best efforts to make this initial determination within 24 hours of receipt of the complaint, or by the close of the next business day. If the OPS Administrator is unable to make this initial determination within 24 hours of receipt of the complaint, the OPS Administrator will include a memorandum in the investigative file that outlines the circumstances that prevented such a determination within 24 hours or receipt of the complaint.

If after conferral with the Commander of the CDP's Bureau of Integrity and Control and/or the Superintendent of the Internal Affairs Unit, and the City Attorney, the Administrator determines that a complaint has no potential for criminal charges, the complaint shall be assigned in accordance with Sections 305 through 308 of this Manual. However, regardless of the initial determination, at any point during the investigation of a complaint the OPS Investigator must inform the Administrator as soon as practicable upon the discovery of any facts, allegations, evidence, information, or other material that implicate potential criminal conduct. The Investigator must prepare a memorandum for the investigative file that outlines the nature of the material that the Investigator believes to implicate potential criminal conduct.

The Administrator must then reassess the complaint and make a determination as to whether the complaint constitutes a potential violation of criminal law such that it should be forwarded to CDP's Internal Affairs Unit. This determination must be made within 24 hours of being informed by an OPS Investigator about the discovery of any facts, allegations, evidence, information, or other material that implicate potential criminal conduct. If the OPS Administrator is unable to make this initial determination within 24 hours of receipt of the additional information, the OPS Administrator will include a Memorandum in the investigative file that outlines the circumstances that prevented such a determination within the required period of time.

If the Administrator determines that a complaint requires a criminal investigation and, therefore, should be referred to the CDP for a criminal investigation, a duplicate file will be made and forwarded to the respective unit for review and possible investigation. Thereafter, the Administrator or his or her designee will update the IAPro database and

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make a notation in the original file. The complainant shall also be advised that the matter has been forwarded to the respective unit. When contact information is available, a confirmation letter to the complainant should be sent by email or mail as soon as practicable, and no later than the close of the next business day. A copy of the correspondence shall be time-stamped, saved in IAPro, and placed in the investigative file. The Investigation Complaint Checklist shall also denote the date the correspondence was sent.

Pursuant to Division policy, the Commanding Officer of the Bureau of Integrity Control Unit or the Superintendent of the Internal Affairs Unit is required to notify the OPS Administrator no later than fifteen (15) business days from receipt of the complaint and provide a status update. If the Commanding Officer of the Bureau of Integrity Control Unit or the Superintendent of Internal Affairs fails to do so, the Administrator shall promptly notify, in writing, the Chief of Police and the Director of Public Safety. Division policy also requires that the Superintendent of the Internal Affairs Unit provide the OPS Administrator with a comprehensive report as to the status of all CDP investigations initiated pursuant to a public complaint at least once every thirty (30) calendar days. If the Superintendent of the of Internal Affairs Unit fails to do so, the Administrator shall promptly notify the Chief of Police and the Director of Public Safety, in writing.

If the Bureau of Integrity Control or Internal Affairs Unit determines that the matter will not be handled as a criminal investigation or if a criminal investigation results in no charges, the file – including any new Investigatory materials generated by Integrity Control – will be returned to OPS. Once the file is received, the IAPro database will be updated and a notation entered on the Investigation Complaint Checklist to reflect the current posture of the investigation and the transfer of investigative responsibility. Thereafter, the matter will be assigned to an OPS Investigator for review of the CDP investigation and additional investigation if necessary. Within five (5) business days of the file being returned to OPS, the complainant will be informed that the matter will not be handled as a criminal investigation (to include an explanation of that decision) and that the complaint has been returned to OPS for investigation. A confirmation letter shall be sent to the complainant via mail or email, when contact information is available, time-stamped, saved in IAPro, and placed in the investigative file. The Investigation Complaint Checklist shall also denote the date the letter was sent.

305. COMPLAINTS OTHERWISE INVESTIGATED BY CDP. If, upon receipt of an excessive force complaint, the OPS determines that the CDP has already initiated an investigation into the incident, the OPS will defer its investigation until the completion of the CDP investigation. For those complaints not involving excessive force or apparent criminal conduct, OPS will retain jurisdiction even if CDP has already opened an investigation into the incident, unless disciplinary proceedings have been initiated by

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CDP. Upon receipt of a completed CDP investigation that was initiated before a complaint was made to the OPS or as the result of a referral to the CDP, the investigation must be reviewed by the OPS to determine if any additional investigation is required prior to submission of the investigation to the PRB for appropriate findings. The OPS has the authority to conduct additional investigation of any incident falling within the jurisdiction of the OPS, whether or not CDP has or has not previously investigated the underlying incident, circumstances, or nucleus of underlying facts. In addition, in any case where the CDP criminal or critical incident investigation did not cover all possible policy, practice or training issues, additional administrative investigation may be necessary.

306. ASSIGNMENT OF A NEW COMPLAINT TO AN OPS INVESTIGATOR. In determining the assignment of a new complaint investigative file to an OPS Investigator, the Administrator must consider the current caseload of Investigators, the complexity of the investigation balanced against the experience of the Investigator, and the next Investigator in the standard queue to be assigned an investigation.
307. DEADLINE FOR ASSIGNMENT OF NEW COMPLAINT TO AN OPS INVESTIGATOR. The Administrator will make every effort to assign every investigative file within 24 hours of receipt, but in any event, by the close of the next business day. The Investigator assigned to the complaint and the date of assignment will be noted on the Investigation Complaint Checklist. If the investigation is not assigned within the prescribed time period, the Administrator will document the reason for the delay in both the investigative file and the IAPro database.
308. REQUIREMENT TO PROVIDE NOTICE TO COMPLAINANT OF COMPLAINT RECEIPT. Prior to transferring custody of the file to the OPS Investigator, the Administrator shall direct the Intake Coordinator to prepare and mail or email a letter to the complainant acknowledging receipt of the complaint, identifying the complaint file number, and providing the contact information of the assigned OPS Investigator. The letter shall also state that the assigned Investigator may contact the complainant to schedule an appointment in order to obtain a more detailed statement. The letter should be sent by the Intake Coordinator as soon as practicable, and no later than the close of the next business day. A copy of the letter shall be time-stamped, saved in IAPro, and placed in the investigative file prior to being forwarded to the Investigator. The Intake Coordinator shall also denote on the Investigation Complaint Checklist the date the letter was sent. All complainant notification letters shall be sent to the complainant no later than seven days after OPS's receipt of the complaint.
309. REQUIREMENT TO PROVIDE NOTICE TO IMPLICATED CDP PERSONNEL. The Administrator will direct that a notification to the implicated, accused, or otherwise principally-involved CDP employee(s) be prepared which documents the following:

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- (a) date and time the complaint was received;
- (b) the nature of the complaint;
- (c) the date, time, and location of the alleged incident;
- (d) and the assigned Investigator's name and contact information.

The notification shall be forwarded to the subject employee's supervisor or the member's commanding officer for service. Upon receipt, the signed copy of the notification acknowledging receipt shall be saved in IAPro and retained in the investigative file. If the signed copy of the notification acknowledging receipt is not returned to the OPS within 10 business days, the Administrator should be advised in order to follow up with the subject employee's supervisor or commanding officer.

In some extraordinary circumstances, and depending on the nature of the allegation, the Administrator may determine that it would not be prudent to make an immediate notification to the subject member. Under those circumstances, the Administrator will make appropriate notifications to CDP command staff, confer with the Law Director, and document in the investigative file the reason why the notification was not made as set out above.

400. COMPLAINT INVESTIGATION PROCESS

401. OVERVIEW. The complaint investigative process must provide complainants with a thorough, impartial, objective, and timely avenue for review of their grievances against CDP employees, and at the same time protect Division employees from false allegations of misconduct or wrongdoing. In an effort to maintain the integrity of the investigative process, precise procedures have been established for the receipt, investigation, and adjudication of misconduct complaints. In addition to the receipt and processing of a complaint, the investigation will typically involve the gathering of physical and testimonial evidence. Testimonial evidence is gathered by taking statements or conducting recorded interviews from the complainant who filed the complaint and all witnesses who may have factual information pertaining to the complaint. Statements may also be taken from persons who have specialized knowledge regarding the complaint or the circumstances related to the complaint. In addition to the gathering of physical and testimonial evidence, Investigators may also seek to gather documentary evidence such as reports, activity sheets, 911 calls, dispatch reports, crime scene materials, as well as video or audio recordings that may be related to the complaint.

The initial review of a complaint is an important part of the investigative process as it will help the Investigator determine the nature and complexity of their investigation. Understanding the complexity of an investigation will help to determine if any additional

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investigative resources may be needed to conduct the investigation, and will also establish a reasonable time-line for completion of the investigation.

402. **ASSIGNING THE CASE TO AN INVESTIGATOR.** Once the intake process has been completed and the complaint has been reviewed by the OPS Administrator it is assigned to an Investigator. The investigative file will be placed in the assigned Investigator's inter-office mailbox. Once received, the Investigator will notify the Administrator's Administrative Assistant as to the date and time of receipt and the administrative assistant will enter that information into the database that is used to track the investigation and assist the OPS Administrator in managing the investigative process.
403. **PROCEDURES FOR CONTACTING AND/OR INTERVIEWING THE COMPLAINANT WHO FILED THE COMPLAINT.** Within five (5) business days of receipt of the file, the assigned Investigator will make an attempt to contact the complainant by phone and schedule an in-person interview if an in-person interview did not take place at the time of Intake.
- (a) In the event that phone contact is made with the complainant, the call will be digitally recorded and state the date and time of the call as well as its intended purpose. (Example: "The date is June 24, 2016. The time is 0900 hours. This is Investigator Jones and I am speaking with or attempting to contact Mr. Smith, the complainant in case number 2016-0000, in order to schedule an in-person interview.")
 - (b) Upon making contact with the complainant, the Investigator will advise the complainant that the call is being recorded for quality assurance purposes and to ensure the information discussed is properly captured and preserved. If the complainant requests that the call not be recorded, the Investigator will document this request in the investigative file and promptly discontinue the recording and continue with the call.
 - (c) A copy of each and every recorded call made in an effort to contact a complainant or witness will be maintained and become a part of the investigative file. In addition, the call(s) will be recorded in the investigative file and entered in the IAPro database.
 - (d) After three unsuccessful attempts to contact the complainant, the Investigator should go to the complainant's last known address in an effort to make contact. If unable to do so or if visiting the last known address proves to be unsuccessful, a certified letter (return receipt requested) shall be forwarded to the complainant setting out the Investigator's efforts to make contact and the need to obtain additional information. A letter personally delivered to the last known address may substitute for a certified letter. The personal delivery shall be documented.

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- (e) Each effort and step to make contact with the complainant, and the manner in which such contact was attempted, shall be properly recorded in the investigative file and in the IAPro database.
 - (f) In the event the complainant agrees to provide an in-person interview, the Investigator will meet the complainant in the OPS lobby and briefly describe the process that will be undertaken, to include the fact that with the complainant's permission the statement may be audio and video recorded.
 - (g) Statements taken without being preserved by video and audio recording should be provided in the complainant's own handwriting, if possible. If, for whatever reason, the complainant is unable to prepare a written statement, the statement will be transcribed by the Investigator and later read to or otherwise presented to the complainant. Once determined to be accurate the complainant will be asked to sign the statement. OPS must investigate the complaint regardless of whether the statement is signed.
404. THE IDENTIFICATION OF EVIDENCE. The types of evidence gathered during the course of an OPS investigation will usually fall into four areas: statements/testimonial evidence, documentary evidence (reports, photographs, etc.), physical evidence, or forensic evidence. Physical evidence may include such things as objects, fingerprints, footprints, handprints, or marks left behind by tools or weapons. Forensic evidence may include such things as bruises or bite marks.

Typically, physical and forensic evidence is gathered during the preliminary stages of a criminal or critical incident investigation. However, it is not unusual for an OPS investigation to involve the documenting and photographing of objects, swelling, bruises, cuts, bite marks, or any other forms of evidence that support or contradict a complainant's allegations.

During the course of the initial (or preliminary) stages of the investigative process, the Investigator will ensure that the following information is collected with the permission and cooperation of the complainant; the complainant's full name, mailing address, telephone number(s), email address, race, gender, and date of birth. The person making a complaint is under no obligation to provide this information. However, such information may assist the Investigator in conducting a thorough and comprehensive investigation and will facilitate the process by which the complainant can be properly notified regarding the investigative status, the findings and conclusions reached by the Investigator, and notice of any action to be taken by the CPRB. In addition, this

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information can also be used in an aggregate manner to allow the OPS to identify patterns in complaints and publicly report on patterns relating to police conduct and use of force.

A complaint investigation has the ultimate goal of determining the truth and facilitating a process which will provide accountability for official misconduct. The preliminary investigation endeavors to answer the following very basic questions about the incident; who, what, when, where, how, and why.

- 1) Who: Who was involved? Does the complaint involve a CDP employee? Who established the employee's identity and how was that accomplished? Who was present at the time of the alleged misconduct, or who may have first-hand knowledge of the incident?
- 2) What: In the complainant's (or witness's) own words, what happened? What are the specific details prior, during, and after the incident which gave rise to the complaint? What specifically was the complainant's (or witness's) involvement? What, if any, relationship may exist between any of the involved parties? What was the mechanism of injury? What outcome is the complainant seeking to achieve by contacting OPS and making a complaint?
- 3) Where: Where did the incident occur? What specific details can the complainant or witness provide about the location where the incident occurred?
- 4) When: When did the incident happen (date and time)? When did the complainant first become aware of the misconduct (was the complainant the involved party or are they reporting on behalf of someone else)?
- 5) How: How did the complainant become aware of the incident (that is, in cases where the complainant may be filing the complaint on behalf of someone else)? How did the incident unfold or develop? How can OPS learn more about the incident?
- 6) Why: Why does the complainant believe the misconduct may have taken place? Why did the complainant decide to file a complaint with OPS?

Typically, the preliminary process is completed within thirty (30) days of the filing of the complaint but may be impeded by delays in acquiring information or data that is outside of the Investigator's control. Quickly completing the preliminary review process will help ensure that evidence related to an incident is not lost or destroyed, and witnesses'

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memories are not allowed to fade with time before an interview is conducted. If an on-site view or photographs may be of particular value, and the passage of time may diminish such evidence, OPS personnel should take steps to secure the potential evidence during the preliminary review.

405. CREATING THE INVESTIGATION PLAN. After the Investigator has prioritized the contact of the complainant and the scheduling of an interview with the complainant, the Investigator must prepare and make available for OPS Administrator review an Investigation Plan to help focus and guide the investigation. The Investigation Plan provides an investigative strategy, identifies potential sources of information, sets out anticipated timelines for conducting the investigation, and helps the Investigator anticipate problems before they arise.

Properly planning the next steps of the investigative process requires that the OPS Investigator determine the most efficient and effective investigative strategy based on both the nature of the complaint and the evidence gathered thus far. The Investigator must also identify other potential sources of information that have not already been identified, establish anticipated timelines related to the various remaining stages of the investigation and completion, and attempt to identify any potential challenges or impediments that may impact the investigation and interfere with a thorough, objective, and timely resolution.

An important part of beginning an investigation of reported misconduct is understanding the nature of the allegations and the sources which will help in determining or disproving the existence of misconduct or wrongdoing on the part of the CDP employee. In addition to state and federal laws governing the conduct of law enforcement officers and other governmental employees, such as non-sworn members of the CDP, the Division's General Police Orders ("GPOs") provide the Investigator with the means of determining whether the conduct or behavior proven during the course of an investigation violated established CDP policy or law. Referring to CDP General Police Orders will help the Investigator in identifying specific conduct alleged in the complaint in an effort to assess whether such conduct violates divisional policy.

With respect to better understanding and interpreting issues of law that may be present at the onset of an investigation, or may surface during the investigative process, OPS Investigators may seek the guidance of appropriate legal counsel representing OPS who does not have any actual or apparent conflicts of interest.

Key segments of the Investigation Plan include:

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- (a) **ALLEGATIONS & CLASSIFICATIONS.** The assigned OPS Investigator must first create a witness list identifying the complainant, the named employee(s) and all potential witnesses, if any. The Investigator must then prepare a briefing document incorporating a brief factual summary of the underlying incident and factual claims or assertions made, and listing each and every specific allegation of misconduct. The document must also list the laws, CDP General Police Orders, police procedures, or training implicated such that, on the face of the complaint itself and the other preliminary information gathered through the procedures outlined in Section 401(1) – (3) above, the law, CDP policies, procedures, or training would have been violated if the facts or actions alleged were later proven to be true.

OPS should consider as applicable “allegations” all those facts or officer actions described in the complaint that, if true, would violate the law, CDP General Police Orders, police procedures, or training. OPS, in making this determination, at this pre-investigation phase, shall draw all reasonable and favorable inferences to the person making the complaint.

If, upon review of the Investigation Plan, the OPS Administrator and/or OPS supervisory designee believes that different, other, or fewer misconduct allegations are warranted by the content of the investigative file to date, the OPS Administrator will outline such determinations in an Investigation Plan Review Memorandum and instruct that the appropriate allegations be addressed by the OPS investigation. The OPS Administrator will be the final decision-maker in that regard.

The OPS Investigator shall add specific allegations, which must all correspond to specific CDP Manual section(s), throughout the investigation whenever new information is discovered that appears to implicate additional, different, or other CDP Manual section(s).

- (b) **WITNESSES & OTHER KEY SOURCES OF EVIDENCE.** The Investigator should identify and document the witnesses and other individuals who may have information relevant to the investigation. The Investigation Plan should consider the order in which witnesses are interviewed and any special considerations, such as whether any parties are anticipated to be unavailable for any period of time or whether there is a concern that a witness might be less willing to participate if too much time elapses.

The Investigator should also outline the types of documentary evidence (some of which might have already been gathered during the initial Intake Phase), including but not limited to:

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- a) CDP incident reports, CAD information, duty logs, and other similar performance databases and/or logs;
- b) Property or evidence reports;
- c) Booking reports and photos;
- d) Documents establishing consent to search;
- e) Secondary employment permits;
- f) Work assignments;
- g) GPS records, if available;
- h) Notes, email, text messages, correspondence, or memoranda;
- i) Training protocols (including training curriculum, syllabuses or videos)
- j) Officer training records;
- k) Operational or unit manuals;
- l) Payroll or other personnel records;
- m) Cleveland Division of Fire or Emergency Medical Services records;
- n) Medical records as authorized by a patient; and
- o) Other Departmental or City records of potential relevance.

The Investigator should further outline the types of physical evidence (some of which might have already been gathered during the initial Intake Phase), including but not limited to:

- Body-Worn Camera and Dash Camera Video;
- Holding Cell video;
- CDP communications recordings;
- Video and/or audio from the scene (e.g., security systems from nearby businesses) or taken by witnesses (e.g., cell phone recordings);
- Photographs, maps, and phone records; and
- Postings to social media sites.

(c) **SECURING OF EVIDENCE.** The OPS Administrator shall ensure the creation and implementation of protocols ensuring the appropriate handling and documentation of the receipt of all physical and documentary evidence that may be collected during the course of an OPS investigation. Such protocols will be submitted for the review and approval of the CPRB.

(d) **MILESTONES & TIMELINES.** The Investigator must set out an anticipated chronology and timeline for the investigation. That chronology and timeline should consider, respond to, and answer at least the following questions:

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- Do all documents and physical evidence need to be collected and analyzed before witness interviews begin?
- In what order should the witnesses be interviewed and why?
- What is an objective estimate as to how long each step of the investigation will take? Could there be any problem in meeting these timelines or deadlines?
- Will holidays, training schedules, workload, or scheduled absences (whether for the Investigator, OPS staff or personnel, or witnesses) impact the investigation timeline?
- How long will it take to prepare the Investigative Summary Report and take other steps to organize the case file after the investigation is completed and before forwarding it to the OPS Administrator for review?

The Investigation Plan should include a schedule for the investigation that includes all steps to be taken before it can be forwarded to the OPS Administrator for review.

406. **EVALUATION OF RELEVANT EVIDENCE.** In every investigation, OPS will consider all relevant evidence that tends to make the existence of any fact that is of consequence to the investigation of a given complaint more probable or less probable than it would otherwise be without the evidence. In evaluating the credibility of any individual, there will be no automatic preference for a CDP member's statement over that of the person filing the complaint or any independent witness or vice versa. OPS will not disregard a statement solely because the person who made the statement has some connection to either the complainant or the involved CDP employee. Nor will OPS reject a complaint because the complainant or a witness has a criminal history. OPS will make all reasonable efforts to resolve material¹ inconsistencies between witness statements.

OPS will document in writing the investigation of each complaint, including all Investigatory steps taken, as well as findings and conclusions.

In addition to determining whether a CDP employee engaged in the conduct alleged in the complaint, and whether that conduct violated policy, procedure, or training, OPS may include recommendations on, the following:

- 1) Is there a need for additional training, counseling, or other corrective measures?
- 2) Should CDP revise its policies, strategies, tactics, or training?

As evidence is obtained during the investigation, it will be carefully and thoroughly catalogued in the investigative file, including the source, date obtained, etc., examined

¹ Facts or issues of a case or inquiry that can affect its conclusion or outcome. (Black's Law Dictionary, 2d Edition Online).

² Employees of the Cleveland Division of Police may be required to affix their signature to any

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and described in the case notes, and uploaded using the OPS exhibit-naming procedure. At the conclusion of the investigation, the value and importance of each piece of evidence must be weighed and described in the Investigative Summary Report.

407. INTERVIEWS.

(a) PREPARING FOR INTERVIEWS. Prior to any witness interview, and whether the witness is civilian or sworn, the OPS Investigator should review the Investigative Plan to determine the issues to be addressed with the individual to be interviewed, considering whether there is documentary or physical evidence that the Investigator wants to use. The Investigator shall prepare an outline of topics and subtopics to be covered with the interviewee.

(b) RECORDING INTERVIEWS. Testimonial evidence is a critical part of the complaint investigative process. Such evidence consists of written or oral statements taken from the complainant, and any witnesses who may have factual information regarding the complaint. How such statements are preserved is especially important in ensuring that the testimony given accurately reflects the words provided by the person giving the statement. Therefore, an Investigator may ask that any written statement be signed by the person making such statement. Neither the person making the complaint, nor any of witness from whom a written statement is collected will be required to sign as a condition of the investigation proceeding.²

All interviews, whether in-person or by telephone, should be recorded in their entirety, as a safeguard to ensure that there is a record of exactly what was said during any interview. If any relevant discussion or review of a video or other evidence occurred prior to the recording, it should be noted on the record during the recorded interview. Again, the purpose of this practice is to properly preserve any statements that are provided during the course of an investigation. Video and audio recorded testimony provides the best assurance that any statements taken or testimony provided is true, accurate, voluntary, and not influenced by the actions of the Investigator.

All CDP employees are obligated by Division policy to submit to recorded interviews. Witnesses who are not employed by CDP should be told the rationale for recording interviews and encouraged to consent.

² Employees of the Cleveland Division of Police may be required to affix their signature to any documents that they prepare in accordance with CDP policy or practice.

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If a civilian witness does not consent to a video or audio recorded statement, the refusal should be documented and the Investigator shall prepare a narrative summary of the interview immediately after, and not more than twenty-four (24) hours after, the interview has concluded. If a person chooses not to provide a video or audio recorded statement, the OPS Investigator will take the statement in writing after which time the person making the statement will be asked to review the document to ensure that it accurately reflects the information that has been provided.

The OPS Investigator should advise any civilian witness who is concerned about providing consent for a video interview that video-recorded interviews of all witnesses (whether officer or civilian) is generally the best practice as it allows a reviewer to observe demeanor and appearance and gestures in addition to documenting and recording the verbal statements of the witness.

If interviewees bring their own recording devices to the interview, they will be permitted to create their own recording of the interview. Upon request, OPS will provide a duplicate copy of the recording or written transcript.

(c) CONDUCTING INTERVIEWS. Where there are significant facts in dispute, it is a best practice to conduct in-person interviews of witnesses who have material information to provide. The OPS Investigator must ensure that the Investigator's demeanor during all interviews is respectful, courteous, and professional. Each person interviewed should be addressed by his or her surname (e.g., "Mr. Jones" or "Mrs. Smith" or "Officer Smith") in order to maintain formality and neutrality. Civilian witnesses may be accompanied to the interview by a representative of their choosing.

The Investigator should avoid forming any opinion regarding the person being interviewed and, instead, focus on obtaining as much information and evidence as possible. The Investigator must also avoid expressing an opinion regarding how the case will or should be decided. If the Investigator believes that it will be difficult to maintain such neutrality with any witness for any reason, he or she should consult with an OPS supervisor and action should be taken to ensure a fair and unbiased investigation.

Although the nature of the complaint may make the interview uncomfortable at times, the Investigator must not avoid asking the necessary questions of any witness. Specific and sometimes direct questions must be asked in order to address the elements present in each allegation. At times, it may be necessary for the OPS Investigator to challenge assertions or probe further when witnesses provide incomplete, vague, imprecise, or unreasonable responses. Where there may be a discrepancy between the interviewee's testimony and

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other testimony or evidence, the OPS Investigator should question the interviewee about the discrepancy without expressing judgment.

Interview questions should address the elements present in the allegation(s) raised against the named employee. Some witnesses may be able to speak to all elements of all allegations, while other witnesses may offer more limited or targeted information.

Open-ended and probing follow-up questions must be asked in order to fully understand what the person being interviewed saw, heard, and otherwise knows about the matter under investigation. Leading questions (which are those that can typically be answered with a “yes” or “no” or where the answer is implied or strongly suggested in the question) should be avoided. Generally, interviews should move from broad to more specific questions, with relationships among any parties present at the incident, as well as any other witnesses, established.

Where feasible, OPS Investigators should use tools such as maps, diagrams, photos, or videos with the individual being interviewed to help explain what happened. If acronyms or special terminology are used during the interview, ask the interviewee to explain it for the record. When interviewing non-police personnel, OPS Investigators should attempt to avoid the use of police terminology or jargon, as the use of terms and concepts that are familiar to the public ensure that interviewees understand what they are being asked.

At the beginning of each interview, the Investigator should determine if any witness has been exposed to any evidence (to include other witnesses or video of the incident) which may impact their perception or recollection of the incident under investigation. Probing questions may be necessary to ensure that the information being provided is based on the witness’ memory and perception of the event and not the memory or perception of another person or mechanism (such as a video recording).

At the conclusion of all interviews, the Investigator should ensure that he or she has all current contact information for the witness. Witnesses should be told that OPS may need to follow up with them if necessary. Interviewees who are not CDP employees should be encouraged not to talk about the interview or incident with anyone else out of fairness to all persons involved and to ensure an objective, fair, and unbiased investigation.

(d) LOCATING AND INTERVIEWING INDEPENDENT WITNESSES (E.G. “CANVASSING” FOR WITNESSES). Every effort will be undertaken by the Investigator to inspect the location where the subject incident occurred. Steps will be undertaken to identify the existence of independent witnesses, and to locate possible video surveillance technology that may have captured the police-complainant interaction.

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This step in the investigative process may precede the Investigator's initial meeting with the complainant in those cases where an early response to the scene would increase the likelihood of gathering evidence.

Information obtained from witnesses located during a canvass of the area should be preserved by audio or video recording.

In the event use of audio or video technology is unavailable at the time, or the witness refuses to be audio or video recorded, the Investigator will provide the witness with a Witness Statement Form to complete and sign, if possible. The inability, impracticality, or refusal of a witness to complete the Witness Statement Form should be documented in the investigative file.

(e) CONDUCTING AN INTERVIEW OF A CDP EMPLOYEE. The Investigator will send notice to the CDP employees' supervisor or Commanding Officer requesting an in-person interview with the CDP employee who is the subject of the complaint. Additionally, correspondence will be forwarded to any relevant CDP employees who may have been witnesses requesting an in-person interview.

Prior to the interviews taking place, the Investigator will take steps to obtain any written reports previously prepared by the CDP employee or CDP witnesses, and any and all audio or video recordings that may be in existence and in the possession of the CDP. Any outlines or questions prepared in advance, along with notes taken by the Investigator during the course of the interviews, will be made part of the investigative file.

Pursuant to CDP policy, the Chief of Police will order employees who witnessed or participated in an incident that is the subject of an OPS complaint to cooperate with the OPS investigation, including submitting to an in-person interview.

OPS Investigators should ensure that interviews of CDP employees are scheduled in a timely manner and that any failure to cooperate in the timely attendance at OPS interviews by CDP employees is reported immediately to the OPS Administrator for appropriate action with CDP command staff.

At the beginning of an employee interview, it shall be determined and stated on the record whether the employee is voluntarily making a statement or is doing so under compulsion.

CDP employees should be asked about their understanding of the policy or policies at issue or implicated by the allegations and their understanding of all related training.

In nearly all instances, the OPS interview of a CPD employee should be conducted in person. During an in-person interview of a CDP employee, the CDP employee may elect to have a representative of the employee's union present. The primary role of a union representative during an interview is to protect the contract rights of the employee.

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Unless the purpose of a union representative's participation is reasonably connected to the protection of a contract right of the employee, the union representative must not be allowed to interrupt or otherwise disrupt an OPS interview. The OPS Investigator should invite the union representative to place any objections on the record at the end of the interview.

In general, the subject employees(s) is/are interviewed after all other evidence is compiled. There will be cases, however, when an initial interview of a subject employee may need to be conducted early in the investigation to ensure all investigative tasks can be identified in a timely manner. Re-interviews of the complainant, witnesses or subject employees may be necessary when new or different information or allegations have been developed during the course of an investigation.

CDP employees are to be given a specific order by the Chief of Police not to discuss the matter or their interview with any unauthorized persons, which will almost always be all individuals who are not their union or legal representative(s).

408. **DUTY TO REVIEW AND EVALUATE EVIDENCE.** As evidence is obtained during the investigation, it should be carefully and thoroughly catalogued in the case file in IAPro (including the source of the evidence, date that the evidence was obtained, etc.), examined and described in the case file, and uploaded to IAPro. At the conclusion of the investigation, the value of each piece of evidence must be weighed and described in the Investigative Summary Report. Care should be taken to mitigate the effects of bias (conscious or unconscious on the part of the Investigator).

OPS Investigators will make all reasonable efforts to resolve material inconsistencies between witness statements.

409. **DUTY TO COMPLETE AN INITIATED INVESTIGATION.** OPS will not terminate an investigation simply because the complainant seeks to withdraw the complaint or is unavailable, unwilling, or unable to cooperate with an investigation. OPS will continue the investigation and reach a finding, where possible, based on the evidence and investigatory procedures and techniques available.
410. **ACCESS TO RELEVANT DISCIPLINARY INFORMATION.** In order to ensure a thorough investigation, OPS Investigators may need access to any and all relevant disciplinary information in the record of an officer who is the subject of a current investigation. Any impediment to obtaining such records should be promptly reported to the OPS Administrator for resolution with the CDP.
411. **PREPARING THE INVESTIGATIVE SUMMARY REPORT.** After review of all relevant reports, materials, and interviews the Investigator will prepare a report outlining the investigation to include the following: a description of the complaint, applicable CDP

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policies, investigative steps taken, a synopsis of all witness statements and evidence, and a deliberative analysis.

In addition to providing the information necessary to ensure informed findings as to whether an officer committed the conduct alleged in the complaint and whether it violated policy, training or legal standards, the Investigative Summary Report must consider whether:

- (1) The incident indicates a need for additional training, counseling, or other corrective measures; and
- (2) The incident suggests that CDP should revise its policies, strategies, tactics, or training.

(a) **FORM AND FORMAT OF THE INVESTIGATIVE SUMMARY REPORT.** OPS Investigative Summary Reports begin with the allegations and elements within each allegation followed by the testimonial, documentary, or physical evidence that is relevant to each such allegation or element listed and discussed in association with it. While this approach means that some evidence may be repeated when it is relevant to more than one allegation or element, this will help subsequent decision-makers sort through the information and more easily, fairly, accurately, and timely arrive at the disposition.

All persons who have been interviewed and listed in the Investigative Summary Report will be identified as either as the complainant, witness, persons with specialized knowledge, or CDP employee.

(b) **IMPORTANT FEATURES OF THE INVESTIGATIVE SUMMARY REPORT.** Investigators shall refrain from making credibility determinations related to the person who brought the complaint, witnesses, or the subject employees(s) unless there is credible and objective evidence to support such a determination. To the extent, the Investigator deems such a determination to be material to the conclusions, such a determination should be thoroughly documented. There will be no automatic preference for an employee's statement over the statement of a civilian or vice-versa.

412. **INVESTIGATOR FINDINGS & RECOMMENDATIONS.** Once the OPS investigation has been completed, the OPS Investigator shall confer with the OPS Administrator or his or her designee in order to determine the appropriate disposition of each allegation in the complaint. The Investigative Summary Report shall contain the Investigator's recommended findings, conclusions, and/or other non-objective determinations about, regarding, or related to the investigation.

500. TIMELINES & MILESTONES

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501. **TIMELINESS OF INVESTIGATIONS.** The timeliness of an investigation is a measure of how efficient the Investigatory process functions. It also helps to instill public confidence in the citizen complaint and investigation process.

It is the goal of OPS to resolve all complaints brought to their attention within 45 days of receipt for Standard complaints and within 75 days for Complex complaints. Investigations which exceed these time periods will be brought to the attention of the OPS Administrator. A written request for an extension will be filed by the Investigator, forwarded to the OPS Administrator and Director of Public Safety, and made part of the investigative file. In addition, the complainant will be notified as to the specific reasons for the delay, and a projected timeline for completion.

A number of factors influence how swiftly an investigation may be completed. The case load of OPS investigative staff and the overall capacity of the office to manage the number of investigations pending resolution is a factor that has a realistic impact on how quickly complaint investigations are completed and scheduled for review and adjudication by the CPRB. Both of these considerations are the responsibility of the OPS to effectively manage and resolve to ensure that citizen complaints are not impeded, and swift and impartial accountability results.

However, there are also factors that influence the timeliness of an investigation that may be outside the immediate control of OPS staff, including the nature and complexity of an investigation, immediate access to certain documents or records that may be in the custody of the CDP or other entities, the continued cooperation of the complainant, and access to relevant witnesses. Additionally, the duty status of the CDP employee who is the subject of the complaint may also impact the speed in which an investigation is accomplished. For example, if a CDP employee has been relieved from duty, is incapacitated, or on approved leave during the course an investigation an Investigator may be precluded from obtaining a statement and, thus, reaching an investigative conclusion may be delayed.

In any case where the unavailability of a witness (including a witness or subject employee) is the cause of a substantial delay in the completion of an OPS investigation, the Investigator will advise the OPS Administrator to determine if the investigation may proceed without a statement or whether the investigation must be held in abeyance until the witness becomes available for an interview.

600. OPS ADMINISTRATOR'S REVIEW OF THE INVESTIGATIVE FILE

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601. REVIEW OF INVESTIGATION. Upon completion of the investigative report, the entire investigative file will be submitted to the Administrator for review to ensure that it is complete, thorough, and objective.

The criteria the OPS Administrator must consider includes, but will not limited to:

- 1) Was all relevant evidence collected?
- 2) Were all witnesses contacted and interviewed when possible?
- 3) Were all interviews thorough?
- 4) Were all applicable OPS procedures followed?

Testimonial evidence (statements made by involved parties and witnesses) must be carefully weighed and evaluated as to relevance and credibility. For example, the reviewer must avoid giving any greater or lesser weight or credence to an individual's testimony because of that person's position (including employment by CDP or another City entity), race, ethnicity, gender identity, economic status, sexual orientation, etc. Only objective criteria relating directly to the truthfulness or credibility of the person should be used in deciding what weight is to be given to his or her testimony.

602. DEFICIENT, INCOMPLETE, OR UNSATISFACTORY INVESTIGATIONS. If an investigation is incomplete, unsatisfactory, or deficient in any way, the Investigator will be directed to take whatever additional investigative steps deemed necessary to thoroughly and satisfactorily complete the investigation.

Where the OPS Administrator has any concerns about the investigation, or determines that further investigation is necessary, the Investigator will complete the assigned steps as expeditiously as possible. The Investigative Summary Report will then be amended and re-submitted to the OPS Administrator for further review and, if appropriate, approval.

603. OTHER DUTIES OF OPS UPON ADMINISTRATOR RECEIPT OF INVESTIGATIVE FILE. Upon receipt of the investigative file, the administrative support staff will update the IAPro database to reflect the status of the investigation and ensure that all relevant fields in the database have been updated and completed.

604. OPS ADMINSTRATOR FINDINGS. Upon concluding that the OPS Investigation is complete, the OPS Administrator must review the recommended findings made included in the Investigative Report in order to ensure they are appropriate and defensible. Any findings that are not appropriately made and based upon the evidence contained in the OPS file will be changed and updated as directed by the Administrator. The Administrator will ensure that written findings as to each allegation in the complaint will include appropriate reasoning for each finding.

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- (b) **PREPONDERANCE OF THE EVIDENCE STANDARD.** The applicable standard governing any and all of the Administrator's findings, conclusions, and/or other non-objective determinations shall be by a preponderance of the evidence. The preponderance standard is defined as, based on all of the evidence it is more likely than not that conduct inconsistent with CDP policy, procedure or training has occurred or has not occurred. As further defined in Black's Law Dictionary, it is the recognition that "the greater weight of evidence, not necessarily established by the greater number of witnesses testifying to a fact but by evidence that has the most convincing force; superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other."
- (c) **CATEGORIES OF FINDINGS.** The only findings that an OPS Investigator may recommend are as follows:
- i. **SUSTAINED:** If the preponderance of the evidence supports a finding that the alleged conduct occurred and the officer's actions were inconsistent with law or Cleveland Division of Police General Police Orders, training, or procedures, the recommended finding will be "Sustained."
 - ii. **EXONERATED:** If the preponderance of the evidence gathered throughout the investigation supports a finding that the alleged conduct occurred but the officer's actions were consistent with law, Cleveland Division of Police General Police Orders, training, or procedures.."
 - iii. **UNFOUNDED:** If the preponderance of the evidence supports a finding that the alleged conduct did not occur.
 - iv. **INSUFFICIENT EVIDENCE:** If the preponderance of the evidence fails to establish whether the alleged conduct did or did not occur, the Investigator will make a recommended finding of "Insufficient Evidence."
605. **DISCIPLINARY RECOMMENDATIONS.** OPS shall not make any recommendations as to potential discipline. Instead, OPS must make recommendations only as to the disposition of specific allegations of the law or CDP policy, procedure or training.
606. **NOTIFICATION AFTER OPS ADMINISTRATOR FINDING DETERMINATIONS.** OPS administrative support staff will prepare and mail a letter to the complainant and the subject CDP employee(s) advising that the investigation has been concluded and the date

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that the CPRB will convene to review the matter. The letter will also advise the complainant and the subject employee(s) of the opportunity to attend the CPRB meeting. Information regarding the hearing process and disciplinary recommendations can be found in the manual governing the CPRB.

607. FORWARDING OF INVESTIGATION AND WRITTEN CONCLUSIONS TO POLICE REVIEW BOARD. OPS will forward all investigations and its written conclusion to the CPRB in sufficient time for CPRB to consider them no later than the second regularly scheduled CPRB meeting following the completion of the investigation.

700. ADMINISTRATIVE DISMISSALS

701. GENERALLY. “Administrative dismissal” may be appropriate for those limited instances where: the individual complained of is not a CDP employee; the subject employee has separated from CDP; the employee referenced in the complaint cannot be identified despite the best efforts of the agency; the preliminary investigation reveals that the delay in police services was due to workload or otherwise unavoidable; the conduct alleged involves an off-duty conduct of a civil nature (unless the alleged conduct, or its effects, constitute misconduct or have a substantial nexus to the officer’s City employment); or, the complaint is about receiving a uniform traffic ticket and/or parking infraction notice without any additional claims of racial profiling, illegal search, excessive force, or other allegations within OPS’s jurisdiction.

On an interim basis, the OPS Administrator has been authorized to Administratively dismiss cases without the prior review or approval of the CPRB. During the pendency of the Consent Decree between the United States and City of Cleveland addressing the performance of the Cleveland Division of Police and related organizations and systems, ongoing reviews and audits of the Administrative Dismissal process will be conducted by the Monitoring Team to ensure compliance with OPS policies and the Consent Decree.

The administrative dismissal of a complaint must be accompanied by a completed Administrative Dismissal Form. (See Appendix H). The form must detail all relevant facts and information in support of the decision and must be completed by the Administrator or his designee and the assigned Investigator.

The Administrative Dismissal Form will be promptly completed when facts supporting administrative dismissal become apparent. Written notice of the administrative dismissal (with an explanation for the reason for the dismissal) should be mailed to the Complainant promptly after the dismissal has been documented. The dismissal letter must also inform the complainant of his/her right to request a review of this decision by the CPRB and should require that any request for review be received by the OPS within two weeks of the receipt of the dismissal letter.

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702. **STANDARD OF REVIEW.** OPS will only administratively dismiss a complaint when the undisputed facts at issue clearly indicate that the complaint fits into one of the six (6) categories eligible for such disposition as set out below. The decision should be made only after all facts have been gathered and thoroughly reviewed.
703. **CATEGORIES OF ADMINISTRATIVE DISMISSAL.** The ONLY six (6) categories of cases for which an administrative dismissal can be appropriately recommended are:

- (a) NON-CDP EMPLOYEE. Complaints made regarding the conduct of individuals not employed as a member of the Cleveland Division of Police: Should a citizen initiate a complaint about the conduct of an individual employed in another department within the City of Cleveland other than the Division of Police, or another government entity, the Intake Coordinator or the assigned Investigator will promptly notify the complainant that OPS lacks the authority to investigate individuals not employed by CDP. The complainant should be referred to the authority with jurisdiction to resolve the complaint. Outside agencies should not be contacted directly by OPS without the express consent of the complainant.

Proper documentation supporting a recommendation for administrative dismissal of a complaint on this basis should consist of a thorough explanation of the process by which the determination is made that the incident did not involve a CDP member.

- (b) SUBJECT EMPLOYEE SEPARATED FROM CDP. Complaints filed about the conduct of an individual presently retired, deceased, or otherwise separated from service with the Cleveland Division of Police are eligible for administrative dismissal. Employees on administrative leave shall not be considered as being “separated from service.”

The Intake Coordinator or assigned Investigator will promptly notify the complainant that OPS generally lacks the authority to investigate individuals no longer employed by CDP as no discipline could be imposed even if the complaint was sustained. The Investigator must document the process by which the determination was made that the subject member(s) is separated from the Division. It is important to recognize, however, that in some instances where the type and scope of the alleged misconduct warrants a complete investigation into the conduct of a former CDP employee, the OPS Administrator may elect to have an investigator proceed with a complete investigation.

- (c) UNIDENTIFIABLE OFFICER. Instances where a diligent investigation fails to produce the identity (name, badge number, and/or zone car assignment) of a

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specific subject member. The assigned Investigator will promptly notify the complainant of the inability to pursue charges against employees who cannot be identified.

The Investigator must document the process by which the determination was made that no name, badge number, or other identifying information exists. This documentation should detail the methods employed by the Investigator to confirm the lack of identification. The Intake Coordinator or assigned Investigator will notify the complainant with a fulsome explanation as to why the OPS investigation was unable to identify the involved employee(s).

- (d) UNIFORM TRAFFIC TICKET (UTT) AND/OR PARKING INFRACTION NOTICE (PIN). Complaints regarding the issuance of moving traffic citations and parking violations are eligible for administrative dismissal when the issuance of the citations involved no alleged misconduct by a Cleveland Division of Police member. However, complaints alleging that the issuance of a citation by a CDP member involved misconduct or other actions within OPS jurisdiction– including unprofessionalism, harassment, bias, discrimination, or profiling will be fully investigated and not subject to administrative dismissal. Where the complaint is administratively dismissed in total, the Intake Coordinator or assigned Investigator will notify the complainant with an explanation as to why the OPS investigation will not proceed.
- (e) UNAVOIDABLE WORKLOAD DELAY. In instances where a complaint alleges a delay in police services and the preliminary investigation reveals that the delay was due to unavoidable workload issues, those complaints will be subject to administrative dismissal. The assigned Investigator must document the process by which the determination was made that the delay in service was unavoidable. This documentation should detail the unavoidable workload issues that prevented the CDP member from providing reasonably prompt service. The Intake Coordinator or assigned Investigator will notify the complainant with an explanation as to why the member was prevented from providing reasonably prompt service.
- (f) OFF-DUTY CIVIL CONDUCT. In instances where a complaint is made regarding the conduct of an officer while off-duty, that is of a civil nature, the complaint will be subject to administrative dismissal unless the alleged conduct – or its effects – constitute misconduct or have a substantial nexus to the officer's employment. The assigned Investigator must document the process by which it was determined that the alleged conduct occurred while the officer was off-duty

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and was not substantially connected to his/her employment. The Intake Coordinator or assigned Investigator will notify the complainant with an explanation as to why the OPS has no jurisdiction to conduct an investigation.

- i. All Administrative Dismissals for Off-Duty Civil Conduct will be promptly referred to the Bureau of Integrity Control in order to allow the CDP to independently evaluate whether any allegation of off duty misconduct constitutes a violation of CDP policy.

800. FINALIZING CIVILIAN POLICE REVIEW BOARD ACTION

801. Upon the CPRB's final disposition, the investigative file shall be returned to the OPS Administrator.
802. In those cases where the CPRB makes a "sustained" finding, the Administrator will direct that a disposition letter be prepared and mailed to the complainant within fifteen (15) calendar days of the CPRB's decision. The Administrator will also promptly direct that a findings letter be delivered to the Chief of Police requesting that a charging document be issued and a final report of disciplinary action returned to OPS for inclusion in the case file.
803. Upon receipt of the Chief of Police's or Director of Public Safety's final disciplinary outcome, OPS shall notify the complainant of the outcome and inform the complainant that his or her complaint is closed.
804. If the ultimate finding from the Chief of Police or Director of Public Safety is not "sustained," the OPS will obtain written findings from the CDP in order to provide a fulsome explanation for the decision to the complainant, along with an explanation of the process that was used to adjudicate the complaint.
805. In those cases where a CPRB finding is not "sustained," the Administrator will direct that a final disposition letter be prepared and mailed to the complainant within fifteen (15) calendar days of the CPRB's decision. The OPS shall obtain from the CPRB the basis for the "not sustained" finding and provide that explanation to the complainant prior to closing out the complaint.

900. DUTIES OF OPS AND OPS PERSONNEL

901. DUTIES OF OPS ADMINISTRATOR.

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- (a) ENSURE ADHERENCE OF ALL OPS PERSONNEL TO ALL PROVISIONS OF THIS MANUAL. The success or failure of OPS Investigators in effectuating full, fair, thorough, complete, unbiased, and timely investigations depends on strong, focused, and effective leadership by the OPS Administrator.
- (b) MEET WITH ALL OPS PERSONNEL INDIVIDUALLY, ONCE PER WEEK, TO DISCUSS CURRENT PROGRESS ON OUTSTANDING INVESTIGATIONS. The OPS Administrator must meet at least once per week with OPS personnel to discuss the status of all ongoing, pending, outstanding, or otherwise incomplete cases assigned to the Investigator.
- (c) DEVELOP OPS TRAINING. It shall be the responsibility of the Administrator, with the input of staff, to develop and implement a professional development training schedule. This will include the development and maintenance of a staff training curriculum for OPS staff to be presented at scheduled staff meetings. These brief training modules (15-20 minute blocks) shall pertain to topics related to civilian oversight, applicable law and best practices, and law enforcement practices pertaining to high risk critical tasks (i.e. arrest, search and seizure, use of force, bias-free policing, etc.). The training curriculum for each phase and records pertaining to receipt of the training shall be well documented and maintained within OPS staff member personnel files and OPS indices.
- (d) ATTEND EXECUTIVE-LEVEL LEADERSHIP TRAINING. The Administrator shall attend appropriate executive-level leadership training once annually. Such training should be identified at the beginning of the calendar year and reviewed by the Director of Public Safety for approval.
- (e) DEVELOP PERFORMANCE EVALUATION PLAN FOR ALL OPS STAFF MEMBERS. It shall be the responsibility of the OPS Administrator, in conjunction with the Director of Public Safety, to develop a performance evaluation plan for all OPS staff members. Such a plan shall reflect relevant performance measures and outcome goals, and define both current and future objectives for each OPS employee. Measures:
 - i. Either on the anniversary of hire or at a specific calendar date (e.g., January 1, July 1, September 1) each staff member shall have an annual performance appraisal and individual development plan completed by his/her supervisor.

Nothing in this provision prevents the Administrator from providing oral or written feedback on an occasional or continuing basis to staff members who

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perform their work in an exemplary or otherwise commendable manner, or to thoroughly document and provide specific remedial direction to effectively address unsatisfactory performance, or performance that is in need of approval.

- (f) CONSIDER NECESSARY CHANGES, UPDATES, OR AMENDMENTS TO OPS MANUAL. As set forth in Section 1001 of this Manual, it shall be the responsibility of the OPS Administrator to review, update, or amend the OPS Operational Manual as needed by December 31 of each calendar year. The Administrator will follow the procedures outlined in Section 100.1 to effectuate this duty.
- (g) ESTABLISH OUTCOME MEASURES AND REPORTS REGARDING INVESTIGATIONS THAT DO NOT MEET ESTABLISHED GOALS REGARDING QUALITY AND TIMELINESS. It shall be the responsibility of the OPS Administrator to establish outcome measures and reports regarding the percentage of investigations that do not meet the established goals, specifically identifying the obstacles that prevented the investigation from being completed within the target time-frame. Such reporting shall be forwarded to the Director of Public Safety no later than December 31st of each calendar year.
- (h) ENSURE FULL AND EFFECTIVE IMPLEMENTATION OF OPS CASE IMPLEMENTATION SYSTEM. It shall be the responsibility of the OPS Administrator to ensure the full and effective implementation of a case management system to include transitioning to the IA Pro platform and regular supervisor review and oversight of cases.
- (i) DEVELOP PLAN FOR OPS-CDP RELATIONSHIP. Establish and implement a system and plan to improve or enhance OPS relationship with the Cleveland Division of Police in order to ensure accountability and officer cooperation, promote efficient and effective investigative procedures, and build trust in the complaint process. Establish and implement a plan to improve the relationship of OPS with the Division of Police by standard, routine and regular communication with the Chief, Supervisors, and District Commanders.
- (j) DEVELOP PLAN FOR COMMUNITY TRUST. Establish and implement annual plan to build community trust and confidence in OPS. Establish new annual plan by December 31st of each calendar year.

902. DUTIES OF OPS INVESTIGATORS. OPS Investigators are primarily responsible for assisting with intake and conducting investigations of OPS cases assigned to them.

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Generally, Investigator duties include:

- Assisting with intake of misconduct complaints;
- Preparing investigative plans for complaints assigned for an OPS investigation;
- Conducting investigations of complaints assigned for an OPS investigation;
- Drafting Investigative Summary Reports and administrative dismissals;
- Providing case update reports to OPS supervisors on a weekly basis; and
- Initiating and updating complaint-related information in the case management system.

Investigators are expected to:

- Conduct thorough, objective investigations of complaints, reach sound neutral conclusions based on investigation results and maintain confidentiality regarding process and outcomes in accordance with all legal requirements.
- Prioritize and manage multiple investigations to ensure evidence is quickly gathered and contractual timelines are met.
- Communicate in a fair and impartial manner with both complainants from a broad spectrum of diverse communities and CDP officers and employees, and to exercise tact and diplomacy in dealing with sensitive, complex and confidential issues and situations.
- Understand and act consistently with the independent function of OPS, and with an understanding of the importance of public trust, so that all intakes and investigations are above reproach and all those involved in the OPS process are treated fairly.
- Be well versed in the operations of CDP, including policies and procedures, supervisory responsibilities, and training and tactics.
- Be knowledgeable about accepted principles and practices of law enforcement, including use of force issues, search and seizure issues, constitutional law, state law, and investigative procedures.
- Seek professional development opportunities that enhance and strengthen their investigative skills and knowledge of civilian oversight “best practices.”

Highly qualified Investigators will possess the following knowledge, skills and abilities:

- Ability to Maintain Confidentiality. Investigators have a moral and a legal obligation to maintain confidentiality out of respect for constituents, complainants, our employees, our policies, and the law.
- Documentation. Documentation must be accurate, concise and thorough and not exhibit bias.

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- Fairness. Investigators must treat everyone involved in the investigation fairly, respecting their rights and explaining their responsibilities through each step of the investigative process.
- Knowledge. Investigators must know the law, Division policy and what their role is when assigned to an internal investigation. They must not hesitate to ask questions if they come across something which with they are not familiar.
- Responsibility. Investigators must recognize that when conducting an internal investigation, they have an obligation to employees, to the Division and to the community – but first and foremost to discover the truth.
- Patience. Investigators need to be patient. They need patience to locate, collect and review large amounts of evidence and they need patience to deal with the inevitable obstacles and challenges they will encounter during an investigation.
- Follow the evidence. Investigators must begin every investigation with an open mind. Good Investigators do not assume anything. They are prepared for anything to emerge as they begin to investigate. They do not accept or reject any possible explanation until they have the evidence to do so.
- Skepticism. Good Investigators do not necessarily accept evidence from anyone at face value. They look for corroboration wherever possible.
- Adaptability. Investigators have to be flexible in their approach. No two investigations are the same and all present unique challenges and opportunities. Investigators should be good at identifying both and developing strategies to deal with them.
- Empathy and understanding. A degree of empathy will assist an Investigator to better engage with and understand the perspectives of the people with whom they are interacting.
- Courage. It can take a great deal of personal courage to conduct misconduct investigations.
- Judgment and common sense. Good judgment and common sense are much underrated qualities. Investigators sometimes have to make difficult decisions, including what issues to investigate, what investigative avenues to pursue and to what extent. They have to be able to justify why they chose to – or choose not to – interview someone. That takes sound judgment, based on common sense.
- Strategic thinking. Investigators need to be able to think ahead and think strategically. They need to be able to answer a range of challenging questions to ensure an effective investigation:
 - What approach will work best?
 - What are the possible obstacles?
 - How should a failure to cooperate be dealt with?
 - Is it possible to resolve or avoid a potential problem, before it arises?

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- How should responsibility for a lack of cooperation and delays be dealt with in order to address the difficulties encountered?

903. DUTIES OF OPS ADMINISTRATIVE PERSONNEL. Administrative staff duties include:

- Conducting intake for misconduct complaints.
- Administering and coordinating maintenance of the case management system.
- Sending employee, bargaining unit, and chain of command notifications.
- Tracking all OPS investigations and the outcomes of such investigations.
- Reviewing cases returned by the chain of command through the case management system to ensure all documentation is included per OPS procedures.
- Transcribing interview tapes and review/proof-read completed transcripts.
- Answering questions and screening in-coming telephone calls and in-person inquiries.
- Performing section facility coordinator responsibilities; i.e., order supplies and equipment, and facilitate, as needed, repair of telephones, computers, copiers, and other office equipment.
- Reviewing and distributing incoming mail and other documents.
- Providing administrative support to OPS personnel.
- Performing duties as OPS archivist and file manager.
- Manage file retention process.
- Train clerical support staff.
- Answer questions and screen in-coming telephone calls and in-person inquiries.
- Maintain section telephone listings and staff status board.
- Draft correspondence to send to complainants.

904. DUTIES OF RESEARCH ANALYST. Research Analyst duties include:

- Assisting with intake of misconduct complaints when necessary.
- Drafting policy recommendations for police reform.
- Conducting outreach to the community about OPS's mission and responsibilities.
- Reviewing, analyzing, and providing statistical data for periodic reports to the OPS Administrator and Director of Public Safety.
- Conducting regular assessments of complaints received to identify problematic patterns and trends.
- Drafting and helping to finalize the agency's annual report.

905. ANNUAL REPORT. OPS must prepare a detailed, analytical, and comprehensive annual report that addresses the operations of OPS and the CPRB, the number and nature of OPS complaints received, OPS investigations, and OPS's and the reviews and adjudication of

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community initiated complaints. In this annual report, OPS must summarize at least the following:

- (a) A chart describing the process by which citizen complaints are accepted, investigated, reviewed and resolved;
- (b) The number and types of complaints administratively dismissed and the grounds for the closures;
- (c) An assessment of the types of complaints being received (based on their initial classification at intake) and an analysis of potential problematic patterns and trends;
- (d) An accounting of the disposition of complaints by complaint type (based on their initial classification at intake), the number and types of complaints investigated, and the average length of complaint investigations;
- (e) An accounting of the disposition of complaints by the CPRB and the ultimate decisions on such complaints, to include recommendations on findings and discipline and the ultimate resolution of such complaints;
- (f) Discussion of issues identified during the course of the OPS' ongoing work regarding police practices, processes, training or policies; and
- (g) Performance measures developed and implemented by the OPS Administrator and the extent to which the OPS has met those performance measures.

The report is to be completed and submitted to the Mayor, Director of Public Safety, Chief of Police, and the Cleveland Community Police Commission (CCPC) by March 31st of each year. OPS must post the report on its website not later than five (5) business days after submitting the report to the Mayor, Director of Public Safety, Chief of Police, and CCPC.

The OPS Administrator should, on an ongoing basis, provide to the CDP and the Director of Public Safety, any available data or information which would inform the CDP and the Director of Public Safety about patterns relating to police practices, processes, training or policies which may need attention from the CDP or the Director of Public Safety.

906. **INVESTIGATOR TRAINING.** OPS Investigators will receive training, at least once per calendar year, that is adequate in quality, quantity, scope, and type and will include instruction relating to:

- (a) investigative skills, including proper interrogation and interview techniques; gathering and objectively analyzing evidence; and data and case management;

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- (b) the particular challenges of administrative investigations of police conduct, including identifying conduct warranting investigation that is not clearly stated in the complaint or that becomes apparent during the investigation;
- (c) properly weighing the credibility of civilian witnesses against officers;
- (d) using objective evidence to resolve inconsistent statements;
- (e) the proper application of the preponderance of the evidence standard; and
- (f) CDP rules and policies, including the requirements of this Agreement and protocols related to administrative investigations of officer conduct alleged to be improper.

Such training should be provided by sources both inside and outside CDP, in order to ensure the highest quality training on investigative techniques and CDP policies, procedures, and disciplinary rules.

1000. AMENDMENT TO OPERATING MANUAL, PROCEDURES, AND RULES

1001. PROCEDURE FOR AMENDING OPERATING MANUAL, INTERNAL RULES, AND OPERATING PROCEDURES. The rules contained within this Operating Manual, and the procedures and rules outlined here, may only be modified, revised, amended, replaced, or otherwise changed via the following process:

- (a) The OPS Administrator must provide, in writing, any and all proposed changes to the Operating Manual to the Director of Public Safety and the Chair of the Police Review Board. The OPS Administrator must publicly announce any proposed changes, post such changes on the OPS website and take into consideration any public comment received.
- (b) The Director of Public Safety will be asked to respond, in writing, as to whether the proposed change may or may not be adopted.
- (c) The Chair of the Police Review Board will be asked to respond, in writing, as to the CPRB's position as to whether the proposed change should be adopted. The Chair of the Police Review Board shall put the measure up to a vote before the full Police Review Board prior to responding to the request and the Chair will provide a written response to the OPS Administrator and the Director of Public Safety.

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- (d) Only those changes approved by the Director of Public Safety may become effective as part of this Manual.

During the pendency of the Consent Decree between the United States and City of Cleveland addressing the performance of the Cleveland Division of Police and related organizations and systems, any and all modifications, revisions, amendments, replacements, or other changes to this Manual must be approved by the Court overseeing implementation of the Decree.

ATTACHMENT A

NACOLE CODE OF ETHICS

The National Association for Civilian Oversight of Law Enforcement (NACOLE)

Preamble

Civilian oversight practitioners have a unique role as public servants overseeing law enforcement agencies. The community, government, and law enforcement have entrusted them to conduct their work in a professional, fair and impartial manner. They earn this trust through a firm commitment to the public good, the mission of their agency, and to the ethical and professional standards described herein.

The standards in the Code are intended to be of general application. It is recognized, however, that the practice of civilian oversight varies among jurisdictions and agencies, and additional standards may be necessary. The spirit of these ethical and professional standards should guide the civilian oversight practitioner in adapting to individual circumstances, and in promoting public trust, integrity and transparency.

Personal Integrity

Demonstrate the highest standards of personal integrity, commitment, truthfulness, and fortitude in order to inspire trust among your stakeholders, and to set an example for others. Avoid conflicts of interest. Conduct yourself in a fair and impartial manner and recuse yourself or personnel within your agency when significant conflict of interest arises. Do not accept gifts, gratuities or favors that could compromise your impartiality and independence.

Independent and Thorough Oversight

Conduct investigations, audits, evaluations and reviews with diligence, an open and questioning mind, integrity, objectivity and fairness, in a timely manner. Rigorously test the accuracy and reliability of information from all sources. Present the facts and findings without regard to personal beliefs or concern for personal, professional or political consequences.

Transparency and Confidentiality

Conduct oversight activities openly and transparently providing regular reports and analysis of your activities, and explanations of your procedures and practices to as wide an audience as possible. Maintain the confidentiality of information that cannot be disclosed and protect the security of confidential records.

Respectful and Unbiased Treatment

Treat all individuals with dignity and respect, and without preference or discrimination including but not limited to the following protected classes: age, ethnicity, culture, race, disability, gender, gender identity, religion, sexual orientation, socioeconomic status or political beliefs.

Outreach and Relationships with Stakeholders

Disseminate information and conduct outreach activity in the communities that you serve. Pursue open, candid, and non-defensive dialog with your stakeholders. Educate and learn from the community.

Agency Self-examination and Commitment to Policy Review

Seek continuous improvement in the effectiveness of your oversight agency, the law enforcement agency it works with, and their relations with the communities they serve. Gauge your effectiveness through evaluation and analysis of your work product. Emphasize policy review aimed at substantive organizational reforms that advance law enforcement accountability and performance.

Professional Excellence

Seek professional development to ensure competence. Acquire the necessary knowledge and understanding of the policies, procedures, and practices of the law enforcement agency you oversee. Keep informed of current legal, professional and social issues that affect the community, the law enforcement agency, and your oversight agency.

Primary Obligation to the Community

At all times, place your obligation to the community, duty to uphold the law and to the goals and objectives of your agency above your personal self-interest.

EXHIBIT B



CITIZEN POLICE REVIEW BOARD

OPERATING MANUAL AND PROCEDURES

LAST AMENDED: NOVEMBER 22, 2016

CIVILIAN POLICE REVIEW BOARD OPERATING MANUAL AND PROCEDURES

A. Purpose of the Police Review Board

1. The purpose of these procedures is to facilitate the operation of the Civilian Police Review Board (“CPRB”), including the review of public complaints filed against sworn police officers and non-sworn employees who are employed by the Cleveland Division of Police as authorized by the City of Cleveland Charter (§§ 115-3, 115-4).
2. In order for this purpose to be achieved, the Civilian Police Review Board, hereafter referred to as the Board or the CPRB, shall have the power to receive, cause investigation of, and recommend, and in some cases determine, the resolution of public complaints regarding misconduct allegedly committed by employees of the Cleveland Division of Police (“CDP”).

B. Purpose, Scope, and Force of this Operating Manual

1. In addition to the Cleveland Charter, this Operating Manual contains all of the rules, procedures, processes, and general operations of the CPRB, including the rules contemplated by the Charter of the City of Cleveland (§ 115-3). If rules, procedures, processes, or operations codified elsewhere or functionally operational elsewhere and potentially, apparently, and/or actually conflict with the provisions of this Manual, the provisions of this Manual control.
2. All provisions of this Operating Manual must be considered in a manner consistent with the Charter of the City of Cleveland.

C. Duties and Responsibilities of the Board, Its Members, and Staff

1. The Board, Board members, and all Board staff must acquit themselves of the duties outlined here in a manner that is consistent with the following statement of ethics (adopted from the National Association for Civilian Oversight of Law Enforcement (“NACOLE”) Code of Ethics). (See Attachment A.)
 - a. Members of the CPRB have a unique role as public servants overseeing the conduct of law enforcement officers. The community, government, and law enforcement have entrusted members of the CPRB to conduct their work in a professional, fair and impartial manner. This trust is earned through a firm commitment to the public good, the mission of the CPRB, and to the ethical and professional standards described herein.

- b. These standards are intended to be of general application. The spirit of these ethical and professional standards should guide CPRB members and staff in adapting to individual circumstances, and in promoting public trust, integrity and transparency.
- c. Personal Integrity: CPRB members and staff will demonstrate the highest standards of personal integrity, commitment, truthfulness, and fortitude in order to inspire trust among CPRB stakeholders, and to set an example for others.
- d. Avoid conflicts of interest: CPRB members and staff are expected to conduct themselves in a fair and impartial manner and recuse themselves when significant conflicts of interest arise. CPRB members and staff will not accept gifts, gratuities or favors that could compromise their impartiality and independence or that have a substantial and improper influence upon the performance of their duties. As public officials, CPRB members are bound by the City and State ethics laws.
- e. Independent and Thorough Oversight: CPRB members and staff are expected to conduct all evaluations and reviews with diligence, an open and questioning mind, integrity, objectivity and fairness, and in a timely manner. CPRB members and staff are expected to rigorously test the accuracy and reliability of information from all sources and consider and present facts and findings without regard to personal beliefs or concern for personal, professional or political consequences.
- f. Transparency and Confidentiality: CPRB members and staff are expected to conduct their activities openly and transparently (as permitted by applicable policy and law), to include providing explanation of CPRB and OPS procedures and practices to as wide an audience as possible. CPRB members and staff must maintain the confidentiality of information that cannot be disclosed by law and policy and protect the security of confidential records.
- g. Respectful and Unbiased Treatment: CPRB members and staff must treat all individuals with dignity and respect, and without preference or discrimination including but not limited to the following protected classes: age, ethnicity, culture, race, disability, gender, gender identity, religion, sexual orientation, socioeconomic status or political beliefs.
- h. Outreach and Relationships with Stakeholders: CPRB members and staff are expected to disseminate information and conduct outreach activity in the community as permitted by law and policy. CPRB members and staff pursue open, candid, and non-defensive dialogue with all stakeholders and seek to educate and learn from the community.

- i. Self-examination and Commitment to Policy Review: CPRB members and staff seek continuous improvement in the effectiveness of civilian oversight of law enforcement programs in Cleveland. CPRB members and staff gauge their effectiveness through evaluation and analysis of their work product and seek to emphasize policy review aimed at substantive organizational reforms that advance law enforcement accountability and performance.
- j. Professional Excellence: CPRB members and staff seek professional development to ensure competence. CPRB members and staff seek to acquire the necessary knowledge and understanding of the policies, procedures and practices of the Cleveland Division of Police (CDP) and the Department of Safety and keep informed of current legal, professional and social issues that affect the community, the CDP, the Office of Professional Standards (OPS) and the CPRB.
- k. Primary Obligation to the Community: At all times, CPRB members and staff place their obligation to the community, their duty to uphold the law and the goals and objectives of the CPRB, above personal self-interest.

D. Organization and Meetings

1. Composition of the Board

- a. The Board consists of nine members who are representative of the diverse communities within Cleveland.
- b. The Mayor appoints five members.
- c. The City Council ("Council") appoints four members.
- d. In an effort to be representative of all of Cleveland's diverse communities, each of the police districts is represented by at least one member who resides in that district. Additionally, at least one member of the Board is between the ages of 18 and 30 at the time of appointment and may be among the members appointed by either the Mayor or the Council.
- e. No member of the Board is employed currently as a law enforcement officer and no member is a current or former employee of the Cleveland Division of Police.

2. Transition pursuant to Ordinance No. 826-16

- a. The members of the Board holding the office as of November 8, 2016, continue in office for the remainder of their terms recognizing that all of the police districts may not be represented until the service of those members is completed.
- b. The two additional members shall be appointed by the Council and their terms shall commence on February 7, 2017.
- c. The next two vacancies following November 8, 2016, whether for a new term or an unexpired term, shall be filled by Council.

3. Term of Membership

- a. Terms of office for Board members shall be for four years.
- b. No Board member may serve for more than two four-year terms when the second term begins less than four years after the end of the first term. However, a person may be eligible for appointment four years after the end date of the second term.
- c. Time spent fulfilling an unexpired term of two years or less shall not be considered as part of the two consecutive terms.

4. Vacancies of the Board

- a. Any of the following circumstances shall lead to a vacancy on the board:
 - i. Expiration of the member's term, death or resignation of the member.
 - ii. Removal by the Director of Public Safety for cause. Any member may be removed by the Director of Public Safety, upon notice and hearing, for neglect of duty or malfeasance in office. Neglect of duty and malfeasance in office include unexcused absence of the member from three consecutive regular meetings of the Board; unexcused absence of the member from one-third or greater of the regular meetings of the Board over the course of the most recent twelve-month period; excused absence of the member, or combination of excused and unexcused absence of the member, from a sufficient number of meetings as to compromise the Board member's ability to faithfully and fully carry out the member's responsibilities to the Board and Cleveland community; or failure to attend and satisfactorily complete the required training course within four months of the beginning of a member's service on the Board.
- b. Vacancies during a term shall be filled in the same manner as original appointments for the unexpired term.
- c. A Board member who desires to resign, shall notify the Chair, the Mayor and the Clerk of Council of the resignation. If the Board becomes aware of a circumstance giving rise to a vacancy, other than expiration of a member's term or notice of resignation as outlined above, the Board Chair shall notify the Mayor and the Clerk of Council as soon as possible.

5. Attendance & Participation

- a. Board members have a duty to use best efforts to attend all regularly-scheduled Board meetings.
- b. Board members have a duty to use all reasonable efforts to attend any special, emergency, or other similar meetings that are not regularly scheduled.
- c. If a Board member cannot attend a meeting or other function of the Board where official business will be conducted, the Board member must provide notice to the

Board Chair and the Board's Administrative Coordinator as soon as possible. The Chair will have discretion to classify absences as excused or unexcused.

- i. An absence about which the Chair and Administrative Coordinator have received advance notice of more than 72 hours will be presumed to be excused, unless the Chair identifies emergency or other extenuating circumstances that warrant the absence being classified as an excused absence.
 - ii. The Administrative Coordinator will track all Board member absences in an electronic database.
- d. Board members have a duty to be responsive to communications from the Board, other Board members, and the Board's staff, including but not limited to telephone, electronic, and other communications.

6. Compensation

- a. Members of the Board shall receive compensation as may be established by the Council.

7. Budget

- a. The Board shall have its own budget separate from the budget for the Department of Public Safety and separate from the budget for the Office of Professional Standards ("OPS").
- b. OPS shall oversee the budget on behalf of, and with guidance from, the Board.

8. Officers

- a. The Board shall select annually one member of the Board to serve as its Chair and Vice-Chair.
 - i. Selection shall be through a majority vote of Board members, during a meeting which is open to the public. To ensure that all Board members can select a Chair and Vice-Chair who will enable the Board to best carry out its duties, the vote for filling the positions of Chair and Vice-Chair shall be conducted via a secret, written ballot process. After Board members have written their selections for the Chair and Vice-Chair, the CPRB's Administrative Coordinator shall collect and tally the ballots and subsequently read the results. Any Board member may request to inspect the written ballots after the results have been read.
 - ii. No person shall serve more than two consecutive one-year terms in each position, but, except as further provided, may be eligible for appointment two years after the end date of the second term.
 - iii. A person may be eligible to serve in one of the positions for up to two consecutive one-year terms consecutive to service in the other position,

but then may not serve again in either position for two years following the end date of the term for the second position even if service in the first or second position was less than two years.

b. Duties and Powers of the Chair

- i. The Chair shall preside over all meetings of the Board and shall have the right to vote on all questions.
- ii. The Chair shall ensure that all municipal and state laws pertaining to the activities and rulings of the Board are faithfully executed.
- iii. The Chair shall act as the spokesperson in all matters pertaining to the Board.
- iv. The Chair shall sign all documents on behalf of the Board after approval by the Board.
- v. The Chair shall perform such other duties and responsibilities imposed upon him or her by the Board.
- vi. In conjunction with Section 11 (c) below, the Chair shall appoint all subcommittees, and, ex-officio, be a member of all subcommittees.

c. Duties and Powers of the Vice- Chair

- i. If at any time the Chair is absent from a meeting for any reason or is unable or unwilling to perform his/her duties, whether within a meeting or outside a meeting, the Vice Chair shall perform all the duties of the Chair with the same force and effect as if performed by the Chair.

d. Chair Pro Tem

- i. If both Chairs are absent at any meeting of the Board and have not selected a Chair Pro Tem, the Board shall select a Chair Pro Tem who shall perform all the duties of the Chair for that specific meeting only.

e. Duties of the Secretary

- i. The Secretary shall be appointed by the Chair.
- ii. The Secretary shall keep a true and correct record of all proceedings of the Board.
- iii. The Secretary shall work with OPS staff to ensure that CPRB or OPS staff maintains custody of all reports, books, papers, and records of the Board.
- iv. The role of Secretary can be designated to the Board staff by a majority vote of the Board.

9. *Orientation and Training*

- a. The OPS Administrator in consultation with the Board Chair is responsible for the establishment of an orientation and training program for the Board members.
- b. The orientation and training program shall include familiarization with the following:

- i. Constitutional and other relevant law on police-citizen encounters, including law on the use of force and stops, searches, and arrests;
 - ii. Police tactics;
 - iii. Investigations of police conduct;
 - iv. Bias-free policing;
 - v. Policing individuals in crisis;
 - vi. CDP policies, procedure, and disciplinary rules;
 - vii. OPS policies, procedure, and rules; and
 - viii. Community outreach.
- c. Training and orientation shall be provided by sources both inside and outside of the City (including but not limited to CDP and OPS).

10. Structure of Meetings

- a. Meetings
 - i. All Board meetings shall be open to the public.
 - ii. The Board shall establish a regular meeting schedule and shall give public notice of the time and place of the meetings.
 - iii. The meetings and business of the Board shall be conducted in accordance with the following:
 - 1. The agenda for each meeting will normally be provided to all members in time to be received at least one week prior to regularly scheduled meeting.
 - 2. The agenda for each meeting will be posted on the Board's website.
 - 3. The Board shall keep written minutes of all meetings and a copy shall be filed with OPS and the Department of Public Safety. The meeting minutes shall also be posted on the Board's website.
 - 4. Segments of Board meetings that are open to the public shall be audio-recorded. These recordings and any transcription of the recordings shall be maintained by the OPS.
- b. Normally, the order of business for Board meetings shall be as follows:
 - i. Roll Call
 - ii. Approval of Minutes
 - iii. Special order of business; announcements; communications.
 - iv. Public comment
 - v. Report from OPS (including a report of new complaints received by OPS on behalf of the Board)
 - vi. General policy items
 - vii. Subcommittee reports
 - viii. Unfinished business

- ix. New business.
- x. Discussion and consideration of complaints and report
- xi. Recess to executive session
- xii. Public meeting shall resume at such time as the Board has concluded those matters authorized to be conducted in Executive Session.
- xiii. Voting on adjudication of complaints
- xiv. Adjourn
- c. Special meetings may be held at the call of the Chair, or the Vice-Chair in the absence of the Chair. In addition, upon petition of a majority of Board members, the Chair shall call a meeting of the Board within one week.
 - i. Board members will be given at least seventy-two hours' notice prior to any special meeting.
 - ii. Notice of a special meeting shall be posted on the Board's website.
 - iii. No business other than that specified in the special meeting agenda shall be considered.

11. Quorum and Voting

- a. Two-thirds of members currently appointed to the Board shall constitute a quorum.
- b. The affirmative vote of the majority of members present shall be required to carry a motion, proposal, or recommendation, unless provided otherwise in this Manual.
- c. Subcommittees
 - i. The Board, as appropriate, may establish subcommittees.
 - ii. No more than five members of the Board shall serve on any one subcommittee.
 - iii. The Chair shall designate members and the Chair of each subcommittee.
 - iv. Subcommittees may include the following:
 - 1. Policy review
 - 2. Continuing education
 - 3. Recruitment and training
 - 4. Outreach
 - 5. Rules

12. Board Staff

- a. The Board shall hire and/or appoint support personnel in accordance with the City's Civil Service laws and rules.
- b. The Board Chair shall recommend to the Board the filling of any staff position for approval by the Board; and shall supervise the administrative, clerical, investigative, and other personnel as necessary to discharge the functions of the Board. Board staff persons shall follow all laws, rules, and regulations relevant to

City employees. The Board may delegate supervisory responsibilities to the OPS Administrator or the Director of Public Safety.

- i. If the Board requires that new or additional investigative work be performed in any given matter, the Chair may coordinate the execution of such work with the OPS Administrator. Instructions regarding any additional investigative work to be performed at the Board's behest must be provided, in writing, to the OPS Administrator.
- c. OPS shall promulgate internal office procedures and prepare necessary standardized forms for the Board's receipt, review, and resolution of public complaints. The daily operations of the Board, including complaint review and resolution, shall be managed by the Board Chair, who shall oversee the regular functioning of the staff assigned to help carry out the duties of the Board.

E. Authority, Jurisdiction, Duties and Responsibilities

1. Jurisdiction

- a. The Board has the power to receive, cause investigation of, and recommend resolution of any and all complaints filed with it alleging misconduct by officers and non-sworn employees of the Cleveland Division of Police, regardless of their duty status, when such misconduct is directed toward any person who is not a CDP employee. On its own complaint, the Board may direct the OPS Administrator to conduct an investigation of any incident involving the use of deadly force by members of the police force and any incident resulting in the injury or death of persons in the custody of the police force.
- b. Under the Charter of the City of Cleveland, the CPRB has jurisdiction over the following types of complaints of misconduct that are made against personnel of the Cleveland Division of Police:
 - i. Harassment complaints, to include those alleging bias, discrimination, and profiling;
 - ii. Excessive Force complaints;
 - iii. Unprofessional Behavior/Conduct complaints;
 - iv. Improper Procedure complaints, including improper arrest, improper citations, and improper search;
 - v. Improper Stop;
 - vi. Improper Tow;
 - vii. Service complaints, including insufficient CDP employee service, and no CDP service;
 - viii. Property complaints, including missing property and damage to property; and

- ix. Misconduct related to the receipt of a Uniform Traffic Ticket or Parking Infraction Notice if the Parking Infraction Notice was issued by personnel in the Division of Police.

2. *Filing Complaints*

- a. The Board shall notify OPS of the Board's receipt and acceptance of a complaint and direct OPS to commence an investigation.
- b. The Board authorizes OPS to receive complaints on its behalf and to begin investigation of those complaints upon receipt.
- c. On its own complaint, the Board may cause an investigation of incidents involving the use of deadly force by members of the police force and incidents resulting in the injury or death of persons in the custody of the police force. These investigations will be completed by OPS in accordance with its procedures.

F. Initial Procedures

1. *Transmittal of Cases*

- a. OPS shall provide access to the full investigative files of cases that will be considered, discussed, and/or adjudicated by the Board not fewer than 15 calendar days before the Board convenes to address the case.
 - i. OPS will ensure that all Board members have full access to all investigatory materials related to the case while also ensuring that OPS files will remain secure from inappropriate dissemination or disclosure. The Chair and the OPS Administrator will collaborate in the creation of a protocol which will ensure both appropriate board access and the ability to maintain the necessary security for OPS files. This protocol will be subject to review and comment by the Board and will require adoption by a majority vote of the Board.
- b. The Investigative File that OPS maintains and that must be made available for Board members will include, and always in this order, the following:
 - i. A cover letter indicating what documents are in the file.
 - ii. The complaint.
 - iii. The allegations (or "charges") that were (1) suggested by the face of the original complaint alone, and (2) any additional allegations or charges that surfaced during the course of the investigation of the complaint.
 - iv. OPS's recommendations and findings including relevant case law, statutes, and Cleveland Division of Police General Policies and Procedure Orders.
 - v. Reports, including but not limited to incident reports, duty reports, and field reports.

- vi. Audio, visual, or transcripts of interviews of witnesses or parties to the incident
- vii. OPS investigator's notes
- viii. Body-worn camera or dash board video and physical evidence in the investigation.

2. Notice to Complainant & Subject CDP Employee

- a. Upon receipt of the Investigative File, the Board shall notify the complainant and each subject CDP employee. The notice shall advise in writing that the complaint will be considered by the Board; and contain an explanation of the process to be utilized by the Board.
- b. The notice shall state the date, time and location of the scheduled public meeting.
- c. Five days before the public meeting, the Board shall send another notification to the complainant and the subject CDP employees.
- d. The Board shall use best efforts to contact the complainant and subject CDP employees, including:
 - i. Sending a letter via United States Postal Service to the last known address of the complainant.
 - ii. Providing written notice to the subject employees through the subject officer's command staff or the subject employee's supervisor.
 - iii. Electronic mail to the parties, when feasible.
- e. The Board shall make record of notices sent.

G. Review of Complaint, Investigation, and Investigatory Follow-Up**1. Method of Investigation**

- a. When reviewing a complaint, Board members may use any of the methods in this Section.

2. Obtaining Documents and Other Evidence

- a. While reviewing the Investigative File, Board members may make written inquiries of the OPS Administrator to obtain additional information, documents, or other evidence. Such written inquiries will become part of the OPS Investigative file.
- b. Board members shall send any questions or requests to OPS as soon as possible but, in any event, at least 72 hours before the designated meeting date.
- c. Board members shall allow complainants or subject employees who are present to speak after the case is called by the Board and the allegations have been presented to the Board by the OPS.
- d. Board members may ask follow-up questions of any person who has addressed the Board.

3. Cooperation and Coordination

- a. In the discharge of its duties, the Board expects complete and prompt cooperation from all employees of the City or the CPD. The Chair may lodge a formal

complaint with the hiring authority of any employee of the City who does not cooperate with the Board in the lawful execution of its duties.

4. Subpoenas

- a. Upon majority vote, and at the request of the OPS Administrator or his or her designee, the Board has the power to subpoena and require the attendance of witnesses, the production of documents, and/or the production of other papers pertinent to its adjudications; and shall have the power to administer oaths.
- b. Prior to issuing any subpoena the Board shall notify the Director of Public Safety and the Chief of Police.

H. Assignment & Pre-Meeting Review of Cases

1. Assignment of Cases

- a. All complaints that have been fully investigated by OPS and submitted to the Board (“cases”) shall be assigned by the Chair for review by either a three-member panel (“Panel”) or by the full Board.
- b. Cases that involve misconduct that can be classified as Demeanor, Rudeness, and Improper Tow, with no other type of alleged misconduct, shall be assigned for review by a Panel unless the Chair determines that there are circumstances warranting assignment to the full Board.
- c. OPS investigations classified as complex investigations shall be assigned to the full Board for review.

2. Composition of Three-Member Panels

- a. Each Panel shall select its own Chair.
- b. Each Panel shall be composed of at least one Board member who was appointed by the Mayor and at least one Board member who was appointed by the City Council.
- c. Assignments to Panels shall be made by rotation among Board members, using any basis (including lottery) that evenly balances the workload among Board members throughout a rolling one-year (365-day) period.

3. Pre-Meeting Review of Cases

- a. For cases assigned to a Panel, all three Panel members shall review the investigatory materials for each assigned case, and complete the “Pre-Meeting Review Checklist” (Attachment B).
 - i. This review shall be performed pursuant to Section (G)(2), “Obtaining Documents and Other Evidence.”
 - ii. All Panel members shall complete a Pre-Meeting Review Checklist.

- iii. Panel members shall apply the “preponderance of the evidence” standard of proof, set forth in Section (I)(2), “Standard of Proof.”
 - iv. All Panel members shall forward a copy of their completed Pre-Meeting Review Checklists to designated Board or OPS staff no later than 24 hours prior to the Board meeting at which the case will be heard. Panel members shall also bring their completed Checklists to the meeting.
 - v. Designated Board or OPS staff shall compile a summary of Panel members’ recommended dispositions, and transmit the summary to the Board Chair in advance of the meeting.
 - vi. If a case is assigned to a Panel, Board members who are not on the Panel shall review the investigatory material to ensure familiarity with the case file, however only Panel members shall prepare a Pre-Meeting Review Checklist.
- b. For cases assigned to the full Board, all Board members shall complete the “Pre-Meeting Review Checklist” (Attachment B).
- i. This review shall be performed pursuant to Section (G)(2), “Obtaining Documents and Other Evidence.”
 - ii. Board members shall apply the “preponderance of the evidence” standard of proof, set forth in Section (I)(2), “Standard of Proof.”
 - iii. All Board members shall forward a copy of their completed Pre-Meeting Review Checklists to designated Board or OPS staff no later than 24 hours prior to the Board meeting at which the case will be heard.
 - iv. All Board members shall bring their completed “Pre-Meeting Review Checklist” to the Board meeting at which the case will be heard.

I. Hearing Procedures

1. Purpose/Scope of Hearing

- a. The Board shall hear each case during a regularly scheduled meeting at which a quorum of members is present.
- b. The purpose of this hearing is to review the case pursuant to the procedures set forth in this Manual, in order to reach a disposition and a recommendation on discipline for each allegation identified by OPS or by Board members during their review of the case.
- c. The Board shall give weight to the OPS Administrator’s recommended disposition, and shall justify in writing any departure from it. However, the Board is not bound by the OPS Administrator’s recommendation and shall reach its own conclusions regarding the appropriate disposition.

2. Standard of Proof - Dispositions

- a. No finding with respect to an allegation of a case shall be sustained unless it is proven by a preponderance of the evidence. "Preponderance of the evidence" means the greater weight of evidence; for example, based on all of the evidence it is more likely than not that conduct inconsistent with CDP policy, procedure or training has occurred or has not occurred.
- b. For purposes of applying the "preponderance of the evidence" standard of proof, officer performance must be evaluated against the policy, procedure, or training that was in effect on the day that, or during the relevant time period during which, the incident occurred.

3. Standard for Recommendation Regarding Discipline or Other Remedial Action

- a. When considering a recommendation regarding discipline or other remedial action, the Board shall apply a standard of "just cause." In determining whether there is just cause for the recommended discipline or other remedial action, the Board shall consider all of the following:
 - i. Was the CDP policy, procedure or training at issue documented and available to the CDP officers or employees who were expected to follow it?
 - ii. Was OPS's investigation of the complaint complete, fair and objective?
 - iii. Was there sufficient evidence to establish by a preponderance of the evidence that the alleged conduct occurred and that it violated a CDP policy, procedure or training?
 - iv. Is the recommended discipline consistent with the CDP disciplinary GPO in place at the time the conduct occurred?

4. Presentation of Findings

- a. The Presentation of Findings shall be open to the public.
- b. The Presentation of Findings shall consist of the following, which shall be addressed in the following order:
 - i. The OPS investigator who was assigned the case and completed the OPS investigator's summary shall provide a list of the allegations investigated by the OPS, a summary of their investigation, and the OPS Administrator's findings and conclusions to the Board. This summary will not necessarily inventory all evidence and investigatory material but should, at minimum, outline the nature of the complaint, the nature of the allegations involved, and the material evidence and facts established by the investigation.
 - ii. Following the investigator's summary, Board members shall pose any questions they may have for OPS relating to the investigation or the findings and conclusions.

5. *Executive Session*

- a. Following the presentation of the cases, the Board shall go into Executive Session. During discussions and deliberations that occur in Executive Session, no individuals or entities who are not either Board members, Board staff, or Board Legal Counsel may be present in the room unless invited by the CPRB. The CPRB may invite the OPS Administrator or his or her designee to remain during executive session deliberations on cases in order to provide advice and consult.
- b. Board members have both an opportunity and a duty to provide the OPS investigator with written questions about investigated cases prior to Board meetings and may also ask the investigator questions during the Presentation of Findings that occurs before the Executive Session. If questions or issues nonetheless arise for the first time during the Executive Session, the Board may, on motion by the Chair or another Board member, vote on tabling deliberation and/or adjudication of a case in order to pose the question(s) or issue(s) to the OPS. The Board may return to public session to make additional inquiries of the OPS and then return to conclude its deliberations immediately thereafter.
 - i. If deliberation or consideration of any case is tabled in order for the Board to follow up with an OPS investigator on a question or issue, the deliberation or consideration of that case will continue at the earliest opportunity, or in any event no later than at the start of the Board's next meeting, whether regularly-scheduled or otherwise.
- c. For cases that have been assigned to a three-member Panel, the Board Chair shall present the summary of the Panel's recommended dispositions.
 - i. If two or more Panel members have recommended the same disposition, the Board shall, upon motion, vote on whether to adopt it as the Board's disposition.
 1. If a majority of the Board approves the motion, the Panel's recommended disposition shall be adopted and shall be voted on pursuant to I(6)(d), below.
 2. If a majority of the Board does not approve the motion, the entire board shall proceed to discuss the case pursuant to section I(5)(d), below.
 - ii. If two or more Panel members do not recommend the same disposition, the entire board shall proceed to discuss the case pursuant to section I(5)(d), below.
- d. For cases to be heard by the entire Board, the Chair shall begin the discussion of the case. The goal of this discussion is to allow each Board member to reach a conclusion, by a preponderance of evidence, regarding the appropriate case disposition.

- e. The Board's discussion shall address the following questions, in order, unless a majority votes to alter the order. The Board shall complete the Hearing Checklist (Attachment C) as it proceeds through each question:
 - i. Findings and evidence that tend to support OPS's recommendation;
 - ii. Findings and evidence that tend to not support OPS's recommendation;
 - iii. The relevant case law, statutes, and CDP policies, procedures and training;
 - iv. Whether the OPS investigation tends to support the allegation by a preponderance of the evidence. The "preponderance of the evidence" means that, based on all of the evidence, it is more likely than not that a violation has occurred;
 - v. Individual Board member recommendations.
- f. The Board's Secretary and/or Administrative Coordinator shall ensure completion of the Just Cause Checklist (Addendum D) and consideration of all issues presented in that checklist during the course of any executive session deliberations.
- g. The Board shall conclude the deliberation of each case only (1) upon completion of consideration of all issues presented in the Hearing checklist, and (2) upon motion by the Chair or another Board Member.
- h. Upon completion of deliberation of one case, the Board shall consider, in the manner outlined in 5(a)–(e) above, all other cases on the meeting's agenda.

6. *Adjudication of Cases*

- a. After consideration of all cases identified prior to the meeting on the meeting Agenda, the Board shall move into the voting process. The Board shall move from the Executive Session back into a regular, public session only (1) upon completion of consideration of all issues presented in the Hearing Checklist for all cases on the meeting's agenda, and (2) upon motion by the Chair or another Board Member.
- b. Categories of Dispositions
 - i. The Board shall vote on a recommendation of one of the following findings for each allegation:
 - 1. Sustained: Preponderance of the evidence supports a finding that the alleged conduct occurred and the officer's actions were inconsistent with law or CDP policy, procedure, or training.
 - 2. Exonerated: Preponderance of the evidence supports a finding that the alleged conduct occurred but the officer's actions were consistent with law or CDP policy, procedure or training.
 - 3. Unfounded: Preponderance of the evidence supports a finding that the alleged conduct did not occur.
 - 4. Insufficient Facts: Preponderance of the evidence fails to establish whether or not the conduct occurred.

- c. Standard for Disposition:
 - i. The Board shall apply the “preponderance of evidence” standard of proof, set forth in Section (I)(2), to each and all of the allegations identified in the investigative file.
- d. Voting
 - i. Disposition votes shall be public.
 - ii. Decisions of the Board shall be made by majority vote.
 - iii. In the event of a tie vote, the CPRB will return to executive session to deliberate further. If a majority vote cannot be achieved, the Board will recess the case until its next meeting and deliberate anew.

7. *Recommendations Regarding Discipline or Other Remedial Action*

- a. Where the Board reaches an adjudication of “Sustained” on one or more allegations, the Board will return to Executive Session to deliberate on a recommendation regarding appropriate discipline or other remedial action.
- b. Potential discipline and other remedial actions include re-training, a letter of reinstruction, counseling from a supervisor, suspension, demotion, termination, or other action that may be appropriate to address the violation.
- c. To determine the recommended discipline action, the Board shall refer to the relevant Disciplinary GPO and/or other relevant General Police Orders addressing discipline, re-training, supervisory intervention, or other remedial action for misconduct or deficient performance. The Board shall make recommendations consistent with, and not materially deviating from, the Discipline GPO and/or other relevant General Police Orders.
- d. To ensure that there is just cause for each recommendation of discipline or other remedial action, the Board shall consider each factor listed on the “Just Cause Checklist” (Attachment D), and shall document this by completing the checklist.
- e. On an interim basis, the Board will recommend the disciplinary group of the disciplinary matrix to be used by the Chief of Police or the Director of Public Safety. In cases where an officer would be eligible for suspension without pay, the Board will not make a recommendation as to the specific number of days suspension to be served.
- f. The Board shall conclude the deliberation regarding discipline or other remedial action only (1) upon completion of consideration of all issues presented in the Just Cause Checklist, and (2) upon motion by the Chair or another Board Member.
- g. Upon completion of deliberation of one case, the Board shall consider, in the manner outlined in 7(a)–(f) above, all other cases on the meeting’s agenda.
- h. Once the Board has arrived at a recommendation regarding discipline or other remedial action, it shall return to public session to vote on a recommendation.

i. Voting

- i. Disposition votes regarding discipline shall be public.
- ii. Decisions of the Board regarding recommendations on discipline or other remedial action shall be made by majority vote. In the event a majority of the Board cannot agree on a particular level of discipline, the Board Secretary will prepare an explanation of the votes cast by each Board member for the Board's final summary.

8. *Recommendation Regarding Training/Policy Changes*

- a. In addition to recommending discipline or other remedial action for CDP officers and employees, the Board shall also consider whether a complaint suggests that CDP should revise its policies, strategies, tactics, or training.
- b. If so, its Final Summary shall so indicate.

9. *Recommendation Regarding Commendations*

- a. During review and consideration of investigations, Board members may identify officer or employee performance that is commendable, superior, noteworthy, or otherwise deserving of special and positive recognition. In such circumstances, a Board member may move that the Board issue a commendation.
- b. If a majority of the Board votes to approve the motion, the Board's Chair will provide a written commendation of the identified officer or employee's performance to the Chief of Police and Director of Public Safety.

10. *Final Summary*

- a. The Board shall prepare a Final Summary with respect to each case or matter under consideration.
- b. The Final Summary shall include the Board's disposition and, where applicable, recommended discipline or other remedial action, and a brief outline of the evidence that the Board concluded tended to support the disposition and/or recommendation. If the Board's recommended disposition departs from OPS's recommended disposition, the Final Summary shall also include a written justification for the departure. The Summary may also include a recommendation that the incident suggests that CDP should revise its policies, strategies, tactics, or training.
- c. The Board shall follow the Final Summary Checklist (Attachment E).

J. Special Procedures for Administrative Dismissal

1. *Assignment of Cases*

- a. On an interim basis, cases in which OPS has initiated a disposition of “Administrative Dismissal” shall be reviewed by the Board upon a timely request for review (“appeal”) by a complainant. In order to facilitate this process, the OPS shall include in every disposition letter where a complaint has been administratively dismissed, notice to the complainant of their right to request a review by the Board within 15 days of the date of receipt of the OPS notice.
- b. For each appeal, a three-member panel shall be chosen by the Chair in accord with Section H.2. of this Manual. Each panel member shall review the Administrative Dismissal Form prepared by OPS (Attachment F), to determine whether the undisputed facts support the ground(s) for administrative dismissal.
- c. If the Panel members unanimously determine that the undisputed facts support the ground(s) for administrative dismissal, the Panel Chair shall check the box on the Administrative Dismissal Form stating that they concur with OPS’s recommendation, sign and date the form, and return it to OPS. OPS will then notify the complainant of the completion of the Board’s review.
- d. If any Panel member determines that the undisputed facts do not support the grounds for administrative dismissal, or that the case requires further investigation, the appeal will be referred to the entire Board for a hearing and decision at its next meeting. If the Board, by a majority vote, determines that the undisputed facts do not support the grounds for administrative dismissal, or that the case requires further investigation, the case will be returned to OPS for investigation.
- e. During the pendency of the Consent Decree between the United States and City of Cleveland addressing the performance of the Cleveland Division of Police, ongoing reviews and audits of the Administrative Dismissal process will be conducted by the Monitoring Team to ensure compliance with OPS policies and the Consent Decree.

2. Eligibility for Administrative Dismissal

- i. Only the following types of complaints may be Administratively Dismissed:
 - a. Complaints disputing traffic citations, except that allegations of misconduct contained in such complaints (e.g., racial profiling, illegal search, excessive force) will be classified and investigated according to their merits;
 - b. Complaints alleging a delay in police services where the preliminary investigation demonstrates that the delay was due to workload, or was otherwise unavoidable;

- c. Complaints regarding off-duty conduct, unless the employee is working secondary employment, or the alleged conduct, or its effects, are inconsistent with law or CDP policy, procedure, or training or have a substantial nexus to the officer's City employment; and
 - d. Complaints in which the preliminary investigation demonstrates that the officer was not an employee of CDP at the time the conduct occurred, or where the identity of the employee cannot be determined despite the best efforts of OPS.
- ii. Complaints that allege other types of conduct cannot be disposed of via the Administrative Dismissal process.

K. Post-Hearing Procedures

1. *Notice to Complainant and Subject CDP Employee*

- a. Upon completion of every hearing, the Board shall cause the OPS to notify the complainant and each subject CDP employee. The notice shall contain written notice that the complaint was considered by the Board and the date of that hearing; and an explanation of the process utilized by the Board.
- b. The notice shall include:
 - i. The date, time and location of the hearing.
 - ii. The nature of the Board's conclusions and recommendations
 - iii. An explanation of the evidence that both tended to support and tended not to support the conclusion.
 - iv. Information on whether there will be further proceedings related to the complaint, such as referral of the matter to the Chief of Police or Safety Director for a hearing and possible imposition of discipline
- c. The OPS shall use best efforts to contact the complainant and subject employees, including:
 - i. Sending a letter via United States Postal Service to the last known address of the complainant;
 - ii. Providing written notice to the subject employees through the subject officers' command staff or the subject employee's supervisor; and
 - iii. Electronic mail to the parties, when feasible.
- d. The OPS shall make record of notices sent and keep the Board advised of its actions in that regard.

2. *Forwarding of Recommendation to Chief of Police*

- a. Upon completion of a hearing, the CPRB shall deliver its Final Summary prepared for each complaint adjudicated as "Sustained" to the Chief of Police

and/or the Director of Public Safety, as appropriate, within fourteen calendar days.

- b. The Chief or Director of Public Safety shall hold a due process hearing, as required by law, at which involved officers may present testimony or other evidence.

L. Action Following Hearing by the Chief/Safety Director

1. Notice to the CPRB of Hearing Outcome

- a. Within 10 days of the conclusion of a hearing, the Chief or Director of Public Safety will notify the Board of the outcome, including the disposition of the charges and any discipline imposed.
- b. If the disposition or discipline departs from the Board's recommendation, the Chief or Director of Public Safety will provide a written explanation for this departure.

2. Overriding Departure by the Chief of Police

- a. In cases involving Board recommended discipline of a suspension of 10 working days or less, where the Chief of Police departs from the Board's disposition or recommendation regarding discipline or other outcome, the Board will consider whether to override the departure pursuant to the City Charter (sections 115-1 through 115-4).
- b. The Chair of the Board will present the Chief's decision at the first CPRB meeting following receipt of the written explanation for the departure. If any member of the Board believes that, notwithstanding the Chief's determination, a preponderance of the evidence establishes misconduct, and that there is just cause for the Board's original recommendation regarding discipline or other remedial consequence, including suspension, demotion or termination, then the Board member shall move the Chair for reconsideration of the matter by the full Board.
- d. The Board shall consider and discuss the motion for reconsideration in Executive Session. The Board shall conclude the deliberation of the motion for reconsideration upon motion by the Chair or another Board Member.
- e. A case shall be reconsidered, and the discipline determination reviewed, if and only if a majority of the Board's permanent members votes to re-consider the case.
- f. At the reconsideration of the case before the Board, the procedures, processes, and standards for governing the Board's initial review of the case govern, with the exception that Board members must consider (i) whether the evidence and explanation for departure tends to support or tends to not support the Chief of

Police's determination, and (ii) whether there is still just cause to make a finding and/or impose discipline in light of the explanation for the departure. CPRB members must closely review and consider the disciplinary letter and other materials provided to it by the Chief, to include the content of any evidence presented at the Chief's Hearing with the subject employee.

- g. For the Board to impose its original finding on any allegation where the Chief has determined not to do so, a majority of the Board's permanent members must vote that a preponderance of evidence supports the original recommendation.
- h. For the Board to impose its original recommendation of discipline or other remedial action where the Chief has determined not to do so or where the Chief has determined to impose a different term of suspension, two-thirds of the Board's permanent members must vote that there is just cause to impose its original recommendation regarding suspension and/or the term of suspension.
- i. If the Board votes to impose its original adjudication and/or recommendation regarding discipline or other remedial action, the Board shall prepare an Amended Final Summary explaining its rationale. The Board's Administrative Coordinator will send the Amended Final Summary to the Director of Public Safety with a copy to the Chief. The Amended Final Summary will constitute a formal certification in writing of the Board's determination, to the Chief of Police and the Director of Public Safety.
- j. The Director of Public Safety is the ultimate adjudicator of discipline for the CDP. If the Director does not accept the decision of the CPRB, s/he will provide a written explanation for this decision to the Chair. The Director will make such written documentation public, such as on the Safety Director or OPS website, at the same time as it is provided to the Chair.

3. *Notice to Complainant and Subject CDP Employee*

- i. Within ten days of receiving notice that the Chief or Director of Public Safety has determined to impose the Board's adjudication and recommended discipline, the CPRB shall cause the OPS to notify the complainant and the subject CDP employee(s).
- ii. When the Chief or the Director of Public Safety has determined to depart from the Board's adjudication and/or recommended discipline, and the Board does not reconsider this determination, the Board shall cause the OPS to notify the complainant and the subject CDP employee(s) no later than ten days following its next regular meeting. This notice shall include the Board's reasoning for not reconsidering the Chief's determination.
- iii. When the Chief has determined to depart from the Board's adjudication and/or recommended discipline, and the Board reconsiders this determination, the Board shall cause the OPS to notify the complainant

and the subject employee(s) of the outcome within ten days following the meeting at which reconsideration took place.

- iv. In all cases adjudicated by the Board, the Board will direct the OPS to provide a timely written explanation to the complainant and the subject employee(s) outlining the reasoning behind the Board's decision to issue findings of "insufficient evidence," "unfounded" or "exonerated."

M. Amendment to Operating Manual, Procedures, and Rules

1. The rules contained within this Operating Manual, and the procedures and rules outlined here, may only be modified, revised, amended, replaced, or otherwise changed via the following process:
 - i. A Board member or the Director of Public Safety must place an amendment of the Operating Manual on the Board Agenda.
 - ii. The Manual amendment must be read and discussed as part of the Agenda of a regular Board meeting at least one regular meeting prior to the amendment being the subject of a vote.
 - iii. The OPS Administrator must publicly announce any proposed changes, post such changes on the OPS website and provide any public feedback received to the Chair and the Board in public session.
 - iv. The Chair must notify the Director of Public Safety and obtain advice and consult regarding the proposed amendment which is to be shared with the Board at the time the Manual amendment is proposed to the Board.
 - v. For a proposed amendment to the Manual to become effective, two-thirds of the permanent members (i.e., 6 out of 9 members) must vote in favor.
2. Pursuant to City Charter Section 115-3, only those changes ultimately approved by the Director of Public Safety may become effective as part of this Manual.
3. The rules in the Manual take effect fifteen (15) days after their publication in the *City Record*.
4. During the pendency of the Consent Decree between the United States and City of Cleveland addressing the performance of the Cleveland Division of Police and related organizations and systems, any and all modifications, revisions, amendments, replacements, or other changes to this Manual must be approved by the Court overseeing implementation of the Decree.

ATTACHMENT A

NACOLE CODE OF ETHICS

The National Association for Civilian Oversight of Law Enforcement (NACOLE)

Preamble

Civilian oversight practitioners have a unique role as public servants overseeing law enforcement agencies. The community, government, and law enforcement have entrusted them to conduct their work in a professional, fair and impartial manner. They earn this trust through a firm commitment to the public good, the mission of their agency, and to the ethical and professional standards described herein.

The standards in the Code are intended to be of general application. It is recognized, however, that the practice of civilian oversight varies among jurisdictions and agencies, and additional standards may be necessary. The spirit of these ethical and professional standards should guide the civilian oversight practitioner in adapting to individual circumstances, and in promoting public trust, integrity and transparency.

Personal Integrity

Demonstrate the highest standards of personal integrity, commitment, truthfulness, and fortitude in order to inspire trust among your stakeholders, and to set an example for others. Avoid conflicts of interest. Conduct yourself in a fair and impartial manner and recuse yourself or personnel within your agency when significant conflict of interest arises. Do not accept gifts, gratuities or favors that could compromise your impartiality and independence.

Independent and Thorough Oversight

Conduct investigations, audits, evaluations and reviews with diligence, an open and questioning mind, integrity, objectivity and fairness, in a timely manner. Rigorously test the accuracy and reliability of information from all sources. Present the facts and findings without regard to personal beliefs or concern for personal, professional or political consequences.

Transparency and Confidentiality

Conduct oversight activities openly and transparently providing regular reports and analysis of your activities, and explanations of your procedures and practices to as wide an audience as possible. Maintain the confidentiality of information that cannot be disclosed and protect the security of confidential records.

Respectful and Unbiased Treatment

Treat all individuals with dignity and respect, and without preference or discrimination including but not limited to the following protected classes: age, ethnicity, culture, race, disability, gender, gender identity, religion, sexual orientation, socioeconomic status or political beliefs.

Outreach and Relationships with Stakeholders

Disseminate information and conduct outreach activity in the communities that you serve. Pursue open, candid, and non-defensive dialog with your stakeholders. Educate and learn from the community.

Agency Self-examination and Commitment to Policy Review

Seek continuous improvement in the effectiveness of your oversight agency, the law enforcement agency it works with, and their relations with the communities they serve. Gauge your effectiveness through evaluation and analysis of your work product. Emphasize policy review aimed at substantive organizational reforms that advance law enforcement accountability and performance.

Professional Excellence

Seek professional development to ensure competence. Acquire the necessary knowledge and understanding of the policies, procedures, and practices of the law enforcement agency you oversee. Keep informed of current legal, professional and social issues that affect the community, the law enforcement agency, and your oversight agency.

Primary Obligation to the Community

At all times, place your obligation to the community, duty to uphold the law and to the goals and objectives of your agency above your personal self-interest.

ATTACHMENT B



Pre-Meeting Review Checklist

*To be used while reviewing a case
before the scheduled Board meeting.*

Complainant Name

OPS Case #

For each allegation (a complaint may involve multiple allegations), address each of the following:

What are the allegations
in the complaint?

If there are multiple allegations, complete a separate checklist form for each

What are the relevant provisions
of CPD Policies and Procedures?

What was OPS's
Recommended adjudication?

What findings and evidence tend to support OPS's recommended adjudication?

What findings and evidence tend not to support OPS's recommendation?

Were there any questions that OPS left unanswered?

Pre-Meeting Review Checklist (cont.)

What follow-up questions, if any, do you have for OPS?

Based on your pre-meeting review, are you able to form an initial opinion regarding the appropriate disposition?

In answering this question, you should use the preponderance of evidence standard. "Preponderance of evidence" means the greater weight of evidence. For example, based on all of the evidence, it is more likely than not that the alleged conduct occurred or more likely than not that the alleged conduct did not occur.

If YES, what is your initial opinion regarding the appropriate disposition?



Sustained: Preponderance of the evidence supports a finding that the alleged conduct occurred and the officer's actions were inconsistent with law or CDP policy, procedure or training.

If NO, what additional information do you need to form an opinion regarding the appropriate disposition?



Exonerated: Preponderance of the evidence supports a finding that the alleged conduct occurred but the officer's actions were consistent with law or CDP policy, procedure or training.

Unfounded: Preponderance of the evidence supports a finding that the alleged conduct did not occur.

Insufficient Facts: Preponderance of the evidence fails to establish whether or not the conduct occurred.

Other violation: Preponderance of the evidence supports a finding that conduct not included in the original complaint occurred and was inconsistent with law or CDP policy, procedure or training.



If Other Violation, what conduct/violation not included in the original complaint occurred?

ATTACHMENT C



Hearing Checklist

*To be used while discussing
a case during executive session.*

Complainant Name

OPS Case #

This checklist should be used to guide the Board's discussion after OPS has presented the cases.

*During the Board discussion, the following topics must be addressed for each allegation.
Place a check next to each to confirm that this topic was addressed.*

For Cases Assigned to a Three-Member Panel

Did a majority of the three panelists recommend the same disposition?

If so, did the Board approve a motion to adopt it as the Board's disposition?

If no to either,
proceed to full
Board discussion

For Cases Assigned to the Full Board or Where a Panel Majority's Recommendation Is Not Adopted

What was OPS's recommendation?

What findings and evidence tend to support OPS's recommendation?

What findings and evidence tend not to support OPS's recommendation?

What are the relevant case law, statutes, and Cleveland Division of Police Policies and Procedures?

Does the OPS investigation tend to support the allegation by a preponderance of the evidence? The "preponderance of evidence" means the greater weight of evidence. For example, based on all of the evidence it is more likely than not that a violation has occurred or had not occurred.

If the Board's Recommendation departs from OPS', what are the reasons for the departure?

What were the individual panel or Board member recommendations?

ATTACHMENT D



Just Cause Checklist

*To be used while discussing recommendations
for discipline or other remedial action*

Complainant Name

OPS Case #

This checklist should be used to confirm that in considering a recommendation regarding discipline or other remedial action, the Board discussed all of these factors, and that a majority of members voted to approve a motion that the Board find its proposed recommendation meets this standard.

Place a check in the box next to each to confirm that this topic was addressed, and that a majority approved the necessary motion. If any topic was not addressed or not approved by majority vote, leave the check box blank.

Is the recommended discipline consistent with the CPD disciplinary matrix in place at the time the conduct occurred?

Is the recommended discipline or other remedial action reasonable and proportional?

In other words, is it commensurate with or otherwise reflective of the gravity or severity of the violation, and is it consistent with discipline or other remedial action imposed for similar conduct under similar circumstances?

ATTACHMENT E



Final Summary Checklist

To be used in guiding preparation of Final Summary

Complainant Name

OPS Case #

This checklist should be used to guide the final summary for each case. For each allegation, include one sentence on each item below:

OPS's recommendation

The names Panel or Board members who reviewed the case

The final vote for each disposition

An explanation that outlines with sufficient detail:

The relevant case law, statutes, and Department Policies and Procedures

Evidence supporting the Board's recommendation

Justification for any departure from OPS's recommended disposition.

If the disposition is "Sustained" or "Other Violation," the Board's recommendation regarding discipline or other remedial action

If there is a recommendation regarding discipline or other remedial action, the following statement:

In reaching this recommendation, the Board has determined that it is consistent with CPD's disciplinary matrix, and that it is supported by just cause.

EXHIBIT C

THE CLEVELAND COMMUNITY POLICE COMMISSION (CCPC)

INITIAL RECOMMENDATIONS:
CIVILIAN POLICE REVIEW BOARD & OFFICE OF
PROFESSIONAL STANDARDS OPERATIONS MANUAL

March 17, 2016

Cleveland Community Police Commission (CCPC)

Initial Recommendations: CPRB/OPS Operations Manual
(Due: March 17, 2016)

Report In Brief:

- I. PRB/OPS Work Group Members*
- II. Purpose & Deadline*
- III. Consent Decree Mandate*
- IV. Review & Recommendation Process*
- V. General Content Recommendations*
- VI. Proposed Operations Manual Table of Contents*
- VII. Proposed Internal Revision Process: Who should be included?*
- VIII. Addenda: Links to Manuals Consulted*

I. PRB/OPS Work Group Members

The PRB/OPS Work Group is one of the standing work groups under the Policy and Procedure Assessment Committee of the Cleveland Community Police Commission. The members are:

- Rhonda Y. Williams, Work Group Chair; Co-Chair, CPC
- Mario Clopton, Co-Chair, CPC
- Craig Boise
- Sergeant Timothy Higgins (former member)
- Detective Steve Loomis

The Work Group would like to thank all Commissioners and participants in the process. These recommendations will be posted on the CCPC website. Any additional feedback or input received from Commissioners, community members, or other stakeholders will be recorded and forwarded to CPRB and OPS at the appropriate times during the revision process.

II. Purpose & Deadline

Initial Recommendations: March 17, 2016

As per the Monitor Plan (approved February 1, 2016):

- OPS will develop a revised operations manual. (Paragraph 200). This will include revisions of the OPS complaint form and the translation of the form into both English and Spanish. (Paragraph 208.)

- The Cleveland Community Police Commission (CCPC) will review the First Draft of the CPRB/OPS Operations Manual to determine whether it adequately reflects community interests, values, experiences, and concerns.

III. Consent Decree Mandate

Paragraph 200. Within 180 days of the Effective Date, OPS will develop a revised operations manual that will be made available to the public. The manual will, at a minimum, include the following:

- a. a mission statement that defines OPS and CPRB's core values, mission, and authority;
- b. definitions of all relevant terms;
- c. investigative procedures, including procedures for objective fact-gathering and evaluation and the factors that will be considered when evaluating credibility; procedures on report writing; and procedures for collecting and processing evidence;
- d. procedures outlining when complaints may be administratively dismissed and the process with which OPS must comply to ensure that complaints are not prematurely or unnecessarily dismissed;
- e. outlines the duties and practices of CPRB, including how CPRB will review OPS findings, how cases will be presented to CPRB by OPS, the standard of review CPRB will apply to reviewing complaints, how disciplinary recommendations will be determined, and a description of the types of information CPRB will make available to the public; and
- f. an explanation of possible dispositions and outcomes of complaints.

Paragraph 208. Within 180 days of the Effective Date, complaint forms and related informational materials will be made available, at a minimum, in English and Spanish. OPS will make every effort to ensure that complainants who speak other languages (including sign language) and have limited English proficiency can file complaints in their preferred language. The fact that a complainant does not speak, read, or write English, or is deaf or hard of hearing, will not be grounds to decline to accept or investigate a complaint.

IV. Review & Recommendation Process

On Thursday, March 3, 2016, the CPC's Police Review Board/Office of Professional Standards (PRB/OPS Work Group) met. In attendance were members of the Cleveland Community Police

Commission's PRB/OPS Work Group; the Civilian Police Review Board chair; the OPS administrator; OPS investigators; and Monitor Team members.

At the work group meeting, the current draft of the Cleveland CPRB/OPS Internal Operations Manual was discussed. The work group considered manuals from other cities, including Seattle, which was identified unequivocally as the "standard bearer" for an Internal Operations and Training Manual. The other manuals were from Durham, N.C.; Las Vegas, NV; the Village of Ossining, NY; and Urbana, IL. At this meeting, participants also began discussing in some detail what should be in the Cleveland CPRB/OPS Internal Operations Manual.

The CPC's PRB/OPS Work Group agreed to have a subsequent meeting to:

- Continue the discussion about what should be included in the Cleveland CPRB/OPS Manual.
- Propose an inclusive revision process that would include, alongside the CPRB chair and OPS administrator, the OPS investigators and staff, as well as other appropriate persons.
- Draft a draft "Table of Contents" that provides guidance in capturing the recommended substantive content for inclusion.

The follow-up meeting was held on Thursday, March 10, 2016. This meeting included representatives of the CPC's PRB/OPS Work Group and from OPS.

V. General Content Recommendations

The CPRB/OPS Internal Operations Manual will develop standard operating procedures that detail the policies and procedures governing employees and the work, the complaint process from start to finish (including initiation of complaint, intake process, investigations, findings and dispositions process, and pre-disciplinary hearings, etc.). The manual should also include the orientation process and outline training requirements and opportunities for all personnel.

The OPS Administrator, CPRB Chair, Office Staff, OPS Investigators and CPRB Members need "rules of the game."

See general recommendations in the grid below.

- **Overview on the current Draft of the CPRB/OPS Internal Operations Manual:** The draft manual, as is, offers a sketch or outline. It needs to be more robust and comprehensive in its presentation of information so that the roles and responsibilities in its internal processes and interactions with the public are presented thoroughly and clearly. For instance, it should outline the structure of the office, standard operating procedures, governing rules and processes for the complaint process, training and performance guidelines, and reporting and accountability measures. See more detail

below.

- **Mission Statement:** Needs more robust mission statements for CPRB and OPS that include statements of core values and objectives; that is, “what we do” and “how are we going to do it.” Accountability and Transparency.
- **Vision Statement:** Needs a vision statement that discusses what kind of relationship they have with the Cleveland Police Department and the community. Currently, the manual does not indicate, anywhere in the document, that CPRB & OPS are going to promote **community, problem-oriented policing**. This concept needs to be incorporated in the manual, as well as accompanied by a discussion of the steps that the CPRB & OPS are going to take to promote community, problem-oriented policing.

The definition of community problem-oriented policing should speak to several critical components:

- (a) customer service;
- (b) empowerment of the community;
- (c) building trust, confidence, and establishing legitimacy of citizen complaint processes; and
- (d) abiding by procedural justice in its operations.

The Manual should include the definition of community problem-oriented policing to ensure everyone is on the same page. (Review the most current definition provided by U.S. Department of Justice’s Community Oriented Policing Services or COPS. <http://www.cops.usdoj.gov>)

A discussion of the “operations” of community problem-oriented policing needs to indicate, at minimum, that the CPRB & OPS:

- (a) understand the expectations of the community members, and how they want to be policed;
 - (b) are committed to listening to and empowering complainants;
 - (c) will serve as a conduit of information, formal complaints, and mediation; and
 - (d) be committed to conducting thorough investigations that result in fair resolutions.
- **Authority:** Indicate where the CPRB and OPS receive its authority to exist and operate. Reference Charter Sections Chapter 25, 115-1 through 115-4. Discuss who the entities can investigate, including sworn and non-sworn employees, as well as other relevant information delineating the authority of both.
 - **Glossary of Terms and Abbreviations:** The glossary should be expanded to include all relevant and/or recurring terms and their definitions. For instance:

- (a) Note typo on page 5, OIC = Officer In Charge
- (b) add, CPRB
- (c) add, “red flag” letter
- (d) add, disciplinary matrix (and reference CPD GPO)
- (e) add, Group I Offense, Group II Offense, Group III Offense
- (f) add, EIS, EWS, IAPro, Blue Team, etc.
- (g) consult CPRB/OPS 2011 Annual Report for additional definitions, page 13.
- (h) Add, the CPD “manual of rules and regulations,” “GPOs,” “divisional notices,” “probable cause,” “preponderance of evidence,” etc.

- **Provide CPRB/OPS Email Information**

- **Structure of the Office:** Outline the structure of the CPRB, OPS, and how they are related. Include:

- (a) An organizational chart – who are the “players”
- (b) Operations Agreement – explain jurisdictions, roles, and relationship to Cleveland Police Department (*see, as an example, Las Vegas Metropolitan Police Department Citizen Review Board “Policy and Procedure Manual”*)
- (c) The CPRB members, who appoints them; delineate the Mayoral and City Council criteria, selection, and appointment processes
- (d) OPS personnel, including the Administrator, general staff, and investigators.
- (e) Explain how CPRB & OPS interact
- (f) Explain the relationship to Internal Affairs (IA)
- (g) Explain who in the office interfaces with the public and in what capacities
- (h) Explain the types of cases OPS accepts? *Any relevant terminology should be included in the Glossary.*
- (i) Include a FAQs

- **Expectations and Responsibilities of CPRB members:** Delineate the expectations and responsibilities of the Chair and CPRB members, and how members are evaluated. This section should also include OPS investigators’ functions and roles at CPRB hearings.

- **Powers and Duties of CPRB**

- **CPRB Public Meetings:** Outline and discuss board-conducted meetings in the community, including how often meetings are held, their purpose, and opportunities for community input.

- **OPA Personnel:** Delineate the job requirements and duties for all personnel.

- **OPS Employee Performance Measures:** Policy drives performance. This should provide guidance for staff and investigators with regard to performance and promotions.

- **Process for Amending Standard Operating Procedures:** Outline.
- **Standardized Complaint Form(s) & Other Relevant Forms:** The most updated forms, including those in Spanish and any other languages, should be included in the manual, accompanied by a stated expectation that forms are to include narrative descriptions of the complaint and the entire investigative process through disposition of the case. This section should also indicate that police officers are required to have complaint forms available in zone cars.
- **Intake & Initiating the Complaint Process – the Complainant:** Outline and detail for the complainant what happens from the moment the person seeks to initiate a complaint. This includes details such as:
 - (a) when you walk into the building, there is security, you will call up, and be given permission to come up;
 - (b) description of the complaint form;
 - (c) define categories of complaints;
 - (d) define what kinds of complaints are currently accepted;
 - (e) description of how complaint forms can be accessed, filled out (in triplicate), and who is given copies of the form (including the complainant);
 - (f) the interview process, which may include audio and video recording;
 - (g) privacy rights;
 - (h) process from filing to disposition. This includes the OPS investigatory process, the PRB public hearing process, the decision-making process with regard to the complaint and discipline, etc.
- **Intake & Initiating the Complaint Process – the Investigator:** Outline and detail for the investigator what happens from the moment a person seeks to initiate a complaint, and what rules and standard operating procedures need to be followed.
- **Investigations – the Complainant:** Outline how investigations can proceed for the complainant, including who can come out to the scene and how the investigation process unfolds once complaints are initiated, the *aspirational time-line* for completion, etc. Be sure to include a “*Special Circumstances*” section to alert the complainant to complex cases or situations that may impact the process.
- **Investigations – the Investigator:** Develop detailed rules, expectations, and stages for carrying out investigations, including gathering evidence and structure of preliminary investigations, preparing for full investigations, the interview process with complainants, and the discovery and presentation of witnesses. This should include the kinds of Standard Questions regarding Investigations. (See, for instance, Seattle’s Manual, pages 24-26.) Include the most updated Flow Chart of the investigative process.
- **Investigations – Management & Police Officers:** Outline the CPD’s and police officers’ responsibilities and duty to cooperate with investigations.

- **Subpoena Power:** What is this, how is it used in the process, and who holds the power to request? (The manual should reference the Charter, where this is delineated.) The relationship and cooperation between OPS and CPRB needs to be outlined here, as well as the specific process for OPS to seek subpoenas with timelines for cases, including expedited needs.
- **Findings and Dispositions:** Provide detailed explanations for how findings are arrived at, the different kinds of dispositions, how those dispositions are arrived at, and guidelines for preparing a written narrative outlining the rationale for the disposition of the complaint.
- **Pre-Disciplinary Hearings:** Define what this is, who attends, and the steps for preparation. Outline what happens during this process, and the roles of all the involved participants. This should include:
 - CPRB & OPS: the OPS Administrator, OPS Investigators, CPRB Members, independent legal representation for the civilian oversight team;
 - Chief of Police or designee
 - Police Officer(s), Union representation, and attorney
 - Director of Public Safety
 - Attorney from the Law Department
 - Court Stenographer and other required staff
- **Mediation Process:** Outline and discuss.
- **Appeals Process:** To the degree that there is no satisfaction, what is next? Provide an outline with details on the Appeals Process.
- **Employee Orientation & Training:** Provide an outline with details that delineate the orientation for all personnel. This section should pay particular attention to training expectations for Investigators, subject matter to be covered, requisite hours required, and opportunities for classes, conferences, etc. This section should answer the question: What completed training looks like. (See below.)
 - **Investigators:** The types of general, basic training should be outlined. How often, for instance, quarterly. The types of necessary specialty training should be outlined to carry out specific types of cases. It should also indicate how this is related to the level of the investigator (e.g., new, mid-level, senior investigators, etc.), as well as indicate how this ties into performance requirements, measures, and promotions. Training should include: legal training that incorporates constitutional standards, 21st century standards, and relevant law on police-community encounters; police tactics; how to investigate police conduct; bias-free policing; policing individuals in crisis; CDP policies, procedures, disciplinary rules, and community outreach.

It should also outline continuing education and professional development opportunities, including civilian oversight conferences (e.g., NACOLE), investigative interviewing training, etc.

- **PRB Members:** PRB members should receive basic comparable training, and have access to the GPOs, rules and regulations, and divisional notices.
- **Non-Retaliation and Intimidation Policy:** Outline and discuss.
- **Oversight of Force Investigation Team:** Define. Outline and discuss the oversight process. Who is included? What roles do members of the CPRB and/or OPS office play?
- **CIRC (Critical Incident Review Committee):** Define. Outline how this committee is formed, who serves on it from the City (i.e., city employees), the CPRB, OPS, and community (i.e., non-city employees), and what their roles and responsibilities are.
- **Public Reports:** Explain in the manual what reports may be produced, including the annual reports and customer surveys. Describe what they are, what should be included in them, and what their purposes are. Establish the expectations for their production, and who is responsible for making sure they are completed.
 - **Semi-Annual or Annual Report:** Assessment of complaints, numbers of complaints per officer per district, as well as aggregate number of complaints per district. Documentation and explanation of trends. This report must go beyond the simple delivery of statistics. These annual reports, which focus on trends, should be followed by recommendations. Provide a report that publicizes those statistics.
 - **Customer Surveys:** develop regular customer surveys based on the findings. These should represent, at minimum, two kinds: (a) complainant satisfaction survey; (b) community feedback survey
- **Complaints & Impact on Officers' Performance Evaluations:** Reference Paragraph 314 in the Consent Decree with regard to performance evaluations and citizen complaints. Outline this in the manual.

A critical point raised during the Work Group meetings was that at the end of the day, and in order to lower the complaint numbers, there has to be a regular, public conveyance of information, established recourses (e.g., additional training), oversight, and transparency. This will help establish accountability.

VI. Proposed Operations Manual Table of Contents

This is not an exhaustive list, but offers a starting point, as discussed by Work Group members and OPS personnel. The proposed “Table of Contents” reflects, to large measure, the general recommendations provided above.

Working Table of Contents:

1. Mission
2. Vision
3. Authority
4. Operating Agreement
5. Glossary of Terms and Abbreviations
6. Structure of the Office
7. Civilian Police Review Board Conducted Hearings
8. Special Considerations (reference Seattle Internal Operations and Training Manual discussed)
9. Standard Operating Procedures
 - a. Initiating a Complaint -- Intake
 - b. Complaint Process
 - c. Complaints of Criminal Misconduct
 - d. Investigations
 - e. Findings and Dispositions
 - f. Pre-disciplinary Hearings
 - g. Mediation
 - h. Appeals Process
 - i. Record Retention Policy
 - j. Public Records Request
10. Oversight of Force Investigation Team
 - a. Call Ups
 - b. Logs
 - c. UDFIT
11. CIRC – Critical Incident Review Committee
12. CPRB and OPS Personnel
 - a. Orientation and Training for CPRB Members
 - b. Orientation and Training for OPS Staff & Investigators
 - c. Performance Measures
 - d. Non-Retaliation and Intimidation Policy
13. Public Reports
 - a. Annual Reports
 - b. Satisfaction Surveys
 - c. Community Feedback Surveys
 - d. Other Reports
14. OTHER?

VII. Proposed Internal Revision Process: Who should be included?

The question was raised and a discussion had about who should be included in the construction, input, and revision process of the CPRB/OPS Internal Operations Manual, particularly between the initial First Draft now being reviewed and the next draft due on April 14, 2016.

The following entities, at minimum, were identified to make sure that those who are being guided and governed by the standard operating procedures delineated in the manual had ample opportunity to provide their knowledge and expertise:

- PRB Chair and members
- OPS Administrator
- OPS Staff
- OPS investigators

It was also suggested by OPS Investigators that in addition to the ongoing iterative input of the specific groups already identified in the Monitor Plan, that the CPRB and OPS personnel might also offer suggestions about ways community input can be received and included.

VIII. Addenda: Links to Manuals Consulted

- Seattle, Office of Professional Accountability, “Internal Operations and Training Manual”
<http://www.seattle.gov/Documents/Departments/OPA/manuals/OPAInternalTrainingandOperationsManualAugust-1-2014.pdf>
- Village of Ossining, NY, “Chapter 8. Civilian Police Complaint Review Board”
<http://ecode360.com/6422318>
- City of Durham, “Civilian Police Review Board Procedure Manual”
<http://durhamnc.gov/DocumentCenter/Home/View/956>
- City of Urbana, Civilian Police Review Board, “Policy and Procedure Manual”
<http://urbanailinois.us/sites/default/files/attachments/cprb-policy-and-procedure-manual-rev-july-2012.pdf>
- Las Vegas Metropolitan Police Department, Citizen Review Board, “Policy and Procedure Manual”
https://www.citizenreviewboard.com/Pages/Documents/CRB_Pol_amended_version2008.pdf