



CLOSED CASE SUMMARY

ISSUED DATE: MAY 2, 2019

CASE NUMBER: 2018OPA-0783

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy	Not Sustained (Unfounded)
# 2	8.200 - Using Force 1. Use of Force: When Authorized	Sustained
# 3	8.200 - Using Force 2. Use of Force: When Prohibited	Not Sustained (Unfounded)
# 4	8.100 - De-Escalation 1. When Safe under the Totality of the Circumstances and Time and Circumstances Permit, Officers Shall Use De-Escalation Tactics in Order to Reduce the Need for Force	Sustained
# 5	8.300-POL-2 Use of Force – CANINE DEPLOYMENT 4. Police Canines Shall be Deployed as a Force Tactic Only When Objectively Reasonable	Not Sustained (Management Action)
# 6	8.300-POL-2 Use of Force – CANINE DEPLOYMENT 6. Officers Must Justify Police Canine Deployment as a Force Tactic if it Results in Reportable Force	Not Sustained (Unfounded)
# 7	8.300-POL-2 Use of Force – CANINE DEPLOYMENT 7. Canine Deployments	Not Sustained (Management Action)
# 8	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Training Referral)

Imposed Discipline

Suspension without Pay – 2 day

This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections are written in the first person.

EXECUTIVE SUMMARY:

Named Employee #1 (NE#1) was alleged to have violated multiple Department policies, including those concerning use of force, de-escalation, K-9 deployments, and professionalism, when he caused his K-9 to bite the male and female Subjects. This matter was referred to OPA by the Department’s Force Investigation Team (FIT), which identified that NE#1’s actions may have been contrary to these policies.

OPA’s investigation was comprised of reviewing FIT’s investigation, the documentation generated by the officers involved in the incident, the criminal investigation conducted by SPD at OPA’s request, and the Department video that captured the incident. OPA also interviewed NE#1, his Sergeant, and a number of the other officers who were witnesses to this incident.



The facts of this case, including a breakdown of the Department video, is set forth clearly and in significant detail in the Case Summary.

ADMINISTRATIVE NOTE:

OPA initially recommended that Allegation #7, which concerned using the K-9 in a directed apprehension and without supervisory approval, and Allegation #8, which concerned the professionalism of NE#1's statements made after he used force, be Sustained. As discussed more fully below in the context of each allegation, the chain of command made arguments that OPA found compelling and that caused OPA to revisit its findings. As such, OPA changed its finding for Allegation #7 from Sustained to Not Sustained – Management Action Recommendation. OPA also changed its finding for Allegation #8 from Sustained to Not Sustained – Training Referral.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy

SPD Policy 5.001-POL-2 requires that employees adhere to laws, City policy, and Department policy.

After its initial review of this case, OPA referred it to SPD for criminal investigation. SPD conducted that investigation and provided the case for prosecutor review. A prosecutor assigned to the King County Prosecuting Attorney's Office declined to prosecute.

I agree that the evidence is insufficient to establish that NE#1 engaged in criminal activity. As such, I recommend that this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained (Unfounded)**

Named Employee #1 - Allegation #2

8.200 - Using Force 1. Use of Force: When Authorized

SPD Policy 8.200(1) requires that force used by officers be reasonable, necessary and proportional. Whether force is reasonable depends "on the totality of the circumstances" known to the officers at the time of the force and must be balanced against "the rights of the subject, in light of the circumstances surrounding the event." (SPD Policy 8.200(1).) The policy lists a number of factors that should be weighed when evaluating reasonableness. (*See id.*) Force is necessary where "no reasonably effective alternative appears to exist, and only then to the degree which is reasonable to effect a lawful purpose." (*Id.*) Lastly, the force used must be proportional to the threat posed to the officer. (*Id.*)

First, with regard to reasonableness, virtually every single factor weighs in favor of a finding that the force was outside of policy.



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- **Severity of the Offense:** At the time of the force, NE#1 believed that, at most, the Subjects had been in possession of a stolen vehicle. Moreover, the level of proof he had connecting the Subjects to this offense arguably did not even rise to probable cause. This was a non-violent and non-severe crime.
 - **The Level of Threat or Resistance and the Conduct of the Subject:** At the time the force was used, the Subjects were walking away from NE#1. They were not running and were not engaging in any other aggressive movements. They had not physically resisted NE#1 prior to that time or threatened force. Further, there was no evidence to believe that they were armed. While NE#1 claimed that the Subjects presented a clear danger to him. This is simply not supported by the evidence and was speculative. Lastly, and significantly, at the time the K-9 was used on the male Subject, he was on his knees with his hands up.
 - **Potential Threat to the Community:** While the force occurred in a residential neighborhood, there were no bystanders in the near vicinity at that time. Moreover, while NE#1 asserted his belief that the Subjects could go into the residence and take hostages, this is unsupported by the evidence and is largely implausible. Indeed, there is no evidence that anyone was actually in the residence at that time.
 - **Potential of Injury to Bystanders and Officers:** As explained above, there was no actual risk of harm to bystanders. While there was the risk of potential of injury to NE#1, this was caused by his decision to go hands on with two individuals at the same time.
 - **The Risk or Apparent Attempt by the Subject to Escape:** NE#1 contended that the Subjects were trying to escape, but the video indicated that they were simply walking away. They never ran at any point. Moreover, while NE#1 stated his belief that the Subjects were going to escape into the residence, this is speculative. Even had they gone inside, they may very well have answered the door had he knocked and announced after setting up a tactical plan.
 - **The Time Available to the Officer to Make a Decision:** While NE#1 had only 13 seconds to make a decision, this was a problem of his own making. By acting without first properly de-escalating, he improperly sped up this incident.
 - **The Availability of Other Resources:** There were numerous other resources available to NE#1, including using time, distance, and shielding and waiting for additional units to arrive to back him. As discussed more fully below, it was unnecessary for NE#1 to act when he did and he failed to de-escalate this matter.
 - **The Training and Experience of the Officer:** NE#1 has had substantial training on K-9 handling, the use of his K-9 as a force tool, and concerning the use of force generally.
 - **The Subject's Proximity to or Access to Weapons:** There is no evidence indicating that the Subjects were armed. They never made any movements that could have been interpreted as reaching for a weapon and they never threatened to use a weapon on NE#1.

While none of the above factors are by themselves determinative, that the factors virtually unanimously weigh against reasonableness supports a determination that the force was outside of policy.



Necessary Factor

With regard to whether the force was necessary, there were other actions that NE#1 could have taken instead of releasing his K-9. He could have waited for other resources to arrive and then contacted the Subjects, even if they had already entered the residence at that time. He also could have approached the Subjects with his K-9 still on the leash and ordered them to comply. These were more effective alternatives. Moreover, as discussed more fully below, the force actually used was not a reasonable degree of force.

Proportionality Factor

Lastly, with regard to the proportionality of the force, the force ultimately applied was not commensurate with the threat facing NE#1 or his speculative concerns that the Subjects would enter the residence and take hostages. Again, the Subjects did not run, presented no apparent physical threat, were not armed, and had not committed a crime of violence. However, NE#1 released his K-9, which bit both of the Subjects multiple times, causing fairly significant injuries to the male Subject that required hospitalization. Moreover, he, himself, used physical force on both individuals. Based on a review of the video, it is evident that the force used was well outside of what was appropriate under the circumstances and was inconsistent with Department policy.

For these reasons, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #1 - Allegation #3

8.200 - Using Force 2. Use of Force: When Prohibited

SPD Policy 8.200-POL-2 states that force is prohibited in several situations, which include but are not limited to: on restrained subjects, unless needed in exceptional circumstances to prevent injury or escape; on subjects who only verbally confront officers, unless the vocalization impedes legitimate law enforcement functions; and when used to punish and/or retaliate.

This allegation was classified because of the K-9 bite to the male Subject when he was in custody and lying on the ground. This occurred when the K-9 escaped from NE#1's patrol vehicle. At that time, NE#1 tried to order his K-9 to stop, but the K-9 did not comply. NE#1 also called to other officers to stop the K-9 from further biting the male Subject. Based on OPA's review of the video, this bite was clearly unintentional and was not a purposeful effort by NE#1 to punish and/or retaliate against the male Subject.

Moreover, NE#1 reported the unintentional bite to his Sergeant. At his OPA interview, the Sergeant explained that K-9 handlers are now instructed to keep their car's center "pass-through" doors closed when re-kenneling their dogs after a deployment. This will ensure that what happens here does not occur again.



While I disapprove of the force, I do not find that it fell within the categories of prohibited force specifically set forth in this policy. As such, I recommend that this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained (Unfounded)**

Named Employee #1 - Allegations #4

8.100 - De-Escalation 1. When Safe under the Totality of the Circumstances and Time and Circumstances Permit, Officers Shall Use De-Escalation Tactics in Order to Reduce the Need for Force

“De-escalation tactics and techniques are actions used by officers, when safe and without compromising law enforcement priorities, that seek to minimize the likelihood of the need to use force during an incident and increase the likelihood of voluntary compliance.” (SPD Policy 8.100-POL-1.)

The policy further instructs that: “When safe and feasible under the totality of circumstances, officers shall attempt to slow down or stabilize the situation so that more time, options and resources are available for incident resolution.” (*Id.*) Officers are also required, “when time and circumstances permit,” to “consider whether a subject’s lack of compliance is a deliberate attempt to resist or an inability to comply based on factors” such as “mental impairment...drug interaction...[and/or] behavioral crisis.” (*Id.*) These mental and behavioral factors should be balanced by the officer against the facts of the incident “when deciding which tactical options are the most appropriate to bring the situation to a safe resolution.” (*Id.*)

The policy gives several examples of de-escalation, which include: mitigating the immediacy of the threat to give officers time to use extra resources and to call more officers or specialty units; and increasing the number of officers on scene to thus increase the ability to use less force. (*Id.*) Other examples of de-escalation include, but are not limited to:

- Placing barriers between an uncooperative subject and officers;
- Containing the threat;
- Decreasing exposure to the potential threat by using distance, cover and concealment;
- Avoidance of physical confrontation unless immediately necessary to protect someone or stop dangerous behavior;
- Using verbal techniques, such as “Listen and Explain with Equity and Dignity” (LEED) to calm an agitated subject and promote rational decision making;
- Calling extra resources, including CIT officers and officers equipped with less-lethal tools; and
- Using “any other tactics and approaches that attempt to achieve law enforcement objectives by gaining the compliance of the subject.

(*Id.*) De-escalation is inarguably a crucial component of the Department’s obligations under the Consent Decree; however, it is not purposed to act as an absolute bar to enforcing the law when necessary. That being said, where officers fail to fully de-escalate and instead act in a manner that increases the need for force and the level of force used, such conduct is inconsistent with the Department’s policy and expectations.

Based on OPA’s review of the evidence – most notably, the Department video, OPA concludes that NE#1 failed to sufficiently de-escalate prior to using force.



NE#1 told OPA that he de-escalated by issuing verbal orders, which included the threat to release his K-9.

The video showed that, prior to contacting the Subjects, NE#1 pulled his patrol vehicle over and got out. At that time, the male and female Subjects were walking towards a residence. He stated: "Come here, guys. Come here. Come, stop or I'll send the dog." The Subjects continued to walk away. NE#1 then said: "I will send the dog. Here. Here!" NE#1 ran towards the Subjects, while stating: "On the ground. Take 'em." The Subjects, who were walking up a driveway towards the doorway of the residence, looked over their shoulders towards NE#1. He then yelled: "Get on the ground now. Take 'em!" The male Subject went down to the ground with his hands up and the female Subject kept walking towards the house. NE#1 again yelled "take 'em" and the K-9 bit the male Subject. Virtually simultaneously, NE#1 grabbed the female Subject and pulled her down to the ground. The total time that elapsed from the inception of the contact to the first moment that force was used was 13 seconds. Moreover, it is unclear from the video whether the Subjects even heard NE#1's initial direction to them to stop. Under the circumstances of this case, these warnings did not meet the requirements of the de-escalation policy.

NE#1 additionally stated that he did not have time to further de-escalate because he was struggling with the Subjects. However, this was a situation of his own making. He chose to go hands on with them 13 seconds after first making contact.

NE#1 also contended that he initially planned to await backing officers and provide K-9 services to track and arrest the Subjects, but that when they saw him, he acted to prevent their escape. However, the video provides no evidence supporting NE#1's assertion that the Subjects were "escaping." Instead, they were walking down the street towards the residence. The CAD Call Log indicated that other officers were on route to back NE#1 and to allow for a team takedown. There was simply no legitimate justification for NE#1 to have failed to wait for those backing officers and to have, instead, gone hands on with two subjects. Indeed, this almost certainly caused the need to use a higher level of force.

The video similarly disproves NE#1's claim that the Subjects were running towards the residence. To the contrary, the video showed them to be walking at all times. Moreover, once they appeared to hear NE#1's orders, the male Subject went down to his knees with his hands up. Regardless, he was bitten virtually immediately thereafter.

NE#1 stated that he tried to use his patrol vehicle for distance and cover. However, this is simply not supported by the video evidence. Instead, the video showed that NE#1 stopped his car, immediately stepped out, and then started running towards the Subjects with his dog. This all occurred within seconds of contact first being made.

NE#1 also contended that force was required due to the exigency of the Subjects potentially entering the home, taking hostages, and causing violence. As discussed below, this was completely speculative and did not excuse NE#1 from de-escalating.

Ultimately, NE#1 failed to comply with the requirements of the de-escalation policy. Instead, he did the opposite – his actions necessitated a higher level of force and he improperly sped this incident up, rather than slowing it down as de-escalation is purposed to do. His collective actions violated this policy and, as such, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**



Named Employee #1 - Allegation #5

8.300-POL-2 Use of Force – CANINE DEPLOYMENT 4. Police Canines Shall be Deployed as a Force Tactic Only When Objectively Reasonable

SPD Policy 8.300-POL-2(4) directs that a K-9 may only be used as a force tactic when objectively reasonable. With regard to when such force is objectively reasonable, the policy provides the following guidance:

Canine handlers will only allow their canines to physically engage or bite a suspect if there is a reasonable belief or if it is known that the suspect is armed with a weapon or other instrumentality capable of producing death or significant physical injury or otherwise poses an imminent threat of death or serious physical injury to the handler or others or is engaged in active aggression or escaping

(SPD Policy 8.300-POL-2(4).) The policy also provides guidance as to when K-9 bites must be released. In this regard, the policy states the following: “Should a bite occur, the handler will as rapidly as possible determine if the suspect is armed and call off the dog at the first possible moment the canine can be safely released.” (*Id.*) The policy further mandates that: “If the suspect is not armed, the handler shall order the canine immediately to release the bite.” (*Id.*) Lastly, the policy instructs that: “When deciding to call off the dog, particular attention must be given to the perceived threat or actual resistance presented by the suspect” and that, given that an average person will struggle when being bitten, the struggling alone should not be viewed as “cause for not calling off the canine.” (*Id.*)

OPA notes that this policy appears to be significantly more permissive than current caselaw. A plausible reading of the policy could yield the conclusion that deployment of a K-9 is permissible as a force tactic whenever a subject is fleeing. Taken to its logical conclusion, this would mean that a misdemeanor subject who posed no possible threat to an officer or even a subject fleeing after committing a citable offense could be subjected to a K-9 bite. Such an expansive policy is not only inconsistent with Ninth Circuit precedent, *see Chew v. Gates*, 145 F. 3d 1087, 1093 (9th Cir. 1998), but is also inconsistent with the great weight of caselaw from federal courts nationwide. *See, e.g. Marley v. City of Allentown*, 774 F. Supp. 343 (E.D. Pa. 1991); *Kerr v. City of West Palm Beach*, 875 F. 2d 1546 (11th Cir. 1989). Indeed, OPA has found no case that would allow for a suspect believed to have merely committed a citable offense to be bitten by a K-9.

OPA does not believe that the above result is what the policy intends and declines to read it as such. However, as the K-9 application, including its objective reasonableness and the failure to immediately release the bite, is discussed more fully above in the context of Allegation #2, OPA chooses to issue a Management Action Recommendation here instead of a Sustained finding.

- **Management Action Recommendation:** The Department should revise SPD Policy 8.300-POL-2(4) to be more consistent with caselaw. Specifically, the policy should be altered to clarify that the fact that a subject is fleeing does not, by itself, provide a justification to use a K-9 in all situations. It is only one factor in the *Graham* analysis as set forth in *Smith v. City of Hemet*, 394 F.3d 689, 700 (9th Cir. 2005). In addition, the policy references a “handler supplemental report”; however, neither NE#1 nor his Sergeant was aware of such a report. If the policy requires that this report to be completed, the K-9 Unit should ensure that it does so when appropriate. If this report is not utilized, then this reference should be removed from the policy.



However, the policy should ensure that the information that this policy requires be recorded be captured in another report.

Recommended Finding: **Not Sustained (Management Action)**

Named Employee #1 - Allegation #6

8.300-POL-2 Use of Force – CANINE DEPLOYMENT 6. Officers Must Justify Police Canine Deployment as a Force Tactic if it Results in Reportable Force

SPD Policy 8.300-POL-2(6) states that officers must justify a K-9 deployment as a force tactic if it results in reportable force. The policy further clarifies that: “No handler shall use their police dog solely to intimidate, coerce, or frighten any person. (SPD Policy 8.300-POL-2(6).)

As a threshold matter, while I find the K-9 application in this case to be outside of policy, this is discussed more fully in the context of Allegations #2 and #5, above. I do not believe that NE#1 used his K-9 to intimidate, coerce, or frighten the Subjects. As such, and solely evaluating this language within the policy, I recommend that this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained (Unfounded)**

Named Employee #1 - Allegations #7

8.300-POL-2 Use of Force – CANINE DEPLOYMENT 7. Canine Deployments

SPD Policy 8.300-POL-2(7) concerns off-leash K-9 deployments and provides the following guidance:

Off-leash canine deployments, searches, and other instances presenting a significant risk of a canine bite to a suspect or others shall be limited to searches for armed felony or armed misdemeanor suspects, wanted for a serious crime, particularly one of violence, where there is a clear danger of death or serious physical injury to the officer or others. In all other instances, searches must be on-leash.

The policy also requires that an officer have approval from a K-9 Unit supervisor prior to deploying a K-9 off-leash. (SPD Policy 8.300-POL-2(7).) The policy states that: “If the handler is unable to contact a canine unit supervisor, approval must be sought from a supervisor in charge at the scene before the canine can be deployed.” (*Id.*)

In the initial DCM, OPA found that NE#1 violated this policy in two respects. OPA found the following:

First, at the time he engaged in the off-leash deployment of his K-9, there was insufficient evidence establishing that the Subjects were armed. Moreover, they were not wanted for a crime of violence or, arguably, even for a serious crime. Further, there was also insufficient evidence to establish that NE#1 was at any risk of injury from the Suspects, let alone that there was the clear danger of death or serious physical injury described in the policy. At his OPA interview, NE#1 contended that there was such a clear danger. He asserted that this was based on the fact that he did not know what the Subjects were



doing, whether they were going to try and break into the residence that they were walking toward, and/or if they were violent criminals who might take hostages if they got into the residence. These arguments are, however, completely unsupported by any evidence in the record. That NE#1 did not know what the Subjects were up to did not provide a basis for an off-leash deployment. Similarly, NE#1 had no evidence corroborating his belief that the Subjects were going to break into the residence and take hostages. If such guesswork could form a permissible basis for an off-leash deployment, it would vitiate the strictures within this policy.

With regard to the second manner in which OPA believed NE#1 violated this policy, OPA provided the below reasoning:

Second, NE#1 engaged in an off-leash deployment without first seeking approval to do so from a supervisor. NE#1 told OPA that he was permitted to deploy his K-9 for both misdemeanor and felony crimes. This was corroborated by his Sergeant at the Sergeant's OPA interview. Moreover, Chapter 2.0 of the K9 Manual states that K-9 handlers "may be used to apprehend a suspect in any crime" NE#1 also asserted that he did not have time to request approval from a supervisor due to the exigency of the situation. However, the policy does not provide for any exception from the requirement that an officer seek approval from a supervisor prior to engaging in an off-leash deployment. In OPA's perspective, this silence in the policy suggests that such conduct is prohibited and informs OPA's finding that NE#1 violated policing in this regard.

At the discipline meeting in this matter, the chain of command expressed that it understood how and why OPA reached its conclusion, but stated that the policy was flawed and that the shortcomings of the policy, not NE#1's conduct, was the true issue here.

As a starting point, the chain of command noted that this policy section did not reference the use of a K-9 in a directed apprehension, which was used here, and only concerned the application of a K-9 to search. While OPA reads the policy more broadly than the chain of command and believes that it applies to all "off-leash deployments" regardless of purpose, the chain of command's point is well taken. OPA agrees that the policy should contain guidance (and reference, for that matter) to directed apprehensions and, without that guidance, it does not provide officers with sufficient expectations for their conduct.

In addition, the chain of command raised issue with OPA's finding surrounding the lack of supervisory approval prior to engaging in the directed apprehension and explained that SPD K-9 officers were trained that such approval was unnecessary where the directed apprehension occurred under exigent circumstances. The chain of command explained that supervisory approval was more applicable to the search scenario. Again, I agree with the chain of command that it seems unrealistic to require supervisory approval prior to a directed apprehension. As such, OPA recommends that the Department also modify this policy to provide guidance as to when supervisory approval is required for directed apprehensions and to determine whether there should be an exception from the approval requirement where exigent circumstances are present.



For these reasons, I amend my recommendation on this allegation from Sustained to Not Sustained and issue the below Management Action Recommendation.

- **Management Action Recommendation:** SPD should amend this policy, or create a new policy, to discuss and provide guidance on when K-9 officers can engage in directed apprehensions. The policy should also outline when supervisory approval is required prior to doing so, as well as whether there is an exception from the requirement for approval where there are exigent circumstances.

Recommended Finding: **Not Sustained (Management Action)**

Named Employee #1 - Allegations #8

5.001 - Standards and Duties 10. Employees Shall Strive to be Professional

SPD Policy 5.001-POL-10 requires that SPD employees “strive to be professional at all times.” The policy further instructs that “employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers.” (SPD Policy 5.001-POL-10.) The policy further states the following: “Any time employees represent the Department or identify themselves as police officers or Department employees, they will not use profanity directed as an insult or any language that is derogatory, contemptuous, or disrespectful toward any person.” (*Id.*) Lastly, the policy instructs Department employees to “avoid unnecessary escalation of events even if those events do not end in reportable uses of force.” (*Id.*)

After the Subjects were bitten and taken into custody, NE#1 walked up to the male Subject and stated: “Next time I fucking say stop, stop!” NE#1 then approached the female Subject and said: “Next time I say stop, stop!” When explaining why he made these statements, NE#1 told OPA that he was “fired up, angry, upset, hurt, about everything that happened.” NE#1 acknowledged that these statements and his demeanor towards the Subjects at that time were not professional. NE#1 further recognized that the “way that [he] said it wasn’t respectful.”

Based on my review of the BWV, I agree with NE#1 that his statements were unprofessional. At that time, the Subjects were injured and were secured in custody on the ground. The comments were aggressive, unnecessary, disrespectful, and could have been viewed as taunting, even if that was not NE#1’s intention. Ultimately, the statements were inconsistent with the Department’s expectations of NE#1’s conduct.

In the initial DCM, I referenced that NE#1 told OPA that he had been counseled by his chain of command concerning this matter and was given a PAS entry. However, I further stated that, while NE#1’s Sergeant confirmed that they discussed the matter, there was no evidence that the Sergeant reduced that discussion to writing or issued a PAS entry. I noted that, had the Sergeant done so, I might have issued a Training Referral instead of Sustained finding.

At the discipline meeting in this matter, NE#1’s chain of command stated that NE#1 did, in fact, receive counseling and retraining from his chain of command that was memorialized in a PAS entry. OPA confirmed that this was the case. Given this, and given that OPA recognizes that this was an intense situation to which NE#1 had an unfortunate but human reaction that he clearly understands was inappropriate, OPA changes its finding on this allegation from Sustained to Not Sustained – Training Referral.



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- **Training Referral:** As NE#1 has already been retrained and counseled on this issue, I do not require further action if his chain of command believes that he understands the problematic nature of his statements. It appears to OPA that he does given his representations at his OPA interview. I counsel NE#1 to avoid repeating such conduct in the future. Any retraining and associated counseling that is completed should be documented and this documentation should be maintained in an appropriate database.

Recommended Finding: **Not Sustained (Training Referral)**