



CLOSED CASE SUMMARY

ISSUED DATE: DECEMBER 5, 2019

FROM: DIRECTOR ANDREW MYERBERG
 OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2018OPA-0928

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	Sustained
# 2	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Sustained

Named Employee #2

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 11. Employees Shall Be Truthful and Complete in All Communication	Not Sustained (Unfounded)
# 2	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Allegation Removed

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:

It was alleged that Named Employee #1 (NE#1) may have acted contrary to law and violated the Department’s professionalism policy while off-duty at a party. It was further alleged that Named Employee #2 (NE#2) may have been dishonest in her statements during the criminal investigation.

ADMINISTRATIVE NOTE:

This is the second amended DCM issued in this case. For the reasons stated below, OPA changes its finding for Named Employee #2 – Allegation #1 from inconclusive to Not Sustained – Unfounded.

SUMMARY OF INVESTIGATION:

On September 19, 2018, the Complainant, an officer employed with SPD, wrote an email to the Deputy Chief in which the Complainant detailed allegations of misconduct against Named Employee #1 (NE#1). The Complainant wrote that NE#1 was at a party at the Complainant’s home on August 11, 2018, and that, during this party, the Complainant engaged in inappropriate and potentially criminal behavior. The Complainant reported that, on several occasions, NE#1 gave the Complainant’s 20-year-old daughter alcohol. The Complainant further relayed that the Complainant



made sexually suggestive comments to his daughter and told his 17-year-old son that the son would enjoy watching NE#1 and the daughter have sex. The Complainant also stated that, at one point during the party, he engaged in a wrestling match with another officer. He said that NE#1 wanted to fight the winner but that the Complainant and the other officer declined. The son agreed to wrestle with the Complainant. During the match, the Complainant became increasingly aggressive towards the son and the Complainant believed that NE#1 was being too rough. The Complainant contended that he put his hand on NE#1's shoulder and said: "that's enough." However, NE#1 punched the Complainant in the face and began "strangling" the son. The Complainant said that he was able to get NE#1 off of the son and pin him to the ground. NE#1 was then removed from the party.

The Complainant's email to the Deputy Chief was accompanied by statements from his son, daughter, and wife. The wife asserted that NE#1 sexually harassed the daughter. She further asserted that NE#1 hurt the son and turned his anger on the Complainant when the Complainant tried to step in. The son said that he was wrestling with NE#1 when NE#1 began to get frustrated because he could not beat the son. NE#1 began to push the son's face into the ground and raised his fist as if he was going to punch the son. At that point, the Complainant tried to intervene and NE#1 punched the Complainant in the face. The son said that NE#1 then began choking him to the extent that he could not speak. The son said that the Complainant began yelling at him and accused him of having sex with the Complainant's then girlfriend, Named Employee #2 (NE#2). The daughter said that NE#1 told her: "if I were a hot lesbian, we would be together right now. We would be soulmates." NE#1 then said to the son: "I bet (the son) wishes I was a hot lesbian right now so he could watch." NE#1 then tried to put his arm around her and she told him not to. She stated that she was offended and disgusted by his statements. She confirmed that NE#1 tried to give her alcohol on several occasions and she refused. The daughter recalled seeing NE#1 violently twisting the son's arm and smashing the son's head into the ground. She said that when the Complainant tried to intervene, NE#1 punched him in the face. The daughter also saw NE#1 put his hands around the son's neck.

OPA Referral and Criminal Investigation

This matter was referred to OPA by the Deputy Chief. OPA, in turn, referred the case back to SPD to conduct a criminal investigation. The criminal investigation was conducted by a Sergeant assigned to the Homicide Unit ("Homicide Sergeant").

As part of the investigation, the Homicide Sergeant obtained photographs of the Complainant's backyard, as well as photographs of the son's injuries. The son had scrapes and red marks on his face and head. The son also had red marks on his neck.

The Homicide Sergeant interviewed the Complainant, the son, the daughter, and the wife. He further interviewed ten other individuals who were at the party, including NE#2. All of these individuals are current or former SPD officers or officers from other Departments. The Homicide Sergeant interviewed one additional SPD officer who was not at the party but who NE#2 identified as potentially having relevant information. The Homicide Sergeant requested that NE#1 provide a statement; however, NE#1 declined to do so and said that this decision was based on advice from the Guild.

All of the witness officers who were at the party stated that NE#1 was intoxicated, with the majority stating that he was heavily intoxicated. Moreover, a number of them received later communications from NE#1 indicating that he felt badly about his actions and that he "blacked out" during the incident. NE#1 did not reference punching the Complainant or choking the son in those text messages.



A. Interviews of the Complainant, the son, the daughter, and the wife and their written statements

The Complainant and his family all provided interviews consistent with what they memorialized in their statements. The Complainant did not recall being struck by NE#1; however, he was told after the fact that this occurred and had pain to his jaw. He asserted that NE#1 did choke the son. The son, the daughter, and the wife all asserted that NE#1 punched the Complainant and that NE#1 choked the son.

Their written statements were consistent with their interviews and had significantly more detail.

B. Interview of WO#1

Witness Officer #1 (WO#1) stated that he was inside of the house and, when he came outside, he observed NE#1 getting ready to wrestle the son. NE#1 had his shirt off at that time. WO#1 saw NE#1 “applying pressure” to the son’s neck, but he did not know if NE#1 was applying enough pressure to “strangle” the son. WO#1 did not see NE#1 punch the Complainant.

C. Interview of WO#2

Witness Officer #2 (WO#2) said that he did not witness the physical conflict between the Complainant and NE#1 or between NE#1 and the son. He said that he was not watching the wrestling match at the time it occurred. He did see the Complainant separate NE#1 from the son. He also heard the son tell NE#1 not to hit the Complainant.

D. Interview of WO#3

Witness Officer #3 (WO#3) stated that he saw NE#1, who was on top of the son and holding the son down, raise up his fist as if he was going to strike the son. WO#3 said that the Complainant then intervened. WO#3 did not see NE#1 hit the Complainant or NE#1 choke the son. WO#3 explained that he was across the yard at the time. WO#3 came over and intervened to break up the altercation.

E. Interview of WO#4 and WO#4’s written statement

Witness Officer #4 (WO#4), who is WO#3’s fiancé, saw NE#1 punch the Complainant in the face when the Complainant was trying to pull NE#1 off of the son. She said that the Complainant did not react immediately but was rubbing his jaw. She recalled that NE#1 put his forearm against the son’s throat and put both hands around the son’s neck. She said that it appeared to her that NE#1 was choking the son. She later saw red marks on the son’s throat and his voice was altered.

WO#4 also provided a written statement concerning this incident that was consistent with her interview. She wrote that, during the course of the evening, NE#1 grew increasingly intoxicated and aggressive. This was noted by multiple people at the party. WO#4 recalled that he blew a 0.34 on a PBT, over three times the legal limit. WO#4 said that, when the daughter arrived at the party, NE#1 tried to give her alcohol on two different occasions. WO#4 perceived NE#1 to be agitated prior to wrestling and said that he took his shirt off. She stated that the wrestling match grew escalated and NE#1 became more and more frustrated. At one point, NE#1 slammed the son onto the ground hard and his head snapped back and hit the ground.



WO#4 viewed NE#1 on top of the son using his forearm to push the son's face down. NE#1 then raised his fist as if to hit the son. Multiple people moved towards them to break up the fight, including WO#4. She recalled believing that NE#1 was about to hit the son. The Complainant grabbed NE#1's shoulders to pull him back and NE#1 turned around and punched the Complainant with a closed fist. NE#1 was yelling and was acting in an uncontrolled manner. WO#3, who was holding NE#1 down, told him to be calm. WO#3 then gave NE#1 "suspect warnings" to calm down or WO#3 would use force. NE#1 began yelling at WO#3 and accused him of having sex with NE#2.

NE#1 continued to be aggressive and initially refused to leave the backyard. Eventually, NE#1 was told to leave and NE#2 was able to remove him. WO#4 said that NE#1 remained in front of the house for over an hour, at one point continuing to yell at WO#3. Ultimately, he left with NE#2.

F. Interviews of WO#5 and WO#6

Witness Officer #5 (WO#5) saw the Complainant and WO#3 trying to pull NE#1 away. He did not see what preceded that.

Witness Officer #6, who is WO#5's wife, was watching the wrestling match between NE#1 and the son. She said that it escalated as it went on. At one point she heard people yell out to stop the match ("King's X") but NE#1 did not stop and put his forearm against the son's neck. She said that the Complainant tapped NE#1's shoulder to get him off and NE#1 did not do so. At that time, NE#1 had his hands on the son's throat and was choking him. She said that the son's face was getting red. The Complainant then put both hands on NE#1's shoulders and NE#1 spun around with his hand up as though he was going to hit the Complainant. She then heard the son yell: "don't swing at my dad" or "don't hit my dad." She also heard the son curse at NE#1. She said that the son raising his voice and cursing were very out of character for him. She later saw redness and scratches to the son's face and his neck appeared to her to be swollen.

G. Interviews of WO#7, WO#8, and WO#9

Witness Officer #7 (WO#7) and Witness Officer #8 (WO#8), who are also married, were present at the party but left before the altercation. Witness Officer #9 (WO#9) also left before the altercation occurred.

H. Interview of WO#10

Witness Officer #10 (WO#10), who was not at the party but who was identified as a witness by NE#2, did not have any firsthand knowledge of the incident. He relayed that he was with the Complainant and the wife several weeks after the incident. At that time, he made a joke about the incident because he did not know how serious it was. Both the Complainant and the wife reacted very strongly. He said that the Complainant described that NE#1 was drunk and "was pretty much out of line and inappropriate the entire night." The Complainant mentioned that NE#1 made an insulting comment to the daughter, tried to give the daughter alcohol, and accused people of having sex with NE#2. The Complainant further told WO#10 that NE#1 left "marks" on the son that were there the next day. WO#10 said that it was a five-minute conversation and that he later apologized to the family for bringing it up.

I. Interview of NE#2 and NE#2's Handwritten Notes



Like the other witness officers, NE#2 stated that NE#1 was intoxicated during the party. She said that, while she had a few alcoholic beverages, she was relatively sober. She observed a wrestling match between the Complainant and WO#3. After that was done, NE#1 wanted to wrestle but both the Complainant and WO#3 were tired. NE#1 then wrestled the son. NE#2 did not recall NE#1 taking his shirt off before the wrestling match. She said that, after a while, the Complainant said that the match should be broken up. She indicated that, prior to that, NE#1 had raised his fist while on top of the son. She said that this was normal to show an opponent that there was an opening. NE#2 recalled that NE#1 said to the Complainant: "I'm not gonna hit your fucking kid."

When asked by the Homicide Sergeant whether she saw NE#1 hit the Complainant with a closed fist, she said that she did not. NE#2 explained: "I was right there and I did not see that, and in fact from [NE#1's] position on the ground it would, and where [the Complainant] was, I just, I don't see how it's even possible. But I was right there and it, I didn't see it." NE#2 also told the Homicide Sergeant that NE#1 did not grab the son's throat. She asserted that the "rumor" concerning both the punch and the grabbing of the neck started well after the incident. The Homicide Sergeant directly asked NE#2 concerning the punch: "How could you have not seen it?" NE#2 responded: "Because it did not happen."

The Homicide Sergeant asked NE#2 if she felt that the son was lying in his written and verbal accounts of the incident. NE#2 said that she did not know but felt that he was suggestible and maybe was convinced of certain facts. For example, NE#2 asserted that the son's claim that NE#1 alleged that she and WO#3 were engaging in sexual activity never occurred.

NE#2 said that another officer relayed to her comments made by the Complainant after the incident. It was NE#2's perception that these comments, which concerned the altercation, were inconsistent with what the Complainant later reported to SPD. She identified that individual as WO#10.

NE#2 later provided the Homicide Sergeant with notes she made of her observations from the incident, as well as later text message exchanges she had with the wife that she felt were concerning. Of note, NE#2 documented the following regarding NE#1 punching the Complainant and choking the son: "I was less than 2 feet away from [NE#1]. I never saw him punch [the Complainant] or choke [the son], which I would have remembered because those observations would have elicited a strong negative reaction from me. I would have registered seeing [NE#1] punch or strangle one of my friends."

Criminal Charges and Dispositional Continuance

Based on the totality of the evidence and statements, the Homicide Sergeant determined that there was probable cause to believe that NE#1 had assaulted both the Complainant and the son. The Homicide Sergeant referred the case for criminal charges.

The King County Prosecuting Attorney's Office declined to bring felony charges against NE#1. However, the Seattle City Attorney's Office charged NE#1 with two counts of assault. NE#1 later agreed to a dispositional continuance. As part of this, NE#1 agreed to not commit any other criminal offenses for 24 months, at which point, the assault charges would be dismissed. He further agreed to multiple conditions, including but not limited to the following: 48 hours of community service; probation monitoring; completion of an alcohol evaluation and recommended treatment; and completion of an anger management course. If NE#1 completed a criminal act within the 24-month period or failed to complete any of the conditions, he would be tried on the assaults and the judge would rely solely on the criminal



investigation documents. Notably, by entering into this dispositional continuance and agreeing to the stipulations therein, NE#1 chose not to seek the dismissal with prejudice of the charges against him or an acquittal.

OPA's Investigation

After NE#1 entered into the disposition continuance, the case was referred back to OPA and OPA commenced its investigation. As part of its investigation, OPA interviewed the Complainant, the son, the daughter, the wife, WO#1, WO#2, WO#3, and WO#4. OPA also interviewed NE#1 and NE#2.

A. NE#1's Interview

NE#1 told OPA that he was intoxicated during the party; however, he stated that he had a recollection of the most serious conduct he was alleged to have engaged in. He stated that he did not believe that he "blacked out" during the incident. He told OPA that he did not recall the statements attributed to him by the daughter and the son, but that he could not categorically deny that he said them. He said that, at times, he played card games at the Complainant's home that involved crude statements. He stated that, as a result, there was inappropriate joking that would occur. NE#1 denied that he provided the daughter with any alcohol at the party.

NE#1 said that he wanted to wrestle the winner of another match, but the Complainant was tired so NE#1 wrestled the Complainant's son. He told OPA that he was able to get on top of the son and he heard the Complainant say that there should be no strikes. He recalled telling the Complainant: "I'm not going to hit your fucking kid." They continued wrestling but the "tension" between NE#1 and the son "was just getting too serious and too competitive." NE#1 said that he would not describe the match as becoming more "aggressive," and that he and the son started "going a little bit harder, because someone wants to win." NE#1 told OPA that he did not take any action that would lead a reasonable observer to believe that he slammed the son's upper body into the ground. When asked by OPA whether he ever choked the son, NE#1 said: "I don't – I don't think so...it wouldn't have been practical or efficient for me to try and get a choke from the front." NE#1 stated that it was possible that his forearm "inadvertently" contacted the son's neck. NE#1 did not recall applying pressure with his forearm to the son's neck. He further stated that he remembered "very vividly not being angry at any point during the grappling match" and opined that, as such, he was not trying to hurt the son.

At that point, people began to try to break the match up. NE#1 said that he was pinned down on his back with the Complainant and NE#3 on top of him. NE#1 denied that he punched the Complainant at that time or that he took any actions towards that could have been interpreted as a punch by others. At that point, people were screaming at him and he was screaming at them. He was then told to leave and was driven from the party by NE#2.

B. NE#2's Interview

NE#2 told OPA that, on the date in question, she was not intoxicated and did not believe that anything impacted her memory. She recalled that NE#1 engaged in a wrestling match with the son. She stated that NE#1 was intoxicated. She said that she "did not observe any assault occur" and that she "would have observed it from [her] clear vantage point with no obstruction." She stated that, at one point, NE#1 was on top of the son and raised his hand as if he would strike him. She said that, in her experience, this was not "uncommon" and had been done to her before when wrestling. She explained that it was "basically just showing your opponent where an opening would be if it were a



striking match.” While she recognized what NE#1 was doing, she heard NE#1 say something along the lines of “I’m not going to hit your fucking kid.” She then saw the Complainant’s hand on NE#1’s shoulder and heard the Complainant say: “that’s enough.” Very shortly thereafter, she heard the son say something like: “don’t touch my dad” or “get off my dad.” NE#1 was then pulled off and others “pig piled him.”

NE#2 told OPA that she “did not observe any assault occur” and that she “would have observed it from [her] clear vantage point with no obstruction.” NE#2 did not recall whether there were any neck restraints used by NE#1 during the match but she denied that NE#1 grabbed the son’s neck with his hands.

With regard to alleged punch by NE#1, she provided the following further explanation:

I had an unobstructed view of [NE#1]. I was focused on him, and additionally, his position in relation to [the Complainant’s] position being that [NE#1] was on the ground and [the Complainant] was standing at the time slightly behind him, would make it—I can’t even imagine how that would happen, but I was looking right at it, and I just didn’t see anything like that.

NE#2 confirmed that it was not possible that the punch did occur but that she just did not see it. She said: No, I was physically within arm’s reach of both of them. I had an unobstructed view of his arm...I saw what it did, and it didn’t hit anybody.”

She said that she did not believe that NE#1 ever turned toward the Complainant at the time the wrestling match was broken up. She recalled that he remained on top of the son with his fist raised up and that, at most, he might have turned his head.

NE#2 denied that she was untruthful or deliberately inaccurate during her interview with the Homicide Sergeant. She lastly told OPA that she had a negative interaction with the wife during a later date at the West Precinct. This involved the wife allegedly accosting NE#2 and saying to her concerning this matter: “I hope you enjoy your job while you have it, you won’t have it much longer. Fucking bitch, lying cunt.”

C. Interviews of the Complainant, the son, the daughter, and the wife

The Complainant said that he and WO#3 were both interested in Jiu Jitsu and would commonly wrestle. He said he also taught the son Jiu Jitsu. The Complainant recalled that NE#1 and the son began to wrestle and that he had no problems with the match initially. At one point, however, NE#1 began grinding the son’s face into the ground. The Complainant let the match go on a little longer but then made the decision to stop it. He approached NE#1 and put his hand on his right shoulder. He said that the next thing he remembered was being on top of NE#1 and pinning him down. NE#1 was eventually removed from the party. The Complainant said that he later had a painful knot on the right side of his face near his chin. The Complainant said that he did not witness NE#1 grab the son’s neck. Lastly, the Complainant asserted his belief that NE#2 was lying to protect NE#1.

The son said that, earlier in the evening, NE#1 made sexually suggestive and inappropriate comments to the daughter. However, he decided to wrestle NE#1 in order to be nice. The wrestling match started out fine, but NE#1 grew rougher.



The son said that NE#1 pushed his head down and then reared up as if he was going to punch the son. At that point, the Complainant approached NE#1 to stop the fight. However, NE#1 punched the Complainant with a closed fist and began choking the son. The son tried to say something, but he could not speak. The Complainant and WO#3 then pulled NE#1 off of him. NE#1 continued to act aggressively even when pulled off of the son. He was eventually removed from the party.

The daughter, like the son, confirmed that NE#1 made inappropriate and sexually suggestive comments towards her. She said that the comments specifically referenced her sexual identity. She also stated that he tried to give her alcohol on two occasions and that she did not want it. She was so upset that she went inside. She was later contacted by the wife and they discussed that the son and NE#1 were wrestling and that she was concerned. The daughter stood approximately four feet from the match. She saw NE#1 get on top of the son and begin to mash his face into the concrete. She saw the Complainant approach NE#1 to break up the fight and NE#1 turned around and punched the Complainant in the face. She described that, at that time, the Complainant was leaning down towards NE#1. NE#1 then turned back to the son and put his hands around the son's neck. The daughter thought it appeared that NE#1 was trying to manipulate the son's neck to move the son's head to face the ground. She said that NE#1 remained aggressive and agitated until he was removed from the party and left.

The wife described watching the wrestling match between NE#1 and the son. She said that, at one point, the match escalated and NE#1 began pushing the son's face into the ground. She saw the Complainant put his hand on NE#1's shoulder and say that it was enough and then NE#1 turned and punched the Complainant in the face. NE#1 then put his hands on the son's neck. She said that NE#1 had his hands on the son's neck for three to four seconds. Shortly thereafter, the Complainant and WO#3 were able to get NE#1 off of the son and pin him down. NE#1 continued to be agitated and was ultimately removed from the party.

D. Witness Officer Interviews

As discussed above, OPA interviewed WO#1, WO#2, WO#3, and WO#4. OPA attempted to interview the other individuals who spoke with the Homicide Sergeant; however, they either did not respond to OPA or declined to be interviewed. None of the individuals who were not interviewed were employees of SPD.

1. WO#1's Interview

WO#1 observed the wrestling match. He described himself as five feet away from where the match was occurring. When later asked about NE#2's positioning, WO#1 said that he did not know where she was at the time. WO#1 described that he saw NE#1 hitting the son against the ground and put his forearm against the son's neck. WO#1 said that NE#1 was applying enough force at the time that the son's face was getting red. WO#1 recounted that the Complainant said to stop and that the fight was over. NE#1 would not stop so he was pulled off of the son. NE#1 would not calm down and ultimately left the party with NE#2.

WO#1 said that he did not see NE#1 punch the Complainant. However, WO#1 confirmed that he did see NE#1 engage in actions that could be interpreted as a punch. He stated the following:

Because, they were trying to get [NE#1] off of [the son]. [NE#1] was still, like, in the wrestling, fighting zone and he was kind of like doing this whole, like, swinging his arms



around. I mean, I don't—I never saw him intentionally make a fist and punch him in the face. I never saw that. If he maybe somehow hit him, I don't know, maybe?... Because he was kind of, yeah, just waving his arms and stuff, so.

2. WO#2's Interview

WO#2 told OPA that he was turned away from the wrestling match when he heard a commotion. When he turned around, he saw the Complainant pulling NE#1 off of the son. After the wrestling match was broken up, WO#2 stayed with the son to make sure the son was okay. WO#2 did not see NE#1 punch the Complainant or see NE#1 make contact with the son's neck; however, he did hear the son say: "don't hit my dad." While he did not see either of the assaults, WO#2 told OPA that they could have occurred even though he did not observe them.

3. WO#3's Interview

WO#3 recalled that, during the course of the evening, NE#1 was drinking more than other people at the party and became noticeably intoxicated and "rowdy." WO#3 said that he and the Complainant decided to engage in a Brazilian Jiu Jitsu match and that this match was friendly. Afterwards, NE#1, who appeared amped up, wanted to wrestle the winner. The Complainant suggested that NE#1 wrestle his son. After a short period of time, the wrestling match "was ramping up really quickly." WO#3 believed that NE#1 was driving the escalation of the match.

WO#3 said that he was only peripherally paying attention to the match but that he saw NE#1 slam the son down on the ground, causing the son's head to hit. He then observed NE#1 "posted up" on the son with his fist raised as if he was going to punch the son. WO#3 rushed over to where NE#1, the son, and the Complainant were. At that time, the Complainant had already reached NE#1 and was engaged with him. WO#3 said that NE#1 "had lost all reason, [and] he was struggling pretty violently both with...[the son] and [the Complainant] as [the Complainant] was attempting to get [the son] off of him. WO#3 also described that NE#1 was "spouting off with profanity, and clearly just not in control of himself." WO#3 said that, while trying to break up the altercation and control NE#1, NE#1 began screaming at him, grabbing onto his leg, and saying that NE#1 should be let up. WO#3 gave NE#1 several orders to stop and said that he would punch him if he did not do so. WO#3 believed that NE#1's actions were assaultive in nature. Multiple people, including NE#2, tried to calm NE#1 down but were unsuccessful. Ultimately, he was removed from the backyard and let the party with NE#2.

WO#3 said that he did not see NE#1 punch the Complainant but referenced the angle that he was viewing the incident from. He did not see the Complainant react as if he had been struck. He also did not see NE#1 grab the son's neck.

4. WO#4's Interview

WO#4 said that, from her observations, NE#1 was intoxicated. Prior to wrestling with the son, NE#1 appeared to her to be mentally preparing himself to fight. She recalled that he took his shirt off prior to wrestling. At the time of the wrestling match, she was sitting in a chair between ten to 15 feet away. At one point during the match, NE#1 slammed the son onto the ground. This surprised WO#4. WO#4 then saw what she believed was NE#1's hands around the son's neck. She could not tell if NE#1 was squeezing at that time. NE#1 raised up his fist as if he was going to punch the son. WO#4 said that the Complainant pulled NE#1 off of the son and, at that time, NE#1 punched the Complainant in the



face. WO#4 recalled that the Complainant did not seem to register the punch. She said that he shook his head and went over to NE#1, who was being held down by WO#3 and NE#2. She described NE#1 as yelling and cursing.

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. It was alleged that NE#1 violated this policy when he assaulted the Complainant and the son.

When evaluating the totality of the evidence, OPA finds that NE#1 did, in fact, engage in both assaults and, in doing so, acted contrary to law.

In reaching this decision, OPA relied substantially on the statements provided by WO#4. She was sober at the time of the assaults and was sitting ten to fifteen feet away with an unobstructed view. She stated that she saw NE#1 punch the Complainant in the face and then put his hands on the son's throat.

Her assertion regarding the punch to the face was corroborated by the son, the daughter, and the wife. All said that NE#1 struck the Complainant. Notably, the Complainant said that he did not remember being punched. I find that this statement supports his credibility. Were the punch fabricated, as NE#2 seems to suggest, then it makes no sense that the Complainant would not say that it happened to be consistent with the rest of his family. Instead, the Complainant honestly stated that he did not recall being hit, even though he later had pain to the right side of his face near his chin.

The remainder of the individuals at the party, except for NE#2, either did not see the punch or had already left at the time of the assault. Of the individuals who said that they did not see the punch, none said definitively that it did not occur. Moreover, WO#2 and WO#6 said that they heard the son say something along the lines of "don't punch my dad," which is additional evidence supporting that a punch occurred. Similarly, WO#1 engage in actions that could have reasonably been interpreted as a punch or an attempted punch.

NE#1 asserted definitively that the punch did not occur; however, given that the remainder of his recollection of this incident is largely fuzzy it is convenient that he has a distinct memory of this fact. Moreover, he admitted in text messages after the incident that he "blacked out," which further calls his memory into question. His assertion in this regard is also self-serving. While this can be expected, it is notably when compared to the Complainant's credible assertion that he did not remember the punch. In addition, NE#1 denied engaging in other problematic acts attributed to him, such as slamming the son down and not being angry during the fight, which further undermined his credibility.

Of all of the witnesses, only NE#2 asserted that the punch did not occur. She said that had NE#1 punched the Complainant she would have seen it as she was looking right at him. However, she is a significant outlier in this regard and had a motive to provide inaccurate information to protect NE#1. Even discounting the potential motivations of the Complainant's family, WO#4 had no discernable motive and, as discussed above, OPA finds her description of what occurred determinative.



That the choke occurred is corroborated not only by WO#4, but also by the son, the daughter, the wife, WO#1, WO#4, and WO#6. As with the punch, even discounting the families' testimony, there are three impartial witnesses who claim that NE#1 engaged in assaultive behavior. Moreover, the only outlier here is again NE#2, who conclusively claims that the choke did not occur. OPA finds her account outweighed by the other evidence and deems her to have provided inaccurate information.

Lastly, OPA finds it probative that NE#1 sought and accepted a dispositional continuance. As discussed above, as part of this agreement, NE#1 committed to performing multiple conditions, including: 48 hours of community service; probation monitoring; completion of an alcohol evaluation and recommended treatment; and completion of an anger management course. He further agreed to not commit any violations of law for 24 months and that, if he did, he would be tried, and the SPD investigation and the associated documentation would be the sole evidence relied upon by the judge. These are significant concessions to make for conduct NE#1 asserted that he did not engage in. To that end, while not an explicit admission of guilt, a dispositional continuance does not, in any respect, establish innocence on NE#1's behalf. It is a functional plea bargain. NE#1 could have proceeded to an acquittal after trial or a dismissal with prejudice, but he made the calculated choice not to do so.

Based on the above, OPA concludes that NE#1 engaged in assaultive behavior that was in violation of law. As such, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #1 - Allegation #2

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.*)

Based on the totality of the evidence, OPA concludes that NE#1 acted unprofessionally in violation of SPD policy. As discussed above, OPA finds that he assaulted both the Complainant and the son. Those acts resulted in a criminal investigation, probable cause being determined for the assaults, charges being filed against him, and his eventual acceptance of a disposition continuance. Even if NE#1 was not found guilty of assault, it is unacceptable for him to have put himself in that place. Moreover, doing so diminished public confidence and trust not only in him, but also in the Department as a whole.

In addition to the assaults, NE#1 engaged in unprofessional behavior when he made sexually suggestive comments to the daughter and the son, including comments that referenced the daughter's sexuality in crude terms. As both the daughter and son explained, this made them feel uncomfortable and the comments were inappropriate.



Lastly, NE#1 acted unprofessionally when he, inebriated well in excess of normal limits, plied the daughter with alcohol without her consent.

For these reasons, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #2 - Allegations #1

5.001 - Standards and Duties 11. Employees Shall Be Truthful and Complete in All Communication

SPD Policy 5.001-POL-11 requires Department employees to be truthful and complete in all communications.

In assessing NE#2's compliance with the SPD's dishonesty policy, OPA evaluated NE#2's statements both during the criminal investigation and at her OPA interview. OPA further compared the substance of these interviews with the totality of the other evidence, including the statements provided by a number of other witnesses. This was a hard allegation to evaluate as reflected by the multiple amendments of this DCM.

In the initial DCM, OPA found it possible that NE#2 may have been dishonest. In reaching this finding, OPA found most significant the fact that, out of all of the witnesses, only NE#2 said that the punch and choke perpetrated by NE#1 did not occur. The others either said that they saw these actions – or at least portions thereof – or said that they did not observe them because of vantage points. While explicitly recognizing that it was a close call, OPA reached the following conclusion with regard to potential dishonesty on NE#2's part:

This decision is based on the following facts: (1) the weight of the evidence indicates that the punch and choke occurred; (2) NE#2 was the only witness who definitively says that they did not occur; (3) NE#2 had a motive to provide false information as she was endeavoring to protect NE#1; and (4) NE#2 made the knowingly false statements regarding material facts in order to protect NE#1.

OPA considered the evidence again after questions were raised on this recommended finding by NE#2's chain of command at the discipline meeting. The chain of command specifically expressed doubts on whether the evidence was sufficient to sustain a dishonesty finding against her. The chain of command noted that NE#2 had consumed alcohol at the party and that, even if not supported by the other evidence, she may have truly believed that NE#1 did not punch or choke the son given her perception of the fast-evolving events. OPA found this latter point compelling, noting that there is significant research indicating that memory is malleable and even that people can develop false memories that can evolve and strengthen over time. OPA believed it possible that NE#2 truly believed that NE#1 did not engage in the conduct alleged. After further consideration, OPA no longer believed that it can prove that NE#2 was intentionally dishonest and changed its finding to Not Sustained – Inconclusive.

Subsequent to the first amendment of the DCM, OPA received additional information in the form of a multi-page letter written by NE#2. This letter addressed OPA's findings and, in particular, raised NE#2's concerns regarding OPA's determination that the dishonesty question was inconclusive rather than unfounded. NE#2's letter (which is included in the casefile) amplified her interview and provided additional relevant information. This included a fuller description of text messages sent between NE#2 and other witnesses and the significance of those messages to the case and the



allegation of dishonesty. NE#2 further discussed OPA's initial determination that she had a motive to testify in favor of NE#1, which was a significant factor underlying the prior findings. She strongly pushed back against this, stating that her employment and reputation were more important to her than any relationship. OPA found this to be compelling and convincing.

Based on OPA's further review and the supplemental information provided by NE#2, OPA no longer believes that she was dishonest and finds that the evidence does not support such a determination. To the contrary, OPA now deems this allegation to be Not Sustained – Unfounded.

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

Named Employee #2 - Allegation #2

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

OPA finds that this allegation is duplicative, as it is also based on NE#2's purported dishonesty. As such, OPA recommends that it be removed.

Recommended Finding: **Allegation Removed**