



CLOSED CASE SUMMARY

ISSUED DATE: FEBRUARY 3, 2022

FROM: INTERIM DIRECTOR GRÁINNE PERKINS
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2021OPA-0322

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 5.001-POL 2. Employees Must Adhere to Laws, City Policy and Department Policy	Not Sustained (Inconclusive)
# 2	5.001 - Standards and Duties 5.001-POL 10. Employees Shall Strive to be Professional	Not Sustained (Unfounded)
# 3	5.001 - Standards and Duties 5.001-POL 11. Employees Will Be Truthful and Complete in All Communication	Not Sustained (Inconclusive)

Named Employee #2

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 5.001-POL 10. Employees Shall Strive to be Professional	Not Sustained (Unfounded)

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:

The Complainant alleged that NE#1 violated the law, was unprofessional, and was dishonest. The Complainant also alleged that NE#2 was unprofessional.

SUMMARY OF INVESTIGATION:

The Complainant and both Named Employees are all SPD employees who attended the Washington State Basic Law Enforcement Academy (BLEA) class together. The allegations in this complaint arise out of a series of interactions during this time. The Complainant originally filed an Equal Employment Opportunity (EEO) complaint with SPD. The Complainant’s non-EEO allegations were referred to OPA. OPA commenced an investigation.

As part of its investigation, OPA reviewed the Complainant’s EEO Complaint and a prior, related OPA complaint submitted by the Complainant. OPA participated in two separate recorded interviews with the Complainant and reviewed paperwork that he provided. Additionally, OPA conducted recorded interviews of both Named Employees and a Witness Deputy who attended BLEA at the same time as the Complainant and Named Employees. Finally, OPA spoke with an SPD Witness Officer and three other witnesses from outside agencies.



a. Complainant

SPD's EEO Office forwarded the Complainant's non-EEO allegations to OPA. The Complainant's non-EEO allegations broadly alleged that he was the victim of an assault at a City facility and that more than one City employee engaged in "Bullying/Stalking" against him.

OPA participated in two recorded interviews with the Complainant. The Complainant stated that he was hired by SPD in October of 2019 and attended BLEA shortly thereafter. The Complainant alleged that the following incidents occurred while he was attending BLEA with both Named Employees:

- **Assault allegation, October 2020:** The Complainant alleged that, during a "mock scene" exercise, he was speaking to a fellow SPD Recruit (Witness Officer #1) near a doorway. The Complainant stated that NE#1 then approached him from behind and, without saying anything, shoved the Complainant to the left. The Complainant described the shove as NE#1 using his left arm to shove the Complainant's upper right arm. The Complainant did not suffer any injury. The Complainant stated that he said "did you just see what he did to me?" to Witness Officer #1 and that Witness Officer #1 replied, "tell him to f*** off."
- **Dishonesty allegation #1, October 2020:** The Complainant alleged that he volunteered to do a "mock scene" but that NE#1 informed the Complainant—on a website in which messages get automatically deleted—that his mock scene had been cancelled. The Complainant further alleged that he checked this information with his supervisor and learned that the mock scene had not been cancelled.
- **Bullying Allegation #1, December 2020:** The Complainant alleged that at the Emergency Vehicle Operations Course (EVOC), in preparation for a skid-plate drill, he placed some personal effects in the front seat of one of the training vehicles. The Complainant said that he then used a port-a-potty and, when he returned, he observed NE#1 sitting in the training vehicle that contained his personal effects. The Complainant said that he told NE#1 "I was going to use that car, you're in my car," to which NE#1 responded, "what makes you think it's your car?" The Complainant said that he told NE#1 "well, you know my stuff is in there, you moved it to the right seat." The Complainant alleged that NE#1 was "a little reluctant" but that NE#1 got out of the training vehicle.
- **Stalking Allegation, December 2020:** The Complainant alleged that, immediately after completing the skid-plate drill referenced above, NE#1 followed the Complainant and that NE#1 repeatedly asked the Complainant to talk to him, despite the Complainant telling NE#1 that he did not want to speak. The Complainant alleged that NE#1 stated, "you're trying to break up the squad." The Complainant said that he went over to talk to a nearby state trooper (Witness Trooper #1) and that NE#1 "just stood there." The Complainant said that Witness Trooper #1 then left and the Complainant walked towards the lunchroom. The Complainant alleged that NE#1 followed him to the lunchroom requesting to talk and saying "you're trying to break up the squad . . . you shouldn't be a police officer."
- **Bullying Allegation #2, December 2020:** The Complainant alleged that during an EVOC training a state trooper was demonstrating how to use different lights and switches in a vehicle. The Complainant alleged that NE#1 stood in front of him during this training, which made it difficult for the Complainant to see the instructor. The Complainant said that he asked NE#1 to move about three times, NE#1 moved out of the way.



- **Bullying Allegation #3, December 2020:** The Complainant alleged that at the firearms range the process was for the recruits to all fire at the same time, then reload at the same time from a common “cart” that had cartridges in it. The Complainant alleged that, on a couple occasions, NE#2 blocked him from accessing the cartridges to reload his firearm and that the Complainant had to “wait until he moved.” The Complainant acknowledged that NE#2 was “filling his magazine” during this time.
- **Dishonesty Allegation #2, December 2020:** The Complainant alleged that he was assigned to reposition traffic cones during an exercise. The Complainant stated that he was at the location, in the dark and rain, for an extended time. The Complainant alleged that a state trooper (Witness Trooper #2) drove up and informed the Complainant that he had assigned NE#1 to replace him, but that NE#1 never showed up.
- **Bullying Allegation #4, Unknown Date:** The Complainant alleged that NE#1 stood in front of him at defensive tactics causing the Complainant to walk around NE#1.
- **Bullying Allegation #5, Unknown Dates:** The Complainant alleged that NE#1 and NE#2 did not share their training vehicle with other recruits.
- **Dishonesty Allegation #3, Unknown Date:** The Complainant alleged that he was assigned to present a Power Point with NE#1. The Complainant stated that NE#1 informed the Complainant that their Power Point was cancelled for a specific day, but when that day arrived, their presentation had not been cancelled and the Complainant was unprepared. The Complainant alleged that NE#1 gave the presentation himself. The Complainant stated that this presentation was witnessed by a witness instructor (Witness Instructor #1).

b. Named Employee #1

As part of its investigation, OPA interviewed NE#1. NE#1 stated that, during his time at BLEA, NE#2 was one of his closest friends. NE#1 also stated that he had a purely professional relationship with the Complainant but described the Complainant as having “issues” with NE#1 “for whatever reason.”

NE#1 described the Complainant having issues with him based on the Power Point presentation that the two worked on together at BLEA. NE#1 stated that the Power Point presentation was scheduled for some time in November of 2020 but mentioned that it may have been postponed for some period of time. NE#1 recalled that he and the Complainant worked together on the presentation and texted with each other concerning the presentation, but that they performed separate research for their portions of the presentation. However, NE#1 described that there was a “miscommunication on the exact date” that they were scheduled to do their presentation, and that they ended up presenting a day earlier than anticipated and they were not able to fully prepare for their presentation. NE#1 stated that because he and the Complainant were both caught by surprise, NE#1 did the best he could to give the presentation “to try to make us both look good.” NE#1 stated that after he gave his presentation, the Complainant presented the exact same information to the class. NE#1 stated that he believed the Complainant “was just angry” about the presentation and that “this is a lot of petty stuff.”

NE#1 recalled the skid-plate incident, stating that an instructor told NE#1 to complete the drill and so NE#1 got into the front vehicle and waited for further instructions. NE#1 stated that the Complainant then opened the car door and said “get out of the car ... this is the one I’m using.” NE#1 stated that he asked the Complainant why the car was his, and that the Complainant indicated that he had personal effects in the back of the car. NE#1 stated that he exited the



car and let the Complainant use it. NE#1 stated that, after the skid-plate drill, NE#1 tried to speak with the Complainant about what had happened “in order to make amends And I just told [the Complainant] if I did anything to offend him, I apologize.” NE#1 stated that the Complainant responded with a “spiel” about what had occurred during their Power Point presentation, an event that NE#1 said occurred a month earlier. NE#1 stated that the Complainant then started “cussing me out,” and that NE#1 “just took it.” NE#1 said he reported this incident to the class president (Witness Deputy #1). NE#1 denied telling the Complainant that he was “breaking the squad” or that the Complainant “shouldn’t be a police officer.” NE#1 denied “following” the Complainant, stating that “[w]e were just going to the same place since it was lunch.”

NE#1 denied assaulting the Complainant, although he remembered having a physical interaction with the Complainant at one of the mock scenes. According to NE#1, while NE#1 was standing next to Witness Officer #1, the Complainant tried to “squeeze his way in” and came “pretty close.” NE#1 said that because the Complainant “was literally touching me,” NE#1 “extended [NE#1’s] arm.” NE#1 denied that there was a shove or push. NE#1 stated he was just reclaiming his personal space.

NE#1 denied ever informing the Complainant that he was “cancelled” for a mock scene. NE#1 denied ever intentionally standing in front of the Complainant. NE#1 also denied that he and NE#2 refused to share a vehicle with other recruits. NE#1 explained that NE#2 is a talented driver and there was an instance at EVOC where NE#2 spent extra time coaching NE#1 on a vehicle maneuver. NE#1 stated that “people were switching in and out.” NE#1 also denied that he failed to relieve the Complainant from his duty replacing traffic cones. Instead, NE#1 described the situation as the opposite: that the Complainant was supposed to relieve NE#1 but chose to relieve someone different.

c. Named Employee #2

As part of its investigation OPA interviewed NE#2. NE#2 stated that he attended BLEA with NE#1 and the Complainant. NE#2 stated that he and NE#1 have a good relationship. NE#2 stated that he was a “squad leader” in BLEA.

NE#2 recalled that NE#1 and the Complainant were assigned to prepare a Power Point presentation together at BLEA but that, when it was their turn to go, it appeared that “there was some miscommunication between the two.” Specifically, NE#2 recalled that the Complainant oversaw their slides, but the Complainant did not advance the slides during the presentation, so the class saw the same slide the entire time. NE#2 also recalled the incident at EVOC, but NE#2 learned about it from NE#1, which was substantially the same as described by NE#1 in his OPA interview.

NE#2 described a separate incident at EVOC in which NE#2 was in a training vehicle and the Complainant opened NE#2’s door and said, “get out.” NE#2 stated that he responded, “excuse me?” NE#2 stated that the Complainant responded by asking “well, how many times have you gone?” to which NE#2 responded, “I’ve gone three times, why?” NE#2 stated that the Complainant said “well, I’ve only gone twice. So don’t you think its only fair that I go now?” NE#2 recalled that he “took a deep breath” and then exited the vehicle so that the Complainant could use the vehicle. NE#2 stated that he was “upset” by this interaction because he found the Complainant’s behavior disrespectful.

NE#2 denied excluding other recruits from riding in a vehicle with him and NE#1. NE#2 also denied ever purposefully standing in front of the Complainant at the range but opined that there were only “two to three ammo trays at the range” and that it was “tight quarters” such that at any given time there were “probably 6, 7, 8 people around a two by four tray to get ammo.”



d. Third-Party Witnesses

OPA conducted a recorded interview of one non-party sheriff deputy (Witness Deputy #1). OPA also spoke with four other witnesses informally: Witness Trooper #1, Witness Trooper #2, Witness Instructor #1, and Witness Officer #1.

Witness Deputy #1 was the class president at BLEA contemporary with the Complainant and Named Employees. Witness Deputy #1 recalled the incidents at the EVOC skid-plate drill and the Power Point presentation, but his recollection differed in key respects from the Complainant.

According to Witness Deputy #1, NE#1 reported the skid-plate drill incident to Witness Deputy #1. Witness Deputy #1 stated that when he sought the Complainant's side of the story, the Complainant became visibly angry and said he did not want to talk about it. Witness Deputy #1 said that he informed the Complainant that he wanted to get the Complainant's side of the story before reporting the incident, at which point the Complainant accused Witness Deputy #1 of threatening him.

Witness Deputy #1 also recalled the Power Point incident, stating that when it was NE#1 and the Complainant's turn to give their presentation it was obvious that the Complainant "clearly things left out" and that NE#1 had to provide the class additional information. Witness Deputy #1 stated that the Complainant then publicly "blasted" NE#1 in front of the whole class, accusing NE#1 of not working with him, to which NE#1 responded, "I tried."

Witness Trooper #1, Witness Trooper #2, and Witness Instructor #1 had no recollection of the Complainant's allegations. Witness Officer #1 stated that he did not witness any physical interaction between the Complainant and NE#1, adding that he would not have made the statement that the Complainant claims he made ("tell him to f*** off").

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

The Complainant alleged that NE#1 violated the law by assaulting and stalking him.

SPD Policy 5.001-POL-2 requires that employees adhere to laws, City policy, and Department policy. In the state of Washington, there are three definitions of criminal assault: (1) an attempt, with unlawful force, to inflict bodily injury upon another; (2) an unlawful touching with criminal intent; and (3) putting another in apprehension of harm whether or not the actor intends to inflict or is incapable of inflicting that harm. *State v. Hupe*, 50 Wash.App. 277, 282, 748 P.2d 263, review denied, 110 Wash.2d 1019 (1988). In Washington, a person commits the crime of stalking if they "intentionally and repeatedly harass or repeatedly follow[] another person" and this behavior places the person being followed in reasonable fear that the stalker intends to injure them. See RCW 9A.46.110.

The Complainant alleged that NE#1 "assaulted" him by pushing him in the upper arm, resulting in no injury. Even if this alleged behavior amounted to a criminal assault—which is debatable—NE#1 denied pushing or shoving the Complainant. Moreover, a third-party witness, Witness Officer #1, stated that he did not observe any physical interaction between the Complainant and NE#1. The assault portion of the Complainant's allegation is Not Sustained as Inconclusive.



The Complainant also alleged that NE#1 “stalked” him by following him to the cafeteria and asking to speak with him, despite the Complainant’s requests not to speak to him. Given that the Complainant and NE#1 were both on their way to the cafeteria, it’s debatable whether the behavior alleged by the Complainant could rise to the level of criminal stalking. However, NE#1 described this interaction as an attempt to apologize to the Complainant—over a very discrete, limited period of time—while they were both walking to the cafeteria. Moreover, a non-party witness identified by the Complainant, Witness Trooper #1, had no recollection of this incident. The stalking portion of the Complainant’s allegation is similarly Not Sustained as Inconclusive.

Accordingly, OPA recommends that this allegation be Not Sustained (Inconclusive).

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

Named Employee #1 - Allegation #2

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

The Complainant alleged that NE#1 was unprofessional by bullying the Complainant.

SPD Policy 5.001-POL-10 requires that SPD employees “strive to be professional.” The policy further instructs that “employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers” whether on or off duty. (SPD Policy 5.001-POL-10.)

The Complainant alleged that NE#1 bullied him by (1) sitting in a training vehicle that contained some of the Complainant’s personal effects; (2) standing in front of the Complainant at a training and then moving after the Complainant asked NE#1 to move three times; (3) standing in front of him at defensive tactics training; and (4) not allowing other recruits to use the training vehicle being used by NE#1 and NE#2.

Taken individually or collectively, these alleged, minor slights do not amount to unprofessionalism. In the first two instances, NE#1 complied with the Complainant’s requests despite being under no obligation to do so. In the third, the Complainant was able to simply walk around NE#1. Although the fourth allegation, if true, could be characterized as rude, it hardly rises to the level of “undermining public trust.”

Accordingly, OPA recommends that this allegation be Not Sustained (Unfounded).

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

Named Employee #1 - Allegation #3

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

The Complainant alleged that NE#1 was untruthful with him on three separate occasions.

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

The Complainant alleged that NE#1 was dishonest on three separate occasions: (1) telling the Complainant that their Power Point presentation had been cancelled; (2) telling the Complainant that his mock scene was cancelled; and (3) failing to relieve him at from resetting the traffic cones.



The Complainant and NE#1 provided different accounts of the miscommunication regarding the date of the Power Point presentation. The Complainant characterized NE#1 of intentionally lying about the presentation being cancelled, whereas NE#1 recalled there being a miscommunication concerning the date. No third-party witnesses witnessed this alleged communication between the Complainant and NE#1 and the text message and email records provided by the Complainant demonstrate that, if anything, NE#1 was communicating with the Complainant in order to complete the assignment. Although it is somewhat illogical to believe that NE#1 would try to sabotage his own presentation, there is insufficient information to determine the validity of this allegation.

Similarly, NE#1 categorically denies the Complainant's allegation that NE#1 lied by telling the Complainant that his mock scene had been cancelled. There is no neutral evidence on which to draw a conclusion concerning this allegation.

Finally, it is unclear how allegedly failing to relieve the Complainant from his job replacing traffic cones could amount to dishonesty. But whether this allegation is considered under dishonesty or professionalism, NE#1 categorically denied that it happened and Witness Trooper #2 does not recall the incident.

Accordingly, OPA recommends that this allegation be Not Sustained (Inconclusive).

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

Named Employee #2 - Allegation #1

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

The Complainant alleged that NE#2 was unprofessional by bullying him.

The Complainant alleged that NE#2 (1) stood in front of him at the range, which caused the Complainant to wait; and (2) along with NE#1, refused to share a training vehicle with other recruits. For the same reasons stated above (Named Employee #1, Allegation #2), neither of these allegations violates SPD policy.

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