



CLOSED CASE SUMMARY

ISSUED DATE: OCTOBER 21, 2019

CASE NUMBER: 2019OPA-0288

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	5.001 - Standards and Duties - 10. Employees Shall Strive to be Professional	Not Sustained (Training Referral)
# 2	5.001 - Standards and Duties 14. Retaliation is prohibited	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 the Named Employee was unprofessional towards him and threatened him based on a retaliatory motive.

ADMINISTRATIVE NOTE:

The retaliation allegation in this case was classified as an Expedited Investigation. This means that OPA believed that it could reach findings on this allegation based on its intake investigation and without interviewing the Named Employee. As such, the named Employee was not interviewed concerning this allegation. The professionalism allegation was subject to a full investigation and the Named Employee was interviewed concerning this allegation.

In addition, during its intake investigation, OPA identified that the Complainant told two other SPD employees that he was threatened by an officer. However, neither SPD employee who received this information reported the Complainant's allegation to a supervisor or OPA. The failure to report was sent back for handling by the chain of command as a Supervisor Action.

Lastly, OPA initially recommended that Allegation #1, which concerns the Named Employee's professionalism, be Sustained. At the discipline meeting in this matter, the chain of command asserted that OPA should change its finding to retraining. The chain of command contended that the statement was not meant to be insulting but was, instead, a reaction to the Complainant's continued disruptive behavior. The chain of command further noted that the Named Employee was a newer officer that had not been previously disciplined or counseled for engaging in unprofessional conduct. Ultimately, OPA agrees with the chain of command that retraining is appropriate and reverses its finding.



ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

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

Officers, including Named Employee #1 (NE#1), were dispatched to a call concerning an ongoing disturbance. The officers received reports that an individual – who was later identified as the Complainant – was yelling racial slurs, was playing loud music from his vehicle, and was striking vehicles belonging to neighbors. During their first response to the scene, NE#1 and two other officers contacted and interviewed the neighbors and verified the complaints concerning the Complainant's behavior. Several hours later, the officers again responded to the scene. This time, they made contact with the Complainant. The interaction was captured on Body Worn Video (BWV).

When they first viewed the Complainant, he was lying on the ground. NE#1 informed the Complainant that neighbors had called 911 because of his behavior. NE#1 questioned the Complainant about his truck and when he had gotten it out of impound and with what money. The Complainant told the officers that he was "50 years old" and he asked one of the officers whether that officer was a sergeant. The officer said that he was not. The Complainant then told the officers to "respect" him. NE#1 responded: "If you're 51 years old, why [are] you walking around the neighborhood screaming?" The Complainant asked whether he was free to and NE#1 replied: "Yeah, you're free to go. Just understand that there's a bunch of children that are afraid of you." The Complainant then said: "This is America and I can..." NE#1 retorted: "Yeah, you're allowed to be a fucking asshole. Good for you." The Complainant got up and began to walk away. NE#1 further stated: "I ain't got no stripes neither." NE#1 then remarked to one of the other officers: "I went to the de-escalation training. That's how that works." NE#1 called to the Complainant: "See you next time." The Complainant replied that there would not be a next time, to which NE#1 said: "I hope not." The Complainant complained about NE#1's remark about their next interaction and NE#1 told him: "That was a friendly greeting." The Complainant's interaction with the officers ended thereafter.

The Complainant later initiated this OPA complaint. As part of its investigation, OPA interviewed the Complainant. He alleged that NE#1 was unprofessional and made threatening statements towards him. The Complainant further asserted that his treatment by NE#1 was due to retaliation based on his success in a recent criminal case.

As part of its investigation, OPA also interviewed NE#1. He provided further information concerning his law enforcement response to this incident and his interaction with the Complainant. NE#1 was questioned concerning his specific statements made to the Complainant and whether those statements were, standing alone and in their totality, professional. NE#1 recognized that he used profanity towards the Complainant but denied that he did so to insult or treat the Complainant contemptuously. NE#1 stated that his use of profanity was purposed to shift the trajectory of the interaction given that the other officers were not have success communicating with the Complainant. However, NE#1 recognized that this statement was unprofessional. With regard to his comment that he "ain't got no stripes neither," NE#1 stated that he was only saying "I don't have stripes, but I can still talk to you." He denied that this was meant to be disrespectful or escalating. Lastly, NE#1 denied that he was threatening the Complainant when he said "see you next time."

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.*)

As discussed above, OPA initially found that NE#1’s statement to the Complainant violated the Department’s professionalism policy. However, after further consideration and discussions with NE#1’s chain of command, OPA reverses that finding. In doing so, OPA places significant weight on the fact that NE#1 was a newer officer and that he had not been previously disciplined or counseled for unprofessional behavior. OPA also recognizes how difficult the Complainant was being on the date in question and understands why NE#1 was frustrated with having to deal with the Complainant’s continued disruptive behavior multiple times during his shift.

The above being said, OPA retains concerns regarding NE#1’s professionalism towards the Complainant. OPA also finds NE#1’s belief that speaking to the Complainant in the manner he did was how de-escalation “works” to be problematic. Based on OPA’s understanding of the de-escalation policy and its review of the training provided to officers in this area, NE#1’s assertion is incorrect. OPA hopes that the retraining provided to NE#1 as part of this case disabuses him of that notion and ensures that he does not engage in similar behavior in the future. For these reasons, OPA now recommends that this allegation be Not Sustained – Training Referral.

- **Training Referral:** OPA recommends that NE#1 and his chain of command review the BWV of this incident together. They should evaluate whether NE#1’s statements were consistent with the Department’s professionalism policy, as well as whether they constituted de-escalation, as NE#1 asserted. NE#1’s chain of command should counsel him to strive to comply with both the professionalism and de-escalation policies moving forward and should inform him that future non-compliance may result in a recommended Sustained finding and the possible imposition of discipline. This retraining and counseling should be documented, and this documentation should be maintained in an appropriate database.

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

Named Employee #1 - Allegation #2

5.001 - Standards and Duties 14. Retaliation is prohibited

SPD policy precludes its employees from engaging in retaliation. (SPD Policy 5.001-POL-14.) SPD employees are specifically prohibited from retaliating against a person who engage in activities including, but not limited to, “oppos[ing] any practice that is reasonably believed to be unlawful or in violation of Department policy” or “who otherwise engages in lawful behavior.” (*Id.*) Retaliatory acts are defined broadly under SPD’s policy and include “discouragement, intimidation, coercion, or adverse action against any person. (*Id.*)

As discussed above, I find that NE#1’s statements to the Complainant were borne out of frustration and annoyance at the Complainant’s conduct. There is no evidence indicating that NE#1, instead, made statements to the Complainant that were purposed to retaliate against him. While the Complainant opined that the retaliation was based on a prior criminal case in which he prevailed, this was speculative. Ultimately, I deem this allegation to be unsupported by the record and, as such, I recommend that this allegation be Not Sustained – Unfounded.

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