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From: Interim Director Gráinne Perkins
Office of Police Accountability

Case Number: 2022OPA-0033

Allegations of Misconduct & Director's Findings

Named Employee #1

1. **Allegation #1:** 8.100 - De-Escalation 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Will Use De-Escalation Tactics in Order to Reduce the Need for Force

Finding: Not Sustained - Training Referral

2. **Allegation #2:** 8.200 - Using Force 1. Use of Force: When Authorized

Finding: Not Sustained - Lawful and Proper

Named Employee #2

1. **Allegation #1:** 5.001 - Standards and Duties 6. Employees May Use Discretion

Finding: Not Sustained - Management Action

Named Employee #3

1. **Allegation #1:** 8.100 - De-Escalation 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Will Use De-Escalation Tactics in Order to Reduce the Need for Force

Finding: Not Sustained - Training Referral

Named Employee #4

1. **Allegation #1:** 8.100 - De-Escalation 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Will Use De-Escalation Tactics in Order to Reduce the Need for Force

Finding: Not Sustained - Training Referral

Named Employee #5

1. **Allegation #1:** 8.100 - De-Escalation 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Will Use De-Escalation Tactics in Order to Reduce the Need for Force

Finding: Not Sustained - Training Referral

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 while responding to an assault call, Named Employee #1 (NE#1), Named Employee #3 (NE#3), Named Employee #4 (NE#4) and Named Employee #5 (NE#5) failed to appropriately use de-escalation techniques. It was further alleged that Named Employee #2 (NE#2) inappropriately used a pillow to cover the face of Community Members #1 (CM#1) when she was spitting at SPD and AMR staff.

Summary of Investigation:

The complaint was referred from SPD's Force review board. OPA initiated an investigation. During its investigation, OPA reviewed the complaint, Computer Aided Dispatch (CAD) Call Report, Incident Report and Supplement, and Body Worn Video (BWV). OPA also interviewed all Named Employees.

On 12-21-2021, NE#1, NE#2, NE#3, NE#4, and NE#5 responded to an assault call at a youth shelter. The call was labeled as a disturbance. The call showed the comment "GUN, IN DOWNSTAIRS COMMON AREA, STAFF HAS TAKEN RP'S GUN AND REFUSING TO RETURN." The call log had several initial updates about "yelling" and "a gun." There was a subsequent update at that the gun was an airsoft gun. More updates indicated that the gun had been dropped and taken away during a fight.

The Named Employees arrived at the location and formed a group outside of the building. The Named Employees then entered the building and contacted CM#1. After the Named Employees contacted CM#1, CM#1 threatened to take the Named Employees guns and spit at the officers. The Named Employees went hands-on with CM#1 and, after a struggle, took CM#1 into custody.

After CM#1 was in custody, Officers interviewed witnesses at the scene. It was alleged that CM#1 had been in an argument with other people also staying in the shelter. It was alleged that staff attempted to resolve the argument but were unsuccessful. It was further alleged that CM#1 took out a BB gun and fired it into the chest of another shelter resident causing no apparent injury but then CM#1 and the victim began to fight and wrestle. Another resident jumped into the fight and got the BB gun away from the suspect. The staff reportedly told CM#1 to leave but she refused.

From the time that CM#1 was initially detained by NE's she began spitting at those present. CM#1 was transported by AMR. CM#1 allegedly bit and spat at NE#1. A spit sock was applied by SPD. Although restrained, CM#1 successfully removed the spit sock on three occasions. BWV showed NE#2 using a pillow to prevent CM#1 spitting. As NE#2 held the pillow over CM#1's face she can be heard continually screaming throughout. Another spit sock was applied which CM#1 also removed.

Analysis and Conclusions:

Named Employee #1 - Allegation #1

8.100 - De-Escalation 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Will 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)

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.” (SPD Policy 8.100-POL-1) 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.)

When NE#1 arrived at the scene, CM#1 was agitated and throwing objects. A FRU of the incident noted, “If the counselor was able to walk up to the subject and try to calm her down (as seen on BWV), the Officers could have tried verbal de-escalation techniques other than ordering the subject to place her hands behind her back.” CM#1 was taken into custody within one minute of NE's arrival. BWV denotes CM#1 stating that she would grab officer's guns when they arrived at scene. When interviewed by OPA, NE#1 described this call as an ongoing assault with a weapon. NE#1 stated that he was concerned that CM#1 was focused on “suicide by cop” as a result of her statements. NE#1 stated that he went hands on with the subject as he wanted to mitigate the access that she had to others in the room and dilute the possibility of “suicide by cop.”

In interview, NE#1 stated that he did use de-escalation through his tactical positioning and by bringing a ballistic shield. When he realized that the shield was inappropriate, he adopted an L formation to approach the subject. NE#1 stated that one part of the tactical “L” was to be able to see the suspect from different angles and possibly see if they had a weapon which he was very worried about. NE#1 stated that he gave verbal commands to the CM#1, but they were

ineffective, and CM#1 continued to say she would take his gun. BWV depicts NE#1 shouting at CM#1, "Get on the ground...I'm gonna put you on the ground if you do that... (CM#1 begins to spit)..Don't...Don't." NE#1 stated that alternative of using a Taser but that normally requires a standoff distance and was not feasible because of the employees who were close by.

NE#1 interpreted the scene through a more severe lens than other attending Named Employees. This may have accelerated both his use of force and failure to consider all methods of de-escalation other than through the use of equipment, such as talking with CM#1, and controlling the scene in this manner. NE#5 stated that he knew the suspect had used a BB gun to shoot another shelter patron already and that the location of the BB gun was unknown and caused him concern. This version however differed to NE#1's understanding who stated that the gun had not been definitively identified as a BB gun. This difference underscores the importance of developing a tactical plan amongst all attending officers before engaging the subject in situations like this.

OPA agrees with FRU with respect to the lack of tactical planning done by the NE's present. Although some escalation tactics were considered by NE#1, they were not discussed as part of an overall approach plan thus rendering them ineffective. OPA believes that the "Time, Distance, Shielding" de-escalatory approach is as much a mind map, as opposed to just an action map. OPA believes that these deficiencies do not amount to a willful violation of policy but moreover a gap in training and as such is better addressed through a training referral. The desire for a sound de-escalatory tactical plan is evident across all Named Employees as each had differing opinions as to the severity of the call. Accordingly. OPA recommends that this allegation be Not Sustained – Training Referral.

- **Training Referral:** NE#1's chain of command should discuss OPA's findings with NE#1. The Training Referral should incorporate counseling and training on relevant sections of 8.100 - De-Escalation (1). Consideration should be given to running a mock practical with all NE's involved to walk them through de-escalation approaches in scenarios such as this. Details of this should be documented, and this documentation should be maintained in BlueTeam.

Recommended Finding: **Not Sustained - Training Referral**

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. Officers shall only use "objectively reasonable force, proportional to the threat or urgency of the situation, when necessary, to achieve a law-enforcement objective." 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 8.050.) The policy lists a number of factors that should be weighed when evaluating reasonableness. (See id.) Force is necessary where "no

reasonably effective alternative to the use of force appeared to exist” and “the amount of force used was reasonable to effect the lawful purpose intended.” (Id.) Lastly, the force used must be proportional to the threat posed to the officer. (Id.)

It was alleged that NE#1 may have violated SPD policy when he used his hand and elbow to pin the face of CM#1 to the ground. These actions are recorded on BWV and as such, these actions are not in dispute. NE#1’s Use of Force report indicated that he used his forearm to pin the CM#1’s head to the ground because initial attempts to hold her head with just his hands failed and CM#1 was able to spit on NE#5 and on him as well as the suspect bit his arm. NE#1 stated that using his forearm gained him more control and he was able to hold her head without being bitten or spat on. During the OPA interview, NE#1 reiterated the same reasoning for having used that approach.

OPA noted that in the original referral by FRU that “The Officers used great restraint by not using higher levels of force when it was reasonable and easily justified (necessary). This may have been because there were 4 Officers on scene and they knew they could overpower the subject or possibly because it was a female subject. Without an explanation in the Officers’ narratives or debrief we will not know. Either way, the Officers did use the lowest levels of force to control the subject.” NE#1 received medical attention as a result of the injuries sustained during his engagement with CM#1.

BWV showed how combative CM#1 was with attending Named Employees. NE#1 had probable cause to arrest the Complainant. Although this use of force may not have been required if Named Employees had employed robust de-escalation techniques, OPA finds the force was reasonable, necessary, and proportional, despite some possible tactical deficiencies. OPA does not find that the tactical deficiencies made the use of force unreasonable or disproportional to the totality of the circumstances. OPA does not believe that NE#1 violated policy in his engagement and use of force with the subject.

Accordingly, OPA recommends that this allegation be Not sustained – Lawful and Proper.

Recommended Finding: **Not Sustained - Lawful and Proper**

Named Employee #2 - Allegation #1

5.001 - Standards and Duties 6. Employees May Use Discretion

As indicated in SPD Policy 5.001-POL-6, “[e]mployees are authorized and expected to use discretion in a reasonable manner consistent with the mission of the department and duties of their office and assignment.” This policy further states that “[d]iscretion is proportional to the severity of the crime or public safety issue being addressed.” (SPD Policy 5.001-POL-6.)

It was alleged that NE#2 may have violated SPD policy when he used a pillow to cover CM#1’s face while she was being transported to Harborview Medical Center.

A review of BWV showed that prior to NE#2 using the pillow to cover CM#1's face, an AMR driver used a pillow to cover CM#1's face to prevent her from further spitting at those present. When CM#1 continued to spit at those present, NE#2 also used a pillow to cover CM#1's face. BWV depicted the application lasted for approximately 23 seconds.

When interviewed, NE#2 stated that he used the pillow as an improvised device as CM#1 had already removed two spit socks and was biting at people preventing another spit sock application. NE#2 stated that he only used this temporarily as he searched for something else to block the spitting. NE#2 stated that he did not apply any pressure and transitioned to a sheet to block the spitting when it became available. CM#1 had her head turned to the side when the pillow was applied.

OPA agrees with the FRU, that the optics of using a pillow in this manner are less than optimal. However, the context of what was occurring is of relevance here. CM#1 was continually spitting at all staff present. OPA found that NE#2 used the pillow more as a shield to prevent further assault on staff present with minimum pressure, if any pressure was used at all. OPA has concern with the fact that CM#1 was able to remove a spit sock three times while being restrained. As such, OPA recommends that SPD consider policy and training to address such circumstances.

Accordingly, OPA recommends that this allegation be Not Sustained – Management Action

Recommendation. Recommended Finding: **Not Sustained - Management Action**

Named Employee #3 - Allegation #1

8.100 - De-Escalation 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Will Use De-Escalation Tactics in Order to Reduce the Need for Force

Similar to NE#1, NE#3 stated that he was worried about the unknown factors in this case, namely "suicide by cop" and the unknown location of the BB gun. NE#3 is a Field Training officer and had a student with him during this call. NE#3 stated that his role was to stand back and evaluate his student during this call. NE#3 stated that used de-escalation by instructing his student to wait for additional officers prior to entering the building and discussing how he would be the primary officer on the call. NE#3 said that making sure that arriving officers formed a team before entering was a form of de-escalation. NE#3 further stated that when NE#1 arrived, he ensured that NE#1 came inside with them with his ballistic shield because NE#1 originally thought the call was for a disturbance outside in the parking lot.

NE#3 stated that he heard NE#1 shout commands at CM#1 to stop but that CM#1 continued to shout and stated that she would take officers guns. NE#3 stated that he was injured during the call. He believed he broke his arm during handcuffing. It did not appear that the suspect directly caused the broken arm but rather it happened from exertion during the struggle to handcuff the suspect.

Similar to the analysis above for Named Employee #1, Allegation #1, OPA agrees with the FRU with respect to the lack of tactical planning done by the Named Employees present. Although some de-escalation tactics were considered by NE#3, they were not discussed as part of an overall approach plan thus rendering them ineffective. OPA believes that the “Time, Distance, Shielding” de-escalatory approach is as much “a mind map” as opposed to “an action map.” OPA believes that these deficiencies do not amount to a willful violation of policy but moreover a gap in training and as such is better addressed through a training referral. The desire for a sound de-escalatory tactical plan is evident across all NEs as each had differing opinions as to the severity of the call.

Accordingly, OPA recommends that this allegation be Not Sustained – Training Referral.

- **Training Referral:** NE#3’s chain of command should discuss OPA’s findings with NE#3. The Training Referral should incorporate counseling and training on relevant sections of 8.100 - De-Escalation (1). Consideration should be given to running a mock practical with all NE’s involved to walk them through de-escalation approaches in scenarios such as this. Details of this should be documented, and this documentation should be maintained in BlueTeam.

Recommended Finding: **Not Sustained - Training Referral**

Named Employee #4 - Allegation #1

8.100 - De-Escalation 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Will Use De-Escalation Tactics in Order to Reduce the Need for Force

NE#4 was a student during this call with NE#3 as his FTO. Both he and his FTO were first to arrive at the scene. NE#4 had a brief discussion with NE#5 and indicated that he was going to take the lead on this call.

When interviewed NE#4 recalled being trained in “Time, Distance, Shielding and coming up with a plan before interacting.” NE#4 stated that the plan had been to “attempt to use verbals as were going in” to deescalate the situation. NE#4 stated that he and NE#5 spoke with a staff member who was going to try and calm CM#1 down so they decided to wait and monitor the situation. NE#4 stated that, as they entered, the situation changed suddenly and CM#1 started to spit and hit NE#1 and NE#3. NE#4 recalled CM#1 stating that she was going to grab the officers’ guns. NE#4 discussed the L formation adopted. This approach appears to have resulted from training, not a plan.

As was found in the analysis above for Named Employee #1, Allegation #1, OPA agrees with FRU with respect to the lack of tactical planning done by the NE’s present. Although some escalation tactics were considered by NE#3, they were not discussed or factored into an overall approach plan thus rendering them somewhat ineffective. OPA believes that the “Time, Distance, Shielding” de-escalatory approach is as much a mind map, as opposed to just an action map.

OPA believes that these deficiencies do not amount to a willful violation of policy but moreover a gap in training and as such is better addressed through a training referral.

As a matter of OPA precedent, student officers are normally moved to witness officers to facilitate the learning process. However, owing to the fact that NE#4 was the primary in this case and owing to the issues raised in this case, the application of spit socks, and removals of same by CM#1, OPA left NE#4 as a Named Employee as they could benefit from the learning points in this case.

In addition to this, and similar to the discussion of de-escalation allegation in NE#1 and NE#3, OPA believes that NE#4 would benefit from a mock practical with respect to a re-run of this incident and understanding what de-escalation techniques could be used. The desire for a sound de-escalatory tactical plan is evident across all Named Employees as each had differing opinions as to the severity of the call.

OPA recommends that this allegation be Not Sustained – Training Referral.

- **Training Referral:** NE#4's chain of command should discuss OPA's findings with NE#4. The Training Referral should incorporate counseling and training on relevant sections of 8.100 - De-Escalation (1). Consideration should be given to running a mock practical with all NE's involved to walk them through de-escalation approaches in scenarios such as this. Details of this should be documented, and this documentation should be maintained in BlueTeam.

Recommended Finding: **Not Sustained - Training Referral**

Named Employee #5 – Allegation #1

8.100 - De-Escalation 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Will Use De-Escalation Tactics in Order to Reduce the Need for Force

NE#5 was the FTO for NE#4. NE#5 first entered the building with NE#4. NE#5 noted the staff as being frantic in attempting to deal with CM#1. NE#5 stated explained that he knew the suspect had used a BB gun to shoot another shelter patron already and that the location of the BB gun was unknown and caused him concern. OPA noted that this differed with NE#1's understanding who stated that the gun had not been definitively known to be a BB gun prior to arresting the suspect. This difference underlines the importance of appropriate tactical planning to identify what is known with respect to attendance at these calls.

The analysis is the same as identified above for Named Employee #1, Allegation #1. OPA agrees with FRU with respect to the lack of tactical planning done by the Named Employees present. NE#5 stated that he made eye contact with NE#1 as they had been partners for 2.5 years and that OPA believes that they both had the idea that the suspect must have limited

access to possibly assault staff, so they both moved forward. NE#5 spoke of an L formation approach as a trained control tactic in situations such as this.

The “Time, Distance, Shielding” de-escalatory approach is as much a mind map, as opposed to an action map. OPA believes that these deficiencies do not amount to a willful violation of policy but moreover a gap in training and as such is better addressed through a training referral. The desire for a sound de-escalatory tactical plan is evident across all Named Employees as each had differing opinions as to the severity of the call.

Accordingly. OPA recommends that this allegation be Not Sustained – Training Referral.

- **Training Referral:** NE#5’s chain of command should discuss OPA’s findings with NE#5. The Training Referral should incorporate counseling and training on relevant sections of 8.100 - De-Escalation (1). Consideration should be given to running a mock practical with all NE’s involved to walk them through de-escalation approaches in scenarios such as this. Details of this should be documented, and this documentation should be maintained in BlueTeam.

Recommended Finding: **Not Sustained - Training Referral**