

CIVILIAN POLICE OVERSIGHT ADVISORY BOARD (CPOAB)

BOARD AGENDA

Tuesday, May 7, 2024, at 5:00 PM
Vincent E. Griego Chambers

Aaron Calderon, Board Chair
Rowan Wymark, Board Vice-Chair
Zander Bolyanatz, Board Member
Shama Newton, Board, Member
Gail Oliver, Board Member
Diane McDermott, Executive Director, CPOA

Viewing: Members of the public will have the ability to view the meeting through GOVTV on Comcast Channel 16, or to stream live on the GOVTV website at: <https://www.cabq.gov/culturalservices/govtv>, or on YouTube at: <https://www.cabq.gov/cpoa/events/civilian-police-oversight-advisory-board-meeting-05-07-2024>. The GOVTV live stream can be accessed from most smartphones, tablets, or computers at these addresses.

- I. Welcome, Call to Order and Roll Call** – *Aaron Calderon, Chair*
- II. Pledge of Allegiance**
- III. Approval of the Agenda**
- IV. Public Comments**
[Public comment shall be limited to three minutes unless extended by the Chairperson]
- V. Review and Approval of Minutes**
 - a. April 11, 2024**
- VI. Reports from City Departments:**
 - a. APD**
 - 1. Internal Affairs Professional Standards (IAPS)** – *Acting Commander Kenneth Johnston*
 - 2. Internal Affairs Force Division (IAFD)** – *Commander Scott Norris*
 - b. ACS-** *Jodie Esquibel, Deputy Director*
 - c. City Attorney-** *Lindsey Rosebrough, Managing Attorney*
 - d. City Council-** *Chris Sylvan, Council Services*
 - e. CPC-** *Kelly Mensah, CPC Liaison*
 - f. Mayor's Office-** *Doug Small, Director of Public Affairs*
 - g. CPOA** – *Diane McDermott, Executive Director*
 - 1. Non-Concurrence Memo CPC 261-23**

VII. Appeals

a. CPC # 274-22

- i. **Hearing on CPC #274-22**
- ii. CLOSED SESSION pursuant to Section 10-15-1(H)(3) NMSA 1978, excluding deliberations by the CPOAB in connection with an administrative adjudicatory proceeding from the requirements of the NM Open Meetings Act.

b. CPC # 107-23

- i. **Hearing on CPC #107-23**
- ii. CLOSED SESSION pursuant to Section 10-15-1(H)(3) NMSA 1978, excluding deliberations by the CPOAB in connection with an administrative adjudicatory proceeding from the requirements of the NM Open Meetings Act.

c. CPC # 134-23

- i. **Hearing on CPC #134-23**
- ii. CLOSED SESSION pursuant to Section 10-15-1(H)(3) NMSA 1978, excluding deliberations by the CPOAB in connection with an administrative adjudicatory proceeding from the requirements of the NM Open Meetings Act.

VIII. Serious Use of Force Case: [Standing Item]

IX. Officer-Involved Shooting Cases: [Standing Item]

X. Reports from CPOAB Subcommittees

a. Policy and Procedure Review Subcommittee – Gail Oliver

1. Met on May 2, 2024, at 3:00 p.m.
2. Next Meeting: June 6, 2024, at 3:00 p.m.
3. Update on APD Policy and Procedure Meetings

b. Ad Hoc Rules Subcommittee – Aaron Calderon

1. Met: April 17, 2024, at 4:00 p.m.
2. Next meeting: May 15, 2024, at 4:00 p.m.
3. Update on Ad Hoc Rules Subcommittee

XI. Discussion and Possible Action:

a. APD Policy Recommendations - Aaron Calderon, Chair

1. SOP 1-48 (Formerly 8-3) Fiscal Division
2. SOP 1-53 (Formerly 5-3) Homicide Unit
3. SOP 2-113 Custom Notification Gun Buy-Back (CNGBB) Program
4. SOP 1-27 (Formerly 5-3) Cold Case Unit
5. SOP 1-59 (Formerly 4-1 and 4-4) Impact Teams
6. SOP 2-4 Use of Respirators
7. SOP 2-14 Use of Cell-Site Simulator Technology
8. SOP 2-25 (Formerly 1-28) Bomb Threats and Bomb Emergencies

9. SOP 2-60 (Formerly 2-24) Preliminary and Follow-up Criminal Investigations
10. SOP 2-112 Violence Intervention Program Call-in
11. SOP 3-15 (Formerly 3-11) Sworn Personnel Positions and Seniority
12. SOP 3-15 (Formerly 2-10 and 4-11) Bid Process

- b. **Update on Serious Use of Force Case Process for CPOA Board** - *Aaron Calderon, Chair*
- c. **CPOAB Mandatory Training Check-in** - *Aaron Calderon, Chair*

XII. CPOA Board's Review of Garrity Materials: [Standing Item]

XIII. Meeting with Counsel re: Pending Litigation or Personnel Issues: [Standing Item]

a. Discussion and Possible Action re:

1. CLOSED SESSION pursuant to Section 10-15-1(H)(7), NMSA 1978, excluding meetings subject to the attorney-client privilege pertaining to threatened or pending litigation in which the public body is or may become a participant from the requirements of the NM Open Meetings Act.

XIV. Other Business

XV. Adjournment

- a. *The next scheduled Board meeting will be held on Thursday, June 13, 2024, at 5:00 p.m. in the Vincent E. Griego Chambers.*

ATTENTION: Unless the board decides otherwise, a dinner break will occur during the meeting at a natural breaking point.

CITY OF ALBUQUERQUE



CIVILIAN POLICE OVERSIGHT ADVISORY BOARD

Aaron Calderon, Board Chair
Rowan Wymark, Board Vice-Chair
Zander Bolyanatz, Board Member
Shama Newton, Board, Member
Gail Oliver, Board Member
Diane McDermott, Executive Director, CPOA

May 7, 2024

Via Email

[Redacted]

Re: Notice of Appeal Decision for CPC # 274-22 (Ofc. M)

PO Box 1293 **APPEAL FINDINGS:**

Albuquerque Mr. B A , an appeal hearing was scheduled for May 7, 2024, at 5 pm, in response to your appeal request submitted on January 5, 2024. We sincerely appreciate your patience during the time it took to convene the new board. To ensure thorough preparation for the hearing, all pertinent materials were sent to you on April 28, 2024.

NM 87103

We appreciate your diligence in bringing your concerns to the attention of the CPOA and CPOAB. Through investigations and appeals initiated by Albuquerque citizens and visitors, valuable information is gathered to potentially inform policy recommendations to the chief of police, the mayor's office, and the city council when deemed appropriate.

www.cabq.gov

Mr. A , you did advise the CPOA team that you would not be able to attend the appeal hearing but would like for your appeal email to be considered as your presentation for the hearing. The board carefully reviewed your email. In accordance with our procedures, any reconsideration of findings requires satisfying at least one of the three specified criteria outlined in your original finding's documentation. Unfortunately, due to the absence of any additional information provided in your written request for an appeal, we are unable to proceed with any consideration of adjustments to the CPOA Executive Directors' findings.

Therefore, we uphold, confirm, and stand by the findings of the CPOA Executive Director.

MATERIALS REVIEWED BY THE BOARD:

Video(s): Yes

APD Report(s): Yes

CAD Report(s): Yes

Complainant Appeared: No

Witness(es) Appeared: No

APD Employee Appeared: No

APD Employee Involved: Officer "M"

Date Hearing Completed: May 7, 2024

APPEAL FINDINGS

Policy Upheld: 2.16.5.B.1.1

1. **Unfounded.** Investigation classification when the investigator(s) determines, by clear and convincing evidence, that alleged misconduct did not occur or did not involve the subject officer.



2. **Sustained.** Investigation classification when the investigator(s) determines, by a preponderance of the evidence, the alleged misconduct did occur by the subject officer.

☐

3. **Not Sustained.** Investigation classification when the investigator(s) is unable to determine one way or the other, by a preponderance of the evidence, whether the alleged misconduct either occurred or did not occur.

☐

4. **Exonerated.** Investigation classification where the investigator(s) determines, by a preponderance of the evidence, that alleged conduct in the underlying complaint did occur but did not violate APD policies, procedures, or training.

☐

5. **Sustained Violation Not Based on Original Complaint.** Investigation classification where the investigator(s) determines, by a preponderance of the evidence, misconduct did occur that was not alleged in the original complaint (whether CPC or internal complaint) but that other misconduct was discovered during the investigation, and by a preponderance of the evidence, that misconduct did occur.

☐

6. **Administratively Closed.** Investigation classification where the investigator determines: The policy violations of a minor nature and do not constitute a pattern of misconduct (i.e. a violation subject to a class 7 sanction, -the allegations are duplicative; -the allegations, even if true, do not constitute misconduct; or -the investigation cannot be conducted because of the lack of information in the complaint, and further investigation would be futile.

☐

Additional Comments:

2.16.5B.1.1- Unfounded- The CPOA investigation determined that Ofc. "M" did not refuse to write a report or state that he was going to provide a report to Mr. A

We uphold, confirm, and stand by the findings of the CPOA Executive Director.

You have exercised your right to appeal this decision as specified in the Oversight Ordinance 9-4-1-10. As was explained in the hearing proceedings in order for the Advisory Board to modify the Director's findings your appeal must demonstrate one or more of the following:

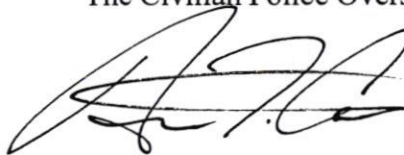
- 1) A policy was misapplied in the evaluation of the complaint;
- 2) That the findings or recommendations were arbitrary, capricious or constituted an abuse of discretion; or
- 3) that the findings and recommendations were not consistent with the record evidence.

The Advisory Board has considered the statements provided by you, the complainant, any witnesses you may have provided, any evidence if deemed admissible, the Agency's position, the Albuquerque Police Department's position and the officer's position if the officer chose to appear.

The Advisory Board may only modify or change the findings and/or recommendations and make further recommendations if one of the above listed conditions was met. The details of the findings are on the second page of this communication.

Thank you for participating in the process of the Civilian Oversight of the Police, ensuring officers and personnel of the APD are held accountable, and improving the process.

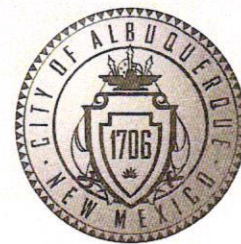
Sincerely,
The Civilian Police Oversight Advisory Board by

A handwritten signature in black ink, appearing to read 'A. Calderon', with a stylized flourish at the end.

Aaron Calderon, Chair
(505) 924-3770

cc: Civilian Police Oversight Agency
Office of Police Reform

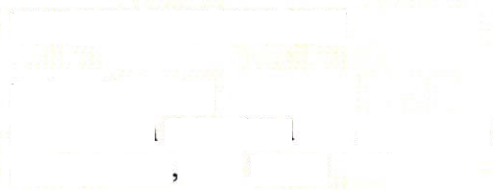
CITY OF ALBUQUERQUE



CIVILIAN POLICE OVERSIGHT AGENCY

August 31, 2023

Via Certified Mail



Re: CPC # 107-23

Mr. D

PO Box 1293

Albuquerque

NM 87103

www.cabq.gov

COMPLAINT:

Mr. D alleged that he was physically assaulted by two brothers that live in the next-door apartment. Mr. D claimed the brothers, N and R, should have been arrested and charged with assault. The responding officers were negligent when they failed to arrest both brothers and knew or should have known that an assault was an arrestable criminal offense.

EVIDENCE REVIEWED:

Video(s): Yes

APD Report(s): Yes

CAD Report(s): Yes

Complainant Interviewed: Yes

Witness(es) Interviewed: N/A

APD Employee Interviewed: Yes

APD Employee Involved: Officer H

Other Materials: N/A

Date Investigation Completed: August 17, 2023

FINDINGS

1. **Unfounded.** Investigation classification when the investigator(s) determines, by clear and convincing evidence, that alleged misconduct did not occur or did not involve the subject officer. ☐

2. **Sustained.** Investigation classification when the investigator(s) determines, by a preponderance of the evidence, the alleged misconduct did occur by the subject officer. ☐

3. **Not Sustained.** Investigation classification when the investigator(s) is unable to determine one way or the other, by a preponderance of the evidence, whether the alleged misconduct either occurred or did not occur. ☐

Policies Reviewed: 2.71.4.A.1

4. **Exonerated.** Investigation classification where the investigator(s) determines, by a preponderance of the evidence, that alleged conduct in the underlying complaint did occur but did not violate APD policies, procedures, or training. ☒

5. **Sustained Violation Not Based on Original Complaint.** Investigation classification where the investigator(s) determines, by a preponderance of the evidence, misconduct did occur that was not alleged in the original complaint (whether CPC or internal complaint) but that other misconduct was discovered during the investigation, and by a preponderance of the evidence, that misconduct did occur. ☐

6. **Administratively Closed.** Investigation classification where the investigator determines: The policy violations of a minor nature and do not constitute a pattern of misconduct (i.e. a violation subject to a class 7 sanction, -the allegations are duplicative; -the allegations, even if true, do not constitute misconduct; or -the investigation cannot be conducted because of the lack of information in the complaint, and further investigation would be futile. ☐

Additional Comments:

After reviewing all available evidence, the investigation determined, that Officer H committed no policy violation for failing to arrest Noah and Romero Ramos for an assault against Mr. D

The investigation determined that both parties acted in self-defense. From Mr. Donovan's point of view, it was understandable that Noah and Romero should have been arrested for assault when at first, words were exchanged, a threatened approach, Mr. D was punched, and the gun was taken. Also, it was reasonable for the brothers to believe something terrible would happen when Mr. D reached for his gun. The brothers did not aggravate the situation once Mr. D was on the ground and his gun taken. There was insufficient evidence to file charges against the brothers or Mr. D

You have the right to appeal this decision. If you are not satisfied with the findings of the CPOA Executive Director within 30 calendar days (inclusive of holiday and weekends) of receipt of this letter, communicate your desire to have an appeal hearing before the CPOA Advisory Board in a signed writing addressed to the CPOA Director. Please send your request to P.O. Box 1293, Albuquerque, NM 87103 or by email CPOA@cabq.gov. Include your CPC number. Please note, **at this time the Advisory Board is being reconfigured so no hearings will take place until regularly scheduled meetings occur. If your appeal request is filed timely you will be notified of when your appeal will be scheduled and more information will follow. Once normal procedures resume the appeal hearings will proceed as specified in the Oversight Ordinance 9-4-1-10. In order for the Advisory Board to modify the Director's findings your appeal must demonstrate one or more of the following:**

- A) The findings by the Director had no explanation that would lead to the conclusion made; or,
- B) The findings by the Director were not supported by evidence that was available at the time of the investigation; or,
- C) The APD policy or APD policies that were considered by the Director were the wrong policies or they were used in the wrong way; or,
- D) The APD policy or APD policies considered by the Director were chosen randomly or they do not address the issues in your complaint.

Administratively closed complaints may be re-opened if additional information becomes available. Please provide your additional information in writing to the CPOA Director as listed above.

If you are not satisfied with the final disciplinary decision of the Chief of Police or any matter relating to the Chief's handling of the complaint you may request a review of the complaint by the City's Chief Administrative Officer. Your request must be in writing and within 30 calendar days (inclusive of holidays and weekends) of receipt of this letter. Include your CPC number. The review by the Chief Administrative Officer will not be delayed as it is not dependent upon the Advisory Board.

If you have a computer available, we would greatly appreciate your completing our client survey form at <http://www.cabq.gov/cpoa/survey>.

Thank you for participating in the process of civilian oversight of the police, ensuring officers and personnel of the APD are held accountable, and improving the process.

Sincerely,
The Civilian Police Oversight Agency by



Diane McDermott
Interim Executive Director
(505) 924-3770

cc: Albuquerque Police Department Chief of Police

CITY OF ALBUQUERQUE



CIVILIAN POLICE OVERSIGHT AGENCY

August 31, 2023

Via Certified Mail

7009 3410 0000 2321 2347

R D
6210 Indian School Rd NE Apt D-110
Albuquerque, NM 87110

Re: CPC # 107-23

Mr. D

PO Box 1293

Albuquerque

NM 87103

www.cabq.gov

COMPLAINT:

Mr. D alleged that he was physically assaulted by two brothers that live in the next-door apartment. Mr. D claimed the brothers, N h and R , should have been arrested and charged with assault. The responding officers were negligent when they failed to arrest both brothers and knew or should have known that an assault was an arrestable criminal offense.

EVIDENCE REVIEWED:

Video(s): Yes

APD Report(s): Yes

CAD Report(s): Yes

Complainant Interviewed: Yes

Witness(es) Interviewed: N/A

APD Employee Interviewed: Yes

APD Employee Involved: Officer S

Other Materials: N/A

Date Investigation Completed: August 17, 2023

FINDINGS

1. **Unfounded.** Investigation classification when the investigator(s) determines, by clear and convincing evidence, that alleged misconduct did not occur or did not involve the subject officer. ☐

2. **Sustained.** Investigation classification when the investigator(s) determines, by a preponderance of the evidence, the alleged misconduct did occur by the subject officer. ☐

3. **Not Sustained.** Investigation classification when the investigator(s) is unable to determine one way or the other, by a preponderance of the evidence, whether the alleged misconduct either occurred or did not occur. ☐

Policies Reviewed: 2.71.4.A.1

4. **Exonerated.** Investigation classification where the investigator(s) determines, by a preponderance of the evidence, that alleged conduct in the underlying complaint did occur but did not violate APD policies, procedures, or training. ☒

5. **Sustained Violation Not Based on Original Complaint.** Investigation classification where the investigator(s) determines, by a preponderance of the evidence, misconduct did occur that was not alleged in the original complaint (whether CPC or internal complaint) but that other misconduct was discovered during the investigation, and by a preponderance of the evidence, that misconduct did occur. ☐

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Additional Comments:

After reviewing all available evidence, the investigation determined, that Officer S committed no policy violation for failing to arrest Noah and Romero Ramos for an assault against Mr. D .

The investigation determined that both parties acted in self-defense. From Mr. Donovan's point of view, it was understandable that Noah and Romero should have been arrested for assault when at first, words were exchanged, a threatened approach, Mr. D was punched, and the gun was taken. Also, it was reasonable for the brothers to believe something terrible would happen when Mr. D reached for his gun. The brothers did not aggravate the situation once Mr. D was on the ground and his gun taken. There was insufficient evidence to file charges against the brothers or Mr. D .

You have the right to appeal this decision. If you are not satisfied with the findings of the CPOA Executive Director within 30 calendar days (inclusive of holiday and weekends) of receipt of this letter, communicate your desire to have an appeal hearing before the CPOA Advisory Board in a signed writing addressed to the CPOA Director. Please send your request to P.O. Box 1293, Albuquerque, NM 87103 or by email CPOA@cabq.gov. Include your CPC number. Please note, **at this time the Advisory Board is being reconfigured so no hearings will take place until regularly scheduled meetings occur. If your appeal request is filed timely you will be notified of when your appeal will be scheduled and more information will follow. Once normal procedures resume the appeal hearings will proceed as specified in the Oversight Ordinance 9-4-1-10. In order for the Advisory Board to modify the Director's findings your appeal must demonstrate one or more of the following:**

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- C) The APD policy or APD policies that were considered by the Director were the wrong policies or they were used in the wrong way; or,
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If you are not satisfied with the final disciplinary decision of the Chief of Police or any matter relating to the Chief's handling of the complaint you may request a review of the complaint by the City's Chief Administrative Officer. Your request must be in writing and within 30 calendar days (inclusive of holidays and weekends) of receipt of this letter. Include your CPC number. The review by the Chief Administrative Officer will not be delayed as it is not dependent upon the Advisory Board.

If you have a computer available, we would greatly appreciate your completing our client survey form at <http://www.cabq.gov/cpoa/survey>.

Thank you for participating in the process of civilian oversight of the police, ensuring officers and personnel of the APD are held accountable, and improving the process.

Sincerely,
The Civilian Police Oversight Agency by



Diane McDermott
Interim Executive Director
(505) 924-3770

cc: Albuquerque Police Department Chief of Police

CITY OF ALBUQUERQUE



CIVILIAN POLICE OVERSIGHT ADVISORY BOARD

Aaron Calderon, Board Chair
Rowan Wymark, Board Vice-Chair
Zander Bolyanatz, Board Member
Shama Newton, Board, Member
Gail Oliver, Board Member
Diane McDermott, Executive Director, CPOA

May 7, 2024

Via Email

[REDACTED]
[REDACTED] e [REDACTED] 1

Re: Notice of Appeal Decision for CPC # 134-23 (Ofc. P)

PO Box 1293 **APPEAL FINDINGS:**

Albuquerque Mr. D [REDACTED] R [REDACTED], an appeal hearing was scheduled for May 7, 2024, at 5 pm, in response to your appeal request submitted on October 15, 2023. We sincerely appreciate your patience during the time it took to convene the new board. To ensure thorough preparation for the hearing, all pertinent materials were sent to you on April 29, 2024.

NM 87103 We appreciate your diligence in bringing your concerns to the attention of the CPOA and CPOAB. Through investigations and appeals initiated by Albuquerque citizens and visitors, valuable information is gathered to potentially inform policy recommendations to the chief of police, the mayor's office, and the city council when deemed appropriate.
www.cabq.gov

Regrettably, you were not in attendance for the scheduled appeal hearing, neither virtually nor in-person. It's important to note that no formal request for a postponement or rescheduling of the appeal hearing was received prior to the designated time. In accordance with our procedures, any reconsideration of findings requires satisfying at least one of the three specified criteria outlined in your original finding's documentation. Unfortunately, due to the absence of any additional information provided by your written request for an appeal, we are unable to proceed with any consideration of adjustments to the CPOA Executive Directors' findings.

Therefore, we uphold, confirm, and stand by the findings of the CPOA Executive Director.

MATERIALS REVIEWED BY THE BOARD:

Video(s): Yes

APD Report(s): Yes

CAD Report(s): Yes

Complainant Appeared: No

Witness(es) Appeared: No

APD Employee Appeared: No

APD Employee Involved: Officer "P"

Date Hearing Completed: May 7, 2024

APPEAL FINDINGS

Policy Upheld: 1.1.5A.4

1. **Unfounded.** Investigation classification when the investigator(s) determines, by clear and convincing evidence, that alleged misconduct did not occur or did not involve the subject officer.



Policy Upheld: 2.60.4.B.1

2. **Sustained.** Investigation classification when the investigator(s) determines, by a preponderance of the evidence, the alleged misconduct did occur by the subject officer.



3. **Not Sustained.** Investigation classification when the investigator(s) is unable to determine one way or the other, by a preponderance of the evidence, whether the alleged misconduct either occurred or did not occur.



4. **Exonerated.** Investigation classification where the investigator(s) determines, by a preponderance of the evidence, that alleged conduct in the underlying complaint did occur but did not violate APD policies, procedures, or training.



Policy Upheld: 2.8.5.A

5. **Sustained Violation Not Based on Original Complaint (SVNBOC).** Investigation classification where the investigator(s) determines, by a preponderance of the evidence, misconduct did occur that was not alleged in the original complaint (whether CPC or internal complaint) but that other misconduct was discovered during the investigation, and by a preponderance of the evidence, that misconduct did occur.



6. **Administratively Closed.** Investigation classification where the investigator determines: The policy violations of a minor nature and do not constitute a pattern of misconduct (i.e. a violation subject to a class 7 sanction, -the allegations are duplicative; -the allegations, even if true, do not constitute misconduct; or -the investigation cannot be conducted because of the lack of information in the complaint, and further investigation would be futile.



Additional Comments:

1.1.5A.4-Unfounded- Ofc. P was not responsible for the loss of Mr. Reese's Car for failing to notify him that his vehicle was located a day prior to a police report being filed with APD.

2.60.4.B.1-Sustained- The CPOA investigation determined by a preponderance of evidence that Ofc. P violated policy for not notifying a detective unit, such as auto theft for follow-up.

2.8.5.A-SVNBOC-The CPOA investigation determined that Ofc. P violated policy not based on the original complaint. Ofc. P, failed to activate their OBRD during the initial conversation with Mr. Re

We uphold, confirm, and stand by the findings of the CPOA Executive Director.

You have exercised your right to appeal this decision as specified in the Oversight Ordinance 9-4-1-10. As was explained in the hearing proceedings in order for the Advisory Board to modify the Director's findings your appeal must demonstrate one or more of the following:

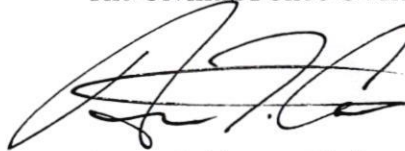
- 1) A policy was misapplied in the evaluation of the complaint;
- 2) That the findings or recommendations were arbitrary, capricious or constituted an abuse of discretion; or
- 3) that the findings and recommendations were not consistent with the record evidence.

The Advisory Board has considered the statements provided by you, the complainant, any witnesses you may have provided, any evidence if deemed admissible, the Agency's position, the Albuquerque Police Department's position and the officer's position if the officer chose to appear.

The Advisory Board may only modify or change the findings and/or recommendations and make further recommendations if one of the above listed conditions was met. The details of the findings are on the second page of this communication.

Thank you for participating in the process of the Civilian Oversight of the Police, ensuring officers and personnel of the APD are held accountable, and improving the process.

Sincerely,
The Civilian Police Oversight Advisory Board by

A handwritten signature in black ink, appearing to read 'A. Calderon', with a stylized flourish at the end.

Aaron Calderon, Chair
(505) 924-3770

cc: Civilian Police Oversight Agency
Office of Police Reform