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City of Albuquerque

Civilian Police Oversight Agency



Diane McDermott
Executive Director

Civilian Police Oversight Agency (CPOA) Mediation/Facilitated Resolution Program Policy

I. Purpose

The mediation program provides impartial, independent mediation, conflict engagement, and facilitated dispute-resolution sessions between civilian complainants and Albuquerque Police Department (APD) personnel. In accordance with the oversight ordinance, mediation shall serve as the principal mechanism for addressing specific community-police complaints when deemed appropriate. The mediation and facilitated resolution program offers an opportunity to voluntarily participate in a structured, facilitated dialogue that promotes communication, understanding, conflict resolution, and community trust.

The program is intended to provide an alternative resolution process for eligible complaints that may be more effectively resolved through constructive dialogue rather than through a formal administrative investigation. The program fosters constructive dialogue and strengthens community-police relations.

The CPOA ordinance Section 9-4-1-4-C-2-d states, “*Mediation First. Whenever possible, and as further described in § 9-4-1-6(C)(3), mediation should be the first option for resolution of civilian police complaints.*” Furthermore, the ordinance emphasizes in section 9-4-1-6-C-3 that “(3) *If appropriate, mediation should be the first option for resolution of civilian police complaints. Mediators should be independent of the CPOA, APD, and the City, and should not be former officers or employees of APD. At the discretion of the Director, an impartial system of mediation should be considered appropriate for certain complaints. If all parties involved reach an agreement, no investigation will occur. If the complainant fails to participate in good faith as determined by the mediator, no investigation will occur. If the officer involved fails to participate in good faith as determined by the mediator, the CPOA investigation will occur. The CPOA and APD shall coordinate to develop a mediation program that aims to allow civilian police complainants and officers the opportunity to communicate directly regarding disputes, find areas of agreement, and reach their own solutions. APD should ensure that officers have mentorship resources available in advance of mediation that explain the mediation process and the benefits it provides for officers and their relationships with the citizens they serve.*”

II. Program Authority

Nothing in this policy is intended to alter or limit the mediation program authorized by Article 9-4-1 ROA 1994. The term “mediation” as used in the ordinance refers to the facilitated resolution program administered by the CPOA. Pursuant to Section 44-7B-3(B)(4) NMSA 1978, the CPOA declares that this program operates outside the scope of the New Mexico Mediation Procedures Act (NMMPA) and

any mediation conducted pursuant to this policy shall not be covered by any of the provisions of the NMMPA. The program is intended to serve as a facilitated conflict-resolution and community-engagement process rather than as statutory mediation governed by the NMMPA. The program is not intended to create the privileges, confidentiality protections, or other legal rights established under that NMMPA unless otherwise required by law.

III. Program Principles

The program shall be guided by the following principles:

- i. Voluntary participation;
- ii. Neutral facilitation;
- iii. Respectful dialogue;
- iv. Good-faith participation;
- v. Fairness and procedural justice;
- vi. Problem-solving and conflict resolution;
- vii. Community trust-building; and
- viii. Recognition that participants may experience the same event differently.

IV. Mediators/Facilitators

Mediators or facilitators shall be independent individuals or organizations contracted by the CPOA. They shall not be part of the CPOA, APD, or the City of Albuquerque in accordance with the oversight ordinance. Their role is to encourage communication, facilitate discussion, promote understanding, and assist participants in identifying potential resolutions. They should possess training or experience in mediation, conflict resolution, restorative practices, community engagement, behavioral health, or related fields. They shall disclose any actual or perceived conflict of interest prior to participation in a matter. Mediators or facilitators shall not:

- i. Conduct administrative investigations;
- ii. Determine policy violations;
- iii. Recommend discipline;
- iv. Render findings of fact;
- v. Determine credibility; or
- vi. Advocate for either participant.

Mediation sessions may be conducted in person, virtually, by phone, or in a hybrid format, as determined by the facilitator and approved by the CPOA.

V. Voluntary Participation

Participation in the program is voluntary, and outcomes are described herein for both participation and nonparticipation. Either participant may decline participation or withdraw at any time. Participation in facilitated resolution shall not constitute an admission of misconduct, liability, wrongdoing, or policy violation. If the involved APD personnel decline to participate in the mediation or facilitated resolution process after being referred by the CPOA, the complaint will proceed through the standard complaint investigation process. If the complainant does not participate in the mediation or fails to participate in good faith, as determined by the mediator/facilitator, no investigation will occur.

Facilitators may hold separate meetings with participants before, during, or after mediation when doing so may assist communication, improve understanding, or facilitate resolution. The selected format should consider participant accessibility, safety, scheduling, and the likelihood of productive dialogue. Participants may request the attendance of a support person (e.g. interpreter, parent, caregiver, etc.) during facilitated sessions. The facilitator may limit their participation or attendance when necessary to preserve the effectiveness, neutrality, or integrity of the process.

VI. Complaint Eligibility

Complaints may be considered for mediation or facilitated conflict resolution when the primary issues involve communication, professionalism, service delivery, misunderstanding, or procedural justice concerns.

Eligible complaints may include, but are not limited to:

- i. Perceived rudeness, discourtesy, or unprofessional conduct;
- ii. Communication concerns;
- iii. Failure to adequately explain police actions, procedures, or decisions;
- iv. Service dissatisfaction or customer service concerns;
- v. Perceived lack of responsiveness or follow-up;
- vi. Minor procedural concerns;
- vii. Complaints regarding non-fatal traffic crash investigations;
- viii. Allegations regarding inaccuracies in reports;
- ix. Complaints arising from misunderstandings or differing perceptions of an interaction;
- x. Complaints where the primary issue appears to stem from communication barriers, behavioral health issues, crisis-related interactions, or differing perceptions, provided the complaint does not otherwise fall within an exclusion category;
- xi. Complaints submitted by individuals with a history of repeated complaints that have not resulted in sustained findings when the Executive Director determines facilitated dialogue may assist in addressing recurring concerns;
- xii. Allegations involving minor misconduct, professionalism concerns, service-delivery issues, or policy violations that would not reasonably be expected to result in significant discipline.
- xiii. Complaints of a less severe nature (class 6 or 7 violations) deemed suitable for mediation by the Executive Director.

VII. Complaints Not Eligible for Mediation

The following complaints are generally not eligible for mediation:

- i. Officer-involved shootings;
- ii. Serious use of force incidents;
- iii. Allegations involving a use of force that resulted in injury as a direct result of an officer's actions or required a force investigation
- iv. In-custody deaths;
- v. Cases involving alleged officer criminal conduct;
- vi. Complaints that specifically allege, or the use of derogatory language/insult based upon a protected characteristic;
- vii. Cases involving pending civil or criminal litigation arising from the same incident;

- viii. Any other matter deemed ineligible for mediation by the Executive Director.

VIII. Officer Eligibility

An officer may be eligible for participation when:

- i. The officer has not received a sustained finding for similar misconduct within the preceding twelve months;
- ii. The officer has not participated in mediation for similar conduct within the preceding six months, unless approved by the Executive Director;
- iii. No conflict of interest exists between the parties;
- iv. The complaint is otherwise eligible under this policy;
- v. Participation would further the goals of communication, understanding, and resolution; and
- vi. Additional eligibility considerations may apply at the discretion of the Executive Director.

IX. Screening and Referral

The Executive Director or designee will determine whether a complaint is appropriate for mediation. In making this determination, consideration will be given to the aforementioned criteria and the potential benefits that could be achieved through facilitated dialogue to build trust and promote community-policing relations.

Complaints may be referred to mediation at intake, during preliminary review, or at any stage prior to the issuance of investigative findings.

X. Confidentiality

The CPOA encourages participants and facilitators to maintain the confidentiality of discussions during facilitated mediation and conflict resolution sessions.

The CPOA will maintain records for semi-annual data reporting purposes, to include:

- i. Referral to mediation form;
- ii. Civilian police complaint;
- iii. Relevant police documents; and
- iv. Outcome of mediation form listing participation, participant satisfaction, successful or unsuccessful facilitation as deemed by the mediator/facilitator

Mediators/facilitators shall not disclose information obtained during a session except as required by law, contract or CPOA policy.

XI. Completion of Mediation

A mediation shall be considered successfully completed when the participants have completed the facilitated resolution dialogue and the facilitator determines that meaningful participation occurred. Participants are not required to reach agreement on the facts of the incident. Participants are not required to execute a settlement agreement. The facilitator's submission of the mediation outcome

form will indicate the conclusion of the mediation. Successful completion or the facilitator's determination of meaningful participation will result in the closure of the complaint in accordance with the police oversight ordinance and this policy. The facilitator may also deem the mediation completed after unsuccessful attempts to obtain the complainant's participation. The case will be assigned for investigation only if the respective APD personnel choose not to participate or if the facilitator determines that they did not participate in good faith.

XII. Executive Director Discretion

The Executive Director may approve exceptions to any eligibility criteria in this policy when doing so furthers the program's objectives and is consistent with the public interest, fairness, and the effective resolution of complaints.

The Executive Director retains final authority regarding referral, acceptance, continuation, termination, and completion of any mediation conducted under this program.

XIII. Good-Faith Participation

Good-faith participation includes:

- i. Attending scheduled meetings or sessions;
- ii. Engaging respectfully with all participants;
- iii. Allowing participants an opportunity to speak without interruption;
- iv. Refraining from threatening, abusive, intimidating, or disruptive behavior; and
- v. Making a sincere effort to engage in constructive dialogue.

The facilitator may terminate mediation dialogue if the mediator determines the participants are unable or unwilling to conduct themselves according to the elements set forth above.

XIV. Failure to Participate or Withdrawal

A participant or complainant who repeatedly fails to respond to communications, attend scheduled sessions, or otherwise engage in the process may be deemed to have withdrawn from mediation. The CPOA will not reopen an investigation into the same matter if the complainant does not engage in the process or withdraws from participation.

APPROVED:

Diane McDermott
Executive Director