



CIVILIAN POLICE REVIEW BOARD

OPERATING MANUAL AND PROCEDURES

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A. Purpose of the Police Review Board

1. The purpose of these procedures is to facilitate the operation of the Civilian Police Review Board (“CPRB”), including the review of public complaints filed against sworn police officers and non-sworn employees who are employed by the Cleveland Division of Police as authorized by the City of Cleveland Charter (§§ 115-3, 115-4).
2. In order for this purpose to be achieved, the Civilian Police Review Board, hereafter referred to as the Board or the CPRB, shall have the power to receive, cause investigation of, and recommend, and in some cases determine, the resolution of public complaints regarding misconduct allegedly committed by employees of the Cleveland Division of Police (“CDP”).

B. Purpose, Scope, and Force of this Operating Manual

1. In addition to the Cleveland Charter, this Operating Manual contains all of the rules, procedures, processes, and general operations of the CPRB. If rules, procedures, processes, or operations codified elsewhere or functionally operational elsewhere and potentially, apparently, and/or actually conflict with the provisions of this Manual, the provisions of this Manual control.
2. All provisions of this Operating Manual must be considered in a manner consistent with the Charter of the City of Cleveland.

C. Duties and Responsibilities of the Board, Its Members, and Staff

1. The Board, Board members, and all Board staff must acquit themselves of the duties outlined here in a manner that is consistent with the following statement of ethics (adopted from the National Association for Civilian Oversight of Law Enforcement (“NACOLE”) Code of Ethics). (*See Attachment A.*)
 - a. Members of the CPRB have a unique role as public servants overseeing the conduct of law enforcement officers. The community, government, and law enforcement have entrusted members of the CPRB to conduct their work in a professional, fair and impartial manner. This trust is earned through a firm commitment to the public good, the mission of the CPRB, and to the ethical and professional standards described herein.
 - b. These standards are intended to be of general application. The spirit of these ethical and professional standards should guide CPRB members and staff in

adapting to individual circumstances, and in promoting public trust, integrity and transparency.

- c. **Personal Integrity:** CPRB members and staff will demonstrate the highest standards of personal integrity, commitment, truthfulness, and fortitude in order to inspire trust among CPRB stakeholders, and to set an example for others.
- d. **Avoid conflicts of interest:** CPRB members and staff are expected to conduct themselves in a fair and impartial manner and recuse themselves when significant conflicts of interest arise. CPRB members and staff will not accept gifts, gratuities or favors that could compromise their impartiality and independence or that have a substantial and improper influence upon the performance of their duties. As public officials, CPRB members are bound by the City and State ethics laws.
- e. **Independent and Thorough Oversight:** CPRB members and staff are expected to conduct all evaluations and reviews with diligence, an open and questioning mind, integrity, objectivity and fairness, and in a timely manner. CPRB members and staff are expected to rigorously test the accuracy and reliability of information from all sources and consider and present facts and findings without regard to personal beliefs or concern for personal, professional or political consequences.
- f. **Transparency and Confidentiality:** CPRB members and staff are expected to conduct their activities openly and transparently (as permitted by applicable policy and law), to include providing explanation of CPRB and OPS procedures and practices to as wide an audience as possible. CPRB members and staff must maintain the confidentiality of information that cannot be disclosed by law and policy and protect the security of confidential records.
- g. **Respectful and Unbiased Treatment:** CPRB members and staff must treat all individuals with dignity and respect, and without preference or discrimination including but not limited to the following protected classes: age, ethnicity, culture, race, disability, gender, gender identity, religion, sexual orientation, socioeconomic status or political beliefs.
- h. **Outreach and Relationships with Stakeholders:** CPRB members and staff are expected to disseminate information and conduct outreach activity in the community as permitted by law and policy. CPRB members and staff pursue open, candid, and non-defensive dialogue with all stakeholders and seek to educate and learn from the community.
- i. **Self-examination and Commitment to Policy Review:** CPRB members and staff seek continuous improvement in the effectiveness of civilian oversight of law enforcement programs in Cleveland. CPRB members and staff gauge their effectiveness through evaluation and analysis of their work product and seek to emphasize policy review aimed at substantive organizational reforms that advance law enforcement accountability and performance.
- j. **Professional Excellence:** CPRB members and staff seek professional development to ensure competence. CPRB members and staff seek to acquire the necessary knowledge and understanding of the policies, procedures and

practices of the Cleveland Division of Police (CDP) and the Department of Safety and keep informed of current legal, professional and social issues that affect the community, the CDP, the Office of Professional Standards (OPS) and the CPRB.

- k. Primary Obligation to the Community: At all times, CPRB members and staff place their obligation to the community, their duty to uphold the law and the goals and objectives of the CPRB, above personal self-interest.

D. Organization and Meetings

1. Composition of the Board

- a. The Board consists of nine members who are representative of the diverse communities within Cleveland.
- b. The Mayor appoints five members.
- c. The City Council (“Council”) appoints four members.
- d. In an effort to be representative of all of Cleveland’s diverse communities, each of the police districts is represented by at least one member who resides in that district. Additionally, at least one member of the Board is between the ages of 18 and 30 at the time of appointment and may be among the members appointed by either the Mayor or the Council.
- e. No member of the Board is employed currently as a law enforcement officer and no member is a current or former employee of the Cleveland Division of Police.

2. Transition pursuant to Ordinance No. 826-16

- a. The members of the Board holding the office as of November 8, 2016, continue in office for the remainder of their terms recognizing that all of the police districts may not be represented until the service of those members is completed.
- b. The two additional members shall be appointed by the Council and their terms shall commence on February 7, 2017.
- c. The next two vacancies following November 8, 2016, whether for a new term or an unexpired term, shall be filled by Council.

3. Term of Membership

- a. Terms of office for Board members shall be for four years.
- b. No Board member may serve for more than two four-year terms when the second term begins less than four years after the end of the first term. However, a person may be eligible for appointment four years after the end date of the second term.
- c. Time spent fulfilling an unexpired term of two years or less shall not be considered as part of the two consecutive terms.

4. *Vacancies of the Board*

- a. Any of the following circumstances shall lead to a vacancy on the board:
 - i. Expiration of the member's term, death or resignation of the member.
 - ii. Removal by the Director of Public Safety for cause. Any member may be removed by the Director of Public Safety, upon notice and hearing, for neglect of duty or malfeasance in office. Neglect of duty and malfeasance in office include unexcused absence of the member from three consecutive regular meetings of the Board; unexcused absence of the member from one-third or greater of the regular meetings of the Board over the course of the most recent twelve-month period; excused absence of the member, or combination of excused and unexcused absence of the member, from a sufficient number of meetings as to compromise the Board member's ability to faithfully and fully carry out the member's responsibilities to the Board and Cleveland community; or failure to attend and satisfactorily complete the required training course within four months of the beginning of a member's service on the Board.
- b. Vacancies during a term shall be filled in the same manner as original appointments for the unexpired term.
- c. A Board member who desires to resign, shall notify the Chair, the Mayor and the Clerk of Council of the resignation. If the Board becomes aware of a circumstance giving rise to a vacancy, other than expiration of a member's term or notice of resignation as outlined above, the Board Chair shall notify the Mayor and the Clerk of Council as soon as possible.

5. *Attendance & Participation*

- a. Board members have a duty to use best efforts to attend all regularly-scheduled Board meetings.
- b. Board members have a duty to use all reasonable efforts to attend any special, emergency, or other similar meetings that are not regularly scheduled.
- c. If a Board member cannot attend a meeting or other function of the Board where official business will be conducted, the Board member must provide notice to the Board Chair and the Board's Administrative Coordinator as soon as possible. The Chair will have discretion to classify absences as excused or unexcused.
 - i. An absence about which the Chair and Administrative Coordinator have received advance notice of more than 72 hours will be presumed to be excused, unless the Chair identifies emergency or other extenuating circumstances that warrant the absence being classified as an excused absence.
 - ii. The Administrative Coordinator will track all Board member absences in an electronic database.

- d. Board members have a duty to be responsive to communications from the Board, other Board members, and the Board's staff, including but not limited to telephone, electronic, and other communications.

6. Compensation

- a. Members of the Board shall receive compensation as may be established by the Council.

7. Budget

- a. The Board shall have its own budget separate from the budget for the Department of Public Safety and separate from the budget for the Office of Professional Standards ("OPS").
- b. OPS shall oversee the budget on behalf of, and with guidance from, the Board.

8. Officers

- a. The Board shall select annually one member of the Board to serve as its Chair and Vice-Chair.
 - i. Selection shall be through a majority vote of Board members, during a meeting which is open to the public. To ensure that all Board members can select a Chair and Vice-Chair who will enable the Board to best carry out its duties, the vote for filling the positions of Chair and Vice-Chair shall be conducted via a secret, written ballot process. After Board members have written their selections for the Chair and Vice-Chair, the CPRB's Administrative Coordinator shall collect and tally the ballots and subsequently read the results. Any Board member may request to inspect the written ballots after the results have been read.
 - ii. No person shall serve more than two consecutive one-year terms in each position, but, except as further provided, may be eligible for appointment two years after the end date of the second term.
 - iii. A person may be eligible to serve in one of the positions for up to two consecutive one-year terms consecutive to service in the other position, but then may not serve again in either position for two years following the end date of the term for the second position even if service in the first or second position was less than two years.
- b. Duties and Powers of the Chair
 - i. The Chair shall preside over all meetings of the Board and shall have the right to vote on all questions.
 - ii. The Chair shall ensure that all municipal and state laws pertaining to the activities and rulings of the Board are faithfully executed.

- iii. The Chair shall act as the spokesperson in all matters pertaining to the Board.
- iv. The Chair shall sign all documents on behalf of the Board after approval by the Board.
- v. The Chair shall perform such other duties and responsibilities imposed upon him or her by the Board.
- vi. In conjunction with Section 11 (c) below, the Chair shall appoint all subcommittees, and, ex-officio, be a member of all subcommittees.
- c. Duties and Powers of the Vice- Chair
 - i. If at any time the Chair is absent from a meeting for any reason or is unable or unwilling to perform his/her duties, whether within a meeting or outside a meeting, the Vice Chair shall perform all the duties of the Chair with the same force and effect as if performed by the Chair.
- d. Chair Pro Tem
 - i. If both Chairs are absent at any meeting of the Board and have not selected a Chair Pro Tem, the Board shall select a Chair Pro Tem who shall perform all the duties of the Chair for that specific meeting only.
- e. Duties of the Secretary
 - i. The Secretary shall be appointed by the Chair.
 - ii. The Secretary shall keep a true and correct record of all proceedings of the Board.
 - iii. The Secretary shall work with OPS staff to ensure that CPRB or OPS staff maintains custody of all reports, books, papers, and records of the Board.
 - iv. The role of Secretary can be designated to the Board staff by a majority vote of the Board.

9. Orientation and Training

- a. The OPS Administrator in consultation with the Board Chair is responsible for the establishment of an orientation and training program for the Board members.
- b. The orientation and training program shall include familiarization with the following:
 - i. Constitutional and other relevant law on police-citizen encounters, including law on the use of force and stops, searches, and arrests;
 - ii. Police tactics;
 - iii. Investigations of police conduct;
 - iv. Bias-free policing;
 - v. Policing individuals in crisis;
 - vi. CDP policies, procedure, and disciplinary rules;
 - vii. OPS policies, procedure, and rules; and
 - viii. Community outreach.

- c. Training and orientation shall be provided by sources both inside and outside of the City (including but not limited to CDP and OPS).

10. Structure of Meetings

- a. Meetings
 - i. All Board meetings shall be open to the public.
 - ii. The Board shall establish a regular meeting schedule and shall give public notice of the time and place of the meetings.
 - iii. The meetings and business of the Board shall be conducted in accordance with the following:
 - 1. The agenda for each meeting will normally be provided to all members in time to be received at least one week prior to regularly scheduled meeting.
 - 2. The agenda for each meeting will be posted on the Board's website.
 - 3. The Board shall keep written minutes of all meetings and a copy shall be filed with OPS and the Department of Public Safety. The meeting minutes shall also be posted on the Board's website.
 - 4. Segments of Board meetings that are open to the public shall be audio-recorded. These recordings and any transcription of the recordings shall be maintained by OPS.
- b. Normally, the order of business for Board meetings shall be as follows:
 - i. Roll Call
 - ii. Approval of Minutes
 - iii. Special order of business; announcements; communications.
 - iv. Public comment
 - v. Report from OPS (including a report of new complaints received by OPS on behalf of the Board)
 - vi. General policy items
 - vii. Subcommittee reports
 - viii. Unfinished business
 - ix. New business.
 - x. Discussion and consideration of complaints and report
 - xi. Recess to executive session
 - xii. Public meeting shall resume at such time as the Board has concluded those matters authorized to be conducted in Executive Session.
 - xiii. Voting on adjudication of complaints
 - xiv. Adjourn
- c. Special meetings may be held at the call of the Chair, or the Vice-Chair in the absence of the Chair. In addition, upon petition of a majority of Board members, the Chair shall call a meeting of the Board within one week.

- i. Board members will be given at least seventy-two hours' notice prior to any special meeting.
- ii. Notice of a special meeting shall be posted on the Board's website.
- iii. No business other than that specified in the special meeting agenda shall be considered.

11. Quorum and Voting

- a. Two-thirds of members currently appointed to the Board shall constitute a quorum.
- b. The affirmative vote of the majority of members present shall be required to carry a motion, proposal, or recommendation, unless provided otherwise in this Manual.
- c. Subcommittees
 - i. The Board, as appropriate, may establish subcommittees.
 - ii. No more than five members of the Board shall serve on any one subcommittee.
 - iii. The Chair shall designate members and the Chair of each subcommittee.
 - iv. Subcommittees may include the following:
 1. Policy review
 2. Continuing education
 3. Recruitment and training
 4. Outreach
 5. Rules

12. Board Staff

- a. The Board shall hire and/or appoint support personnel in accordance with the City's Civil Service laws and rules.
- b. The Board Chair shall recommend to the Board the filling of any staff position for approval by the Board; and shall supervise the administrative, clerical, investigative, and other personnel as necessary to discharge the functions of the Board. Board staff persons shall follow all laws, rules, and regulations relevant to City employees. The Board may delegate supervisory responsibilities to the OPS Administrator or the Director of Public Safety.
 - i. If the Board requires that new or additional investigative work be performed in any given matter, the Chair may coordinate the execution of such work with the OPS Administrator. Instructions regarding any additional investigative work to be performed at the Board's behest must be provided, in writing, to the OPS Administrator.
- c. OPS shall promulgate internal office procedures and prepare necessary standardized forms for the Board's receipt, review, and resolution of public complaints. The daily operations of the Board, including complaint review and

resolution, shall be managed by the Board Chair, who shall oversee the regular functioning of the staff assigned to help carry out the duties of the Board.

E. Authority, Jurisdiction, Duties and Responsibilities

1. Jurisdiction

- a. The Board has the power to receive, cause investigation of, and recommend resolution of any and all complaints filed with it alleging misconduct by officers and non-sworn employees of the Cleveland Division of Police, regardless of their duty status, when such misconduct is directed toward any person who is not a CDP employee. On its own complaint, the Board may direct the OPS Administrator to conduct an investigation of any incident involving the use of deadly force by members of the police force and any incident resulting in the injury or death of persons in the custody of the police force.
- b. Under the Charter of the City of Cleveland, the CPRB has jurisdiction over the following types of complaints of misconduct that are made against personnel of the Cleveland Division of Police:
 - i. Harassment complaints, to include those alleging bias, discrimination, and profiling;
 - ii. Excessive Force complaints;
 - iii. Unprofessional Behavior/Conduct complaints;
 - iv. Improper Procedure complaints, including improper arrest, improper citations, and improper search;
 - v. Improper Stop;
 - vi. Improper Tow;
 - vii. Service complaints, including insufficient CDP employee service, and no CDP service;
 - viii. Property complaints, including missing property and damage to property; and
 - ix. Misconduct related to the receipt of a Uniform Traffic Ticket or Parking Infraction Notice if the Parking Infraction Notice was issued by personnel in the Division of Police.

2. Filing Complaints

- a. The Board shall notify OPS of the Board's receipt and acceptance of a complaint and direct OPS to commence an investigation.
- b. The Board authorizes OPS to receive complaints on its behalf and to begin investigation of those complaints upon receipt.
- c. On its own complaint, the Board may cause an investigation of incidents involving the use of deadly force by members of the police force and incidents resulting in

the injury or death of persons in the custody of the police force. These investigations will be completed by OPS in accordance with its procedures.

F. Initial Procedures

1. Transmittal of Cases

- a. OPS shall provide access to the full investigative files of cases that will be considered, discussed, and/or adjudicated by the Board not fewer than 15 calendar days before the Board convenes to address the case.
 - i. OPS will ensure that all Board members have full access to all investigatory materials related to the case while also ensuring that OPS files will remain secure from inappropriate dissemination or disclosure. The Chair and the OPS Administrator will collaborate in the creation of a protocol which will ensure both appropriate board access and the ability to maintain the necessary security for OPS files. This protocol will be subject to review and comment by the Board and will require adoption by a majority vote of the Board.

- b. The Investigative File that OPS maintains and that must be made available for Board members will include, and always in this order, the following:
 - i. A cover letter indicating what documents are in the file.
 - ii. The complaint.
 - iii. The allegations (or “charges”) that were (1) suggested by the face of the original complaint alone, and (2) any additional allegations or charges that surfaced during the course of the investigation of the complaint.
 - iv. OPS’s recommendations and findings including relevant case law, statutes, and Cleveland Division of Police General Policies and Procedure Orders.
 - v. Reports, including but not limited to incident reports, duty reports, and field reports.
 - vi. Audio, visual, or transcripts of interviews of witnesses or parties to the incident
 - vii. OPS investigator’s notes
 - viii. Body-worn camera or dash board video and physical evidence in the investigation.

2. *Notice to Complainants*

- a. Upon receipt of the Investigative File, the Board shall notify the complainant and each subject CDP employee. The notice shall advise in writing that the complaint will be considered by the Board; and contain an explanation of the process to be utilized by the Board.
- b. The notice shall state the date, time and location of the scheduled public meeting.
- c. Five days before the public meeting, the Board shall send another notification to the complainant and the subject CDP employees.
- d. The Board shall use best efforts to contact the complainant and subject CDP employees, including:
 - i. Sending a letter via United States Postal Service to the last known address of the complainant.
 - ii. Providing written notice to the subject employees through the subject officer's command staff or the subject employee's supervisor.
 - iii. Electronic mail to the parties, when feasible.
- e. The Board shall make record of notices sent.

G. *Review of Complaint, Investigation, and Investigatory Follow-Up*

1. *Method of Investigation*

- a. When reviewing a complaint, Board members may use any of the methods in this Section.

2. *Obtaining Documents and Other Evidence*

- a. While reviewing the Investigative File, Board members may make written inquiries of the OPS Administrator to obtain additional information, documents, or other evidence. Such written inquiries will become part of the OPS Investigative file.
- b. Board members shall send any questions or requests to OPS as soon as possible but, in any event, at least 72 hours before the designated meeting date.
- c. Board members shall allow complainants or subject employees who are present to speak after the case is called by the board and the allegations have been presented to the Board by OPS.
- d. Board members may ask follow-up questions of any person who has addressed the Board.

3. *Cooperation and Coordination*

- a. In the discharge of its duties, the Board expects complete and prompt cooperation from all employees of the City or the CPD. The Chair may lodge a formal complaint with the hiring authority of any employee of the City who does not cooperate with the Board in the lawful execution of its duties.

4. Subpoenas

- a. Upon majority vote, and at the request of the OPS Administrator or his or her designee, the Board has the power to subpoena and require the attendance of witnesses, the production of documents, and/or the production of other papers pertinent to its adjudications; and shall have the power to administer oaths.
- b. Prior to issuing any subpoena the Board shall notify the Director of Public Safety and the Chief of Police.

H. Assignment & Pre-Meeting Review of Cases

1. Assignment of Cases

- a. All complaints that have been fully investigated by OPS and submitted to the Board (“cases”) shall be assigned by the Chair for review by either a three-member panel (“Panel”) or by the full Board.
- b. Cases that involve misconduct that can be classified as Demeanor, Rudeness, and Improper Tow, with no other type of alleged misconduct, shall be assigned for review by a Panel unless the Chair determines that there are circumstances warranting assignment to the full Board.
- c. OPS investigations classified as complex investigations shall be assigned to the full Board for review.

2. Composition of Three-Member Panels

- a. Each Panel shall select its own Chair.
- b. Each Panel shall be composed of at least one Board member who was appointed by the Mayor and at least one Board member who was appointed by the City Council.
- c. Assignments to Panels shall be made by rotation among Board members, using any basis (including lottery) that evenly balances the workload among Board members throughout a rolling one-year (365-day) period.

3. Pre-Meeting Review of Cases

- a. For cases assigned to a Panel, all three Panel members shall review the investigatory materials for each assigned case, and complete the “Pre-Meeting Review Checklist” (Attachment B).
 - i. This review shall be performed pursuant to Section (G)(2), “Obtaining Documents and Other Evidence.”
 - ii. All Panel members shall complete a Pre-Meeting Review Checklist.
 - iii. Panel members shall apply the “preponderance of the evidence” standard of proof, set forth in Section (I)(2), “Standard of Proof.”

- iv. All Panel members shall forward a copy of their completed Pre-Meeting Review Checklists to designated Board or OPS staff no later than 24 hours prior to the Board meeting at which the case will be heard. Panel members shall also bring their completed Checklists to the meeting.
 - v. Designated Board or OPS staff shall compile a summary of Panel members' recommended dispositions, and transmit the summary to the Board Chair in advance of the meeting.
 - vi. If a case is assigned to a Panel, Board members who are not on the Panel shall review the investigatory material to ensure familiarity with the case file, however only Panel members shall prepare a Pre-Meeting Review Checklist.
- b. For cases assigned to the full Board, all Board members shall complete the "Pre-Meeting Review Checklist" (Attachment B).
 - i. This review shall be performed pursuant to Section (G)(2), "Obtaining Documents and Other Evidence."
 - ii. Board members shall apply the "preponderance of the evidence" standard of proof, set forth in Section (I)(2), "Standard of Proof."
 - iii. All Board members shall forward a copy of their completed Pre-Meeting Review Checklists to designated Board or OPS staff no later than 24 hours prior to the Board meeting at which the case will be heard.
 - iv. All Board members shall bring their completed "Pre-Meeting Review Checklist" to the Board meeting at which the case will be heard.

I. Hearing Procedures

1. Purpose/Scope of Hearing

- a. The Board shall hear each case during a regularly scheduled meeting at which a quorum of members is present.
- b. The purpose of this hearing is to review the case pursuant to the procedures set forth in this Manual, in order to reach a disposition and a recommendation on discipline for each allegation identified by OPS or by Board members during their review of the case.
- c. The Board shall give weight to the OPS Administrator's recommended disposition, and shall justify in writing any departure from it. However, the Board is not bound by the OPS Administrator's recommendation, and shall reach its own conclusions regarding the appropriate disposition.

2. Standard of Proof - Dispositions

- a. No finding with respect to an allegation of a case shall be sustained unless it is proven by a preponderance of the evidence. "Preponderance of the evidence" means the greater weight of evidence; for example, based on all of the evidence it

is more likely than not that conduct inconsistent with CDP policy, procedure or training has occurred or has not occurred.

- b. For purposes of applying the “preponderance of the evidence” standard of proof, officer performance must be evaluated against the policy, procedure, or training that was in effect on the day that, or during the relevant time period during which, the incident occurred.

3. *Standard for Recommendation Regarding Discipline or Other Remedial Action*

- a. When considering a recommendation regarding discipline or other remedial action, the Board shall apply a standard of “just cause.” In determining whether there is just cause for the recommended discipline or other remedial action, the Board shall consider all of the following:
 - i. Was CDP policy, procedure or training at issue documented and available to CDP officers or employees who were expected to follow it?
 - ii. Was OPS’s investigation of the complaint complete, fair and objective?
 - iii. Was there sufficient evidence to establish by a preponderance of the evidence that the alleged conduct occurred and that it violated a CDP policy, procedure or training?
 - iv. Is the recommended discipline consistent with the CDP disciplinary GPO in place at the time the conduct occurred?

4. *Presentation of Findings*

- a. The Presentation of Findings shall be open to the public.
- b. The Presentation of Findings shall consist of the following, which shall be addressed in the following order:
 - i. The OPS investigator who was assigned the case and completed the OPS investigator’s summary shall provide a list of the allegations investigated by OPS, a summary of their investigation, and the OPS Administrator’s findings and conclusions to the Board. This summary will not necessarily inventory all evidence and investigatory material but should, at minimum, outline the nature of the complaint, the nature of the allegations involved, and the material evidence and facts established by the investigation.
 - ii. Following the investigator’s summary, Board members shall pose any questions they may have for OPS relating to the investigation or the findings and conclusions.

5. *Executive Session*

- a. Following the presentation of the cases, the Board shall go into Executive Session. During discussions and deliberations that occur in Executive Session, no individuals or entities who are not either Board members, Board staff, or Board Legal Counsel may be present in the room unless invited by the CPRB. The CPRB

may invite the OPS Administrator or his or her designee to remain during executive session deliberations on cases in order to provide advice and consult.

- b. Board members have both an opportunity and a duty to provide the OPS investigator with written questions about investigated cases prior to Board meetings and may also ask the investigator questions during the Presentation of Findings that occurs before the Executive Session. If questions or issues nonetheless arise for the first time during the Executive Session, the Board may, on motion by the Chair or another Board member, vote on tabling deliberation and/or adjudication of a case in order to pose the question(s) or issue(s) to OPS. The Board may return to public session to make additional inquiries of OPS and then return to conclude its deliberations immediately thereafter.
 - i. If deliberation or consideration of any case is tabled in order for the Board to follow up with an OPS investigator on a question or issue, the deliberation or consideration of that case will continue at the earliest opportunity, or in any event no later than at the start of the Board's next meeting, whether regularly-scheduled or otherwise.
- c. For cases that have been assigned to a three-member Panel, the Board Chair shall present the summary of the Panel's recommended dispositions.
 - i. If two or more Panel members have recommended the same disposition, the Board shall, upon motion, vote on whether to adopt it as the Board's disposition.
 - 1. If a majority of the Board approves the motion, the Panel's recommended disposition shall be adopted and shall be voted on pursuant to I(6)(d), below.
 - 2. If a majority of the Board does not approve the motion, the entire board shall proceed to discuss the case pursuant to section I(5)(d), below.
 - ii. If two or more Panel members do not recommend the same disposition, the entire board shall proceed to discuss the case pursuant to section I(5)(d), below.
- d. For cases to be heard by the entire Board, the Chair shall begin the discussion of the case. The goal of this discussion is to allow each Board member to reach a conclusion, by a preponderance of evidence, regarding the appropriate case disposition.
- e. The Board's discussion shall address the following questions, in order, unless a majority votes to alter the order. The Board shall complete the Hearing Checklist (Attachment C) as it proceeds through each question:
 - i. Findings and evidence that tend to support OPS's recommendation;
 - ii. Findings and evidence that tend to not support OPS's recommendation;
 - iii. The relevant case law, statutes, and CDP policies, procedures and training;

- iv. Whether the OPS investigation tends to support the allegation by a preponderance of the evidence. The “preponderance of the evidence” means that, based on all of the evidence, it is more likely than not that a violation has occurred;
- v. Individual Board member recommendations.
- f. The Board’s Secretary and/or Administrative Coordinator shall ensure completion of the Just Cause Checklist (Addendum D) and consideration of all issues presented in that checklist during the course of any executive session deliberations.
- g. The Board shall conclude the deliberation of each case only (1) upon completion of consideration of all issues presented in the Hearing checklist, and (2) upon motion by the Chair or another Board Member.
- h. Upon completion of deliberation of one case, the Board shall consider, in the manner outlined in 5(a)–(e) above, all other cases on the meeting’s agenda.

6. *Adjudication of Cases*

- a. After consideration of all cases identified prior to the meeting on the meeting Agenda, the Board shall move into the voting process. The Board shall move from the Executive Session back into a regular, public session only (1) upon completion of consideration of all issues presented in the Hearing Checklist for all cases on the meeting’s agenda, and (2) upon motion by the Chair or another Board Member.
- b. Categories of Dispositions
 - i. The Board shall vote on a recommendation of one of the following findings for each allegation:
 - 1. Sustained: Preponderance of the evidence supports a finding that the alleged conduct occurred and the officer’s actions were inconsistent with law or CDP policy, procedure, or training. A complaint may be “sustained in part” if the investigation revealed sufficient evidence to support a finding of a policy violation on one or more, but not all of the complainant’s allegations. A complaint may also be “sustained for a violation not based on original complaint” if the investigation reveals evidence of misconduct that was not included in the complainant’s original allegation but arose out of the incident that is the subject of the complaint.
 - 2. Exonerated: Preponderance of the evidence supports a finding that the alleged conduct occurred but the officer’s actions were consistent with law or CDP policy, procedure or training.
 - 3. Unfounded: Preponderance of the evidence supports a finding that the alleged conduct did not occur.
 - 4. Insufficient Evidence: Preponderance of the evidence fails to establish whether or not the conduct occurred.

- c. Standard for Disposition:
 - i. The Board shall apply the “preponderance of evidence” standard of proof, set forth in Section (I)(2), to each and all of the allegations identified in the investigative file.
- d. Voting
 - i. Disposition votes shall be public.
 - ii. Decisions of the Board shall be made by majority vote.
 - iii. In the event of a tie vote, the CPRB will return to executive session to deliberate further. If a majority vote cannot be achieved, the Board will recess the case until its next meeting and deliberate anew.

7. *Recommendations Regarding Discipline or Other Remedial Action*

- a. Where the Board reaches an adjudication of “Sustained” on one or more allegations, the Board will return to Executive Session to deliberate on a recommendation regarding appropriate discipline or other remedial action.
- b. Potential discipline and other remedial actions include re-training, a letter of reinstruction, counseling from a supervisor, suspension, demotion, termination, or other action that may be appropriate to address the violation.
- c. To determine the recommended discipline action, the Board shall refer to the relevant Disciplinary GPO and/or other relevant General Police Orders addressing discipline, re-training, supervisory intervention, or other remedial action for misconduct or deficient performance. The Board shall make recommendations consistent with, and not materially deviating from, the Discipline GPO and/or other relevant General Police Orders.
- d. To ensure that there is just cause for each recommendation of discipline or other remedial action, the Board shall consider each factor listed on the “Just Cause Checklist” (Attachment D), and shall document this by completing the checklist.
- e. On an interim basis, the Board will recommend the disciplinary group of the disciplinary matrix to be used by the Chief of Police or the Director of Public Safety. In cases where an officer would be eligible for suspension without pay, the Board will not make a recommendation as to the specific number of days suspension to be served.
- f. The Board shall conclude the deliberation regarding discipline or other remedial action only (1) upon completion of consideration of all issues presented in the Just Cause Checklist, and (2) upon motion by the Chair or another Board Member.
- g. Upon completion of deliberation of one case, the Board shall consider, in the manner outlined in 7(a)–(f) above, all other cases on the meeting’s agenda.
- h. Once the Board has arrived at a recommendation regarding discipline or other remedial action, it shall return to public session to vote on a recommendation.
- i. Voting

- i. Disposition votes regarding discipline shall be public.
- ii. Decisions of the Board regarding recommendations on discipline or other remedial action shall be made by majority vote. In the event a majority of the Board cannot agree on a particular level of discipline, the Board Secretary will prepare an explanation of the votes cast by each Board member for the Board's final summary.

8. *Recommendation Regarding Training/Policy Changes*

- a. In addition to recommending discipline or other remedial action for CDP officers and employees, the Board shall also consider whether a complaint suggests that CDP should revise its policies, strategies, tactics, or training.
- b. If so, its Final Summary shall so indicate.

9. *Recommendation Regarding Commendations*

- a. During review and consideration of investigations, Board members may identify officer or employee performance that is commendable, superior, noteworthy, or otherwise deserving of special and positive recognition. In such circumstances, a Board member may move that the Board issue a commendation.
- b. If a majority of the Board votes to approve the motion, the Board's Chair will provide a written commendation of the identified officer or employee's performance to the Chief of Police and Director of Public Safety.

10. *Final Summary*

- a. The Board shall prepare a Final Summary with respect to each case or matter under consideration.
- b. The Final Summary shall include the Board's disposition and, where applicable, recommended discipline or other remedial action, and a brief outline of the evidence that the Board concluded tended to support the disposition and/or recommendation. If the Board's recommended disposition departs from OPS's recommended disposition, the Final Summary shall also include a written justification for the departure. The Summary may also include a recommendation that the incident suggests that CDP should revise its policies, strategies, tactics, or training.
- c. The Board shall follow the Final Summary Checklist (Attachment E).

J. *Special Procedures for Administrative Dismissal*

1. *Assignment of Cases*

- a. On an interim basis, cases in which OPS has initiated a disposition of "Administrative Dismissal" shall be reviewed by the Board upon a timely

request for review (“appeal”) by a complainant. In order to facilitate this process, OPS shall include in every disposition letter where a complaint has been administratively dismissed, notice to the complainant of their right to request a review by the Board within 15 days of the date of receipt of the OPS notice.

- b. For each appeal, a three-member panel shall be chosen by the Chair in accord with Section H.2. of this Manual. Each panel member shall review the Administrative Dismissal Form prepared by OPS (Attachment F), to determine whether the undisputed facts support the ground(s) for administrative dismissal.
- c. If the Panel members unanimously determine that the undisputed facts support the ground(s) for administrative dismissal, the Panel Chair shall check the box on the Administrative Dismissal Form stating that they concur with OPS’s recommendation, sign and date the form, and return it to OPS. OPS will then notify the complainant of the completion of the Board’s review.
- d. If any Panel member determines that the undisputed facts do not support the grounds for administrative dismissal, or that the case requires further investigation, the appeal will be referred to the entire Board for a hearing and decision at its next meeting. If the Board, by a majority vote, determines that the undisputed facts do not support the grounds for administrative dismissal, or that the case requires further investigation, the case will be returned to OPS for investigation.
- e. During the pendency of the Consent Decree between the United States and City of Cleveland addressing the performance of the Cleveland Division of Police, ongoing reviews and audits of the Administrative Dismissal process will be conducted by the Monitoring Team to ensure compliance with OPS policies and the Consent Decree.

2. Eligibility for Administrative Dismissal

- i. Only the following types of complaints may be Administratively Dismissed:
 - a. Complaints disputing traffic citations, except that allegations of misconduct contained in such complaints (e.g., racial profiling, illegal search, excessive force) will be classified and investigated according to their merits;
 - b. Complaints alleging a delay in police services where the preliminary investigation demonstrates that the delay was due to workload, or was otherwise unavoidable;
 - c. Complaints regarding off-duty conduct, unless the employee is working secondary employment, or the alleged conduct, or its effects, are inconsistent with law or CDP policy, procedure, or training or have a substantial nexus to the officer's City employment; and

- d. Complaints in which the preliminary investigation demonstrates that the officer was not an employee of CDP at the time the conduct occurred, or where the identity of the employee cannot be determined despite the best efforts of OPS.
- ii. Complaints that allege other types of conduct cannot be disposed of via the Administrative Dismissal process.

K. Post-Hearing Procedures

1. Notice to Complainant and Subject CDP Employee

- a. Upon completion of every hearing, the Board shall cause OPS to notify the complainant and each subject CDP employee. The notice shall contain written notice that the complaint was considered by the Board and the date of that hearing; and an explanation of the process utilized by the Board.
- b. The notice shall include:
 - i. The date, time and location of the hearing.
 - ii. The nature of the Board's conclusions and recommendations
 - iii. An explanation of the evidence that both tended to support and tended not to support the conclusion.
 - iv. Information on whether there will be further proceedings related to the complaint, such as referral of the matter to the Chief of Police or Safety Director for a hearing and possible imposition of discipline
- c. OPS shall use best efforts to contact the complainant and subject employees, including:
 - i. Sending a letter via United States Postal Service to the last known address of the complainant;
 - ii. Providing written notice to the subject employees through the subject officers' command staff or the subject employee's supervisor; and
 - iii. Electronic mail to the parties, when feasible.
- d. OPS shall make record of notices sent and keep the Board advised of its actions in that regard.

2. Forwarding of Recommendation to Chief of Police

- a. Upon completion of a hearing, the CPRB shall deliver its Final Summary prepared for each complaint adjudicated as "Sustained" to the Chief of Police and/or the Director of Public Safety, as appropriate, within fourteen calendar days.
- b. The Chief or Director of Public Safety shall hold a due process hearing, as required by law, at which involved officers may present testimony or other evidence.

L. Action Following Hearing by the Chief/Safety Director

1. Notice to the CPRB of Hearing Outcome

- a. Within 10 days of the conclusion of a hearing, the Chief or Director of Public Safety will notify the Board of the outcome, including the disposition of the charges and any discipline imposed.
- b. If the disposition or discipline departs from the Board's recommendation, the Chief or Director of Public Safety will provide a written explanation for this departure.

2. Overriding Departure by the Chief of Police

- a. In cases involving Board recommended discipline of a suspension of 10 working days or less, where the Chief of Police departs from the Board's disposition or recommendation regarding discipline or other outcome, the Board will consider whether to override the departure pursuant to the City Charter (sections 115-1 through 115-4).
- b. The Chair of the Board will present the Chief's decision at the first CPRB meeting following receipt of the written explanation for the departure. If any member of the Board believes that, notwithstanding the Chief's determination, a preponderance of the evidence establishes misconduct, and that there is just cause for the Board's original recommendation regarding discipline or other remedial consequence, including suspension, demotion or termination, then the Board member shall move the Chair for reconsideration of the matter by the full Board.
- d. The Board shall consider and discuss the motion for reconsideration in Executive Session. The Board shall conclude the deliberation of the motion for reconsideration upon motion by the Chair or another Board Member.
- e. A case shall be reconsidered, and the discipline determination reviewed, if and only if a majority of the Board's permanent members votes to re-consider the case.
- f. At the reconsideration of the case before the Board, the procedures, processes, and standards for governing the Board's initial review of the case govern, with the exception that Board members must consider (i) whether the evidence and explanation for departure tends to support or tends to not support the Chief of Police's determination, and (ii) whether there is still just cause to make a finding and/or impose discipline in light of the explanation for the departure. CPRB members must closely review and consider the disciplinary letter and other materials provided to it by the Chief, to include the content of any evidence presented at the Chief's Hearing with the subject employee.
- g. For the Board to impose its original finding on any allegation where the Chief has determined not to do so, a majority of the Board's permanent members must vote that a preponderance of evidence supports the original recommendation.

- h. For the Board to impose its original recommendation of discipline or other remedial action where the Chief has determined not to do so or where the Chief has determined to impose a different term of suspension, two-thirds of the Board's permanent members must vote that there is just cause to impose its original recommendation regarding suspension and/or the term of suspension.
- i. If the Board votes to impose its original adjudication and/or recommendation regarding discipline or other remedial action, the Board shall prepare an Amended Final Summary explaining its rationale. The Board's Administrative Coordinator will send the Amended Final Summary to the Director of Public Safety with a copy to the Chief. The Amended Final Summary will constitute a formal certification in writing of the Board's determination, to the Chief of Police and the Director of Public Safety.
- j. The Director of Public Safety is the ultimate adjudicator of discipline for CDP. If the Director does not accept the decision of the CPRB, s/he will provide a written explanation for this decision to the Chair.

3. *Notice to Complainant and Subject CDP Employee*

- i. Within ten days of receiving notice that the Chief or Director of Public Safety has determined to impose the Board's adjudication and recommended discipline, the CPRB shall cause OPS to notify the complainant and the subject CDP employee(s).
- ii. When the Chief or the Director of Public Safety has determined to depart from the Board's adjudication and/or recommended discipline, and the Board does not reconsider this determination, the Board shall cause OPS to notify the complainant and the subject CDP employee(s) no later than ten days following its next regular meeting. This notice shall include the Board's reasoning for not reconsidering the Chief's determination.
- iii. When the Chief has determined to depart from the Board's adjudication and/or recommended discipline, and the Board reconsiders this determination, the Board shall cause OPS to notify the complainant and the subject employee(s) of the outcome within ten days following the meeting at which reconsideration took place.
- iv. In all cases adjudicated by the Board, the Board will direct OPS to provide a timely written explanation to the complainant and the subject employee(s) outlining the reasoning behind the Board's decision to issue findings of "insufficient evidence," "unfounded" or "exonerated."

M. Amendment to Operating Manual, Procedures, and Rules

1. The rules contained within this Operating Manual, and the procedures and rules outlined here, may only be modified, revised, amended, replaced, or otherwise changed via the following process:
 - i. A Board member or the Director of Public Safety must place an amendment of the Operating Manual on the Board Agenda.
 - ii. The Manual amendment must be read and discussed as part of the Agenda of a regular Board meeting at least one regular meeting prior to the amendment being the subject of a vote.
 - iii. The OPS Administrator must publicly announce any proposed changes, post such changes on the OPS website and provide any public feedback received to the Chair and the Board in public session.
 - iv. The Chair must notify the Director of Public Safety and obtain advice and consult regarding the proposed amendment which is to be shared with the Board at the time the Manual amendment is proposed to the Board.
 - v. For a proposed amendment to the Manual to become effective, two-thirds of the permanent members (i.e., 6 out of 9 members) must vote in favor.
2. Pursuant to City Charter Section 115-3, only those changes ultimately approved by the Director of Public Safety may become effective as part of this Manual.
3. The rules in the Manual take effect fifteen (15) days after their publication in the *City Record*.
4. During the pendency of the Consent Decree between the United States and City of Cleveland addressing the performance of the Cleveland Division of Police and related organizations and systems, any and all modifications, revisions, amendments, replacements, or other changes to this Manual must be approved by the Court overseeing implementation of the Decree.