



**CITY OF ALBANY
COMMUNITY POLICE REVIEW BOARD
PUBLIC MONTHLY MEETING
MEETING MINUTES**

*June 8, 2023, at 6:00 p.m.
Albany Law School, Room W212*

I. CALL TO ORDER AND ROLL CALL (N. Vives)

CPRB Chair Nairobi Vives called the meeting to order at 6:00 PM.

BOARD MEMBERS PRESENT:

CPRB Chair Nairobi Vives, Vice-Chair Veneilya Harden, Kevin Cannizzaro, John Levendosky, and Antoinette Santos

OTHERS PRESENT:

CPRB Program Manager Michele Andre, GLC Deputy Director Patrick Woods, Assistant Corporation Counsel Raisi K. Mobebe, Office of Professional Standards (OPS) Commander Joshua Laiacona, Julie L. Schwartz (T&M Managing Director of Investigations), Consultant Andrew Lah, Former CPRB Chair Ivy Morris, and Attorney Michael L. Goldstein, Kasey Charles, Co-founder of the Black Abolitionist Directive.

II. APPROVAL OF THE AGENDA (N. Vives)

Chair Vives called the meeting to order and moved to approve tonight's agenda.

III. REPORT FROM MOEEL LAH FAKHOURY LLP (A. Lah)

Consultant Andrew Lah from Moeel Lah Fakhoury LLP reported that his team has continued training, advising with strategic work, and assisting the board with its various committees.

IV. PRESENTATION FROM DANE JENNINGS, CEO OF CATAPULT GAMES

Dane Jennings, CEO of Catapult Games, provided a presentation to the board on a virtual reality de-escalation software that is steered to help reduce violence and police-civilian encounters.

V. CONSIDERATION OF INDEPENDENT INVESTIGATION

AD2023-020

(J. Levendosky)

Chair of Investigation Committee Board member John Levendosky provided an update that members of the Investigation Committee and Executive Committees were able to view CCTV footage from the May 31, 2023, incident at Madison Park involving two minors and officers from the Albany Police Department. The Investigation Committee recommends that this incident be subject to independent investigation by the CPRB. Board Member Levendosky made a motion to independently investigate May 31, 2023, incident – AD2023-020, which was made and unanimously approved.

VI. CONSIDERATION OF SUBPEONAS

Chair Vives discussed the subpoena requests for Subpoena AD Testification for Jordan Young's independent investigational and Subpoena Duces Tecum for June 20th officer-involved shooting and complaint #2023-013 independent investigation.

Ms. Schwartz made a motion which was seconded by Vice-Chair Dr. Harden, subpoenas were approved.

VII. REPORT FROM T&M USA LLC

Independent Investigator Julie Schwartz provided an update on T&M USA LLC (T&M)'s independent investigations. T&M has received four cases assignment and requested a 30-day window for remote access for South Station Arch Street case file due to the size of the case file. Albany Police Department (APD)'s OPS Commander Joshua Liacona denied the request and provided a 7-day window instead. Within that period, there were many technological issues. Though, she does not believe it was in bad faith, she expressed her concern over how archaic the process is and the Board is entitled to the full case files according to Local Law J. Ms. Schwartz requested a Subpoena for the entire casefile involving the mother and child (complaint # 2023-013), including the Detective bureau files. Ms. Schwartz also provided updates on Subpoenas request for the Jordan Young case. Ms. Schwartz requested that the subpoenas be served again with an affidavit of service that moved toward the possibility of litigation to the officers in question.

Chair Vives reported that she spoke to Commander Liacona to discuss the 7-day remote access rule regarding the review of evidence/case files. Board member Kevin inquired under what circumstances gives the Commander authority to set that timeline whether the instruction is from Corporation Counsel or APD. Commander answered that it was an internal decision that was made and Corporation Counsel agreed with their decision. Board

Member Kevin continued to show concern between the Commander's decision and Local Law J.

Chair Vives affirmed Kevin's position and highlighted that the matter should be resolved outside of the meeting with Corporation Counsel.

VIII. CASE REVIEW AND UPDATE

CC2021-0037

(J. Levendosky and K. Cannizzaro)

Board Member Kevin Cannizzaro report that this complaint occurred on December 19, 2021. The complaint alleged that while he was waiting in his vehicle at Albany Memorial Hospital, his wife, who had been receiving treatment that evening, as he was sitting there, two officers pulled up behind—both of them got out of the car and in his complaint, he indicated that a white male officer pointed a gun in the point, could see “hate in the officer eyes”, after this interaction he called the Albany Police Department (APD) and in his complaint, his interaction with the third officer alleges that he was unprofessional or otherwise rude, and taking the complaint. Board Member Cannizzaro noted that there was a good amount of evidence in the file and reviewed APD paperwork, the 911 calls, body cameras, radio transmissions, and call to the third-officer at South Station and Non-APD evidence from Albany Memorial Hospital.

Board members Levendosky and K. Cannizzaro concluded that from a factual perspective, the underlying incident that initiated this incident was a 911 call from an emotionally disturbed person claiming that they had an AR-15 and that they were in the emergency room of Albany Memorial Hospital and that they were threatening to kill everyone at the hospital.

APD officers arrived within 3-5 minutes, with Officers 206 and 207 first to arrive on the scene. Officer 207 was the officer that OPS focused on in the complaint, he had his duty weapon, on his right side. From this evidence, Board member Cannizzaro recommended that he be exonerated and unfounded with the incident not occurring. OPS also agreed with this conclusion of “unfounded.” Board Members Levendosky and Cannizzaro with regard to Unit 207, moved to amend the motion from exonerated to unfounded.

Regarding the 911 call, Board members Levendosky and Cannizzaro found the officer unprofessional, as he did follow any of the general orders as it relates to Call Handling. Board members recommended that this complaint be sustained against the officer.

Board Members Levendosky and Cannizzaro also highlighted other discrepancies that were raised in the OPS investigation. Board Member Cannizzaro noted that Officer 206's statement, he admits that “he had his gun pointed directly at the vehicle, however, the report from the OPS detectives contradicts this sworn statement and claims that both officers had their “duty gun in [their] right hand by the side leg pointed down”. It is not clear why the OPS final report contradicts the statement of Officer 206, who admits that he had his firearm pointed directly at the vehicle. The statement was provided to OPS directly and is

signed off on by multiple supervisors of Officer 206. OPS exonerated all of the officers involved in the alleged Complaint.

Board Member Cannizzaro further added that APD General Order 1.3.05 titled “Lethal Weapons” is applicable to the circumstances of this complaint given the allegations that officers pointed a firearm in the face of the Complainant. According to that general order, “an officer may use deadly force when the officer reasonably believes that the action is in the defense of human life”. (See G.O. 1.3.05 at p.1). An officer is permitted to utilize and/or display a lethal weapon only in compliance with Article 35 of the New York State Penal Law. (See G.O. 1.3.05[I][A][2]). It should be noted that, according to APD policy and general orders, “*the drawing or display of an officer’s firearm represents an escalation toward the use of deadly physical force, increasing the risk of accidental discharge . . . and may contribute to fear or panic*”. (See G.O. 1.3.05[II][G][1][a]). The aforementioned general order allows officers to remove their weapons from their holsters only: (i) when the officer reasonably believes that the situation may pose an immediate risk of death or serious injury to themselves or others; or (ii) when there is a justification to use deadly force against a person. (See G.O. 1.3.05[II][G][1][a][i]-[ii]).

It was noted that there was some evidence that was not included in the OPS investigation that would be expected for completeness reasons. For example, there was no Body Worn Camera video footage obtained from Unit 204 which arrived on the scene approximately 15-20 minutes after the 911 call. There was some Body Worn Camera footage from Unit 176, who was the responding sergeant. Even in terms of Unit 176, there were significant portions of the Body Worn Camera, where the audio is turned off, even though the video is on. The justification for the lack of the video footage, at least from the OPS perspective is that because Units 176 and 204 showed up after the alleged incident, their Body Worn Camera video is “irrelevant to the investigation”.

Board member Cannizzaro recommended that OPS’s investigation comply with Local Law J and make sure that complaints are being processed within the statutory time required for discipline. Board Member Cannizzaro recommended that there should be more Body Worn Cam investigations by OPS.

Commander responded to the timeline issue and admitted that this is a concern for the department and they are hoping to resolve this issue within the next month or so. Board Members Levendosky and Cannizzaro concurred and offered to discuss means of assistance from other entities if manpower is needed.

Commander responded also to the OPS investigation procedure regarding Unit 206 and Unit 207. Commander agrees that OPS’s findings are valid. Board Members Levendosky and Cannizzaro disagreed with the Commander’s interpretation. They also asked the commander what OPS will do to re-investigate its findings. The commander responded that they are going to look at Board Members Levendosky and Cannizzaro’s recommendations but cannot provide any specifics to the board.

For those reasons, Board member Cannizzaro recommends finding that Unit 207 is **exonerated** concerning the allegations that he pointed his firearm in the face of the complainant or otherwise used his firearm in an improper manner. The clear evidence contained in the OPS file, and the Albany Memorial surveillance confirms that the allegations did not occur.

During the investigation, OPS determined that a Police Officer was in violation of General Order 3.2.15 - Body Worn Cameras for not activating it.

The CPRB and OPS has made the following findings as to the conduct of the specific officers involved:

- With regards to the allegation of improper Call Handling, the CPRB and OPS reached a finding of **Unfounded**.
- With regards to the allegation of improper Conduct Standards, the CPRB and OPS reached a finding of **Unfounded**.
- With regards to the allegation of violation of policy (Body Worn Cameras, General Order No.: 3.2.15), the OPS and CPRB reached a finding of **Sustained** and the CPRB recommended discipline in connection with that sustained finding.
- With regards to the allegation of violation of policy (Use of Force-Lethal Weapons, General Order No.: 1.3.05), the CPRB reached a finding of **Exonerated**.

The CPRB and OPS may make a finding of Sustained – where the review discloses sufficient facts to prove the allegations made in the complaint, Not Sustained – where the review fails to disclose sufficient facts to prove or disprove the allegation made in the complaint and Exonerated – where the acts which provide the basis for the complaint occurred, but the review shows that such acts were proper.

CC2021-002

(A. Santos)

Board member Santos reported that OPS completed their review in March 2023, which is two years after the complaint was received, and the monitor report was completed on March 23, 2023. A brief summary of the allegation is that the complainant alleges that an APD officer driving a vehicle intentionally reviving his vehicle to a large group of adolescents on bicycles, who were alleged to block an intersection. The complainant alleged that the bicycle was seized by an officer without providing an articulable reason for the seizure of the property. It also alleged that a security guard was in the area observing the scene. The type of allegations includes conduct standards, abuse of authority, unprofessional conduct, evidence and property handling, use of force, and violation of the Body Worn Camera policy.

Board member Santos further investigated and found discrepancies in their accounts. Further, no effort was made to contact the witnesses and complainant. She found that there was no clear evidence provided. Thus, Board member Santos concluded that his finding cannot be sustained because it was not thoroughly investigated.

Board member Santos concluded that allegations of the officers endangering a crowd of adolescents by reviving his engine and opening the door for his patrol car cannot be sustained by failure to activate their Body Worn Camera. OPS found that the officers were in violation of the Body Worn Cameras, General Order No.: 3.2.15).

Board member Santos recommended that APD officers follow the departmental policies/general orders as appropriate in conjunction with procedures.

Board member Santos stated that she was not provided with the full disciplinary history of the officers involved.

Chair Vives made a motion to table the review of the complaint which was seconded by Dr. Harden, motion approved. Board member Kevin Cannizzaro abstained.

CC-2022-005

(A. Santos)

Board member Santos reported a summary of the complaint. The complainant alleged was physically assaulted by an unknown and unidentified civilian on the CDTA without provocation because she asked the passenger on the bus to put on a mask. The complainant alleges not being provided with the videotape detailing the alleged offense by APD. The Complainant also alleged being interrogated by APD instead of being treated like a victim. The type of allegations in question includes call handling and unprofessional conduct. The complainant requested videotape footage via proper mechanisms of the incident on multiple accounts, but APD did not provide it to her.

Board member Santos found that there was no finding in regard to the incident that occurred on the CDTA because it did not involve an APD Officer. Regarding the request for videotapes, there was no APD violation. Board member Santos also found that there was nothing in the policy that showed that APD violated when they did not provide the complainant with the COVID-19 medical status of the officer. She moved to exonerate this finding. Vice-Chair Veneilya Harden raised some concerns about the process in which the complainant was not treated as a victim and asked the commander for the procedures regarding victims who are assaulted. Commander stated that he is not clear about the process of the complainant's role with the CDTA and APD. Chair Vives raised concerns about this process about how to move forward. Further investigation will be done.

The CPRB and OPS has made the following findings as to the conduct of the specific officer involved:

- With regards to the allegation of improper Unprofessional Conduct, the CPRB reached a finding of **Not Sustained**.
- With regards to the allegation of improper Call Handling, the CPRB and OPS reached a finding of **Exonerated**.
- With regards to the allegation of improper Conduct Standards, the CPRB and OPS reached a finding of **Exonerated**.

The CPRB and/or OPS may make a finding of Not Sustained – where the review fails to disclose sufficient facts to prove or disprove the allegation made in the complaint and Exonerated – where the acts which provide the basis for the complaint occurred, but the review shows that such acts were proper.

IX. INDEPENDENT INVESTIGATION UPDATES

CC2022-017

J. Conroy

Chair Vives moved to table this independent investigation update for the next meeting.

X. PUBLIC COMMENTS

Kasey Charles, Co-founder of the Black Abolitionist Directive expressed his concern about the lack of communication between the civilian population and police department. He is also not happy with not having access to disciplinary records from APD and provided discontent with the timeline provided during the investigative process by OPS and APD. He spoke about how the community feels and is not happy with the entire process and the lack of accountability from APD.

XI. COMMITTEE REPORTS

BYLAWS AND RULES

(K. Cannizzaro)

Board Member Kevin Cannizzaro reported there was no update from the committee.

COMMUNITY OUTREACH

(P. Collins-Hackett)

Secretary Paul Collins-Hackett was excused from this meeting.

Chair Nairobi Vives reported that the CPRB will attend events like Albany's Capital Pride Parade this upcoming weekend.

MEDIATION

(V. Collier)

Vice Chair Dr. Harden provided a report on behalf of Rev. Victor Collier that there were two cases that were recommended for mediation and are also looking for other venue opportunities to have mediation.

INVESTIGATION

(J. Levendosky)

Board Member John Levendosky reported that the committee has been issued with the 7-day protocol with APD and it has created delays in completing investigations, especially large ones. Regarding CC-2022-0141 (sexual assault case) would like some protocols in place that can help with this case, as mentioned in Ms. Schwartz's previous reports.

Board Member John Levendosky reported they met with one of the consultants to discuss further investigations, subpoenas, litigation, and outside matters. Board Member John Levendosky also stated that 8 complaints were received, 2 closed without review, 1 was out of jurisdiction, 1 withdrawn, and 4 awaiting OPS detectives.

POLICE DEPARTMENT LIAISON

(V. Harden)

Vice Chair Dr. Harden reported that they noticed that the OPS case summary findings have been shorter, which was brought up to the commander. In addition, it was discussed that new cases should include an evidence checklist. This committee also discussed reassignment for Detective Shane's cases, and they were reassigned. She also stated that the committed received good feedback about the sessions that were provided and there will be upcoming classes in November to provide an overview of the CPRB.

PUBLIC OFFICIAL LIAISON

(N. Vives)

Chair Vives reported that last month's meeting was canceled. She highlighted that this meeting was reconvened based on some concerns that were raised last year such as increasing funding and attempting to engage the administration on CPRB matters. There will be an update next month.

REPORT FROM DISCIPLINARY MATRIX WORKING GROUP

Chair Vives reported that this meeting included in addition to the Board, LT Mahar from APD, Mark Mishler, and CPRB Manager Michele Andre. CPRB met last month to discuss the details of the matrix, creating 21 working categories. Kevin will create a working draft pursuant to Local Law J and will have more updates next week.

REPORT FROM CORPORATION COUNSEL

(R. Mobebe)

Assistant Corporation Counsel Raisi Mobebe reported that there were no significant updates from Corporation Counsel; they have sent a correspondent regarding their relationship dynamic in terms of the representation in terms of Counsel and working on finalizing the outside counsel agreements.

REPORT FROM THE GOVERNMENT LAW CENTER

(M. Andre)

Program Manager Michele Andre reported that two Summer interns started this past week, with one more starting in July. Program Manager Michele Andre also reported community outreach events that the CPRB will participate in this month, the June 11, 2023, Capital Pride Parade and June 17, 2023, Capital District YMCA African Heritage Parade. Ms. Andre also reported that she, Vice Chair Dr. Harden, and Board members Kevin Cannizzaro, and Antoinette Santos attended June 5, 2023, Albany Common Council meeting where Local Law Q of 2022 which codifies the relationship between the newly created Public Safety Commissioner (final arbiter of police discipline) and the CPRB. Local Law Q of 2022 passed by Common Council 12-1.

The CPRB will be holding a Retreat on July 22 and also providing an update to Albany Common Council on August 2nd. Ms. Andre noted that she will be reached out to a few members to meet and test out the new case management system - HighQ. Furthermore, GLC and her are working on a 30-day survey for the public on their feedback on the APD Disciplinary Matrix.

REPORT FROM THE OFFICE OF PROFESSIONAL STANDARDS (J. Laiacona)

Commander Laiacona reported that there are no updates at this time.

REPORT FROM THE CHAIR (N. Vives)

Chair Vives highlighted that she continues working towards resolving conflicts between CPRB, APD, and Corporation Counsel to work toward true oversight for the community.

XII. NEW BUSINESS (N. Vives)

Chair Vives made a motion to approve the minutes from the May 11, 2023, public monthly meeting, which was seconded and unanimously approved.

Chair Vives made a motion to approve the minutes from the May 17, 2023, and June 1, 2023, the CPRB Standing Committee on the Disciplinary Matrix, which was seconded and unanimously approved.

XIII. ADJOURNMENT

There being no further business, the meeting was adjourned at 8:16 p.m.

Respectfully Submitted,

Michele Andre
Program Manager