

**SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT**

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**MEMORANDUM**

TO: BART Police Department, Chief of Police                      DATE: August 8, 2014

FROM: Independent Police Auditor

SUBJECT: **Policy Recommendation – BPD Policy 1021**

Chapter 1-04(G) of the Citizen Oversight Model (Model) states that the Office of the Independent Police Auditor (OIPA) shall develop recommendations concerning General Orders and Directives, procedures, practices, and training of the BART Police Department (BPD), with the goal of improving professionalism, safety, effectiveness, and accountability. Additionally, Chapter 1-04(D) of the Model calls on OIPA to develop an alternative dispute resolution process for certain complaints, and to secure the concurrence of the BART Citizen Review Board (CRB) and the BART Police Associations (Associations) prior to implementation. In accordance with these sections of the Model, OIPA has developed *BPD Policy 1021 – Complaint Mediation Program*.

This policy recommendation is being made in a notably different manner than some of OIPA's previous ones, and it is important to briefly explain this difference. In November 2013, OIPA made its first presentation of a written draft mediation program to the CRB, after having had also discussed it with both the Associations and members of BPD's command staff. In a continuous effort to incorporate the comments, suggestions, and edits made by all parties involved in the development of the program, four more drafts were subsequently crafted before the final one was ultimately agreed to by all required parties at the CRB meeting in March 2014.

Since that time, OIPA worked with the BPD Support Services Bureau to reformat the written draft mediation program, without altering any of the substantive content therein, so that it would be consistent with the BPD Policy Manual. As a result of this work, *BPD Policy 1021 – Complaint Mediation Program* has now been created and stands ready for implementation and incorporation into the BPD Policy Manual.<sup>1</sup>

For your review, following is the final written draft mediation program agreed to by the CRB and the Associations in March 2014, as required by the Model; also following is the reformatted version of the program that has been deemed ready for inclusion in the BPD Policy Manual by the BPD Support Services Bureau and is presently being recommended by OIPA. Please feel

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<sup>1</sup> Through discussions with BPD's Office of Internal Affairs, OIPA acknowledges that some edits to *BPD Policy 1020 – Internal Investigation of Allegations of Misconduct* may still be required at this time in order to ensure that it is not inconsistent with, or in conflict with, the new policy initiating a complaint mediation program. OIPA is hopeful that any such edits can be made quickly so as not to delay the implementation of the mediation program any more than necessary.

free to contact me at your convenience with any questions about the complaint mediation program.

A handwritten signature in black ink, appearing to read "M. P. Smith", written over a horizontal line.

Mark P. Smith  
BART Independent Police Auditor

Attachments (2)

## OFFICE OF THE INDEPENDENT POLICE AUDITOR

### Complaint Mediation Program

#### 1. Introduction

Chapter 1-04(D) of the BART Citizen Oversight Model (Model) gives the Office of the Independent Police Auditor (OIPA) the responsibility for developing a system of voluntary alternative dispute resolution that can be utilized to resolve certain complaints of misconduct with less formality than that which comes with a full investigation. Alternative dispute resolution in the form of mediation can often yield the optimal outcome of an incident involving alleged misconduct, both for the complainant and the involved employee. It may be the most effective way for a complainant to feel that his or her concern was genuinely listened to, and it presents an opportunity for an employee to share his or her views about the incident that gave rise to the complaint in a non-interrogatory setting.

OIPA is of the opinion that mediation can be particularly effective to resolve complaints of misconduct against BART Police Department (BPD) employees that arise primarily due to a lack of effective communication between the complainant and the employee. Such complaints do not seem to be uncommon. For example, when an individual does not understand why a police officer has issued a particular command, or when an officer does not understand why an individual has reacted to a command in an unexpected way, the potential for a negative interaction (and the subsequent initiation of a complaint) rises. By maximizing the chance that each party will listen to the other's point of view, mediation often makes it possible for both sides to gain a new understanding of each other and of why the interaction between them might have escalated into a conflict in the first place.

Therefore, OIPA establishes the Complaint Mediation Program.

#### 2. Scope of Complaint Mediation Program

Complaints of misconduct may involve BPD police officers, BPD civilian employees, or a combination thereof. As a mediation process can often be beneficial for all parties to a complaint, OIPA feels it is sensible to make the Complaint Mediation Program available for complaints involving all BPD employees, both sworn and civilian. Doing so will also minimize confusion as to the eligibility of a complaint for the program when some of the allegations involve a BPD police officer while others involve a BPD civilian employee. In light of this, the term "employee" is commonly used throughout this document and is meant to include both BPD sworn officers and BPD civilian employees.

#### 3. Potential Benefits of Complaint Mediation Program

- a. *For Complainants*
  - i. More expedient resolution of complaint
  - ii. Opportunity to have concerns heard directly by involved employee
  - iii. Enhanced sense of finality to complaint process

- iv. Better understanding of law enforcement procedures, which may lead to minimization of future complaints
  
- b. *For Officers*
  - i. More expedient resolution of complaint
  - ii. Complaint handled outside of formal disciplinary process
  - iii. Opportunity to explain justification for actions directly to complainant
  - iv. Better understanding of issue that led to complaint, which may lead to minimization of future complaints
  
- c. *For BART*
  - i. Increased public confidence regarding police department
  - ii. More efficient use of resources
  - iii. Better customer service

#### **4. Goals of Complaint Mediation Program**

Mediation involves the informal resolution of a complaint of misconduct against a BPD employee through a face to face meeting in which a professional mediator serves as a neutral facilitator and where the complainant and the involved employee both ultimately agree to an acceptable resolution. Mediation is based on voluntary participation by all parties to a dispute, and it focuses on understanding, problem solving, and reconciliation rather than fact finding, determining guilt or innocence, and assigning responsibility.

#### **5. Complaint Mediation Program Rules**

The eligibility of complaints for inclusion in the Complaint Mediation Program is detailed in this section. As a corollary, any complaints that are not eligible for inclusion in the program, for any reason, shall be handled as complaints pursuant to BPD Policy 1020 and/or the Model, as applicable.

- a. *Case eligibility*
  - i. Participation in the Complaint Mediation Program must be voluntary for both the complainant(s) and the involved employee(s). Before the actual mediation process begins, all such parties must consent to the process in writing. Without written consent from all complainants and involved employees, the case is ineligible for inclusion in the program. Written consent may be obtained from the parties at the site of mediation, prior to the mediation session beginning.
  - ii. Complaints that include the below-listed allegations and/or alleged circumstances are ineligible for the Complaint Mediation Program, regardless of the consent of the involved parties; when a complaint involves any of these allegations and/or alleged circumstances, as

well as other allegations and/or alleged circumstances not on this list, the entire complaint is ineligible for the Complaint Mediation Program:<sup>1</sup>

1. Use of Deadly Force
  2. Suspicious and Wrongful Deaths
  3. Unnecessary or Excessive Use of Force
  4. Truthfulness
  5. Racial Animus
  6. Bias-Based Policing and/or Racial Profiling
  7. Sexual Orientation Bias
  8. Sexual Harassment
  9. Arrest or Detention
  10. Search or Seizure
  11. Reporting Misconduct
  12. Workplace Discrimination/Harassment
  13. Supervision
  14. Substantial injury suffered by any of the involved parties
- iii. Subject to all of the exclusions listed in Section 5.a.ii, the types of allegations eligible for inclusion in the mediation include, but are not necessarily limited to:
1. Performance of Duty
  2. Conduct Unbecoming an Officer
  3. Courtesy
  4. Policy/Procedure
  5. Policy Complaint<sup>2</sup>

*b. Officer Eligibility*

- i. Any new complaint is ineligible for the Complaint Mediation Program when any involved employee who is being accused of misconduct in the complaint:
  1. Has had any allegation of misconduct Sustained against him or her within the 12 months prior to the date that the new complaint was initiated; or
  2. Has been accused of misconduct in a Citizen Complaint, Administrative Investigation, or Comment of Non-Complaint, or any combination thereof, on three or more occasions within the 12 months prior to the date that the new complaint was initiated; or
  3. Has participated in the Complaint Mediation Program, as an employee being accused of misconduct, on three or more occasions within the 12 months prior to the date that the new complaint was initiated.

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<sup>1</sup> Many of the terms included in this list, as well as the list in Section 5.a.iii, were taken from the Model and/or from BPD's Office of Internal Affairs. Both of these offices are responsible for classifying incoming complaints of misconduct regarding BPD employees. As the terminology used in such classification may change from time to time, this list may need to be updated accordingly.

<sup>2</sup> When a complaint that is otherwise eligible for mediation, but the complaint is against a BPD policy and not a specific employee, BPD may designate an employee that it feels is appropriate to participate in the mediation as a BPD representative.

c. *Discretion of the Chief of Police*

- i. The Chief of Police, or the Chief's designee, at his or her discretion, may deem any complaint ineligible for mediation. The Chief shall promptly notify OIPA upon making such a determination.

## 6. Complaint Mediation Program Procedures

a. *Intake of New Complaints*

- i. Upon receiving a new complaint of misconduct that does not, on its face, fall into the prohibited categories listed in Section 5.a.ii, BPD's Office of Internal Affairs (IA) shall inform the complainant that his or her complaint ***may*** be eligible for the Complaint Mediation Program ***in lieu of an investigation***. IA shall also inform the complainant of his or her option, regardless of eligibility for mediation, to have the complaint handled in accordance with the procedures laid out in BPD Policy 1020. If the complainant prefers to pursue mediation, IA shall forward the complainant's contact information to OIPA, which shall then be responsible for contacting the involved employee(s) pursuant to Section 6.b.
  1. IA shall continue its practice of recording all new complaints in its case database, including the assignment of a case number to each complaint. All cases that end up being a part of the Complaint Mediation Program shall be categorized as "Citizen Complaints."
  2. IA shall attempt to identify and gather all evidence about the new complaint that is known or reasonably should be known to be perishable, even if all parties to a complaint indicate their consent to have it handled through the Complaint Mediation Program. The gathering of such evidence is important if mediation does not ultimately take place, in which case a formal investigation may be required to be completed instead.<sup>3</sup>
- ii. Upon receiving a new complaint of misconduct that does not, on its face, fall into the prohibited categories listed in Section 5.a.ii, OIPA shall inform the complainant that his or her complaint ***may*** be eligible for the Complaint Mediation Program ***in lieu of an investigation***. OIPA shall also inform the complainant of his or her option, regardless of eligibility for mediation, to have the complaint handled in accordance with the procedures laid out in BPD Policy 1020. If the complainant prefers to pursue mediation, OIPA shall notify IA of the information about the complaint it has learned at that point (as is already done with other complaints received by OIPA). OIPA shall then be responsible for contacting the involved employee(s) pursuant to Section 6.b.
  1. IA shall attempt to identify and gather all evidence about the new complaint that is known or reasonably should be known to be perishable, even if all parties to a

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<sup>3</sup> It is acknowledged that even with the requirement to collect perishable evidence, IA may not be made aware of as much information about the circumstances giving rise to the complaint as they would be by conducting a series of formal interviews; their ability to discover some of the evidence, perishable or not, that is relevant to the complaint may therefore be curtailed to some degree.

complaint indicate their consent to have it handled through the Complaint Mediation Program. The gathering of such evidence is important if mediation does not ultimately take place, in which case a formal investigation may be required to be completed instead.<sup>4</sup>

*b. Consent from all Involved Employees*

- i. Once a complainant has indicated a preference to pursue mediation of an eligible complaint, OIPA shall determine whether all involved employees are eligible for mediation in accordance with Section 5.b. If any involved employees are ineligible, OIPA will inform the complainant that mediation is not a viable option for that complaint, which will instead be handled in accordance with BPD Policy 1020. If all involved employees are eligible for mediation, OIPA shall contact each of them to determine whether they consent to mediation of the complaint against them. In making such contact, OIPA shall notify each involved employee of the nature of the allegation(s) raised against him or her. Contact with the employees will be made by OIPA via email message, with a copy to each employee's supervisor.<sup>5</sup>
  1. If any one of the involved employees decline to consent to mediation, the complaint will be deemed as ineligible for the Complaint Mediation Program. OIPA shall notify IA of this, and IA shall handle the complaint pursuant to BPD Policy 1020.
  2. Once the required email notification has been sent to the involved employees, if OIPA does not subsequently receive a response from any one (or more) of the employees for more than 7 calendar days after that employee was last on-duty, the complaint will be deemed as ineligible for the Complaint Mediation Program. OIPA shall notify the complainant and IA of this, and IA shall handle the complaint pursuant to BPD Policy 1020.
  3. If any employees are involved who are unable to be identified through the best efforts of OIPA, the complaint will be deemed as ineligible for the Complaint Mediation Program. OIPA shall notify IA of this, and IA shall handle the complaint pursuant to BPD Policy 1020.
  4. If all of the involved employees have been successfully identified and deemed eligible for mediation, and all of them have indicated their consent to mediation of the complaint involving them, then the mediation process shall continue pursuant to Section 6.c.

*c. Referral to SEEDS*

- i. OIPA shall contact the SEEDS Community Resolution Center (SEEDS) to initiate mediation proceedings. OIPA will also be responsible for providing SEEDS with whatever information they require about the complaint at issue. In accordance with standard SEEDS operating

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<sup>4</sup> See Note 3.

<sup>5</sup> OIPA shall make good faith efforts to establish contact with all involved employees via any means it deems effective and appropriate. The use of email is meant to be the single mandated method of contact in each case. Email is the preferred mandatory method because it lends itself to easy documentation and record-keeping.

procedure, SEEDS will then establish contact with the involved parties and schedule a date and time for the mediation to take place. BPD employees shall be allowed to attend mediation while on-duty, but they shall inform their immediate supervisor as far in advance as is reasonably feasible before doing so. BPD employees who attend mediation while off-duty shall be compensated for their time.

- ii. As noted above in Section 5.a.i., all parties to mediation must document their consent to the mediation process in writing. Once such documentation has been submitted to either IA, OIPA, or SEEDS (i.e. – at the site of mediation) by all parties, the subsequent failure of the complainant to attend a mediation session scheduled by SEEDS shall not result in any further investigation by IA into the underlying complaint; conversely, the subsequent failure of any of the involved BPD employees to attend a mediation session scheduled by SEEDS shall result in the termination of mediation efforts with respect to the underlying complaint, which will be then be handled by IA pursuant to BPD Policy 1020.
- iii. Notwithstanding Section 6.c.ii above, if, for any reason, SEEDS is unable to schedule a date for the mediation that is within 90 days of the date that the underlying complaint was initiated, OIPA will notify SEEDS to cease further attempts at scheduling the mediation. IA shall then handle the complaint pursuant to BPD Policy 1020.
- iv. Upon completion of its mediation efforts, SEEDS will contact OIPA to inform it of the outcome of those efforts. OIPA will, in turn, notify IA of the outcome.
  1. If SEEDS reports that mediation occurred, IA shall indicate the disposition of the underlying Citizen Complaint as “Mediated.” No further investigation will be conducted by IA with regard to the mediated complaint, and the complaint shall not be relied upon, in any way, as a basis for disciplinary proceedings or in the evaluation of an employee. This does not preclude a mediated complaint from being considered when determining officer eligibility for a separate mediation, in accordance with Sections 5.b.2 and 5.b.3.
  2. If SEEDS reports that mediation did not occur, SEEDS will also send a “No Mediation Letter” to the party that was requesting the mediation.
    - a. Involved BPD employees in receipt of such a letter may forward a copy to IA, which shall include the copy in the file for the associated case. IA shall also indicate the disposition of the underlying Citizen Complaint as “Mediated,” and shall treat the case as described in Section 6.c.iv.1 above.
    - b. Complainants in receipt of such a letter may forward a copy to IA, which shall include the copy in the file for the associated case. IA shall then handle the complaint pursuant to BPD Policy 1020.
- v. Exclusive of any materials it deems confidential in line with its standard operating procedures, SEEDS shall deliver all of the materials it has related to the mediation proceeding (i.e. - written consent to the mediation from the involved parties) to OIPA. OIPA shall deliver a copy of all such materials to IA.
- vi. OIPA shall be responsible for the payment of all fees arising out of the mediation services provided by SEEDS pursuant to the Complaint Mediation Program.



*d. Conduct of Mediation*

- i. The mediation itself shall be conducted according to the rules established for Community Mediation by SEEDS. Neither OIPA nor IA shall have any role in conducting any of the mediation sessions, nor shall they be present during any such sessions.
- ii. Pursuant to SEEDS standard practice, requests by either party in a mediation to be accompanied by a representative or another person must be made directly to SEEDS prior to the mediation session; this is so that consent can be sought by SEEDS from the opposite party before the request is granted to the requesting party.

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## Complaint Mediation Program

### 1021.1 PURPOSE AND SCOPE

Alternative dispute resolution in the form of mediation can often yield the optimal outcome of an incident involving alleged misconduct, both for the complainant and the involved employee. It may be the most effective way for a complainant to feel that his or her concern was genuinely listened to, and it presents an opportunity for an employee to share his or her views about the incident that gave rise to the complaint in a non-interrogatory setting. By maximizing the chance that each party will listen to the other's point of view, mediation often makes it possible for both sides to gain a new understanding of each other and of why the interaction between them might have escalated into a conflict in the first place.

Mediation is based on voluntary participation by all parties to a dispute, and it focuses on understanding, problem solving, and reconciliation rather than fact finding, determining guilt or innocence, and assigning responsibility.

### 1021.2 ELIGIBILITY FOR MEDIATION

The eligibility of complaints for inclusion in the Complaint Mediation Program is detailed in this section. As a corollary, any complaints that are not eligible for inclusion in the program, for any reason, shall be handled as complaints pursuant to Department Policy 1020 and/or the BART Citizen Oversight Model, as applicable.

#### 1021.2.1 CASE ELIGIBILITY

Participation in the Complaint Mediation Program must be voluntary for both the complainant(s) and the involved employee(s). Before the actual mediation process begins, all such parties must consent to the process in writing. Without written consent from all complainants and involved employees, the case is ineligible for inclusion in the program. Written consent may be obtained from the parties at the site of mediation, prior to the mediation session beginning.

- (a) Complaints that include the below-listed allegations and/or alleged circumstances are ineligible for the Complaint Mediation Program, regardless of the consent of the involved parties; when a complaint involves any of these allegations and/or alleged circumstances, as well as other allegations and/or alleged circumstances not on this list, the entire complaint is ineligible for the Complaint Mediation Program:
1. Use of Deadly Force
  2. Suspicious and Wrongful Deaths
  3. Unnecessary or Excessive Use of Force
  4. Truthfulness
  5. Racial Animus

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6. Bias-Based Policing and/or Racial Profiling
  7. Sexual Orientation Bias
  8. Sexual Harassment
  9. Arrest or Detention
  10. Search or Seizure
  11. Reporting Misconduct
  12. Workplace Discrimination/Harassment
  13. Supervision
  14. Substantial injury suffered by any of the involved parties
- (b) Subject to all of the exclusions listed above, the types of allegations eligible for inclusion in the Complaint Mediation Program include, but are not necessarily limited to:
1. Performance of Duty
  2. Conduct Unbecoming an Officer
  3. Courtesy
  4. Policy/Procedure
  5. Policy Complaint\*

\*When a complaint is eligible for mediation, but the complaint is against a Department policy and not a specific employee, the Department may designate an employee that it feels is appropriate to participate in the mediation as a Department representative.

#### 1021.2.2 OFFICER ELIGIBILITY

Any new complaint is ineligible for the Complaint Mediation Program when any involved employee who is being accused of misconduct in the complaint:

- (a) Has had any allegation of misconduct Sustained against him or her within the 12 months prior to the date that the new complaint was initiated; or
- (b) Has been accused of misconduct in a Citizen Complaint, Administrative Investigation, or Comment of Non-Complaint, or any combination thereof, on three or more occasions within the 12 months prior to the date that the new complaint was initiated; or
- (c) Has participated in the Complaint Mediation Program, as an employee being accused of misconduct, on three or more occasions within the 12 months prior to the date that the new complaint was initiated.

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#### 1021.2.3 DISCRETION OF THE CHIEF OF POLICE

The Chief of Police, or the Chief's designee, at his or her discretion, may deem any complaint ineligible for mediation. The Chief shall promptly notify the Office of the Independent Police Auditor (OIPA) upon making such a determination.

#### **1021.3 COMPLAINT MEDIATION PROGRAM PROCEDURES**

##### 1021.3.1 INTAKE OF NEW COMPLAINTS BY INTERNAL AFFAIRS SECTION

Upon receiving a new complaint of misconduct that does not, on its face, fall into the prohibited categories listed in Section 1021.2.1, the Internal Affairs Section shall inform the complainant that his or her complaint may be eligible for the Complaint Mediation Program in lieu of an investigation.

Internal Affairs shall also inform the complainant of his or her option, regardless of eligibility for mediation, to have the complaint handled in accordance with the procedures laid out in Department Policy 1020. If the complainant prefers to pursue mediation, Internal Affairs shall forward the complainant's contact information to OIPA, which shall then be responsible for contacting the involved employee(s) pursuant to Section 1021.3.3.

Internal Affairs shall continue its practice of recording all new complaints in its case database, including the assignment of a case number to each complaint. All cases that end up being a part of the Complaint Mediation Program shall be categorized as "Citizen Complaints."

Internal Affairs shall attempt to identify and gather all evidence about the new complaint that is known or reasonably should be known to be perishable, even if all parties to a complaint indicate their consent to have it handled through the Complaint Mediation Program. The gathering of such evidence is important if mediation does not ultimately take place, in which case a formal investigation may be required to be completed instead.\*

\*It is acknowledged that even with the requirement to collect perishable evidence, Internal Affairs may not be made aware of as much information about the circumstances giving rise to the complaint as they would be by conducting a series of formal interviews; their ability to discover some of the evidence, perishable or not, that is relevant to the complaint may therefore be curtailed to some degree.

##### 1021.3.2 INTAKE OF NEW COMPLAINTS BY THE OFFICE OF THE INDEPENDENT POLICE AUDITOR

Upon receiving a new complaint of misconduct that does not, on its face, fall into the prohibited categories listed in Section 1021.2.1, OIPA shall inform the complainant that his or her complaint may be eligible for the Complaint Mediation Program in lieu of an investigation. OIPA shall also inform the complainant of his or her option, regardless of eligibility for mediation, to have the complaint handled in accordance with the procedures laid out in Department Policy 1020. If the complainant prefers to pursue mediation, OIPA shall notify Internal Affairs of the information about the complaint it has learned at that point (as is already done with other complaints received

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by OIPA). OIPA shall then be responsible for contacting the involved employee(s) pursuant to Section 1021.3.3.

Internal Affairs shall attempt to identify and gather all evidence about the new complaint that is known or reasonably should be known to be perishable, even if all parties to a complaint indicate their consent to have it handled through the Complaint Mediation Program. The gathering of such evidence is important if mediation does not ultimately take place, in which case a formal investigation may be required to be completed instead.\*

\*It is acknowledged that even with the requirement to collect perishable evidence, Internal Affairs may not be made aware of as much information about the circumstances giving rise to the complaint as they would be by conducting a series of formal interviews; their ability to discover some of the evidence, perishable or not, that is relevant to the complaint may therefore be curtailed to some degree.

#### 1021.3.3 CONSENT FROM ALL INVOLVED EMPLOYEES

Once a complainant has indicated a preference to pursue mediation of an eligible complaint, OIPA shall determine whether all involved employees are eligible for mediation in accordance with Section 1021.2.2. If any involved employees are ineligible, OIPA will inform the complainant that mediation is not a viable option for that complaint, which will instead be handled in accordance with BPD Policy 1020. If all involved employees are eligible for mediation, OIPA shall contact each of them to determine whether they consent to mediation of the complaint against them. In making such contact, OIPA shall notify each involved employee of the nature of the allegation(s) raised against him or her. Contact with the employees will be made by OIPA via email message, with a copy to each employee's supervisor.\*

\*OIPA shall make good faith efforts to establish contact with all involved employees via any means it deems effective and appropriate. The use of email is meant to be the single mandated method of contact in each case. Email is the preferred mandatory method because it lends itself to easy documentation and record-keeping.

If any one of the involved employees decline to consent to mediation, the complaint will be deemed as ineligible for the Complaint Mediation Program. OIPA shall notify IA of this, and IA shall handle the complaint pursuant to BPD Policy 1020.

Once the required email notification has been sent to the involved employees, if OIPA does not subsequently receive a response from any one (or more) of the employees for more than 7 calendar days after that employee was last on-duty, the complaint will be deemed as ineligible for the Complaint Mediation Program. OIPA shall notify the complainant and IA of this, and IA shall handle the complaint pursuant to BPD Policy 1020.

If any employees are involved who are unable to be identified through the best efforts of OIPA, the complaint will be deemed as ineligible for the Complaint Mediation Program. OIPA shall notify IA of this, and IA shall handle the complaint pursuant to BPD Policy 1020.

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If all of the involved employees have been successfully identified and deemed eligible for mediation, and all of them have indicated their consent to mediation of the complaint involving them, then the mediation process shall continue pursuant to Section 1021.3.4.

#### 1021.3.4 REFERRAL TO SEEDS

OIPA shall contact the SEEDS Community Resolution Center (SEEDS) to initiate mediation proceedings. OIPA will also be responsible for providing SEEDS with whatever information they require about the complaint at issue. In accordance with standard SEEDS operating procedure, SEEDS will then establish contact with the involved parties and schedule a date and time for the mediation to take place. BPD employees shall be allowed to attend mediation while on-duty, but they shall inform their immediate supervisor as far in advance as is reasonably feasible before doing so. BPD employees who attend mediation while off- duty shall be compensated for their time.

As noted above in Section 1021.2.1, all parties to mediation must document their consent to the mediation process in writing. Once such documentation has been submitted to either IA, OIPA, or SEEDS (i.e. – at the site of mediation) by all parties, the subsequent failure of the complainant to attend a mediation session scheduled by SEEDS shall not result in any further investigation by IA into the underlying complaint; conversely, the subsequent failure of any of the involved BPD employees to attend a mediation session scheduled by SEEDS shall result in the termination of mediation efforts with respect to the underlying complaint, which will be then be handled by IA pursuant to BPD Policy 1020.

If, for any reason, SEEDS is unable to schedule a date for the mediation that is within 90 days of the date that the underlying complaint was initiated, OIPA will notify SEEDS to cease further attempts at scheduling the mediation. IA shall then handle the complaint pursuant to BPD Policy 1020.

Upon completion of its mediation efforts, SEEDS will contact OIPA to inform it of the outcome of those efforts. OIPA will, in turn, notify IA of the outcome.

If SEEDS reports that mediation occurred, IA shall indicate the disposition of the underlying Citizen Complaint as “Mediated.” No further investigation will be conducted by IA with regard to the mediated complaint, and the complaint shall not be relied upon, in any way, as a basis for disciplinary proceedings or in the evaluation of an employee. This does not preclude a mediated complaint from being considered when determining officer eligibility for a separate mediation, in accordance with Section 1021.2.2.

If SEEDS reports that mediation did not occur, SEEDS will also send a “No Mediation Letter” to the party that was requesting the mediation.

Involved BPD employees in receipt of such a letter may forward a copy to IA, which shall include the copy in the file for the associated case. IA shall also indicate the disposition of the underlying Citizen Complaint as “Mediated.” No further investigation will be conducted by IA with regard to the mediated complaint, and the complaint shall not be relied upon, in any way, as a basis for disciplinary proceedings or in the evaluation of an employee. This does not preclude a mediated

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complaint from being considered when determining officer eligibility for a separate mediation, in accordance with Section 1021.2.2.

Complainants in receipt of such a letter may forward a copy to IA, which shall include the copy in the file for the associated case. IA shall then handle the complaint pursuant to BPD Policy 1020.

#### 1021.3.5 CONDUCT OF MEDIATION

The mediation itself shall be conducted according to the rules established for Community Mediation by SEEDS. Neither OIPA nor IA shall have any role in conducting any of the mediation sessions, nor shall they be present during any such sessions.

Pursuant to SEEDS standard practice, requests by either party in a mediation to be accompanied by a representative or another person must be made directly to SEEDS prior to the mediation session; this is so that consent can be sought by SEEDS from the opposite party before the request is granted to the requesting party.

Exclusive of any materials it deems confidential in line with its standard operating procedures, SEEDS shall deliver all of the materials it has related to the mediation proceeding (i.e. - written consent to the mediation from the involved parties) to OIPA. OIPA shall deliver a copy of all such materials to IA.

#### 1021.3.6 COST OF MEDIATION

OIPA shall be responsible for the payment of all fees arising out of the mediation services provided by SEEDS pursuant to the Complaint Mediation Program.