



# NEW ORLEANS POLICE DEPARTMENT OPERATIONS MANUAL

## CHAPTER: 24.2

### TITLE: COMMUNITY-POLICE MEDIATION

**EFFECTIVE: 09/02/2018**

**REVISED: 07/28/2019, 8/13/2023**

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#### PURPOSE

The Community-Police mediation process is designed to help resolve conflict and allow the parties involved to come to a mutually acceptable resolution.

The Office of the Independent Police Monitor (OIPM) has established the Community-Police Mediation Program because adversarial disciplinary processes are not always the most effective way to resolve all police-community conflict. NOPD employees and community complainants may participate in mediation as an alternative to the traditional complaint investigation process.

The NOPD goal in participating in a mediation process is to increase the level of trust between the Department and the community at large. Mediation provides NOPD employees with a mechanism to resolve complaints outside the investigation process.

#### DEFINITIONS

**Complainant**—Any community member (minor or adult) who makes a complaint to the NOPD or to the OIPM.

**Mediation**—A mediation process helps parties develop a mutual understanding of a conflict. Mediation may help the parties identify disputed issues, facilitate communication, provide an opportunity to improve community relationships, and generate options that may help the parties reach a mutually acceptable resolution.

**Post-investigation Mediation** – Mediation that occurs after a formal disciplinary investigation has taken place and has resulted in a disposition of unfounded, exonerated, or not sustained. The goal of a post-investigation mediation is to help improve NOPD and community relationships by generating discussion that allows for better understanding between NOPD employees and the community.

**Mediation Coordinator**—The Mediation Coordinator is a person designated by the OIPM to serve as the unbiased, impartial, and independent coordinator and facilitator of the Community-Police Mediation Program. The Mediation Coordinator will establish, coordinate, and review all the mediation processes and ensure the collection of evaluative data. The Mediation Coordinator will closely liaise with the NOPD Public Integrity Bureau (PIB) as necessary to develop and maintain the referral processes.

**Mediator**—The role of the mediator is to be a neutral and trained third party who does not

influence or pressure either party to come to an agreement; the complainant and the NOPD employee own the process.

**NOPD Employee**—Any person employed or appointed by the Department, including full-time or part-time officers, reserve officers, civilian employees, and volunteers.

### ELIGIBILITY PROCESS

1. Only civilian complaints will be considered eligible for mediation. PIB will determine whether a complaint is eligible. The PIB Administrative Lieutenant/Intake Lieutenant will assess complaint allegations and provide cases eligible for mediation to the OIPM within three days after the complaint is received by the NOPD. PIB will adhere to its normal complaint intake and classification process. Complaints that PIB does not provide to the OIPM for potential mediation will remain with PIB for the appropriate non-mediation investigatory process.
2. Certain civilian complaints will be considered eligible for mediation, for example: professionalism, discourtesy, and neglect of duty. Complaints involving the following will not be considered eligible for mediation:
  - (a) A criminal allegation against the NOPD employee;
  - (b) Where discipline results in the possible termination of an NOPD employee;
  - (c) False arrest;
  - (d) Unreasonable use of force;
  - (e) The planting of evidence;
  - (f) Untruthfulness/false statements;
  - (g) Unlawful search;
  - (h) Retaliation;
  - (i) Sexual misconduct;
  - (j) Domestic violence;
  - (k) Theft; or
  - (l) Possible misconduct of the supervisory or command leadership of the subject NOPD employee
3. The complaint will not be eligible for mediation if the NOPD employee against whom the complaint is made has already mediated two complaints within the previous 12 months.
4. Eligibility determinations will be final and not subject to appeal.

### SUITABILITY PROCESS

5. Once PIB has deemed a complaint eligible for mediation and provided the complaint to OIPM, the OIPM will assess case and party suitability for mediation through assessment conversations with the NOPD employee and the complainant. Whether the parties agree to mediation will be considered in determining suitability.
6. The OIPM will determine suitability for mediation. A complainant may be suitable for mediation when:
  - (a) The complainant has provided informed consent to mediation (See **Form 312 – Consent to Mediation and Withdrawal of Complaint**);
  - (b) If the complainant is a minor, the minor will be accompanied at the mediation by an adult support person;
  - (c) The complainant agrees to sign the confidentiality form (See **OIPM Mediation Program Confidentiality Agreement Form**) and the complaint waiver form (See **Form 312**); and
  - (d) The complainant understands the expectations of mediation and is willing to participate in the mediation in good faith.

7. The OIPM will determine suitability for mediation. A NOPD employee may be suitable for mediation when:
  - (a) The NOPD employee has provided informed consent;
  - (b) The NOPD employee has signed an automatic 60-day extension form and confidentiality form (see 1025.5); and
  - (c) The NOPD employee understands the expectations of mediation and is willing to participate in the mediation in good faith.
8. Suitability criteria will be final and not subject to appeal.
9. Complaints that the OIPM determines are unsuitable for mediation will be automatically re-filed by PIB for the appropriate non-mediation investigatory process.

#### AGREEMENT/DISAGREEMENT TO MEDIATE

10. Participation in the mediation process is voluntary, and the complainant and NOPD employee must agree to mediation before the mediation can proceed.
11. The NOPD employee, if agreeing to mediate a complaint, shall give written authorization by signing an extension form that allows PIB to extend the investigation period of the complaint for an additional 60 days for a maximum period of 120 days. The NOPD employee must sign the extension form within 10 days after PIB provides the complaint to the OIPM.
12. The complainant, if agreeing to the mediation and as part of the mediation process, must withdraw the complaint from the normal complaint investigative process outlined in **Chapter 52.1.1 – Misconduct Intake and Complaint Investigation** and allow the issue that is the basis of the original complaint to be handled according to this Chapter by signing a complaint waiver form within 20 days after PIB provides the complaint to the OIPM.
13. If both parties agree to mediate, the Mediation Coordinator will select a mediator or mediators and a date for the mediation session.
14. If the NOPD employee does not agree to mediate, the complaint will be automatically re- filed by PIB under the complaint investigative process outlined in **Chapter 52.1.1 – Misconduct Intake and Complaint Investigation** and will be subjected to the appropriate non-mediation investigatory process. If the complainant does not agree to mediate, the complaint will be automatically re-filed by PIB and will be subjected to the appropriate non-mediation investigatory process.

#### MEDIATION TIME PERIODS

The PIB Administrative Lieutenant/Intake Lieutenant assesses complaint allegations and refers cases eligible for mediation to the OIPM.	OIPM determines suitability, and the parties agree to mediate and sign the confidentiality, extension, and complaint waiver forms.	Mediation occurs.
14 days after the complaint is received by NOPD.	20 days after PIB provides the complaint to the OIPM.	Within 60 days after the complaint is received by the NOPD.

15. A complaint that is not mediated within 60 days will be returned to PIB for the appropriate non-mediation investigatory process. In the case of a failure to mediate

based on scheduling or a failure of the NOPD employee to participate in the mediation in good faith, the complaint will be automatically re-filed by PIB and will be subjected to the appropriate non-mediation investigatory process. The mediator will adequately document to PIB the basis for its determination that the NOPD employee has failed to participate in the mediation in good faith. (See **Chapter 52.1.1 – Misconduct Intake and Complaint Investigation**)

### **SCHEDULING OF MEDIATION**

16. The Mediation Coordinator will schedule the mediation at a time agreed upon by all parties. Failure to agree on a date will not be the basis of any disciplinary action against an NOPD employee. If a date cannot be agreed to, the complaint will be automatically re- filed by PIB and will be subjected to the appropriate non-mediation investigatory process.

### **MEDIATORS**

17. All mediators will be selected by the Mediation Coordinator from a pool of mediators. This pool of mediators will consist of appropriately skilled mediators that have undergone police complaint mediation training arranged by the Mediation Coordinator. Ideally, mediation will be conducted by a panel of two mediators. Where a civilian complainant is not fluent in English, a bilingual mediator or an interpreter will be offered.

### **CONFIDENTIALITY**

18. The mediation and any paperwork associated with the mediation are confidential and shall not be reproduced or made public in any way. Both parties must sign a Confidentiality Agreement that will include a prohibition on the use of any information disclosed in the mediation process in a judicial or trial setting.
19. Survey forms will be provided before and after the mediation session to be filled out separately by both parties. The information will be anonymous and will be used only for research and evaluation purposes. Consent to fill out the survey forms will be obtained from both parties.

### **CONDUCT OF MEDIATION**

20. Mediation is a non-confrontational dispute resolution process. In order to maintain a positive atmosphere, each party is allowed to bring another individual, but that individual will not participate in the mediation except to observe and provide support (unless that individual is an adult accompanying a minor).
21. The Rules of Evidence do not apply to mediations. The parties may bring whatever information they feel relevant to the mediation.
22. The mediator or mediators will attempt to facilitate a resolution to issues brought up in the mediation. The goal is for parties to listen to each other to determine what led both to the complaint and to the complainant-police interaction.

### **MEDIATION OUTCOMES**

23. Working together, all parties should attempt to decide on a resolution that will satisfy both parties. Parties may elect to draft and sign a resolution agreement and may choose to share that agreement with the OIPM and/or PIB. A specific resolution is not required to successfully conclude a mediation session.

24. The agreement to enter into mediation, the act of taking part in mediation, and the resolution of the mediation will not be recorded in the NOPD employee's disciplinary record.

### **APPEAL**

25. There shall be no appeal from the mediation process. Mediation is a voluntary process entered into willingly by both parties; due to its voluntary nature, appeal is unnecessary.

### **POST-INVESTIGATION MEDIATION**

26. Mediation may also be offered after a misconduct investigation is complete. If a complainant or an NOPD employee under investigation did not receive the outcome they felt was appropriate, mediation may offer a chance for their concerns to still be heard. Mediation offers a chance for the employee and complainant to clarify misunderstandings, give and receive feedback on how to resolve the issues, better understand each other, increase trust, and improve relationships between the NOPD and the community.
27. Post-investigation mediation will be available for complaints with UNFOUNDED, EXONERATED, or NOT SUSTAINED dispositions. Post-investigation mediation will not be offered for complaints with a SUSTAINED disposition. SUSTAINED complaints will be handled according to the disciplinary process outlined in Chapter 52.1.1 – Misconduct Intake and Complaint Investigation.
28. The process for eligibility, suitability, scheduling, mediators, confidentiality, conduct of mediation, and mediation outcomes will follow the established policy and processes for regular mediation referrals as outlined above in this Chapter. The following exceptions apply:
  - a. The NOPD employee does not need to sign a 60-day extension form since the investigation will be complete at this point. In lieu of the extension, the NOPD employee will provide informed consent and sign a Consent to Mediate Form (see Consent to Mediate Form).
  - b. The complainant does not need to sign a complaint waiver form since the investigation will be complete at this point. In lieu of the waiver, the complainant will provide informed consent and sign an OIPM Consent to Mediate Form (form provided by the OIPM).
29. Complaints that previously were offered mediation as an alternative to investigation but were declined are still eligible for post-investigation mediation and should be offered the opportunity again. Complainants or employees may desire the opportunity to mediate once the investigation is complete.

### **POST- INVESTIGATION MEDIATION AGREEMENT**

30. Participation in the mediation process is voluntary, and the complainant and NOPD employee must agree to mediation before the mediation can proceed.
31. If either party do not agree to mediate, no further action will be taken.

### **POST-INVESTIGATION TIMELINE**

32. The complaint should be referred to the OIPM Mediation Program for post-investigation mediation within ten (10) business days of the investigation's completion.

33. The OIPM will conduct assessment conversations with the NOPD employee and the complainant, obtain signed consent forms, and coordinate a mediation date. Mediation should occur within a timely manner after the complaint is received by the OIPM.

#### **POST-INVESTIGATION MEDIATION GOALS**

34. The goal is for the participants to listen to each other, have a space to be heard, gain clarity, and better understand what led to both the complaint and the complainant-police interaction. The participants may make agreements, but a specific resolution is not required.
35. After the mediation session is complete, if the NOPD employee has participated in good faith, the OIPM agrees to file a commendation letter to acknowledge the effort of the NOPD employee to go beyond any departmental requirements to foster relationships with community members.