

*FINAL INVESTIGATIVE REPORT*

Date of Issuance: April 16, 2020

ACTON POLICE DEPARTMENT:

 *COMPLAINT INVESTIGATION*

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**I. INTRODUCTION**

The Town of Acton engaged Natashia Tidwell and Hogan Lovells US LLP (“the Investigators”)<sup>1</sup> to review the Acton Police Department’s response to a January 9, 2020 incident at the Merriam Elementary School to determine whether the officers performed consistently with police department policies and procedures and, where necessary, to make recommendations for improvement of applicable policies, training, or strategies.

On January 9, 2020, Detective Tyler Russell, an Acton Police School Resource Officer, was asked to assist Merriam School personnel with Juvenile, [REDACTED], who was physically combative with school personnel and [REDACTED]. Shortly thereafter, Sergeant Scott Howe arrived at the school to assist Det. Russell. School officials also notified Juvenile’s mother, [REDACTED]. Ultimately, Det. Russell and school officials determined that Juvenile needed [REDACTED]

[REDACTED].<sup>2</sup> Upon her arrival at the Merriam School, [REDACTED] objected to the proposed course of action. Following a series of interactions with police and school officials, a portion of which was captured by video and uploaded to Facebook, Sgt. Howe placed [REDACTED] under arrest for Disorderly Conduct. Acton Fire Department personnel transported Juvenile to Emerson Hospital via ambulance. [REDACTED] who is Black, alleged that police and school officials were treating her, and Juvenile, differently based on their race.

This report summarizes the investigation. It concludes that there is no evidence to support a finding that the officers’ actions, specifically [REDACTED] arrest and the [REDACTED] of Juvenile, were discriminatory in nature. Similarly, the Investigators conclude that the officers’ actions at Merriam were generally consistent with police department policies and procedures. However, the Investigators conclude that the physical execution of [REDACTED] arrest met the standard for submission of a Use of Force report pursuant to Acton Police Department Policy & Procedure 1.01 and that Sgt. Howe violated the policy by failing to submit the required report.<sup>3</sup>

<sup>1</sup> On April 3, 2020, Attorney Tidwell left Hogan Lovells US LLP to join Saul Ewing Arnstein & Lehr LLP.

<sup>2</sup> [REDACTED]

[REDACTED] See Exhibit 1.

<sup>3</sup> As discussed later in this report, the Investigators recognize that Chief Burrows’ reported assertion that a Use of Force report was unnecessary may impact the adoption of the Investigators’ Sustained finding or the imposition of any corrective action in this matter. However, based on the policy’s clear language, the Investigators conclude that a report was required. The policy’s language regarding Det. Russell’s responsibility, as an officer assisting in the

## **II. PROCEDURAL TIMELINE**

Based on [REDACTED] allegation that the school and police response was racially motivated, Acton Chief of Police Richard Burrows recorded the complaint in a Citizen’s Complaint Form (See **Exhibit 2**), which triggered the opening of an internal investigation.<sup>4</sup>

On February 5, 2020, Chief Burrows notified Sgt. Howe and Det. Russell that each was “the focus of an internal investigation for violations of the Acton Police Department Rules and Regulations specifically, Conduct Unbecoming an Officer (Rules and Regulations-G. Prohibited Conduct #1) and Neglect of Duty (Rules and Regulations G. Prohibited Conduct #17). See **Exhibits 3 and 4**.

On February 10, 2020, the Town of Acton engaged Natasha Tidwell and Hogan Lovells to conduct the internal investigation of this matter.

On February 24, 2020, Chief Burrows notified Sgt. Howe and Det. Russell of their Rights and Responsibilities under the investigation and ordered each to appear for investigative interviews at a date to be determined.<sup>5</sup> See **Exhibits 5 and 6**.

On March 6, 2020, Chief Burrows notified Sgt. Howe and Det. Russell of his approval of the Investigators’ request for additional time to complete the investigation.<sup>6</sup> See **Exhibits 7 and 8**.

## **III. SCOPE OF INVESTIGATION**

The Town of Acton provided the Investigators with the following audio and video recordings:

### Recordings

- Acton Police Department booking hallway video recording;
- Acton Police Department booking holding area video recording;
- Acton Police Department holding cell #5 video recording;
- Acton Police Department holding cell #6 video recording;
- Merriam School entrance closed circuit surveillance camera recording;
- Merriam School lobby closed circuit surveillance camera recording;
- [REDACTED] Facebook video;

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arrest, is less clear. As such, the Investigators did not issue a finding as to whether Det. Russell violated the policy in his failure to submit a Use of Force report.

<sup>4</sup> To date, neither [REDACTED] nor anyone acting on her behalf has filed a complaint with the Acton Police Department.

<sup>5</sup> Although both officers were provided a Statement of Rights and Responsibilities on February 25, 2020, the notices were not signed and returned until March 30, 2020.

<sup>6</sup> Acton Police Department Policy & Procedure 4.06, *Internal Affairs (Appendix A)*, requires completion of internal investigations within 30 days unless the Chief or Deputy Chief of Police grants an extension.

- Acton Police/Acton Fire Department dispatch audio recording; and
- Acton Boxboro Regional School District January 30, 2020 Community Conversation.

### Documents

In addition to the recordings listed above, the Investigators were provided with numerous police records and other documents, including but not limited to the following:

- Acton Police Department Incident Report #2020-00545 (1/7 Incident at Merriam School);
- Acton Police Department Incident Report #2020-00651 (1/8 Incident at Merriam School);
- Acton Police Department Incident Report #2020-00746 (1/9 Arrest at Merriam School and supplemental reports);
- Rules & Regulations for the Government of the Acton Police Department;
- Acton Police Department Policies & Procedures;
- Merriam Elementary School Personnel Witness Statements;
- Merriam Elementary School Record of Crisis Intervention Team (“CIT”) Incidents;
- Memorandum of Understanding (“M.O.U”) between Acton Boxborough Regional School District and the Acton Police Department Regarding the School Resource Officer Program; and
- Judith Kaye Training & Consulting: *Summary Report of Acton Police Department Cultural Competence & Racial Equity Training*, August 9, 2017 (Rev. 9-5-17).

### Interviews

The Investigators interviewed the subject officers, Sgt. Howe and Det. Russell. Both were accompanied by their respective union attorneys. ██████████ did **not** respond to interview requests.<sup>7</sup> Twelve (12) other interviews were conducted, by telephone, videoconference, and in-person:<sup>8</sup>

- Acton Police Department Lieutenant Edward Lawton;
- Acton Police Department Lieutenant Douglas Sturniolo;
- Acton Police Department Officer Tricia Sullivan;
- Acton Fire Department Captain Robert Smith;
- Acton Fire Department Firefighter Shaun Shattuck;
- Acton Fire Department Firefighter James Ruggiero;

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<sup>7</sup> The Investigators initially attempted to contact ██████████ through Attorney Steven Ballard, who identified himself in media reports as ██████████ attorney. Attorney Ballard reported, via email, that he was not representing ██████████ in “this matter,” and assured Investigators that he would forward the interview request to ██████████. See Exhibit 9. The Investigators also attempted to contact ██████████ through certified and regular mail.

<sup>8</sup> On March 10, 2020, in response to the public health emergency stemming from the outbreak of COVID-19, Massachusetts Governor Charlie Baker issued the first in a series of executive orders closing schools and non-essential businesses and advising residents to stay-at-home. As such, the Investigators conducted several interviews remotely.

- Acton Fire Department Paramedic Dave Sukerman;
- Acton Fire Department Paramedic Matthew Seely;
- Acton-Boxborough School Deputy Superintendent Dawn Bentley;
- Merriam Elementary School Principal Juliana Schneider;
- Merriam Elementary School Psychologist Carolyn Imperato; and
- Merriam Elementary School Special Educator Chelsea Medvedeff.

#### **IV. FACTUAL SUMMARY**

The following summarizes the evidence the Investigators gleaned from witness interviews, written statements, audio and video recordings, and relevant documents.

##### **A. DETECTIVE RUSSELL’S PRE-JANUARY 9, 2020 INTERACTIONS WITH JUVENILE**

###### **1. January 7, 2020**

On January 7, 2020, Merriam School officials requested that Det. Russell come to the school to assist with Juvenile. According to Assistant Principal Bryant Armitrano’s written statement, [REDACTED] called to alert him that Juvenile was refusing to get out of the family’s van and enter the school. [REDACTED] car was parked in the circular driveway in front of Merriam. At various points before and after Det. Russell’s arrival, Juvenile locked himself inside the car, threw objects out of the car, and physically assaulted [REDACTED] and others who were able to gain entry to the car. The assembled adults offered Juvenile numerous incentives to convince him to enter the school. After roughly 90 minutes, Juvenile went into the school building to use the bathroom. Det. Russell left the school and filed a report detailing his response. *See Exhibit 10.*

###### **2. January 8, 2020**

On January 8, 2020, Mr. Armitrano called Det. Russell to report that Juvenile had run out of the Merriam School and towards the street. According to written statements and interviews with school officials, it took about 10 minutes to return Juvenile to the building. Prior to fleeing the school, Juvenile became agitated and physically combative with school officials. According to these officials, Juvenile threw various objects around the office and [REDACTED] [REDACTED]. School officials [REDACTED] [REDACTED] Mr. Armitrano notified [REDACTED] to inform her of what was happening with Juvenile. Advocates Psychiatric Emergency Service (“Advocates”), a mobile crisis intervention team serving Acton and neighboring communities, was also contacted.<sup>9</sup> However, Advocates did not send a team to the school. By the time Det. Russell

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<sup>9</sup> While an Advocates team member did reach school officials by phone and reportedly visited the [REDACTED] family that evening, it is unclear how (and by whom) Advocates was alerted to the January 8<sup>th</sup> incident with Juvenile. According to Mr. Armitrano’s written statement, [REDACTED] contacted Advocates and asked that they respond to

arrived, Juvenile was back in the building and seated calmly. Det. Russell remained at the school for roughly an hour but did not have any contact with Juvenile. He later filed a report detailing his response. *See Exhibit 11.*

**B. JANUARY 9, 2020: EXECUTION OF [REDACTED] ON JUVENILE**

Juvenile began the school day without incident. He spent part of the morning in his regular [REDACTED] classroom and a portion in the Resource Room, the room used by Chelsea Medvedeff and other special educators to facilitate activities in support of Juvenile and other students. At approximately 11:35 a.m., when Juvenile was scheduled to be outside at recess with his class, Ms. Medvedeff observed Juvenile inside Mr. Armitrano’s office.<sup>10</sup> After a few minutes, Juvenile agreed to leave the office and return to the Resource Room where he sat quietly for a few minutes before returning to Mr. Armitrano’s office.

Over the course of the next hour, Juvenile grew increasingly agitated. He flipped over a table and attempted to tear off one of its legs. When Ms. Medvedeff attempted to stop him, Juvenile punched and kicked her in the knees. Other school officials, including Merriam School principal Juliana Schneider, arrived to assist Ms. Medvedeff in controlling Juvenile. The group attempted various “stability holds,” and ultimately activated the school’s crisis intervention plan whereby various school officials (the “Team”) join in responding to [REDACTED]. The Team included School Psychologist Carolyn Imperato. Det. Russell was also notified.

According to school officials, Juvenile engaged in [REDACTED] they witnessed the day before, including [REDACTED]. Ms. Imperato [REDACTED]

[REDACTED] Det. Russell and Ms. Imperato joined Principal Schneider in her office, which adjoins Mr. Armitrano’s. There,

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Merriam. However, Chelsea Medvedeff, the Merriam School Special Education teacher, states that school officials asked Det. Russell to contact Advocates. It is possible that Advocates received multiple calls.

<sup>10</sup> Mr. Armitrano was not in the school building. As such, his office was not on the list of available “choices” for Juvenile to spend time away from his regular classroom.

<sup>11</sup> Det. Russell was not trained in the safe restraint technique but asked school staff to direct him in implementing the technique.

the three reviewed the available options for Juvenile’s care. By that time, ██████████ had been notified and asked to come to school. Once again, Advocates was called, but reported that no one was available to respond. Det. Russell, Ms. Imperato, and Principal Schneider discussed releasing Juvenile to ██████████ but Ms. Imperato counseled against doing so based on what had been reported to her about Juvenile’s assaultive behavior towards ██████████ earlier that week. The three agreed that Juvenile would need ambulance transport and, according to Ms. Imperato, hoped that ██████████ would be “on board” with the decision once she arrived. Ms. Imperato believed that ██████████ would agree to the proposed plan based on Mr. Armitrano’s reporting of a conversation he had with ██████████ in which she stated her desire for Juvenile to be evaluated. Det. Russell called Sgt. Howe, the Patrol Shift Supervisor, on his cellular telephone to apprise him of the ongoing situation and the possibility of ██████████.<sup>12</sup> About 5 minutes later, according to Sgt. Howe, Det. Russell called again to report that ██████████ had arrived at Merriam and to request that Sgt. Howe come to the school along with an ambulance.

At 1:21 p.m., Acton Fire Rescue was dispatched to the Merriam School for a “██████████.”<sup>13</sup> As is standard practice, the ambulance, staffed by Acton Fire Department paramedics Dave Sukerman and Matthew Seely, was accompanied by an engine truck, staffed by Firefighters James Ruggiero and Shaun Shattuck. They conferred with Det. Russell and Sgt. Howe prior to entering Mr. Armitrano’s office to see Juvenile. Ruggiero remained in the office with Juvenile, Det. Russell, and school officials, while Seely, Shattuck, and Sukerman floated between the office and the hallway where ██████████ was conferring with Sgt. Howe and other school officials. During that period, Juvenile was largely uncommunicative but, in between bouts of crying, he would occasionally call out to his mother who could be heard out in the hallway with Sgt. Howe and other school officials. The fire department personnel attempted to coax Juvenile from underneath the table but were unsuccessful until Sgt. Howe entered the room and revealed to Juvenile that ██████████ was at the police station. At that point, Juvenile took Sgt. Howe’s extended hand and climbed aboard the stretcher without incident. At 2:00 p.m., Sukerman and Seely transported Juvenile to Emerson Hospital from the Merriam School. Det. Russell and school officials arrived at Emerson Hospital shortly thereafter.

**C. JANUARY 9, 2020: ARREST OF ██████████**

██████████ arrived at Merriam School at approximately 1:00 p.m. She initially met with Det. Russell, Principal Schneider, and Ms. Imperato inside Schneider’s office where she was updated on the situation with Juvenile and the consensus view that Juvenile needed to be transported to

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<sup>12</sup> Sergeant Fred Rentschler, Det. Russell’s direct supervisor, was not working that day. Sgt. Howe, who was at Acton Police headquarters at the time of the call, walked downstairs to Acton Fire Department headquarters to discuss the situation with the Deputy Fire Chief and inquire as to whether Juvenile could be transported to Children’s Hospital in Boston rather than Emerson Hospital in Acton.

<sup>13</sup> January 9th was an early release day at Merriam. Although the students had already been dismissed, fire personnel were asked to curtail use of emergency lights and sirens as they approached the school to protect Juvenile’s privacy.

██████████<sup>14</sup> ██████████ objected and suggested instead that she bring Juvenile to the hospital. According to Ms. Imperato, ██████████ combative behavior quickly escalated. She raised her voice and pointed in Imperato’s and Schneider’s faces, stating words to the effect of, “do your job and let me do mine.” ██████████ demanded to see Juvenile and reacted angrily when Schneider asked ██████████ to permit Principal Schneider to enter the adjoining room first to see how Juvenile was doing. ██████████ rose from her seat and, according to Ms. Imperato, “got right up into [Principal Schneider’s] face.” Det. Russell stepped between the two and ██████████ entered the adjoining room where Juvenile was seated calmly eating a snack.

██████████ took Juvenile by the hand and walked out of the room and into the hallway. They spoke privately for a brief period before returning to Mr. Armitrano’s office. According to Det. Russell, ██████████ told Juvenile not to leave with the police and fire department and continued to voice her objection to ██████████. Det. Russell asked ██████████ to return to the hallway. At about that same time, approximately 1:15 p.m., Sgt. Howe arrived.

After returning Juvenile to Mr. Armitrano’s office, ██████████ can be seen on the school’s closed-circuit video pacing the lobby and talking on her cellphone. According to Sgt. Howe, ██████████ was speaking to Advocates, the mobile crisis team. Because ██████████ had activated the speakerphone, Sgt. Howe spoke directly to Advocates and informed them of the decision to transport Juvenile to the hospital ██████████ over ██████████ objection. Over the next few minutes, Sgt. Howe along with Firefighter/Paramedics Seely and Sukerman tried to convince ██████████ to assist them in getting Juvenile to the hospital. She refused and repeatedly requested that she be permitted to see Juvenile. Seely and Sukerman shared Sgt. Howe’s belief that ██████████ “irrational” behavior would do little to calm Juvenile and would, in fact, exacerbate the situation as evidenced by her previously telling Juvenile not to leave with the police and fire officials. ██████████ continued to escalate, even accusing Sukerman of trying to “get all the credit” by taking Juvenile to the hospital. According to Seely, ██████████ pulled out her cellphone and stated her intent to “record all you motherfuckers.”

██████████ began filming her interaction with school, police, and fire officials. The roughly 6-minute video begins with ██████████ describing her location and stating, “they are forcing my child to go to the hospital by force.” Sgt. Howe is standing in the hallway between ██████████ and Mr. Armitrano’s office. Juvenile can be heard calling to ██████████ who, upon hearing Juvenile call to her, asks Sgt. Howe whether he intends to deny her entry into the room. Sgt. Howe repeatedly asks ██████████ to help police and fire officials get Juvenile to the hospital. ██████████ refuses and accuses police and school officials of treating her and Juvenile differently because they are Black. Sgt. Howe responds that race “has nothing to do with” the officials’ actions and resumes his requests for ██████████ to assist in executing the ██████████.

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<sup>14</sup> Since earlier in the school year, ██████████ and Principal Schneider shared a strained relationship that included one incident in which ██████████ angrily berated Schneider whom she characterized as a “joke of a principal.”

██████████ focuses her attention on Principal Schneider at two different points in the video. At the 90-second mark, ██████████ calls out “Juliana, Juliana, can I talk to you, Juliana?” Principal Schneider does not respond and walks past ██████████. When ██████████ attempts to follow her, Sgt. Howe steps between them and tells ██████████ that she is “hindering the process.” Principal Schneider remains in the hallway outside the door to the Main Office suite with Assistant School Superintendent Dawn Bentley who Schneider summoned to Merriam prior to ██████████ arrival. Principal Schneider states that she stayed in the area near the office suite, “pacing a bit back and forth,” and feeling “uncomfortable” with the filming. At one point she questioned aloud whether she should stay in the hallway or return to her office. Asst. Supt. Bentley recalls the moment and states that she interpreted Schneider’s question as concern that she (Schneider) was getting “[██████████] worked up.” Ultimately, the two determined that it was best for Principal Schneider to remain in the hallway.

As captured in the video, Sgt. Howe continues to ask ██████████ to help the police. ██████████ asserts that she has a right to see Juvenile while Sgt. Howe conditions her ability to do so on her willingness to help police and fire officials transport Juvenile to the hospital. Moments later, ██████████ rushes forward, appearing to bump Sgt. Howe. He tells her, “stop pushing me,” and attempts to hold her back. ██████████ asks if she is under arrest to which Sgt. Howe responds, “you’re not under arrest yet.” As Sgt. Howe appears to struggle with ██████████, they inch closer to Principal Schneider who attempts to move away from ██████████. The video becomes very shaky as ██████████ calls out “Juliana, Juliana” and tries to move past Sgt. Howe towards Principal Schneider. At that point, according to Principal Schneider, ██████████ struck Schneider’s “back lower hip” in what Schneider characterizes as a “physical assault” rather than ██████████ attempt to get Principal Schneider to respond.<sup>15</sup> At the video’s 2:40 mark, Sergeant Howe places ██████████ under arrest.

Sgt. Howe: “Now you’re under arrest.”

██████████: “What did I do? What did I do now?”

Sgt. Howe: “Unlawful [unintelligible]...disturbing the peace.”

██████████: “I’m not...I was trying to talk to her.”

██████████: “This is Acton-Boxboro, the police are arresting me.

Sgt. Howe (in background): “Stop resisting. Stop resisting.”

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<sup>15</sup> Sgt. Howe did not witness the assault on Principal Schneider. The following day, he returned to Merriam to speak with Principal Schneider. In Schneider’s view, Sgt. Howe’s arrest report did not “accurately portray” the incident because it omitted the alleged assault. See **Exhibit 12**. Sgt. Howe informed Schneider that she could press charges, but she opted not to “go that route.”

(cont.)

██████████:

“What did I do?”

Sgt. Howe:

“Stop resisting, put your hands behind your back.”

██████████:

“What did I do?”

Sgt. Howe:

“I told you to stop pushing me.”

██████████:

“I did not push you.”

Sgt. Howe:

“Yes you did. You have it on video. Please put your hands behind your back. Stop resisting.”

██████████:

“What did I do? I just want to talk to my son.”

Sgt. Howe:

“Put your hands behind your back and stop resisting.”

Det. Russell assisted Sgt. Howe in handcuffing ██████████ while Firefighter Shattuck took possession of ██████████ phone which remained on and recording. The officers and Shattuck escorted ██████████ out of the school. Off. Tricia Sullivan, who Sgt. Howe summoned to the scene after the arrest, transported ██████████ to the police department for booking.

**D. THE AFTERMATH OF ██████████ ARREST**

At the police station, Sgt. Howe conferred with Chief Burrows and others regarding the appropriate charge(s) against ██████████.<sup>16</sup> Although he is depicted in the video as advising ██████████ that she was under arrest for “Disturbing the Peace,” and “Interfering,” ██████████ was ultimately charged with Disorderly Conduct under M.G.L. Chapter 272, Section 53.<sup>17</sup> She was released on her own recognizance at approximately 5:00 p.m.<sup>18</sup> Lieutenant Edward Lawton, who assumed command of the patrol division that evening, was aware of ██████████ arrest but did not have an opportunity to review and approve Sgt. Howe’s arrest report until a later shift (possibly Friday, January 10<sup>th</sup>). Based on the text of Sgt. Howe’s report and its description of ██████████ as having “struggled” with the arresting officers, Lt. Lawton felt that filing of a Use

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<sup>16</sup> On his way back to the police station from Merriam, Sgt. Howe called Chief Burrows to alert him to the circumstances surrounding the ██████████, the arrest, and ██████████ allegations of racial discrimination.

<sup>17</sup> Sgt. Howe and Chief Burrows also discussed charging ██████████ with Assault & Battery on a Police Officer based on her repeated pushing of Sgt. Howe prior to her arrest.

<sup>18</sup> Lieutenant Douglas Sturniolo oversaw ██████████ booking which proceeded without incident due, in part, to Off. Sullivan’s established rapport with ██████████. For nearly an hour, ██████████ demeanor alternated between anger and despair. Lt. Sturniolo and Off. Sullivan are to be applauded for their patience and empathetic treatment of ██████████ under extremely challenging circumstances.

of Force Report, pursuant to Policy & Procedure #1.01, *Use of Force (Appendix B)*, was necessary and appropriate. Sgt. Howe disagreed.<sup>19</sup> Lt. Lawton shared his and Sgt. Howe's competing views with Chief Burrows who ultimately determined that a report was unnecessary.

**V. Applicable Policies & Guidelines**

- Acton Police Department Rules & Regulations, Section I.G. (Prohibited Conduct) #1, *Conduct Unbecoming an Officer*<sup>20</sup>
- Acton Police Department Rules & Regulations, Section I.G. (Prohibited Conduct) #17, *Neglect of Duty*;
- Acton Police Department Policy & Procedure # 1.01, *Use of Force*;
- Acton Police Department Policy & Procedure # [REDACTED];
- Acton Police Department Policy & Procedure # 1.15, *Handling Juveniles*; and
- M.O.U. between Acton Police Department & Acton Boxborough Regional School District Regarding the School Resource Officer Program.

**VI. FINDINGS & RECOMMENDATIONS**

The Investigators considered various Acton Police Department policies and procedures and pertinent sections of the Acton Police Department Rules and Regulations in analyzing the officers' actions to determine whether a preponderance of the evidence supported a finding that a violation occurred. Each subject officer's conduct will be assessed separately.

**A. DETECTIVE TYLER RUSSELL**

**Policy:** Acton Police Department Policy & Procedure #1.15, *Handling Juveniles*

M.O.U. between Acton Police Department & Acton Boxborough Regional School District Regarding the School Resource Officer Program<sup>21</sup>

**Finding:** EXONERATED

Section IV.G of the *Handling Juveniles* policy (**Appendix E**) recognizes the Chief of Police's authority to establish and/or maintain a school resource officer program but does not

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<sup>19</sup> During his interview, Sgt. Howe stated that while [REDACTED] was struggling, he did not have to employ any "techniques" in placing her under arrest and, as such, a report was not needed. In his interview, Det. Russell stated that a Use of Force report was unnecessary because he did not need to exert himself in making the arrest.

<sup>20</sup> The pertinent sections of Rules & Regulations for the Government of the Acton Police Department are attached as **Appendix C**. In his February 4, 2020 Notice of Investigation and Possible Discipline, Chief Burrows informed Sgt. Howe and Det. Russell that their conduct was being investigated for potential violations of the *Conduct Unbecoming* and *Neglect of Duty* provisions of the Rules & Regulations.

<sup>21</sup> At the time of the Merriam School incident, the Acton Police Department did not have a policy detailing the duties and responsibilities of School Resource Officers (SROs). The *Handling Juveniles* policy broadly defines the SRO role but does not offer specific guidance. On February 28, 2020, the police department implemented Policy & Procedure #1.37 *School Resource Officer (Appendix D)*. The newly established policy is not under consideration here as it was not in effect on January 9th. Instead, the Investigators relied upon the M.O.U between the police department and the school district in assessing Det. Russell's conduct pursuant to the *Handling Juveniles* policy.

substantively delineate the SRO’s duties and responsibilities. The M.O.U. between the school district and police department (**Appendix F**) offers much needed guidance particularly on the coordination of effort between school personnel and SROs in response to students [REDACTED]. [REDACTED], provides, in pertinent part, that “[the school district and police department] agree that [REDACTED]. The M.O.U. goes on to state that, where there is [REDACTED] the SRO shall [REDACTED]. Here, both Det. Russell and school personnel, [REDACTED], collectively determined that Juvenile was [REDACTED]. The weight of the evidence, comprised of interviews and written statements of school officials who witnessed and responded to Juvenile’s increasingly worrisome behavior over a 3-day period, supports that determination. As such, the Investigators conclude that Det. Russell’s actions complied with department policy.

**Policy:** Acton Police Department Policy & Procedure # [REDACTED] [REDACTED]

**Finding:** EXONERATED

In addition to the M.O.U.’s provisions relating to officer response to [REDACTED] (**Appendix G**) offers additional guidance to officers [REDACTED]. Specifically, [REDACTED] should only be initiated where an officer has observed [REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]

Det. Russell notified the patrol shift supervisor, Sgt. Howe, and requested that Sgt. Howe respond to the Merriam School to assist in [REDACTED] over [REDACTED] objection. Having determined, along with school officials, that there was a risk of harm to [REDACTED] were she to be permitted to bring Juvenile to the hospital, Det. Russell and the school officials hoped, as Ms. Imperato the school psychologist stated, that “[REDACTED] would be on board.” [REDACTED] was not. However, the weight of the evidence supports a finding that Det. Russell made a reasonable effort to enlist [REDACTED] to initiate the proceeding. Further, both Det. Russell (through school officials) and [REDACTED] herself sought assistance from Advocates, the mobile crisis intervention team, in getting Juvenile the services he needed. While Advocates was unable to respond, the evidence supports a finding that Det. Russell made

a reasonable effort to enlist their help. As such, the Investigators conclude that Det. Russell complied with the policy.

**Policy:** Acton Police Department Rules & Regulations, Section I.G. (Prohibited Conduct) #1, *Conduct Unbecoming an Officer*

**Finding:** EXONERATED

*Conduct Unbecoming an Officer* is defined as “[t]he omission of any required act, or the commission of any specific act or acts of immoral, improper, disorderly or intemperate personal conduct which reflects discredit upon the officer himself, upon his fellow officers, upon the Department or upon the Town.” Certainly, an officer’s initiation of enforcement action against a person based on their race or other protected characteristic, as ██████████ alleged in the Facebook video, would, if found, warrant that characterization.<sup>22</sup> However, the Investigators conclude that there is no evidence to support a finding that Det. Russell’s actions were racially motivated or driven by bias.

**Policy:** Acton Police Department Rules & Regulations, Section I.G. (Prohibited Conduct) #17, *Neglect of Duty*

**Finding:** EXONERATED

*Neglect of Duty* is defined as “[b]eing absent from assigned duty without leave, leaving post or assignments without being properly relieved, or failing to take suitable and appropriate police action when any incident requires police attention or service. Here, there is no evidence that Det. Russell acted in any way other than consistent with applicable policies, procedures, and training in his execution of ██████████ and in his collaboration with school officials in determining that it was necessary to do so.

**B. SERGEANT SCOTT HOWE**

**Policy:** Acton Police Department Rules & Regulations, Section I.G. (Prohibited Conduct) #1, *Conduct Unbecoming an Officer*

**Finding:** EXONERATED

As detailed above, *Conduct Unbecoming an Officer* is defined as “[t]he omission of any required act, or the commission of any specific act or acts of immoral, improper, disorderly or intemperate personal conduct which reflects discredit upon the officer himself, upon his fellow officers, upon the Department or upon the Town.” Certainly, an officer’s initiation of enforcement action against a person based on their race or other protected characteristic, as ██████████ alleged in

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<sup>22</sup> In response to the Investigators request for any departmental policies prohibiting racial bias and discrimination the Town provided Policy & Procedure #1.23 *Bias Based Profiling (Appendix H)*. As further discussed in the next section, the type of conduct alleged in ██████████ complaint, specifically that she and Juvenile were treated differently based on their race, is not adequately addressed by the police department’s *Bias-Based Profiling* policy.

the Facebook video, would, if found, warrant that characterization. However, the Investigators conclude that there is no evidence to support a finding that Sgt. Howe’s actions were racially motivated or driven by bias.

**Policy:** Acton Police Department Rules & Regulations, Section I.G. (Prohibited Conduct) #17, *Neglect of Duty*

**Finding:** NOT SUSTAINED

*Neglect of Duty* is defined as “[b]eing absent from assigned duty without leave, leaving post or assignments without being properly relieved, or failing to take suitable and appropriate police action when any incident requires police attention or service. Sgt. Howe was placed in the unenviable position of serving as contact officer to a visibly irate [REDACTED] while police and fire officials attended to Juvenile. While a preponderance of the evidence does not support a finding that Sgt. Howe’s actions were inappropriate, the Investigators found his response to [REDACTED], a person in emotional crisis, slightly lacking in key respects.

Before evaluating Sgt. Howe’s response, it should be noted that he was not, in the Investigators’ view, the ideal person to task with engaging and attempting to de-escalate [REDACTED].<sup>23</sup> He had no connection to, familiarity with, or knowledge of [REDACTED], the parent of two Merriam School students. By the morning of January 9<sup>th</sup>, [REDACTED] relationship with school officials, primarily Principal Schneider, had deteriorated to such an extent that Principal Schneider believed that police presence might be necessary for any meeting between her and [REDACTED].<sup>24</sup> As captured in the Facebook video, much of [REDACTED] attention and ire is focused on Principal Schneider, who, after conferring with Asst. Supt. Bentley, determined that it was best to remain in the hallway, pacing back and forth, without responding to [REDACTED] requests to talk. As a result, Sgt. Howe, through no fault of his own, was thrust into the role of [REDACTED] primary contact.

Based upon the Investigators’ review of the school’s closed-circuit video, Sgt. Howe placed [REDACTED] under arrest roughly 15 minutes after his arrival. As his arrest report indicates, roughly 10 minutes were dedicated to his and the firefighters’ efforts to implore [REDACTED] to assist them in getting Juvenile to [REDACTED]. Sadly, Juvenile was not the only person [REDACTED] at Merriam that day. When [REDACTED] repeatedly requests that she be permitted to see Juvenile again, Sgt. Howe conditions her ability to do so on her willingness to “help them.” In response, [REDACTED] a pleads, “why don’t you help me...you’re not helping me.” She appeared to be [REDACTED]

<sup>23</sup> The *Use of Force* policy defines de-escalation as “the use of tactics, communication skills and other interventions with the goal of non-violent positive compliance with lawful objectives.”

<sup>24</sup> According to Asst. Supt. Bentley, Principal Schneider contacted her, via text message, prior to the Jan. 9th incident, seeking a “sounding board” for a potential meeting with a parent who had been “not nice.” Bentley stated that Principal Schneider was “nervous” and planned to ask Det. Russell to sit in on the meeting because Assistant Principal Armitrano, with whom the parent shared an amiable relationship, was going to be out of town. Bentley did not have an opportunity to respond to Schneider’s message and only discovered, upon arriving at Merriam, that the parent Schneider was referring to was [REDACTED]. Bentley is unable to place the exact time of Schneider’s request for advice but believes that the message was sent either the evening of January 8<sup>th</sup> or the morning of January 9<sup>th</sup>.



are involved in any instance wherein physical force greater than handcuffing of a compliant detainee” is utilized (emphasis added).<sup>27</sup>

██████████ Facebook video depicts her arrest and the brief struggle that ensued as Sgt. Howe, with the assistance of Det. Russell, attempted to place her in handcuffs. Sgt. Howe can be heard, at least four times, telling ██████████ to “stop resisting,” and at least as many times ordering her to put her hands behind her back. Firefighter Shattuck described Sgt. Howe and Det. Russell as engaged in an approximately one-minute struggle to handcuff ██████████. Det. Russell described ██████████ as trying to “wriggle to get her hand free,” as he attempted to take control of her left arm while Sgt. Howe tried to handcuff her from the right. By any objective measure, ██████████ was non-compliant.

A characterization of ██████████ as anything other than non-compliant cannot be reconciled with the legal justification for her Disorderly Conduct arrest. In his arrest report, Sgt. Howe describes ██████████ as “agitated...yelling, flailing her arms and pushing [Sgt. Howe and fire department personnel] out of the way,” actions that Sgt. Howe states continued for approximately 10 minutes culminating in his decision to place her under arrest. That ██████████, who seconds beforehand, according to Sgt. Howe, was flailing about and pushing at least two adult men out of her way to see her son, would suddenly transform into a fully cooperative individual once she was being handcuffed defies credulity. Sgt. Howe concedes as much when he states that he and Det. Russell struggled to handcuff ██████████. Despite his belief that a Use of Force report was unnecessary because he did not utilize the type of soft-hand techniques that also require reporting, the policy, fairly read, encompasses the application of force to handcuff a non-compliant detainee regardless of whether techniques are utilized. As such, the Investigators conclude that a preponderance of the evidence supports a finding that Sgt. Howe violated the *Use of Force* policy by failing to complete the required report.<sup>28</sup>

### C. RECOMMENDATIONS

Determining whether the subject officers complied with applicable policies and procedures does not end the inquiry. Rather, police administrative investigations should, where necessary, include an assessment of whether the underlying incident suggests the need for revision of department policies, training, or strategies. Here, the Investigators found two areas of concern that may warrant further review and appropriate action: (1) the apparent widespread misinterpretation of the *Use of Force* policy; and (2) the absence of robust bias-based policing policies and training.

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<sup>27</sup> The policy defines as compliant “an individual who is fully cooperative with a Department member.” See Appendix B, Section III (Definitions).

<sup>28</sup> As previously stated, the Investigators recognize that Sgt. Howe was advised of Chief Burrows’ decision that a Use of Force report was not required. The varied interpretations of the policy, and the potential for confusion, are discussed in the next section.

## 1. Use of Force Reporting Policy

During his interview, when asked about his and Sgt. Howe’s divergent interpretations of the *Use of Force* policy’s reporting requirements, Lt. Lawton surmised that if one were to present the [REDACTED] arrest scenario to the entire department and poll individual officers as to the necessity of a report, the results would vary widely. He may be correct.<sup>29</sup> That was certainly the case here. In Det. Russell’s view, the necessity of a Use of Force report is commensurate with the degree to which an officer exerts himself in effecting an arrest. In Sgt. Howe’s view, the use of force to handcuff a non-compliant detainee is only reportable if the officer utilizes soft-hand techniques (or injury results). The policy’s language, however, does not leave room for either interpretation. In fact, in its preamble, the *Use of Force* policy makes clear that “[t]his policy requires strict adherence by all sworn personnel.” Yet, there appear to be competing views of its reporting requirements at all levels of the department. As such, the Investigators recommend that, if police and Town officials believe that the policy imposes too strict a standard for reporting, or that its language is ambiguous, they should consider revising the policy. If, however, the department opts not to change the policy, the Investigators recommend additional training to ensure uniform interpretation and application throughout the department.

## 2. Bias-Based Policing/Cultural Competency Training

As previously discussed, the Investigators concluded that there is no evidence to support a finding that either Sgt. Howe or Det. Russell treated [REDACTED] or Juvenile differently based on their race. However, reliance on the *Conduct Unbecoming an Officer* regulation to establish a standard for reviewing this type of misconduct complaint is not ideal. While the *Bias-Based Profiling* policy prohibits certain conduct it is largely concerned with profiling activity related to traffic stops, field contacts, and asset forfeiture. It does not offer guidance to officers in performance of a wide range of duties that may require familiarity with the role implicit bias plays in police decision-making or the importance of cultural competency to an officer’s interactions with a diverse population. While the presence of a robust bias-based policing policy and training program may not have changed the outcome here, the absence of both cannot be overlooked. Notably, the Town has begun prioritizing increased training in these critical areas. However, it is unclear whether police-specific training is being considered.

In his interview, Sgt. Howe stated that he attended an implicit bias training sometime in the last 3 or 4 years. The training, according to Sgt. Howe lasted several hours, but he believes that he had to leave early to attend to his police duties. Based on a review of its internal training records, the Town of Acton furnished the Investigators with a summary report of a *Cultural Competence & Racial Equity* training that was offered as part of a joint initiative by the Acton, Boxborough, and Carlisle police departments.<sup>30</sup> Among the trainings core objectives were to give participants the

<sup>29</sup> The policy, in its current iteration, is less than one year old.

<sup>30</sup> See Judith Kaye Training & Consulting: *Summary Report of Acton Police Department Cultural Competence & Racial Equity Training, August 9, 2017 (Rev. 9-5-17) (Appendix J)*. According to the report, there were 5 Acton Police officers at the training. Chief Burrows reports that Sgt. Howe was one of those officers.

opportunity to “[a]rticulate why cultural competence and racial equity are relevant to effective policing/service” and to “enhance skills for communicating effectively and de-escalating conflict cross-culturally.”

In her report summarizing the workshops, the lead facilitator details the level of resistance to full engagement in the process she and the other trainers encountered, including “strong voices in the room that challenged the material at nearly every turn, and insisted that the whole issue of police-community relations and race was a recent fabrication of the media.”<sup>31</sup> While the “strong voices” are not identified by name, the report, released in 2017, should serve as a signal to police and Town officials that additional training in these areas is warranted. The Investigators strongly encourage the police department to invest in this enhanced policy development and training. To ensure that skepticism and inevitable resistance to the subject matter are addressed swiftly, the department should seek to establish feedback channels and lines of communication with instructors and officers alike. If done so holistically, and not in response to incidents like the present matter, the department can overcome the perception that the enhanced training is a punishment for alleged misconduct as opposed to a strategy for fostering and enhancing trusting relationships with a community whose demographics continue to expand.

**VII. LIST OF EXHIBITS**

1. Commonwealth of Massachusetts, [REDACTED]  
[REDACTED]
2. Acton Police Department Citizen’s Complaint Form
3. *Notice of Investigation and Possible Discipline* to Sergeant Scott Howe
4. *Notice of Investigation and Possible Discipline* to Detective Tyler Russell
5. *Statement of Rights & Responsibilities and Order to Appear at Investigative Interview* to Detective Tyler Russell
6. *Statement of Rights & Responsibilities and Order to Appear at Investigative Interview* to Sergeant Scott Howe
7. *Notice of Extension of Investigation* to Detective Tyler Russell
8. *Notice of Extension of Investigation* to Sergeant Scott Howe
9. Email from Attorney Steven Ballard to Investigators (March 2, 2020)

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<sup>31</sup> See Appendix J at p. 4.

10. Acton Police Department Incident Report #2020-00545 (1/7 Incident at Merriam School)
11. Acton Police Department Incident Report #2020-00651 (1/8 Incident at Merriam School)
12. Acton Police Department Incident Report #2020-00746 (1/9 Arrest at Merriam School and supplemental reports)

**VIII. LIST OF APPENDICES**

- A. Acton Police Department Policy & Procedure #4.06, *Internal Affairs*
- B. Acton Police Department Policy & Procedure #1.01, *Use of Force*
- C. (Excerpt) Rules & Regulations for the Government of the Acton Police Department
- D. Acton Police Department Policy & Procedure #1.37, *School Resource Officer*
- E. Acton Police Department Policy & Procedure # 1.15, *Handling Juveniles*
- F. Memorandum of Understanding (“M.O.U”) between Acton Boxborough Regional School District and the Acton Police Department Regarding the S.R.O. Program
- G. Acton Police Department Policy & Procedure # [REDACTED]
- H. Acton Police Department Policy & Procedure #1.23, *Bias Based Profiling*
- I. (Excerpt) Massachusetts Criminal Justice Training Committee, Recruit Officer Course, *Volume I: Policing in Massachusetts, Communication Skills*
- J. Judith Kaye Training & Consulting: *Summary Report of Acton Police Department Cultural Competence & Racial Equity Training*, August 9, 2017 (Rev. 9-5-17)