

ARLINGTON COUNTY CODE

Chapter 69

**LAW ENFORCEMENT COMMUNITY OVERSIGHT BOARD AND INDEPENDENT
POLICING AUDITOR**

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ARTICLE I. LAW ENFORCEMENT COMMUNITY OVERSIGHT BOARD

§ 69-1. Law Enforcement Community Oversight Board

- (a) There is hereby established a public body to be known as the Law Enforcement Community Oversight Board (“Oversight Board”), the purposes, duties, and authorities of which shall be as set forth herein.
- (b) The Oversight Board is a public body appointed by the County Board to advise and to perform delegated functions of the County Board. It shall not be able to bring suit or to be sued in its own name, except to the extent needed to request and defend subpoenas as authorized by this ordinance.

§ 69-2. Oversight Board Purpose and Scope

- (a) Purpose: The purpose of the Oversight Board is to increase and maintain trust between and among the County Police Department, the County Board, the County Manager, and the public. The Oversight Board shall: provide timely, fair, and objective review and evaluation of County policing policies, practices, and procedures, and their implementation; timely, fair and objective review of concurrent investigations by the Independent Policing Auditor and the Police Department of incidents involving the County Police Department, and the sufficiency of any resulting disciplinary actions; provide meaningful assessments and corrective

recommendations intended to maintain and promote non- discriminatory policing; ensure the protection of all communities through recommended actions and reform, including in the criminal justice system; and recommend strategies for effectively implementing identified reforms.

- (b) Scope: The Oversight Board shall have the authority to review and recommend disciplinary actions concerning investigations completed by the County Police Department and the Independent Policing Auditor for certain matters defined below, to evaluate policing practices, policies, procedures, and outcomes in Arlington County, to make and issue reports to the public, and to provide actionable recommendations to the County Board, the County Manager, and the County Police Department, and other public agencies regarding policing practices, policies and procedures in Arlington County. The Oversight Board is hereby authorized to perform the duties hereinafter prescribed.
- (c) Procedural Memorandum of Understanding: In order to carry out its scope and authorized functions and to define in more detail the process and terms applicable thereto, the Oversight Board shall enter into a memorandum of understanding (“MOU”) with the County Police Department, subject to review and approval of the County Board. The MOU shall be signed by the Oversight Board Chair, the Independent Policing Auditor, the Police Chief, and the County Manager. The MOU shall define the terms of the relationships and mutual obligations between the Oversight Board and the County Police Department. Within ninety (90) days after the initial Oversight Board members are appointed by the County Board, the MOU shall be fully executed. If a provision of the MOU conflicts with a provision of this enabling ordinance, the provision of the enabling ordinance shall govern.
- (d) Budget: In order to carry out their respective duties, the Oversight Board and Office of the Independent Policing Auditor shall be provided an annual budget subject to appropriation by County Board, and shall expend the appropriated funds consistent with:
 - i. the responsibilities of the Oversight Board and of the Office of the Independent Policing Auditor as provided for in this ordinance;
 - ii. the budget and appropriation approved by County Board; and
 - iii. County procurement and expenditure regulations and practices.
- (e) Oversight Board Reports: The Oversight Board shall produce public reports regarding the work of the Oversight Board and disseminate such reports in hard copy and online, including, but not limited to:
 - i. a written report to the County Board by September 1 of each fiscal year of its activities for the prior fiscal year (ending June 30) under the provisions of this chapter along with any comments and recommendations it may choose to make; and
 - ii. a written report after each completed investigation review which shall not include any Personally Identifiable Information, or criminal or juvenile

information prohibited from being disclosed by Virginia State or Federal Law. The reports of each review by the Oversight Board shall be provided to the public with all narratives and recommendations, but will not include a copy of the investigative report prepared by the Arlington County Police Department Office of Professional Responsibility or the Independent Policing Auditor.

- (f) Other Duties: Undertake such other tasks as may be reasonably necessary for the Oversight Board to effectuate its authorized duties as defined in this ordinance.

§ 69-3. Oversight Board Member Requirements and Term of Office

- (a) The Oversight Board shall be composed of seven (7) voting members appointed by the County Board, which shall endeavor to create a fair, objective, independent, diverse, and representative body which shall reflect the demographic diversity of the County. The County Board will designate one of the members as Chair.
- (b) The voting members of the Oversight Board shall be residents of the County and shall demonstrate fairness, integrity and objectivity.
- (c) The Oversight Board shall also have two (2) non-voting members appointed by the County Board who shall have past experience in law enforcement, but who shall not be a current employee of or an immediate family member of a current employee of a law enforcement agency and shall be at least three years honorably removed from service.
- (d) No voting or non-voting member shall be a current or former County employee, a current or former County elected official, a current candidate for public office, a current employee of a law enforcement agency, or an immediate family member of any of the preceding. When used in this section, the definition of “former” means less than three (3) years separated from service.
- (e) Except as to the initial Oversight Board, members shall be appointed for terms of four years each. Oversight Board members’ terms shall be staggered. To that end, the County Board shall appoint four (4) voting members of the inaugural Oversight Board to 18-month terms and three (3) voting members to four-year terms. Initial non-voting members shall be appointed to four-year terms. An Oversight Board member may be appointed to no more than two consecutive four-year terms; however, members initially appointed to an 18-month term shall be eligible to serve two consecutive four-year terms after the conclusion of the initial 18-month term.
- (f) All Oversight Board members shall report directly to and may be removed by the County Board at any time in its discretion.

§ 69-4. Conflicts of Interest and Confidentiality

- (a) The Oversight Board and each member shall comply with the Virginia State and Local Government Conflict of Interests Act under Virginia Code §§ 2.2-3100 et seq. and shall file the annual disclosure form specified thereunder for local officials and each Oversight Board member shall upon appointment and each year thereafter sign

an acknowledgment of their obligations to preserve confidentiality as provided in this ordinance, the MOU, and policies of the Oversight Board.

- (b) Except as included in the Oversight Board reports as hereafter defined and to the extent allowed under the Virginia Freedom of Information Act, each member shall maintain the confidentiality of all confidential or privileged information, including but not limited to:
 - i. Office of Professional Responsibility investigative files;
 - ii. disciplinary actions, memos and reports that the member receives during service on the Oversight Board;
 - iii. statements of a police officer, or County Police Department employee, who was required by the County Police Department to give a statement;
 - iv. criminal investigative files;
- (c) All original records provided to the Oversight Board by the County Police Department shall remain official County Police Department records.

Any breach of confidentiality by an Oversight Board member, as determined by the County Board, shall result in removal from the Oversight Board.

§ 69-5. Quorum, Voting, and Meetings

- (a) The Oversight Board shall comply with all requirements of the Virginia Freedom of Information Act pertaining to disclosure of public records and the conduct of public meetings including the requirement that all meetings shall be open to the public except under circumstances when the topic is authorized by the law to be discussed in a closed meeting.
- (b) The Oversight Board, assisted by the Independent Policing Auditor, is authorized to develop and implement its own bylaws, administrative systems, and operating policies and procedures, consistent with existing Federal and State law, State regulation, and this ordinance. Such bylaws shall be subject to public notice and public hearing before adoption by the Oversight Board.
- (c) The Oversight Board shall meet as often as necessary to conduct its business, but no less frequently than eleven (11) times per calendar year.
- (d) The Oversight Board may take any action by motion or resolution upon an affirmative majority vote provided a quorum of at least five (5) out of seven (7) voting members must be present.
- (e) The Oversight Board shall keep minutes of its Oversight Board meetings, and those minutes shall include:
 - i. the date, time, and location of each meeting;
 - ii. the members present and absent;
 - iii. a summary of the discussion on matters proposed, deliberated, or decided; and

- iv. a record of any votes taken.

§ 69-6. Support of Oversight Board

(a) Oversight Board Staff

- i. An Independent Policing Auditor shall be hired by the County Manager as provided in § 69-11 who shall staff the Oversight Board and coordinate the Oversight Board's administrative functions.
- ii. The Independent Policing Auditor shall hire such staff as shall be necessary to conduct the assigned duties of the Oversight Board, subject to appropriation of funds therefore by the County Board. Such staff functions may be performed by consultants or full-time employees.
- iii. The Oversight Board shall retain outside counsel to advise the Oversight Board from a list of attorneys recommended by the County Attorney.

(b) Other Support from the County

- i. A website shall be established for the Oversight Board hosted on the County's website. The Oversight Board shall determine what is posted on the Oversight Board's website to the extent it complies with all applicable Federal, State and local laws.
- ii. All public meetings of the Oversight Board shall be videotaped and made available to the public on the County's website.
- iii. The County shall not interfere unreasonably with the Oversight Board's decisions, assisted by the Independent Policing Auditor, to post materials to or remove materials from the Oversight Board's website.
- iv. The Oversight Board members shall be provided with a County email address to be used exclusively for Oversight Board-related matters.
- v. The County Manager, including all County departments and staff, shall make a good faith effort to cooperate with and assist the Oversight Board, and shall comply with all reasonable Oversight Board requests or expeditiously provide a reason for rejection.

§ 69-7. Oversight Board Training

At least once every year, and prior to voting on any matter before the Board (but in no case later than six months after appointment to the Oversight Board), Oversight Board members shall participate in the following training:

- (a) at least eight hours of training, presented by the National Association for Criminal Oversight of Law Enforcement or a comparable professional organization.
- (b) Training by the applicable County staff including but not limited to the following:
 - i. legal and ethical obligations of members of a public body appointed by the

County Board;

- ii. County Police Department policies and training, including but not limited to defensive tactical training, crisis intervention training, and de-escalation training;
 - iii. relevant privacy rules and County policies and procedures involving liability, employee discipline, and other matters related to police operations; and
 - iv. County Police Department and County administrative systems, processes, structures and operations.
- (c) at least three ride-along sessions with County Police Department patrol operations per calendar year.
- (d) The County and the Independent Policing Auditor shall provide Oversight Board members with additional training, which shall include but not be limited to relevant training by subject matter experts on mental health, trauma-informed policing, civil rights and constitutional law, race and systemic racism, community organizing and outreach, mediation, investigation, and policing practices, policies, and administration.
- (e) The matters listed above for required training may change through amendments to the Memorandum of Understanding provided for in § 69-2(c) or by amendment of this ordinance.

§ 69-8. Access to County Police Department Records

- (a) The Oversight Board and the Independent Policing Auditor shall be provided full access to all County Police Department reports, files, and records related to the Oversight Board's review of public complaints filed with the Oversight Board or with County Police Department within 10 (ten) business days of creation or receipt of such reports, subject to such limitations as may be imposed thereon by this Chapter and applicable laws. At the time the County Police Department provides the aforesaid reports, files, and records, it shall identify generally those records that have been withheld in accordance with the provisions of this ordinance and the MOU.
- (b) Records containing confidential information such as information protected by law, personally identifiable information, information that may reveal the identity of a confidential source, information that could endanger the life or physical safety of any individual, information that would disclose techniques, procedures, or guidelines used in criminal investigations or prosecutions that if revealed may reasonably be expected to risk the circumvention of the law, or information eligible for exemption from the mandatory disclosure requirements under the Virginia Freedom of Information Act, may be reviewed only in a properly convened closed session of the Oversight Board in order to maintain the confidentiality of the information.

(c) The Independent Policing Auditor and the Oversight Board shall not have access to juvenile records, records that may reveal the identity or personally identifiable information of a confidential informant or records which the County Police Department is not legally authorized to share. The County Police Department shall not provide records to the Oversight Board or the Independent Policing Auditor if the records requested are related to the following matters if such disclosure would compromise said matters through the revelation of the process, evidence, methods, scope or other factors in said matters, until such time as the matter is completed or a determination is made by the County Manager that the matter will not be compromised by the release of therequested documents:

- i. investigative files for an active criminal investigation;
- ii. files related to an active investigation by the Commonwealth Attorney, the Virginia Attorney General, or the United States Department of Justice, or the Northern Virginia Critical Incident Response Team;
- iii. files related to an active EEOC claim involving a County Police Department officer or employee;
- iv. files related to an active Office of Human Rights investigation involving a County Police Department officer or employee; and

§ 69-9. Oversight Board Duties

(a) Oversight Board Readiness Resolution

- i. Within thirty (30) days after the initial Oversight Board members are appointed by the County Board, the Oversight Board shall meet to establish its practices and procedures. When the Oversight Board has established its procedures, the Memorandum of Understanding required pursuant to § 69-2(c) has been executed by all parties, the Oversight Board is sufficiently staffed and all training has been completed it shall pass a resolution indicating its readiness to take on the responsibilities assigned to it in this Chapter.
- ii. As soon as possible after the County Board appoints the initial Oversight Board members, the County Manager shall prepare and post advertisements for the position of Independent Policing Auditor.

(b) Complaint Intake

- i. The Oversight Board will develop and administer a process for receiving complaints from members of the public regarding the misconduct of law enforcement officers of the County Police Department and referring complaints to the County Police Department for investigation. This process shall be separate and distinct from any existing procedures by which the County Police Department receives community complaints as specified under Virginia Code § 9.1-600.

- ii. Complaints filed with the Oversight Board may be submitted using a form provided by the Oversight Board or may be submitted orally by a complainant and may be submitted anonymously. Complaints filed orally shall capture the same information included in the complaint form developed by the Oversight Board.
- iii. Information about the process for filing a complaint with the Oversight Board, complaint forms, and general information about the Oversight Board and its purpose and scope shall be made available online and at the office of the Independent Policing Auditor, the County Police Department, the County's Office of Human Rights, as well as other locations deemed effective for making such forms and information widely available.
- iv. Information about the process for filing a complaint with the Oversight Board, complaint forms, and general information about the Oversight Board and its purpose and scope shall be made readily available in English, Spanish, and in any additional language as requested by an individual submitting a complaint to the Oversight Board.

(c) Oversight and Review of Completed County Police Department Investigations

- i. When a complaint from a member of the public is submitted to the County Police Department, the County Police department shall notify the Oversight Board within five (5) calendar days of the complaint and give the Oversight Board the opportunity to participate in the investigation through the Independent Policing Auditor as outlined in section (ii) below. When a complaint from a member of the public is submitted to the Oversight Board, the Oversight Board shall notify the County Police Department within (5) calendar days of the complaint and allow the County Police department to investigate the complaint with the participation of the Independent Policing Auditor as outlined in section (ii) below, or independently by the County Police Department if the Independent Policing Auditor chooses not to participate in the investigation. The investigation of any complaint, whether conducted independently by the County Police Department, or conducted concurrently by the County Police Department and the Independent Policing Auditor, shall be completed and an investigation report provided to the Oversight Board within sixty (60) days from the date the investigation is permitted to begin, subject to the limitations of provisions of § 69-8. The Oversight Board shall extend the 60-day period upon request of the Police Chief and the Independent Policing Auditor to protect an ~~orig~~ investigation, or for other good cause, with notice to the complainant and County Board.
- ii. The Independent Policing Auditor may participate in all investigations of officer misconduct handled by the County Police Department resulting from a complaint from a member of the public and shall have access to records and witnesses to the same extent as the County Police Department, subject to the

limitations set by §69-8. Such participation shall include collaboration with the County Police Department in the development of an investigative plan, reviewing with the County Police Department any records within the department's digital evidence management system, reviewing with the County Police Department any pertinent law enforcement records within the Department's Records Management System, observing all real-time interviews of witnesses with the County Police Department, reviewing all recorded interviews in which the Independent Policing Auditor chooses not to attend in real-time, providing feedback during the interview to be relayed to County Police Department staff conducting the interview, providing feedback to County Police Department staff in determining next steps in the investigative process, reviewing facts gained from investigation with County Police Department staff, and any other form of participation as may be contemplated in the MOU developed pursuant to §69-2(c). For active investigations as outlined in § 69-8(c), the Independent Policing Auditor shall be limited in his participation to the same extent the County Police Department is limited in its participation in such investigations. The Independent Policing Auditor may participate in the County Police Department's administrative investigation of officer misconduct performed by the County Police Department after the close of the active investigation outlined in § 69-8(c), in the same manner as all other investigations of officer conduct handled by the County Police Department as described in this section (ii).

iii. Non-Concurrent Investigations

- 1) If, after making a good faith effort to participate with the County Police Department on a concurrent investigation as described in section (ii) above, the Independent Policing Auditor is unable to gain access to any witnesses, records, books, papers, or other evidence necessary to perform his duties and the duties of the Oversight Board as provided by this ordinance, the Independent Policing Auditor may request the County Manager to require the County Police Department to produce the requested witnesses and documents. The County Manager shall not unreasonably deny such a request, but any production of witnesses or documents shall be limited by § 69-8. The County Manager shall issue a decision on the Independent Policing Auditor's request by no later than four business days following the date of that request.
- 2) If the County Manager denies the Independent Policing Auditor's request made pursuant to subparagraph (1) above, the Oversight Board by two-thirds vote of the Oversight Board may direct the Independent Policing Auditor, on behalf of the Oversight Board, to apply to the Arlington Circuit Court for a subpoena compelling the attendance of such witness or the production of such books, papers, and other evidence, and the Court may, upon good cause shown, cause the subpoena to be issued. In seeking a subpoena, the Oversight Board shall: (1) give the County Police

Department reasonable notice of its intent to subpoena such witness or records, and serve the County with a copy of the subpoena no later than service of such subpoena on the subject of the subpoena; (2) not unreasonably withhold its agreement to limitations requested by the County Manager on the scope of the subpoena intended to protect confidential information and other information that may adversely affect pending matters related to the matters under review by the Oversight Board; (3) digitally record any interviews or depositions, and make copies of any records obtained by subpoena, and (4) provide the County Police Department with copies of any such interview/deposition recordings and document records. The Oversight Board shall delegate all its authority to subpoena and question witnesses to the Independent Policing Auditor, who shall conduct any interviews, depositions, or questioning of witnesses in a non-public forum that adequately protects the privacy of the individual being subpoenaed, the confidentiality or sensitivity of information shared or sought, and the integrity of any pending or concurrent investigation.

- iv. The Oversight Board shall be informed regularly by the Independent Policing Auditor on the status of and steps to perform duties, including reports on the progress of a concurrent investigation.
- v. The Oversight Board may review all completed investigations conducted by the County Police Department alone or conducted concurrently with the Independent Police Auditor regarding public complaints of misconduct by County Police Department law enforcement officers, whether received by the County Police Department or the Oversight Board, to ensure their thoroughness, completeness, accuracy, objectivity, impartiality; and the sufficiency of any discipline resulting from such investigations. The Oversight Board may consider reducing the review to only a selected number of investigations or investigations of a certain nature based on criteria to be articulated by the Oversight Board and set forth in the MOU or other policies of the Oversight Board.
- vi. The Oversight Board shall not conduct a review of or otherwise inquire into any matter which is subject to an active investigation as described in § 69-8(c).
- vii. If and only if legislative change empowers the Oversight Board to meet in closed session to discuss investigative and personnel records and to otherwise perform its duties under this Ordinance, the Oversight Board may also, after a 2/3 vote of a quorum of the Oversight Board, make recommendations to the County Board, the County Manager and the Police Chief regarding officer conduct and the sufficiency of any discipline imposed or not imposed.
- viii. After receiving the report of the County Police Department or the Independent Policing Auditor and completing an investigation review, including any public

hearing the Oversight Board may conduct, the Oversight Board may make one of the following recommendations:

- 1) concur with all or some of the findings and determinations detailed in the County Police Department or Independent Policing Auditor Report;
 - 2) advise the County Board, the County Manager, and the Police Chief that the County Police Department or Independent Policing Auditor findings are not supported by the information reasonably available to the County Police Department and recommend further review and consideration by the Police Chief; or
 - 3) advise the County Board, the County Manager, and the Police Chief that, in the Oversight Board's judgment, further investigation is needed.
 - 4) If the County Police Department declines to implement the disciplinary recommendations of the Oversight Board the Chief of Police shall, within thirty (30) days of the Oversight Board's recommendation, create a written record, which shall be made available to the Oversight Board, the County Board, the County Manager, and the public, of its rationale for declining to implement the recommendation of the Oversight Board.
- ix. The Oversight Board shall complete its investigation review and provide its investigation review report and other findings within sixty (60) days of commencing its review and subject to the provisions of § 69-8. The Oversight Board may extend the 60-day period for good cause with notice to the County Manager and the Police Chief.

(d) Oversight Board Policy Recommendations and Duties

- i. The Oversight Board shall have the following duties regarding review of police policy and procedure:
 - 1) review and evaluate existing and proposed County Police Department administrative directives, including all rules, policies, and procedures which direct the operation of the County Police Department and its employees including the implementation of such directives, rules, policies and procedures;
 - 2) review and evaluate reports issued and data collected by the County Police Department related to policing practices, policies, procedures, and outcomes;
 - 3) receive, review and evaluate the annual budget and expenditures of the County Police Department and make budgetary recommendations;

- 4) advise the County Manager on the hiring and annual evaluation of the Independent Policing Auditor;
 - 5) recommend legislation, policy changes and other actions related to duties of the Oversight Board to the County Board, the County Manager, the County Police Department, and other public agencies;
 - 6) conduct community outreach related to the review and reform of policing practices, policies and procedures in the County and the work of the Oversight Board; and
 - 7) review and evaluate periodic reports from the Police Chief regarding implementation of recommendations made by the Oversight Board.
 - 8) Review and provide feedback to the County Manager as to the performance of the Independent Police Auditor. The Oversight Board and its members shall have no authority to directly perform any of the duties delegated to the Independent Police Auditor pursuant to this ordinance, including directly applying to the Circuit Court for a subpoena, compelling the release of documents, or questioning witnesses in an open meeting. The Oversight Board will be informed regularly by the Independent Policing Auditor on the status of and steps to perform his duties.
- ii. The Oversight Board may recommend policies or procedures to the County Board, the County Manager and the Police Chief concerning police practices, policies and procedures. The Oversight Board shall present in writing its recommendations with supporting rationale to the County Board, the County Manager, and the Police Chief within thirty (30) days from the date the Oversight Board adopted its recommendations.
- 1) The Oversight Board's recommendations shall be included in any public reports issued by the Oversight Board, including hardcopy and online
 - 2) If the County Police Department declines to implement any changes recommended by the Oversight Board, the Chief of Police shall, within thirty (30) days of the Oversight Board's recommendation, create a written record, which shall be made available to the County Board, the County Manager, and the public, of its rationale for declining to implement the recommendation of the Oversight Board.

§ 69-10. Exclusions

- (a) The Oversight Board shall not consider complaints, incidents, claims or issues involving the following:
 - i. Complaints involving any incident that occurred more than two years before the filing of the complaint with the Oversight Board or the County Police Department;
 - ii. Any financial management related issue; or
 - iii. Any other claim outside the scope of the Oversight Board's authority as provided for by this Chapter or applicable law.
 - iv. Any matter identified in §69-8(c)

§ 69-11. Independent Policing Auditor

The County Manager shall hire an Independent Policing Auditor, in consultation with the County Board and the Oversight Board, with the terms and conditions of such appointment set forth in a position description. The Independent Policing Auditor shall be provided office space by the County, but such office space shall not be housed in any County Police Department facility. The County Manager shall consult with, and receive the recommendations of, the Oversight Board as part of the County Manager's review of the Independent Policing Auditor's performance.

§ 69-12 Independent Policing Auditor Duties and Responsibilities

The Independent Policing Auditor shall:

- (a) provide the necessary administrative and policy support for the Oversight Board, as well as assist the Oversight Board with achieving its purpose and in carrying out its scope;
- (b) hire and supervise and make employment decisions regarding the Independent Policing Auditor's staff in accordance with existing County Administrative Regulations and Human Resources procedures, subject to the budget and appropriation of funds;
- (c) be responsible for the independent review of County Police Department current or proposed policing practices, rules, policies, procedures, directives and outcomes and present findings of such reviews and any resulting recommendations to the Oversight Board;
- (d) conduct investigations, or hire and supervise staff to conduct investigations, of complaints made by a member of the public regarding the conduct of County Police Department officers pursuant to §§ 69-9(c)(ii)-(iii).
- (e) perform a quality assurance function with the goal of identifying systematic changes that will improve police services to the community;
- (f) receive complaints from the public
- (g) create and manage a community complaint and case tracking system;
- (h) provide support to the Oversight Board in its review of completed investigations by

the County Police Department;

- (i) provide support to the Oversight Board in its review of any disciplinary actions taken that may arise as a result of investigations conducted by the County Police Department; and
- (j) maintain the confidentiality of all records not authorized for public disclosure.

§ 69-13 Interpretation

In any instance of disagreement between and among the Oversight Board, the Police Chief, the Independent Policing Auditor, or the County Manager regarding the interpretation of any provision of this Ordinance or the scope of authority delegated to the Oversight Board by the County Board, the County Board shall resolve such disagreement in consultation with the County Attorney. The County Board's decision on the interpretation of this Ordinance and the scope of authority delegated to the Oversight Board shall be final.