

October 19, 2017

Forty-Seventh Report *of the Independent Monitor for the Oakland Police Department*

Introduction

This is our forty-seventh status report on the Negotiated Settlement Agreement (NSA) in the case of *Delphine Allen, et al., vs. City of Oakland, et al.*, in the United States District Court for the Northern District of California under the direction of Judge William H. Orrick. I was appointed in 2010 to oversee the monitoring process of the Oakland Police Department (OPD) that began in 2003.

This report covers our site visit of September 2017; and describes our recent assessments of NSA Tasks 34, 41, and 45. As we have noted previously, following the Court's Order of May 21, 2015, we devote special attention to the most problematic component parts of the Tasks that are not yet in full or sustained compliance, and discuss the most current information regarding the Department's progress with the NSA and its efforts at making the reforms sustainable.

Increasing Technical Assistance

Each month, our Team conducts visits to Oakland that include both compliance assessments and technical assistance. During our visits, we meet with Department and City officials; observe Department meetings and technical demonstrations; review Departmental policies; conduct interviews and make observations in the field; and analyze OPD documents and files, including misconduct investigations, use of force reports, crime and arrest reports, Stop Data Forms, and other documentation. We also provide technical assistance in additional areas, especially those that relate to the remaining non-compliant Tasks or areas identified by the Department.

Within the last few months, we have provided technical assistance to OPD officials in the areas of IAD investigations (Task 5); stop data and related issues (Task 34); risk management and the development of PRIME, the Performance Reporting Information Metrics Environment, (Task 41); several Department policies and procedures, including policies related to PRIME, officer discipline, handcuffing, and the use of electronic control weapons.

As noted previously, we are also closely following the Department's progress with its review and revision of all policies and procedures. To ensure continuing compliance with the NSA, the Monitoring Team and the Plaintiffs' attorneys are reviewing revisions of all NSA-related policies.

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Building Internal Capacity at OPD

Also per the May 21, 2015 Court Order, we continue to work closely with the Office of Inspector General's (OIG) lieutenant and staff to identify areas that it should audit or review – and to help design approaches to these audits that are not cumbersome, so as to ensure sustainability. We review OIG's now-quarterly progress reports, which detail the results of its reviews; and continue to assist OIG as it becomes a stronger unit and further develops its capacity to monitor the Department's continued implementation of the NSA reforms. OIG is continuing the practice of following up on past reports, as a way of verifying that the Department implements OIG's recommendations.

Focused Task Assessments

Task 26: Force Review Board (FRB)

Requirements:

OPD shall develop and implement a policy concerning its FRB proceedings. The policy shall:

- 1. Set out procedures, membership and a timetable for FRB review of use of force investigations involving Level 2 incidents, as defined in Department General Order K-4, REPORTING AND INVESTIGATING THE USE OF FORCE;*
- 2. Require the FRB to review all use of force investigations;*
- 3. Require the FRB to make a recommendation as to whether the use of force was in policy or out of policy;*
- 4. Require the FRB to forward sustained policy violations to the Discipline Officer.*
- 5. Require the FRB not to review any use of force allegation until the internal investigations has been completed;*
- 6. Authorize the FRB to recommend to the Chief of Police additional use of force training or changes in policies or tactics, or additional standards, investigatory policies, or training for use of force investigations;*
- 7. Require the FRB to conduct an annual review of use of force cases examined, so as to identify any patterns of use of force practices that may have policy or training implications, and thereafter, issue a report to the Chief of Police;*
- 8. Require that the FRB membership include, at a minimum, one member from the Training Division, one member from the Field Training Officer program, and either the Bureau of Field Operations Deputy Chief or his/her designee;*
- 9. Minimally, that one member of the FRB shall be replaced at least annually.*

(Negotiated Settlement Agreement V. C.)

Relevant Policy:

Department General Order K-4.1, *Force Review Boards*, was originally published on February 17, 2006, and revised on December 21, 2015.

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Commentary:

Force Review Boards, consisting of three command-level staff, carefully examine the deployment/application investigation of Level 2 uses of force.¹ These examinations often result in follow-up activities, which may include a review of policies, supervision, training, and tactics – and where appropriate, corrective intervention with involved officer(s).

OPD has been in compliance with this Task since the nineteenth reporting period. However, due to the significance of a use of force by police officers, we continue to monitor this Task – which includes our review of force reports and attendance at Force Review Board (FRB) proceedings when they are conducted during out site visits. None have been conducted during our last two visits.

Force Review Boards play an important role in OPD's effort to limit officers' use of force, which has resulted in a continued decline in the overall use of force by officers from 614 in 2016 to 413 to date in 2017, a decrease of 32%. However, the slight increase of Level 2 uses of force – from 15 in 2016 to 19 for the same period – demonstrates the need for continued vigilance and where necessary, supervisory intervention, including the provision of training.²

OPD remains in compliance with this Task.

¹ Level 2 uses of force include: 1) Any strike to the head (except for an intentional strike with an impact weapon); 2) Carotid restraint is applied that does not result in the loss of consciousness; 3) Use of impact weapons, including specialty impact munitions or any other object, to strike a subject and contact is made, regardless of injury; 4) Any unintentional firearms discharge that does not result in injury; 5) A police canine bites the clothing or the skin of a subject, or otherwise injures a subject requiring emergency medical treatment (beyond first-aid) or hospital admittance; 6) Any use of force which results in injuries to the subject requiring emergency medical treatment (beyond first-aid) or hospital admittance; (NOTE: For the purposes of this order, an evaluation by a medical professional to assess a complaint of injury is not emergency treatment) 7) Any Level 3 use of force used on or applied to a restrained subject; 7.a) A restrained subject is a person who has been fully placed in a Department authorized restraint device such as both hands handcuffed, a WRAP or Rip Hobble; 7.b) A subject with only one handcuff on is not a restrained person.

² Memorandum, 193rd Bi-Weekly Compliance Update 9/10/17 – 9/23/17, City of Oakland Police Department, dated 27 September 2017.

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Task 30: Executive Force Review Board (EFRB)

Requirements:

1. *An EFRB shall be convened to review the factual circumstances surrounding any Level 1 force, in-custody death, or vehicle pursuit-related death incidents. A firearm discharge at an animal shall be reviewed by the EFRB only at the direction of the Chief of Police. The Board shall have access to recordings and/or transcripts of interviews of all personnel on the scene, including witnesses, and shall be empowered to call any OPD personnel to provide testimony at the hearing.*
2. *OPD shall continue the policies and practices for the conduct of EFRB, in accordance with the provisions of DGO K-4.1, FORCE REVIEW BOARDS.*

(Negotiated Settlement Agreement V. G.)

Relevant Policy:

Department General Order K-4.1, *Force Review Boards*, was published on February 17, 2006, and revised on December 21, 2015.

Commentary:

Executive Force Review Boards (EFRBs), consisting of three top command-level staff, are convened as required and consistent with policy. The EFRB conducts thorough, detailed reviews of all Level 1 uses of force, in-custody deaths, and vehicle pursuit-related deaths.³ We closely monitor this process through a review of board reports and our observations of EFRB proceedings conducted during our site visits.

OPD achieved compliance with this Task during the nineteenth reporting period; however, given the seriousness of any use of force or an in-custody death, we continue to monitor and report on this Task.

³ Level I use of force events include: 1) Any use of force resulting in death; 2) Any intentional firearm discharge at a person, regardless of injury; 3) Any force which creates a substantial risk of causing death, (The use of a vehicle by a member to intentionally strike a suspect shall be considered deadly force, reported and investigated as a Level 1 UOF under this section. This includes at any vehicle speed, with or without injury, when the act was intentional, and contact was made); 4) Serious bodily injury, to include, (a) Any use of force resulting in the loss of consciousness; and (b) Protracted loss, impairment, serious disfigurement, or function of any bodily member or organ (includes paralysis); 5) Any unintentional firearms discharge, (a) If a person is injured as a result of the discharge; or (b) As directed by the CID Commander; 6) Any intentional impact weapon strike to the head; 7) Any use of force investigation that is elevated to a Level 1 approved by a Watch Commander.

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OPD conducted no EFRBs thus far in the current year; however, one is pending and may be scheduled during our November site visit. This is a reduction in numbers from previous years and demonstrates the Department's continued attention to – and progress with – the evaluation of these events; and where necessary, supervisory intervention, including the provision of training is achieving positive results.

Task 34: Vehicle Stops, Field Investigation, and Detentions

Requirements:

1. *OPD shall require members to complete a basic report on every vehicle stop, field investigation and every detention. This report shall include, at a minimum:*
 - a. *Time, date and location;*
 - b. *Identification of the initiating member or employee commencing after the first year of data collection;*
 - c. *Reason for stop;*
 - d. *Apparent race or ethnicity, and gender of individual(s) stopped;*
 - e. *Outcome of stop (arrest, no arrest);*
 - f. *Whether a search was conducted, and outcome of search;*
 - g. *Offense categories (felony, misdemeanor or infraction).*
2. *This data shall be entered into a database that can be summarized, searched, queried and reported by personnel authorized by OPD.*
3. *The development of this policy shall not pre-empt any other pending or future policies and or policy development, including but not limited to “Promoting Cooperative Strategies to Prevent Racial Profiling.”*

(Negotiated Settlement Agreement VI. B.)

Relevant Policy:

Department policies relevant to Task 34 include: General Order M-19, *Prohibitions Regarding Racial Profiling and Other Bias-Based Policing*; Report Writing Manual (RWM) Inserts R-2, N-1, and N-2; Special Order 9042, *New Procedures Regarding Stop Data Collection* (published June 2010); and Special Order 9101, *Revised Stop Data Collection Procedures* (published November 2012).

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Commentary:

OPD developed and implemented the required policy for compliance with the requirements of this Task. The data described in Task 34.1 (a.-g.) is entered by officers on data collection reports, which the Department has periodically revised to accommodate improved processes and expanded data elements. The reports' information is entered into a database that can be summarized, searched, and queried to identify indicators of disparate treatment or racial profiling.

Commencing in April 2013, we found the stop data collected by OPD sufficiently accurate and voluminous for analysis to identify indicators of disparate treatment.⁴ Using this data, OPD produced a series of tables/charts illustrating various data, which have been the basis for review and/or analyses at monthly Risk Management Meetings (RMMs).

During the Risk Management Meetings, OPD Commanders present stop data from one of the five Area Commands in tables/charts. The presentations cover stops – both vehicle and pedestrian; reasons for the stops; and any resulting actions taken – including searches, the results of searches, arrests, and other actions. The illustrative tables allow for preliminary analyses to determine whether there *appears* to be disparate treatment of or within one or more population groups by or within one of more of the various Area squads. The data has also served to inform OPD regarding the effectiveness of existing – and the development of new – crime control strategies.

As we have previously reported, these reviews resulted in some successes – notably, increased attention to and analysis of parole/probation stops and searches, and increases in overall search recovery rates. The data has also identified the need, and provided the basis for, development of focused policing strategies, which include an emphasis on intelligence-led stops, as opposed to random traffic stops. Nonetheless, as also previously reported, additional focus on the identification and resolution of disparate treatment indicators is required to achieve compliance with this Task.

The stop data presented during the RMMs often includes variances warranting further analysis to verify the presence or absence of disparate treatment at the Area, squad, and in some cases – the officer level. However, OPD has not yet operationalized a standard procedure to do so. Although we recognize that disparities may result from specific assignments, crime control strategies, or unusual events, it is nevertheless important – when these disparities, for example, depict a wide variance in search recovery rates between population groups – to conduct further analysis to verify, to the degree possible, the presence or absence of disparate treatment, which may be the result of bias requiring intervention. OPD is presently aware of this shortcoming; we look forward to a proposed resolution.

⁴ Our periodic reviews of stop data reports consistently find that nearly 100% of all OPD stops are based on documented probable cause or other legal basis.

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OPD continues to conduct monthly Risk Management Meetings, during which various data are review. At the September RMM, the Area Commander provided a thoughtful analysis of officers' activity in his Area. Clearly well-prepared, the commander noted that the priorities in his Area are to reduce crime, make the community safer, and practice Constitutional policing – and that his command staff are required to regularly audit officers' use of force and other reports to ensure that they are consistent with the Area's priorities. The commander also discussed the importance of strengthening and rebuilding the relationship and trust with the community – and also acknowledged that officers must recognize how recent scandals have affected this relationship. He noted that while the stops in his Area are, overall, significantly lower than other Areas, the arrest activity is still comparable to that of other Areas, which he attributed to a philosophy that police work involves much more than making stops, and his direction that officers need to develop strong investigative skills.

As noted in previous reports, OPD has modified the data illustrations presented for discussion and analysis at the RMMs. As we have pointed out previously, the modifications of the format and presentation of data may prove challenging for Area presenters, as well as those overseeing the Risk Management Meetings to interpret the new presentations; therefore, the efficacy of the modifications remain in question. We will continue to assist and work with OPD to resolve these issues as they arise to ensure productive meetings and outcomes.

The below table is one illustration of the data presented at the September RMM:

AREA STOPS, DISCRETIONARY SEARCHES & RECOVERIES - 2/01/17 – 075/31/17⁵							
Race	Stops	Stops %		Searches %		Recoveries %	
		Area	Other	Area	Other	Area	Other
African American	786	52%	68%	43%	32%	18%	20%
Hispanic	435	29%	18%	47%	22%	21%	16%
White	110	7%	8%	17%	16%	21%	21%
Asian	122	8%	4%	43%	13%	29%	16%
Other	47	3%	2%	34%	17%	13%	13%
Total	1,500	100%	100%	42%	28%	20%	19%

We continue to recognize the considerable commitment of time, energy, and resources by OPD to address disparate treatment in collaboration with Dr. Jennifer Eberhardt and the Stanford University team. This relationship continues to be beneficial, as OPD continues its implementation of the Department's work with Dr. Eberhardt and the Stanford University team to better understand bias and its effects on the community. The implementation by OPD of the

⁵ Data presented during the September RMM. Discretionary searches exclude incident to arrest; recoveries exclude marijuana (returned and medical) and other weapons (returned), as well as recoveries from incident to arrest and inventory searches. "Other" refers to the average for the other four Areas, weighted by Area stops.

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recommended 50 actions designed and intended to change the Department's culture and strengthen ties with the communities it serves, which are acknowledged by OPD as a significant part of its compliance effort, are ongoing. We regularly report on the status and progress with the adoption of these recommendations. (See below.)

In addition, the recently completed study by Dr. Eberhardt and the Stanford University Department of Linguistics describing findings of a study of language from body-worn camera footage relating to respect and racial disparities is under review by OPD.

Clearly, OPD is advancing its efforts to comply with requirements of this Task. We recognize continued internal efforts to address bias; and the ongoing engagement of Dr. Eberhardt and the Stanford University Team to assist, which will optimally result in improved operational procedures and minimizing and/or elimination of bias and/or disparate treatment.

However, the below-described specific issues remain incomplete; accordingly, we will continue to monitor OPD's progress on these issues until the Department achieves full compliance:

- Implementation of general and specific intervention strategies to address data indicators of abnormalities and/or possible bias at the Area, squad, and individual officer levels;
- Further enhancement of the revised Risk Management Process, including adjustments to illustrative charts and tables to more effectively identify indicators of bias and/or disparate treatment;
- Implementation of processes to provide for a more expeditious compilation of stop data prior to, during, and following Risk Management Meetings. The City anticipates that this will be achieved with implementation of PRIME 2.0;
- Assessment and determination whether the present rotating review of stop data (once every five months) is sufficient to reliably identify possible bias and ensure sustained intervention and/or prevention measures. A change in this process to better or more frequently review and address stop data issues remains under review; and
- Implementation of the *applicable* 50 recommendations contained in the 2016 Stanford University Report. OPD represents that 14 recommendations have been completed, an additional 14 are completed/ongoing tasks, 21 are in progress, and one requires additional analysis.

Task 41: Use of Personnel Assessment System (PAS) and Risk Management⁶

Requirements:

Within 375 days from the effective date of this Agreement, OPD shall develop a policy for use of the system, including supervision and audit of the performance of specific members, employees, supervisors, managers, and OPD units, as well as OPD as a whole. The policy shall include the following elements:

- 1. The Chief of Police shall designate a PAS Administration Unit. The PAS Administration Unit shall be responsible for administering the PAS policy and, no less frequently than quarterly, shall notify, in writing, the appropriate Deputy Chief/Director and the responsible commander/manager of an identified member/employee who meets the PAS criteria. PAS is to be electronically maintained by the City Information Technology Department.*
- 2. The Department shall retain all PAS data for at least five (5) years.*
- 3. The Monitor, Inspector General and Compliance Coordinator shall have full access to PAS to the extent necessary for the performance of their duties under this Agreement and consistent with Section XIII, paragraph K, and Section XIV of this Agreement.*
- 4. PAS, the PAS data, and reports are confidential and not public information.*
- 5. On a quarterly basis, commanders/managers shall review and analyze all relevant PAS information concerning personnel under their command, to detect any pattern or series of incidents which may indicate that a member/employee, supervisor, or group of members/employees under his/her supervision may be engaging in at-risk behavior. The policy shall define specific criteria for determining when a member/employee or group of members/employees may be engaging in at-risk behavior.*
- 6. Notwithstanding any other provisions of the PAS policy to be developed, the Department shall develop policy defining peer group comparison and methodology in consultation with Plaintiffs' Counsel and the IMT. The policy shall include, at a minimum, a requirement that any member/employee who is identified using a peer group comparison methodology for complaints received during a 30-month period, or any member who is identified using a peer group comparison methodology for Penal Code §§69, 148 and 243(b)(c) arrests within a 30-month period, shall be identified as a subject for PAS intervention review. For the purposes of these two criteria, a single incident shall be counted as "one" even if there are multiple complaints arising from the incident or combined with an arrest for Penal Code §§69, 148 or 243(b)(c).*

⁶ As noted previously and above, OPD now refers to its risk management database system as PRIME, or Performance Reporting Information Metrics Environment.

7. *When review and analysis of the PAS threshold report data indicate that a member/employee may be engaging in at-risk behavior, the member/employee's immediate supervisor shall conduct a more intensive review of the member/employee's performance and personnel history and prepare a PAS Activity Review and Report. Members/employees recommended for intervention shall be required to attend a documented, non-disciplinary PAS intervention meeting with their designated commander/manager and supervisor. The purpose of this meeting shall be to review the member/employee's performance and discuss the issues and recommended intervention strategies. The member/employee shall be dismissed from the meeting, and the designated commander/manager and the member/employee's immediate supervisor shall remain and discuss the situation and the member/employee's response. The primary responsibility for any intervention strategies shall be placed upon the supervisor. Intervention strategies may include additional training, reassignment, additional supervision, coaching or personal counseling. The performance of members/ employees subject to PAS review shall be monitored by their designated commander/manager for the specified period of time following the initial meeting, unless released early or extended (as outlined in Section VII, paragraph B (8)).*

8. *Members/employees who meet the PAS threshold specified in Section VII, paragraph B (6) shall be subject to one of the following options: no action, supervisory monitoring, or PAS intervention. Each of these options shall be approved by the chain-of-command, up to the Deputy Chief/Director and/or the PAS Activity Review Panel.*

Members/employees recommended for supervisory monitoring shall be monitored for a minimum of three (3) months and include two (2) documented, mandatory follow-up meetings with the member/employee's immediate supervisor. The first at the end of one (1) month and the second at the end of three (3) months.

Members/employees recommended for PAS intervention shall be monitored for a minimum of 12 months and include two (2) documented, mandatory follow-up meetings with the member/employee's immediate supervisor and designated commander/manager: The first at three (3) months and the second at one (1) year. Member/employees subject to PAS intervention for minor, easily correctable performance deficiencies may be dismissed from the jurisdiction of PAS upon the written approval of the member/employee's responsible Deputy Chief, following a recommendation in writing from the member/employee's immediate supervisor. This may occur at the three (3)-month follow-up meeting or at any time thereafter, as justified by reviews of the member/employee's performance. When a member/employee is not discharged from PAS jurisdiction at the one (1)-year follow-up meeting, PAS jurisdiction shall be extended, in writing, for a specific period in three (3)-month increments at the discretion of the member/employee's responsible Deputy Chief. When PAS jurisdiction is extended beyond the minimum one (1)-year review period, additional review meetings

involving the member/employee, the member/ employee's designated commander/manager and immediate supervisor, shall take place no less frequently than every three (3) months.

9. *On a quarterly basis, Division/appropriate Area Commanders and managers shall review and analyze relevant data in PAS about subordinate commanders and/or managers and supervisors regarding their ability to adhere to policy and address at-risk behavior. All Division/appropriate Area Commanders and managers shall conduct quarterly meetings with their supervisory staff for the purpose of assessing and sharing information about the state of the unit and identifying potential or actual performance problems within the unit. These meetings shall be scheduled to follow-up on supervisors' assessments of their subordinates' for PAS intervention. These meetings shall consider all relevant PAS data, potential patterns of at-risk behavior, and recommended intervention strategies since the last meeting. Also considered shall be patterns involving use of force, sick leave, line-of-duty injuries, narcotics-related possessory offenses, and vehicle collisions that are out of the norm among either personnel in the unit or among the unit's subunits. Division/appropriate Area Commanders and managers shall ensure that minutes of the meetings are taken and retained for a period of five (5) years. Commanders/managers shall take appropriate action on identified patterns of at-risk behavior and/or misconduct.*
10. *Division/appropriate Area Commanders and managers shall meet at least annually with his/her Deputy Chief/Director and the IAD Commander to discuss the state of their commands and any exceptional performance, potential or actual performance problems or other potential patterns of at-risk behavior within the unit. Division/appropriate Area Commanders and managers shall be responsible for developing and documenting plans to ensure the managerial and supervisory accountability of their units, and for addressing any real or potential problems that may be apparent.*
11. *PAS information shall be taken into account for a commendation or award recommendation; promotion, transfer, and special assignment, and in connection with annual performance appraisals. For this specific purpose, the only disciplinary information from PAS that shall be considered are sustained and not sustained complaints completed within the time limits imposed by Government Code Section 3304.*
12. *Intervention strategies implemented as a result of a PAS Activity Review and Report shall be documented in a timely manner.*
13. *Relevant and appropriate PAS information shall be taken into account in connection with determinations of appropriate discipline for sustained misconduct allegations. For this specific purpose, the only disciplinary information from PAS that shall be considered are sustained and not sustained complaints completed within the time limits imposed by Government Code Section 3304.*

14. *The member/employee's designated commander/manager shall schedule a PAS Activity Review meeting to be held no later than 20 days following notification to the Deputy Chief/Director that the member/employee has met a PAS threshold and when intervention is recommended.*
15. *The PAS policy to be developed shall include a provision that a member/employee making unsatisfactory progress during PAS intervention may be transferred and/or loaned to another supervisor, another assignment or another Division, at the discretion of the Bureau Chief/Director if the transfer is within his/her Bureau. Inter-Bureau transfers shall be approved by the Chief of Police. If a member/employee is transferred because of unsatisfactory progress, that transfer shall be to a position with little or no public contact when there is a nexus between the at-risk behavior and the "no public contact" restriction. Sustained complaints from incidents subsequent to a member/employee's referral to PAS shall continue to result in corrective measures; however, such corrective measures shall not necessarily result in a member/employee's exclusion from, or continued inclusion in, PAS. The member/employee's exclusion or continued inclusion in PAS shall be at the discretion of the Chief of Police or his/her designee and shall be documented.*
16. *In parallel with the PAS program described above, the Department may wish to continue the Early Intervention Review Panel.*
17. *On a semi-annual basis, beginning within 90 days from the effective date of this Agreement, the Chief of Police, the PAS Activity Review Panel, PAS Oversight Committee, and the IAD Commander shall meet with the Monitor to review the operation and progress of the PAS. At these meetings, OPD administrators shall summarize, for the Monitor, the number of members/employees who have been identified for review, pursuant to the PAS policy, and the number of members/employees who have been identified for PAS intervention. The Department administrators shall also provide data summarizing the various intervention strategies that have been utilized as a result of all PAS Activity Review and Reports. The major objectives of each of these semi-annual meetings shall be consideration of whether the PAS policy is adequate with regard to detecting patterns of misconduct or poor performance issues as expeditiously as possible and if PAS reviews are achieving their goals.*
18. *Nothing in this Agreement, and more specifically, no provision of PAS, shall be construed as waiving, abrogating or in any way modifying the Department's rights with regard to discipline of its members/employees. The Department may choose, at its discretion, to initiate the administrative discipline process, to initiate PAS review or to use both processes concurrently or consecutively.*

(Negotiated Settlement Agreement VII. B.)

Relevant Policy:

OPD revised and issued Departmental General Order D-17, *Personnel Assessment Program*, in November 2013. Since our last report, the Department has begun to address General Order D-17 as part of Department's ongoing policy review and revision program. Due to the introduction of PRIME, a revised version of the relevant policy is currently under review.

Commentary:

Task 40 delineates the data requirements for the risk management system that is described in Task 41. Even with the difficulties associated with the implementation of PRIME (Performance Reporting Information Metrics Environment), the Department continues to collect and tabulate all fields of data required under Task 40. Since PRIME came online, however, there have been concerns about the quality of the data; and the current information does show some deviation from the numbers expected based on recent history. Significant concerns with the quality of data continue.

In the preparation of this report, OPD presented corrected numbers to us on multiple occasions. The problems with PRIME are troublesome for several reasons. For one, the data do not yet appear to be stable enough to guide policy choices, and they may misrepresent officer risk-related activity – thus understating or overstating risk activity. For example, for this report, we originally received information that there had been 69 pursuits for the quarter, more than doubling the number for the same quarter in the previous year. When we inquired about this, OPD reexamined the data and reported instead that there had been 23 pursuit incidents involving 69 officers. OPD also reported that the pursuit numbers for the same quarter in 2016 were incorrect. According to a review of Q3 2016 pursuit data, there were 21 pursuit incidents involving 62 officers.

Similar corrections were needed for the quarterly use of force number for this year and the previous year. The differences are shown below.

Q3 2017 USE of FORCE Counts		
	As reported	As revised
Level 1	1	1
Level 2	4	4
Level 3	31	26
Level 4	89	79

Revisions to the numbers for 2016 were also forwarded while we were drafting this report. For that, Level 4 uses went from an incorrect number of 115 in 2016 to a corrected number of 146. OPD explained that this is because the methodology for counting uses of force changed when PRIME was implemented. OPD, therefore, should report the data both ways to ensure the comparability of data over time.

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During the time period in 2017, a total of 303 Internal Affairs Division complaints were filed, compared with 227 for the same months in 2016. No corrections were reported for these numbers.

Taken together, these data can only be seen as disheartening. Accurate data are critical for decision-making in any large urban police department; and the ability to drill down from Department-wide through Area-wide and squad levels, and finally, to individual officers is fundamental to good supervision.

The problems associated with PRIME are certainly critical to all of this – but they also seem to be only *part* of the mix of data-related issues the Department is having difficulty with. There are collection and recording problems, and a failure of oversight and audits that should correct errors early. These problems jeopardize the Department's compliance with Tasks 40 and 41. There is a strong need to stabilize and ensure the accuracy of the data used for policy decision-making and risk management. It does not seem likely that those outcomes can be achieved without a greater investment of personnel who are trained in data management and analysis.

As required under Task 41, OPD utilizes the data collected with reference to Task 40 to identify and review officers who exceed established thresholds or are referred for review by command staff. Comprehensive reviews are conducted by the PAS Administration Unit staff; and those reviews are then examined by officers' supervisors, who may concur or reject the PAS Administration Unit's recommendations. The reviews then move forward, up the chain of command to unit commanders; then Deputy Chiefs; and finally, the PAS Review Panel can concur or revise recommendations that range from no action to monitoring or supervision.

Over the last quarter, the PAS processes included completion of 18 reviews, a substantial number although slightly lower than in the recent past. Although it had been anticipated that the data in PRIME would allow for more expedited reviews, problems with that data have required that all reviews now be verified by hand. *That process is now more laborious than it had been before PRIME.*

Examination of the outcomes of reviews shows that choosing "no action necessary" is the frequent choice as it was for 15 of 18 cases reviewed. The records of the complete review process show, however, that the PAS Review Panel, in the final step in the process, reversed three of four decisions in which the supervisors recommended no action, although the PAS Administration Unit had recommended monitoring. In those three cases, the final result was placement on supervisory monitoring. In all, at the end of September, there were 25 officers on supervisory monitoring and four on intervention. This comes out to just over 3% of all officers, and 5.5% of officers assigned to patrol.

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These data raise several important issues with regard to risk management. There may be a need for increased training and communication with first-line supervisors, since they may lean against monitoring or intervention when the PAS Administration Unit supports it and that position is ultimately confirmed up the chain of command. Furthermore, the total number of officers on monitoring or supervisions remains small. Reserving some response to risk issues for the most serious cases may suggest a view of risk management that does not primarily emphasize early intervention to positively influence officer development. It makes little sense to expect that a certain number of officers being reviewed, and having certain numbers in monitoring or supervision, represents a report card of sorts for the Department or for individual officers. Instead, those numbers may be better seen as providing insight onto management perspectives on risk and the commitment to a philosophy of engagement, support, and career development.

Task 45: Consistency of Discipline Policy

Requirements:

On or before October 6, 2003, OPD shall revise and update its disciplinary policy to ensure that discipline is imposed in a fair and consistent manner.

- 1. The policy shall describe the circumstances in which disciplinary action is appropriate and those in which Division-level corrective action is appropriate.*
- 2. The policy shall establish a centralized system for documenting and tracking all forms of discipline and corrective action, whether imposed centrally or at the Division level.*
- 3. All internal investigations which result in a sustained finding shall be submitted to the Discipline Officer for a disciplinary recommendation. The Discipline Officer shall convene a meeting with the Deputy Chief or designee in the affected chain-of-command for a confidential discussion of the misconduct, including the mitigating and aggravating factors and the member/employee's overall performance.*
- 4. The COP may direct the Discipline Officer to prepare a Discipline Recommendation without convening a Discipline Conference.*

(Negotiated Settlement Agreement X. B.)

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Relevant Policy:

Five Departmental policies incorporate the requirements of Task 45: Departmental General Order M-03, *Complaints Against Department Personnel and Procedures* (published December 6, 2005 and revised most recently on August 24, 2013); Training Bulletin V-T.1 and V-T.2, *Internal Investigation Procedure Manual* (published July 17, 2008); Internal Affairs Policy and Procedure Manual (published December 6, 2005); and Training Bulletin V-T, *Departmental Discipline Policy* (published March 14, 2014).

Commentary:

Task 45.2 requires that OPD maintain a centralized system for documenting and tracking all OPD forms of discipline and corrective action, whether imposed centrally or at the division level. To assess Phase 2 compliance with this subtask, we reviewed the six cases that contained at least one sustained finding that were approved in June and July 2017. All (100%) of these cases and findings contained all of the necessary information available on the spreadsheet generated by IAD for our review. OPD is in compliance with the requirement that it maintain an adequate system for documenting and tracking discipline and corrective action.

The NSA also requires that discipline be imposed in a manner that is fair and consistent. To this end, the Department developed a Discipline Matrix, which was adopted on September 2, 2010 and was in effect until a new Discipline Matrix was approved on March 14, 2014. This subsequent Matrix applies to violations after that date.

As noted above, we reviewed all six cases with sustained findings that were approved during June and July 2017. One case involved the care and control of an arrestee's property, resulting in the loss of his wallet from his vehicle. Another case involved the failure to accept or refer a complaint. Another case involved a violation of general conduct standards. Three cases involved preventable motor vehicle accidents.

In each case, as required, the proposed discipline fell within the Discipline Matrix that was in effect at the time of the action for which the discipline was imposed.

During July and August 2017, OPD held two *Skelly* hearings for IAD cases involving employees with sustained findings in which discipline of a one-day suspension or greater was recommended. We reviewed the *Skelly* reports, and found that they contained adequate justification for the results documented. One case involved the failure to activate a PDRD. The proposed one-day suspension was reduced to a written reprimand, with the concurrence of the Chief. The other case involved the unintentional discharge of a firearm. The proposed one-day suspension was also reduced to a written reprimand, again with the concurrence of the Chief. The reports were generally well-written and followed the established format.

We also reviewed the training records that OPD provided, and confirmed that all *Skelly* hearing officers received the approved *Skelly* Officer Training in January of last year. Additionally, all active *Skelly* officers received refresher training on April 26, 2017. No additional training was provided during this review period.

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During the recent October 2, 2017 Case Management Conference, as well as in the joint Parties' statement that preceded it, the Plaintiffs' attorneys raised concerns regarding the consistency of discipline as it pertains to the race and gender of OPD members. In their statement, the Plaintiffs' attorneys requested that the Monitor/Compliance Director "audit this Task in the near future and to report statistics by race and gender as to whether police officers are receiving consistent discipline without regard to their gender or ethnic background." This request was further discussed in the Case Management Conference, and the Parties agreed to discuss the processes that might be involved to ensure the confidentiality of members when such an audit is conducted. We will work closely with the Parties to determine the parameters and methodology of this robust review.

OPD remains in partial compliance with Task 45.

Conclusion

It is necessary once again for the Monitoring Team to address the organizational issues that continue to impinge on the development of PRIME. During our most recent site visits, it has seemed clear that the City Information Technology Department intended to decrease its role and was increasing its expectations that the Police Department would contribute more to the solution of the technical problems with the system. However, that is inconsistent with police personnel power and staffing patterns – and it is most certainly inconsistent with the Court's expressed expectations at the recent status conference regarding City information technology expertise.

It should be clear that we do not expect the burden of design and implementation of the risk management system to shift from its original form with the City of Oakland.

In our next report, we shall also assess the measure to which the Department continues to implement both the recommendations in the Swanson-Barron report, which detailed the Court-appointed independent investigation of OPD's initial investigation of Internal Affairs Division case 15-0771; as well as the commitments the Department made as part of its own related Critical Incident Review.



Chief (Ret.) Robert S. Warshaw

Monitor