

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

Introduction

This is our forty-ninth 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 November 2017; and describes our recent assessments of NSA Tasks 20, 34, 41, and 45. As we have noted previously, following the Court's Order of May 21, 2015, in our monthly reports, 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.

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 20: Span of Control

Requirements:

On or before August 14, 2003, OPD shall develop and implement a policy to ensure appropriate supervision of its Area Command Field Teams. The policy shall provide that:

1. *Under normal conditions, OPD shall assign one primary sergeant to each Area Command Field Team, and, in general, (with certain exceptions) that supervisor's span of control shall not exceed eight (8) members.*
2. *During day-to-day operations, in the absence of the primary supervisor (e.g., due to sickness, vacation, compensatory time off, schools, and other leaves), the appropriate Area Commander shall determine, based on Department policy and operational needs, whether or not to backfill for the absence of the sergeant on leave.*
3. *If a special operation, (e.g., Beat Feet, Special Traffic Offenders Program (STOP), etc.) requires more than eight (8) members, the appropriate Area Commander shall determine the reasonable span of control for the supervisor.*
4. *If long-term backfill requires the loan or transfer of a supervisor from another unit, the Chief of Police and/or the Deputy Chief of Police shall make that decision.*

(Negotiated Settlement Agreement IV. C.)

Relevant Policy:

Three Departmental policies incorporate the requirements of Task 20: Departmental General Order A-19, *Supervisory Span of Control*, issued on July 26, 2006; Departmental General Order D-13, *Assignment to Acting Higher Rank or Classification*, issued on June 17, 1999; and Departmental General Order D-13.1, *Assignment to Acting Sergeant of Police*, issued on May 14, 2014. (The publication of DGO D-13.1 cancelled Special Order 8435, which previously governed the selection process of acting sergeants.)

Commentary:

To assess these requirements for this report, we reviewed spreadsheets prepared by the Department for the months of July, August, and September 2017 that, by date, note which type of sergeant supervised each applicable squad – a primary sergeant, relief sergeant, acting sergeant, other sergeant (one working overtime), or none. (The Department refers to unsupervised squads as “open.”) We calculated per squad the compliance percentages for this subtask during this reporting period. Each of the 48 applicable squads were in compliance – that

is, all applicable squads during this reporting period were supervised by either a primary, relief, or other/overtime sergeant for at least 85% of their working shifts. We also found that none of the applicable squads exceeded the required 1:8 supervisor to officer ratio at least 90% of their working shifts.

OPD continues to be in compliance with these important requirements. We are encouraged that the Department has institutionalized the sound practices of tracking how each squad is supervised each day; planning, when possible, for expected absences; and thoughtfully considering how to fill in for personnel who are absent unexpectedly.

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.

Commentary:

Force Review Boards, consisting of three command-level staff, carefully examine the deployment/application investigation of Level 2 uses of force.¹ Although OPD has been in compliance with this Task since the nineteenth reporting period, we continue to monitor this Task due to the seriousness of any police use of force. Our monitoring includes our review of force reports and attendance at Force Review Board (FRB) proceedings when they are conducted during out site visits. OPD has held 19 Boards thus far in the present calendar year.²

Implementation of the Force Review Board has proven to be a vital component of OPD's effort to limit officers' use of force, and has contributed to a continued decline in the overall use of force by officers from 717 in 2016 to 458 to date in 2017, a decrease of 36%. However, increases of Level 1 uses of force – from 0 to 2, and for Level 3 from 80 to 82, for the same period – signal the need for continued vigilance, particularly at the immediate supervisory level; and where necessary, supervisory intervention, including the provision of training.³

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 Status Memorandum dated November 20, 2017.

³ Memorandum, 197th Bi-Weekly Compliance Update 11/5/17 – 11/18/17, City of Oakland Police Department, dated 22 November 2017.

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 to review all Level 1 uses of force, in-custody deaths, and vehicle pursuit-related deaths.⁴ OPD also achieved compliance with this Task during the nineteenth reporting period; however, we continue to closely monitor this process through a review of board reports and our observations of any EFRB proceedings conducted during our site visits.

OPD conducted no EFRBs thus far in the current year; one is scheduled for our December site visit. This is a reduction from previous years, which demonstrates OPD's continued attention to – and progress with – the evaluation of these events. However, as noted above, the reporting of two Level 1 uses of force in 2017 demonstrates the need for continued vigilance by supervisors and the importance of critical reviews by Force and Executive Force Review Boards.⁵

⁴ 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.

⁵ Memorandum, 197th Bi-Weekly Compliance Update 11/5/17 – 11/18/17, City of Oakland Police Department, dated 22 November 2017.

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).

Commentary:

OPD continues to make progress toward, but has not yet achieved, compliance with the requirements of this Task. As previously reported, OPD collects and stores data described in Task 34.1 (a.-g.). As of April 2013, the data has been sufficiently detailed, accurate, and voluminous for analysis to determine the lawful basis for the stops and further to identify indicators of disparate treatment.

OPD conducts monthly Risk Management Meetings (RMMs), during which one of the five Area Commanders present stop data from his/her Area command for review and discussion regarding the reasons (basis) for the stops; resulting actions taken – including searches, the results of searches, arrests, and other actions 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 also serves to inform OPD regarding the effectiveness of existing – and the development of new – crime control strategies, and efforts to make the community safer and practice Constitutional policing.

This process has proven beneficial, as evidenced by OPD’s increased attention to and analysis of parole/probation stops and searches, and increases in overall search recovery rates. The Department’s data has also identified the need – and provided the basis for – the development of more concentrated policing strategies; OPD is now focusing on “intelligence-led stops,” which are based on specific information, as opposed to random traffic stops.

The stop data presented during the RMMs consistently contains wide variances in the numbers of stops within the identified population groups, which has prompted careful analysis of actual stop data to determine whether the basis for the stops meet the legal standards described above is an important and basic consideration. Both the Department’s and our own reviews of the data have consistently found adherence to legal standards.

Information and/or descriptions of persons involved in criminal activity provided to police officers by victims and witnesses are also an influential component of data analysis. Recently analyzed stop data from one Area found descriptors of persons suspected of criminal activity in general alignment with stop data, which tangentially relates to the utility of intelligence-led stop and the importance of ensuring that any stops codes as intelligence-led are based on intelligence and correctly coded. As previously mentioned, we recognize the possibility of coding errors if they are not carefully monitored, in particular at the first-line supervisory level.

Although OPD has provided extensive briefings and training on the criteria and process for coding stops as intelligence-led, the error rate has generally exceeded 20 percent. During a recent RMM, command staff noted its specific review of stop data prior to that meeting identified a continued high error rate and therefore a need for additional training. While we acknowledge the benefit of command’s review, we find it problematic that the errors were not discovered and corrected at the first-line supervisor level; and that the expressed corrective measure did not focus on the *responsibilities of supervisors* rather than the provision of additional training.

OPD subsequently conducted an executive command meeting with sergeants, lieutenants, and captains “to articulate the basis for an Intelligence-Led Stop...and address any misconceptions related to the topic,” noting also that it is the sergeants’ responsibility “to ensure...subordinates have a clear understand of what Intelligence-Led Stops are.”⁶ This is a positive step; however, we recommend that sergeants also be held responsible for adherence to the established standards for the “intelligence-led” designation by subordinates.

Of continuing concern to us are the modifications of the data illustrations presented for discussion and analysis at the RMMs, which may present interpretative challenges. We continue to work with OPD to make improvements to ensure productive meetings and outcomes.

We recognize the continued collaboration by OPD with Dr. Jennifer Eberhardt and the Stanford University team to address disparate treatment as both innovative and beneficial in its quest to better understand bias and its effects on the community. We acknowledge as positive the decision by OPD to include the adoption of the Stanford recommended 50 actions designed and intended to change the Department’s culture and strengthen ties with the communities it serves part of its compliance effort. We will regularly report on the status and progress with the adoption of these recommendations.

While OPD continues to advance its efforts to comply with requirements of this Task, 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. Further, we will look for a clear and unambiguous commitment to the provisions of this Task as a means to ensure that the protocols that have been undertaken will be institutionalized and remain an integral, sustainable practice.

- 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, though at this time it is unclear when that version of the risk management system will be established;
- 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 recently represented that the implementation of five specific recommendations will be completed by January 23, 2018.

⁶ 197th Biweekly Compliance Update 11/5/17 – 11/18/17.

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

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).*
- 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. The revised version of the relevant policy is currently under review.

Commentary:

PRIME, or OPD's Performance Reporting Information Metrics Environment, is critical to the Department's compliance with NSA Task 40, which sets requirements for the risk management database; and Task 41, which addresses the operation of the risk management system. There were substantial delays in the implementation of the database – and since its implementation, there have been significant problems with the operation of PRIME and with accuracy and confidence in the system's data. OPD and the City continue to make modest progress in the resolution of problems, but difficulties remain.

PRIME is, however, only one of several major and inter-related technical projects underway at OPD. The development of a new Computer Aided Dispatch (CAD) System and Records Management System (RMS) is proceeding with the development of a contract with a separate vendor. Even as struggles with PRIME continue, development and planning for PRIME 2.0 moves forward on a parallel track. PRIME 2.0 is expected to incorporate data covering four additional areas, including personnel information, training data, stop data, and body-worn camera (PDRD) video footage. The stop data may present significant challenges since new requirements have been promulgated by the State of California. Some significant changes in data collection and reporting are included. OPD, as all California law enforcement agencies, will be required to comply with them by early 2019.

As those projects move forward, OPD is also reviewing a vendor's proposal to produce the data presentations for the Risk Management Meetings. The monthly meetings have become a significant component of the overall risk management effort. Their importance is clear, in the Department's ongoing commitment to them as well as in the frequent review and revision that has occurred to ensure their value. Early in the process, OPD staff handled the data presentations for the meetings; but they are now overseen by consultants from Stanford University. That is expected to change with an external contractor taking on that effort. With this approach, there will be an even greater need for the Department to be certain it fully understands the presentations and the underlying data and avoids potential problems resulting from contracting out the presentations and analysis.

As the new technology projects move forward, the Department continues to deal with problems associated with PRIME. Although improvements in data quality are reported and the Department continues to work closely with its PRIME vendor, stubborn problems remain. Even at this late date, the risk management unit (formerly known as the PAS Administration Unit) staff must calculate threshold analyses by hand in order to identify officers for review. Those analyses are the critical first step in the assessment and management of risk-related behavior. For the next step, the problem of exclusion criteria has not been resolved. That deals with exclusion of some officers for review based on recent review history. OPD estimates that 75% of those they review would be excluded from further review if the automated system were functional. The review process now also requires tracking data manually. As of the time of our October site visit, there also remained unresolved printing problems. As OPD has reported, taken together, these problems have slowed the process of risk-related reviews and intervention; and thus reduced the number of officers reviewed.

In the hopes of addressing these problems, the PRIME vendor's contract to assist in debugging has been extended; and the Department and vendor are spending substantial time on a weekly basis addressing problems that continue to cascade as system-testing goes on or as new problems are discovered with the use of the database. Regular shutdowns to update the system occur, although emergency shutdowns are less common.

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.)

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). Several of these policies are currently being revised.

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 14 cases that contained at least one sustained finding that were approved in August and September 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 14 cases with sustained findings that were approved during August and September 2017. One case involved the failure to return a detainee's identification card after a stop, and also a failure to activate a PDRD as required by policy. Two cases involved the failure to accept or refer a complaint. In two other cases, improper demeanor allegations were sustained. One case involved a sustained finding for insubordination. In another case, it was determined that a dispatcher did not conduct a proper interview of a caller. In another case, two officers received sustained findings for failing to make an arrest for violation of a restraining order. In one case, the investigation revealed that a civilian employee improperly used a personal cell phone while operating a City vehicle. In another case, a civilian employee was sustained for failing to report for duty; being intoxicated when he should have been on duty; and then subsequently providing untruthful statements in his IAD interview. Termination was recommended in this case. Three cases involved preventable motor vehicle accidents, and another involved a pursuit that was deemed in violation of policy.

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 August and September 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 an off-duty DUI arrest. The proposed 10-day suspension was upheld with the concurrence of the Chief, although the suspension will be held in abeyance for 24 months in accord with Department policy since the officer attended “an approved wellness program.” The other case involved a sustained demeanor allegation. The officer reported for his *Skelly* hearing without representation, accepted responsibility for his actions, indicated the penalty was fair, and declined to participate further in the *Skelly* hearing process. Nonetheless, the *Skelly* Officer completed a report and upheld the proposed one-day suspension, 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.

OPD received one arbitration decision during the reporting period. An impartial arbitrator upheld the termination of a civilian employee for performance issues and insubordination. A review of the records indicated that the City was well prepared to put forth its case before, during, and after the arbitration hearing.

OPD remains in partial compliance with Task 45.

City’s Progress Implementing Recommendations of Swanson-Barron Report and Commitments to its Critical Incident Review

The Department continues to make progress implementing 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. The Department is also making progress on the commitments it made as part of its own Critical Incident Review and in the October 2, 2017 Case Management Conference in Court. Chief Kirkpatrick designed the Critical Incident Review process to focus on, in her words, the “cultural transformation” of the Department.

During our November site visit, we inquired with OPD as to the status of each of these commitments. OPD is making progress making several significant revisions to Policy 611 (Criminal Investigation of Members of the Department and Sworn Law Enforcement Personnel). The Department also continues to convene its Culture Working Group, comprised of a diverse cross-section of OPD members and employees who are responsible, per OPD, for examining “the cultural environment in OPD that allowed fostering of the egregious conduct that occurred in the sexual misconduct event” and identifying other training and leadership issues in the

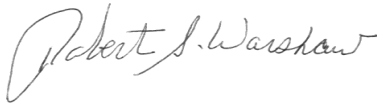
Department. Beginning in January, Chief Kirkpatrick will meet individually with those personnel who were involved in the initial investigation of Internal Affairs Division case 15-0771 to assist them in developing personal improvement plans.

We will continue to follow up on any outstanding issues during our upcoming site visits, and update this information in our monthly reports.

Conclusion

PRIME-related problems have clearly created a substantial burden for the Department, as well as for the City's Information Technology Department. Some quite drastic responses to these problems have been considered. City ITD has indicated that it would consider scrapping PRIME entirely and building a new system from scratch. It has also advocated for OPD to bear a greater burden in addressing these problems. That suggests an unexpected and seemingly unwelcomed reformulation of current working relationships. It would require development of substantially more technical skills within OPD. One concrete step that has already been taken is that the City is soliciting outside bids for fixing the bugs in the system. Addressing the problems with PRIME are undoubtedly complicated by the Department's work on other related and necessary technology projects.

We will discuss these issues further with OPD and City officials during our upcoming site visit.



Chief (Ret.) Robert S. Warshaw
Monitor