

Oakland Police Department



Negotiated Settlement Agreement

19th Annual Report

February 1, 2013– January 31, 2014

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INTRODUCTION

Since January 22, 2003, the City of Oakland and the Oakland Police Department have been implementing the reforms outlined in the Negotiated Settlement Agreement¹ (Agreement) with the goal of transforming the Department into a model agency with superior police practices. The Department has striven to implement such practices in the areas of supervision, accountability, police intervention programs, use of force, and misconduct investigations.

The original Agreement reform provisions were separated into 52 tasks for implementation, delegation, and tracking purposes (only 51 were assessed for actual practice compliance – the fifty-second task dealt with contractual housekeeping provisions). A Memorandum of Understanding (MOU) succeeded the Agreement, requiring continued, but more narrowly focused, oversight. The MOU focuses on the 22 tasks that were not yet in full compliance and/or were considered to be the most critical tasks when the Agreement expired.

The Monitor, Chief Robert Warshaw, Police Performance Solutions, LLC, assesses compliance with each of the 22 MOU tasks and provides quarterly summaries of his findings.

In this nineteenth annual report, the Office of the Inspector General (OIG) summarizes the Department's compliance status and efforts to implement provisions of the MOU for the period of February 1, 2013 through January 31, 2014. During this time period, the Monitor released four reports (the thirteenth, fourteenth, fifteenth, and sixteenth quarterly status reports) based on site visits conducted throughout the year. The Monitoring Team conducted its sixteenth quarterly site visit from November 4, through November 8, 2013, to evaluate the Department's progress with the NSA during the three-month period of July 1, through September 30, 2013.

The Department has changed the way it does business, resulting in much improved training, supervision, self-monitoring, and accountability. It has put into practice or revised policies and procedures to reflect current industry standards. There continue to be areas in need of improvement; the Department is working closely with the Monitor to ensure meaningful and lasting change.

¹ An agreement entered into between the City and Plaintiffs in the Delphine Allen, et al. v. City of Oakland, et al., consolidated case number C00-4599 TEH (JL), otherwise known as the "Riders" cases, Section XIII.A.1. The mutually agreed-upon court-approved Negotiated Settlement Agreement resulted from a City of Oakland decision to resolve litigation brought by multiple plaintiffs seeking both monetary compensation and reforms within the Department as a result of this case.

COMPLIANCE PROGRESS OVERVIEW

For implementation, delegation, and tracking purposes, Agreement reform provisions were separated into 52 separate tasks. The MOU is now focused on the 22 tasks that were not yet in full compliance and/or were considered to be the most critical tasks at the completion of the Agreement in January 2010.

Only the Monitor can deem the Department in compliance, and only after conducting an audit of each task. In order to achieve full compliance, two phases of compliance must be satisfied: policy and training, and actual practice (“implementation”). Policy and training compliance were achieved for all NSA tasks prior to the implementation of the MOU.

Implementation progress as of January 21, 2014 (date of publication of the *Sixteenth Quarterly Report of the Independent Monitor for the Oakland Police Department*) is summarized in Table 1 below. Table 2 (following page) lists the 22 tasks by number and title and summarizes their state of compliance as of the same date.

Table 1. Task Compliance Status

Task Status	Tasks as of January 21, 2014
Tasks in Training and Policy Compliance	22 of 22
Tasks in Compliance, Implementation	14 of 22
Tasks in Partial Compliance, Implementation	8 of 22
Tasks Not in Compliance, Implementation	0 of 22
Deferred Tasks*	0 of 22

*Note: The “Deferred” category is used in circumstances where PPS-IMT is unable to fully determine the compliance status of a task due to lack of or incomplete data.

Table 2. State of Compliance (as of January 21, 2014)

Task		Phase 1: Policy and Training	Phase 2: Implementation			
		In Compliance	In Compliance	Partial Compliance	Not in Compliance	Deferred
Task 2:	Timeliness Standards and Compliance with IAD Investigations					
Task 3:	IAD Integrity Tests					
Task 4:	Complaint Control System for IAD and Informal Complaint Resolution Process (4.7 and 4.10 only)					
Task 5:	Complaint Procedures for IAD					
Task 6:	Refusal to Accept or Refer Citizen Complaints					
Task 7:	Methods for Receiving Citizen Complaints (7.3 only)					
Task 16:	Supporting IAD Process – Supervisor/Managerial Accountability					
Task 18:	Approval of Field – Arrest by Supervisor (18.2.2 only)					
Task 20:	Span of Control for Supervisors					
Task 24:	Use of Force Reporting Policy					
Task 25:	Use of Force Investigations and Report Responsibility					
Task 26:	Force Review Board (FRB)					
Task 30:	Executive Force Review Board (EFRB)					
Task 33:	Reporting Misconduct					
Task 34:	Vehicle Stops, Field Investigation and Detentions					
Task 35:	Use of Force Reports – Witness Identification					
Task 37:	Internal Investigations – Retaliation Against Witnesses					
Task 40:	Personnel Assessment System (PAS) – Purpose					
Task 41:	Use of Personnel Assessment System (PAS)					
Task 42:	Field Training Program					
Task 43:	Academy and In-Service Training (43.1.1 only)					
Task 45:	Consistency of Discipline Policy (45.1 and 45.4 only)					
Total Tasks		22	14	8	0	0

OFFICE OF INSPECTOR GENERAL AUDITS

During this reporting period, the Office of Inspector General completed five audits of NSA related tasks and three audits of non-NSA related policy and procedures. Six audits were completed by OIG Audit Unit staff and two audits were completed by Elite Performance Assessment Consultants (EPAC). The purpose of the audits was to identify deficiencies that could impact compliance with the Agreement and Departmental policy, as well as inefficiencies in practice. In addition to the five NSA related audits, the Audit Unit completed three audits of risk areas not related directly to NSA tasks (Search Warrants, Confidential Informants, and the Reserve Officer Program). It is important to note that the OIG completed six audits of NSA-related tasks during the 2013 calendar year. The calendar year and the reporting period differ by one month. The first audit for the calendar year 2013 (Special Audit Oakland Police Department Officer-Involved Shootings) was completed on January 29, 2013, and was summarized in the Negotiated Settlement Agreement 18th Annual Report.

NSA-related audits are listed below and summarized in this section:

1. Procedures for Transporting Detainees and Citizens (Task 36)
2. OPD/DA Liaison Command (Task 22)
3. Academy and In-Service Training (Task 43)
4. Mobile Data Terminal Traffic (Task 51)
5. Community Policing (Task 47)

Non-NSA related audits that were conducted are listed below:

6. Reserve Officer Program (DGO A-04)
7. Citizen Informant Files (DGO O-04)
8. Search Warrant (TB I-F)

Procedures for Transporting Detainees and Citizens/Task 36

On November 5, 2013, the Audit and Inspections Unit of the Office of Inspector General completed an audit of Task 36, Transporting Detainees and Citizens. Task 36 requires:

Task 36.1 - Members and employees log in and out on the radio when transporting a detainee or any other civilian (unless the transport is done by wagon).

Task 36.2 - The radio report includes: time, mileage, location, purpose of transport, gender of individuals being transported, and the identification of the member or employee involved in the transport.

The audit team reviewed 228 transports during the period of February 1, 2013 through February 28, 2013 and found the Department achieved a compliance rating of 97% for Task 36.1 and 99% for Task 36.2.

Findings

The Department has been found in compliance with this task in all audits conducted by the first IMT and the OIG since 2008.

Management Level Liaison/Task 22

On December 27, 2013, EPAC completed an audit of Task 22, Management Level Liaison. Task 22 requires:

“Within 60 days from the effective date of this Agreement, OPD shall establish a Management-Level Liaison (MLL) to the courts, the District Attorney’s Office, and the Public Defender’s Office. This unit or person shall ensure that cases which are lost or dropped due to bad reports, defective search warrants, granted ‘Motion to Suppress,’ contradictory evidence or testimony, or any other indication of performance problems or misconduct, are tracked. The OPD MLL shall be required to meet and cooperate with the Monitor. The DA’s and PD’s Offices may attend meetings, as they deem appropriate.”

EPAC staff conducted a review of all MLL reports from September 1, 2008 through September 30, 2013, and Strike Lists from July 2013 through September 2013; one IAD/Division level investigation resulting from MLL referral from the September 2013 MLL Monthly Report; and OPD correspondence/tracking documents for the audit time period to determine whether and how OPD was tracking MLL cases.

Findings

The Department was found in compliance for Task 22.

There was one area of concern. The MLL retained only 2 ½ months of the Strike List for the 13 months audited. The previous MLL had retired and the status of the missing lists was unknown. Although the OPD did not have the Strike Lists from September 2012 through June 2013, they did have copies of e-mails from the District Attorney’s Office and Public Defender’s Office indicating that there were no cases which were lost or dropped due to bad reports, defective search warrants, granted ‘Motion to Suppress,’ contradictory evidence or testimony, or any other indication of performance problems or misconduct during the specified period. These e-mails were attached to the MLL Monthly Reports and were reviewed by the EPAC audit staff.

Academy and In-Service Training/Task 43

On December 20, 2013, the Audit and Inspections Unit of the Office of Inspector General completed an audit of Task 43, In-Service Training. Task 43 requires:

“A. Academy Training Plan

Within 540 days of the effective date of this Agreement, OPD shall develop and implement a plan to enhance its Academy and in-service training to ensure that OPD members, dispatchers,

and civilian evidence technicians are adequately trained for their positions, and aware of and able to implement the most contemporary developments in police training. This plan shall include a review of OPD's training curriculum, with additional emphasis on ethics and professionalism, critical thinking and problem solving, conflict resolution, and relationships with the community. The plan shall also address the criteria and method for selecting OPD training instructors, the training provided to instructors, procedures for evaluating the content and quality of training provided to OPD personnel and procedures for maintaining training records for OPD personnel. In arriving at the plan regarding staffing, training content and methodology, OPD shall consult with at least four (4) other, large law-enforcement agencies within the United States which have excellent reputations for professionalism. In particular, OPD shall consult with these agencies about qualifications and other criteria to be used in selecting staff for training positions. OPD shall also review the approach of these other law enforcement agencies in training both new staff and experienced staff on ethics and professionalism, critical thinking and problem solving, conflict resolution, and relationships with the community.

B. Professionalism and Ethics

OPD shall expand professionalism and ethics as a training topic within the recruit academy, in-service training, and field training. Wherever possible, OPD shall include and address issues of professionalism and ethics using curricula that employ realistic scenario-based training exercises.

C. Supervisory and Command Training

OPD shall provide all sergeants and commanders with mandatory 40-hour in-service supervisory and leadership training. Officers shall attend training prior to promotion to the rank of sergeant. Lieutenants shall attend training within six (6) months of promotion. Such training shall include supervisory and command accountability, and ethics and professionalism, with emphasis on supervisory and management functions and situations, and shall include both scenario-based training and case studies.

D. In-Service Training

OPD shall provide all members with forty (40) hours of in-service training every eighteen (18) months.

1. Sergeants shall receive at least 20 hours of training designed for supervisors every 18 months.
2. Members at the rank of lieutenant and above shall receive at least 20 hours of training designed for commanders every 18 months.

E. Training Staff Record Review

Appointment to the Academy staff or other staff training position shall also require a review of the record of the individual being considered, to ensure that the individual does not have a record of any Class I offense, as defined in Section III, paragraph H (1), within the prior two (2) years, and that the individual is supportive of the philosophy and values of OPD."

To conduct this audit, the audit team coordinated their efforts with the Department's Training Division personnel. The team requested and received members/employees' training records from January 1, 2009 through December 31, 2012 and other necessary documents (i.e. instructor files, course curricula, lesson plans, etc.). In addition, the team held a meeting in which the Training commander and staff were interviewed to determine the Department's actual practices. Moreover, the audit team also conferred with other supervisors/commanders, when necessary, to aid in clarifying information and/or audit questions.

There were five main objectives for this audit. First, determine whether OPD has a training plan which insures its sworn police officers, sergeants, and lieutenants and civilian dispatchers and evidence technicians are adequately trained for their respective positions. Second, determine whether professionalism and ethics, critical thinking and problem-solving, conflict resolution, and relationships with the community are included in OPD's in-service training as training topics. Third, determine whether OPD provides sergeants and commanders with mandatory 40 hour in-service supervisory and leadership training. Fourth, determine whether OPD provides all members with 40 hours of in-service training every 18 months. Fifth, determine whether OPD, prior to selecting a member or an employee as an instructor, reviews the applicant's complaint history and ensures that he/she is supportive of the Department's philosophy and values.

Findings

Policy: The Department has a comprehensive policy, which is outlined in DGO B-20, published April 6, 2005 - **In Compliance**

Training: The Department has trained the relevant personnel on the policy- **In Compliance**

Practice: OPD has a training plan containing the elements required by the NSA (listed in task subparts below) and is implementing this plan in both academy and in-service training (Task 43.1)
Compliance Requirement: Yes/No
Audit Finding: Yes

OPD's training plan ensures that OPD members, dispatchers, and civilian evidence technicians are adequately trained for their respective positions and trains OPD personnel to implement the most contemporary developments in policing (Task 43.1.1)

Compliance Requirement: Yes/No

Audit Finding: Yes

OPD's training plan includes a review of OPD's training curriculum and incorporates additional emphasis on: ethics and professionalism [using realistic scenario-based training exercise wherever possible (43.2)]; critical thinking and problem-solving; conflict resolution; and relationships with the community (Task 43.1.2)

Compliance Requirement: Yes/No

Audit Finding: Yes

OPD's training plan establishes criteria and method for: selecting OPD training instructors (in accordance with the elements listed in Task 43.5); training provided to instructors; procedures

for evaluating the content and quality of training provided to OPD personnel; and procedures for maintaining training records for OPD personnel (Task 43.1.3)

Compliance Requirement: Yes/No

Audit Finding: Yes

OPD's training plan includes expansion of professionalism and ethics as a training topic within the recruit academy, in-service training, and in field training, using realistic scenario-based training exercises wherever possible (Task 43.2)

Compliance Requirement: Yes/No

Audit Finding: Yes

All sergeants and commanders receive 40 hours of in-service supervisory and leadership training. This training includes supervisory and command accountability; ethics and professionalism; emphasizes supervisory and management functions and situations; and includes both scenario-based training and case studies (Task 43.3)

Compliance Rating: 95%

Audit Finding: 96%

Officers received this training prior to promotion to sergeant (Task 43.3.1)

Compliance Requirement: 90%

Audit Finding: Partial Compliance

(93% of Officers received training, but only 37 hour of training)

Lieutenants receive this training within six months of promotion (Task 43.3.2)

Compliance Requirement: 90%

Audit Finding: 17%

All members receive 40 hours of in-service training every 18 months (Task 43.4)

Compliance Requirement: 95%

Audit Finding: 96%

Members at the rank of lieutenant and above receive at least 20 hours of training designed for commanders every 18 months (Task 43.4.2)

Compliance Requirement: 95%

Audit Finding: 100%

The complaint history of every in-service or academy training instructor is reviewed prior to appointment. No training instructor is appointed unless the individual is shown to be supportive of the philosophy and values of OPD and does not have a sustained Class I offense within the two years prior to appointment (Task 43.5)

Compliance Requirement: 95%

Audit Finding: 100%

There were three areas of concern. The first two regard the training provided to newly promoted sergeants and lieutenants. The audit indicated that the Department was providing newly promoted sergeants with only 37 hours of training instead of the required 40 hours. In addition, the audit indicated that lieutenants were not receiving the required POST supervisory

accountability and management functions courses within six months of promotion. Finally, as the Monitor noted it in its audit, dated July 18, 2013, there was a need for the Department's PETs to receive adequate training.

Since the completion of this audit, the Training Division has increased training for newly promoted sergeants to the required 40 hours. The Training Division has also implemented a new system of controls to ensure that newly promoted lieutenants receive the required POST supervisory accountability and management functions courses within six months of promotion. Lastly, the Training Division and the Department's Bureau of Field Operations are coordinating the necessary training for the PETs.

Mobile Data Terminal Traffic/Task 51

On December 04, 2013, the Audit and Inspections Unit of the Office of Inspector General completed an audit of Task 51, Compliance Audits and Integrity Tests. Task 51 requires:

“Upon implementation of policies and procedures pursuant to this Agreement, OPD shall conduct annual audits of stratified, random samples of: (4) Mobile Data Terminal traffic.”

The purpose was to examine the content of car-to-car message transmissions and ensure that user generated messages do not violate Department policy, local and/or federal laws.

The OIG reviewed all MDT transmissions between December 2012 and September 2013; a total of 304 days were reviewed. There were 57 individual messages transmitted in the 304 days covered by the audit, with an average of one message every 5.33 days.

Findings

Of the 57 messages reviewed during the audit period, none were found to contain inappropriate language, wording that constitutes a policy violation, or lengthy conversations unrelated to work.

Community Policing Plan/Task 47

On December 31, 2013, Elite Performance Assessment Consultants, LLC (EPAC), completed an audit of Task 47, Management Level Liaison. Task 47 requires:

“Within 138 days from the effective date of this Agreement, OPD shall develop and implement a plan to strengthen its commitment to relationships with local communities including, but not limited to, the following:

- A. OPD shall host at least one (1) community meeting per quarter in each Patrol Service Area.
- B. Each patrol supervisor, and officer assigned to a regular beat or geographic area of the City, shall attend a minimum of one (1) community meeting per quarter in the Area he/she is regularly assigned.
- C. OPD shall develop mechanisms to measure its community policing and problem solving activities.

D. OPD shall incorporate positive statistics on community policing and problem solving activities in “Crime-Stop” meetings, along with information on citizen complaints and use of force incidents.

E. The appropriate Departmental personnel shall arrange a meeting within 60 days unless not feasible with representatives of an established organization active within Oakland (PUEBLO, ACLU, NAACP, etc.), community groups or church groups, if an organization communicates a concern regarding specific police personnel or practices.”

The audit was bifurcated. This portion covers Task 47.1 and Task 47.2 which require:

Task 47.1 – OPD hosts at least one community meeting per quarter each Patrol Service Area.

Task 47.2 – Each patrol supervisor and officer assigned to a regular beat or geographic area of the City, attends a minimum of one community meeting per quarter in the Area he/she is regularly assigned.

EPAC staff conducted a review of all Public Appearance Report (PAR) forms from July 1, 2013 through September 30, 2013, all documentation of tracking Public Appearances, and all weekly Patrol Assignment Rosters from July 1, 2013 through September 30, 2013.

Findings

EPAC found that the commitment to community policing appears at every level of OPD and its mission. Findings in the audit primarily relate to shortfalls in OPD personnel not meeting the community meeting requirements specified in the NSA.

The Department was found in compliance with a rating of 98% for Task 47.1.

The Department was in compliance with 86% of OPD required personnel attending community meetings. However, the Department was found out of compliance with only 71% attending in their PSA. As a result, OPD did not meet compliance with Task 47.2 with a total percentage of 79%.

OPD is currently working to resolve the issues related to Task 47.2 by modifying the Public Attendance Report, establishing better supervisor and command tracking for officers’ attendance at community meetings, and achieving greater efficiency in record keeping.

CONCLUSION

The Department continues to work towards full compliance with Tasks that are in partial compliance. The Department has worked closely with the Monitor to identify solutions to issues that have prevented it from achieving full compliance. While progress has been made, the Monitor has concerns about the overall training of PETs and the lack of structure of the EFRB. The Department has taken measures to address both issues. The Department and the City remain committed to achieving full compliance with the NSA and will continue working with all the stakeholders to attain the goal of ensuring meaningful and lasting change.