



## MEMORANDUM

**TO:** HONORABLE MAYOR &  
CITY COUNCIL

**FROM:** LeRonne L. Armstrong  
Chief of Police

**SUBJECT:** Bi-Monthly OPD NSA Status Update

**DATE:** February 8, 2021

City Administrator  
Approval

Date

Feb 26, 2021

### **RECOMMENDATION**

**Staff Recommends That The City Council Receive A Bi-Monthly Update On The Oakland Police Department's (OPD) Compliance With The Negotiated Settlement Agreement (NSA).**

### **BACKGROUND**

In 2003 the City of Oakland entered into a Negotiated Settlement Agreement (NSA) to settle the *Allen v. City of Oakland* lawsuit (the "Riders" case). The NSA requires implementation of 51 Tasks to promote police integrity and prevent unconstitutional policing. A court-appointed Monitor reviews and reports on compliance with each task and makes a determination of "in compliance, out of compliance, or partial compliance." A request for a "Negotiated Settlement Agreement (NSA) Bi-Monthly Update" report was made at the October 24, 2019 Rules and Legislation Committee and a [report](#) and [presentation](#) were presented to the Public Safety Committee on January 14, 2020. Multiple priorities have delayed subsequent bi-monthly update reports, including:

- Responding to the Covid-19 Pandemic;
- Civic protests following the killing of George Floyd in the summer of 2020;
- Violent crime surges;
- Increased sideshow activity; and
- Budget development in a period of historic revenue declines.

Notwithstanding the lack of reporting to the Public Safety Committee, the Police Department and the City have continued to prioritize actions towards compliance with the NSA throughout 2020

to present. In 2020, the Department moved into full compliance on Task 26, Force Review Boards. These Boards review intermediate and certain lower-level uses of force.

**ANALYSIS**

Currently, the Monitor has found OPD to be in compliance with 44 of the 51 original NSA tasks, in partial compliance with four tasks, and out of compliance with three tasks.<sup>1</sup> The tasks that do not have a current assessment of full compliance are as follows:

Task	Out of Compliance
2	<p data-bbox="448 663 1276 699"><b><u>Timeliness with Internal Affairs Division (IAD) Investigations</u></b></p> <p data-bbox="313 722 1256 789">Compliance Standard is 85% of Class I investigations and 85% of Class II investigations to be completed within 180 days of intake.</p> <p data-bbox="313 833 1377 900">The <a href="#">Seventy-First Report</a> of the Independent Monitor showed Class I investigations at 67% and Class II investigations at 75% for the second quarter of 2020.</p> <p data-bbox="313 945 1382 1012">For the fourth quarter of 2020, IAD projects Class I investigations at 82% and Class II investigations at 84%.</p>
30	<p data-bbox="651 1050 1068 1085"><b><u>Executive Force Review Board</u></b></p> <p data-bbox="313 1108 1390 1285">In 2019, the Monitor found the Department no longer in compliance with Task 30 based on the Executive Force Review Board (EFRB) held for the officer-involved-shooting (OIS) that resulted in the death of Joshua Pawlik. In the five years prior to the 2019 EFRB, the Department conducted seventeen (17) EFRBs, all of which were found to be in compliance with the NSA and Department policy.</p> <p data-bbox="313 1329 1398 1505">The Department held one (1) EFRB in January and February 2020 involving a canine bite use of force. In the <a href="#">Sixty-Ninth Report</a> of the Independent Monitor, the Monitor agreed with the EFRB finding and complimented, <i>“The Board was well-run; significant concerns were raised and thoroughly discussed; and, while not all the votes were unanimous, the Board reached the proper conclusions.”</i></p>
5	<p data-bbox="493 1543 1227 1579"><b><u>Internal Affairs Division (IAD) Complaint Procedures</u></b></p> <p data-bbox="313 1602 1360 1707">Per the Seventy-First Report of the Independent Monitor, a further compliance assessment is deferred pending the conclusion and review of cases stemming from the George Floyd protests in May/June 2020.</p> <p data-bbox="313 1751 1289 1776">In the Seventy-First Report, the Monitor noted, “[T]he Department has made</p>

<sup>1</sup> As described herein, the Monitor has deferred further assessment of two tasks—one of those tasks was last found in compliance, and one was last found out of compliance.

	<p>progress in this Task and has shown a capacity to better address internal investigations....” For the most recent investigations reviewed, the Monitor agreed with the overall quality of the investigations but disagreed with certain findings in two (2) of twenty (20) cases it reviewed and found it “concerning” that both cases involved allegations about officers’ truthfulness.</p>
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<b>Task</b>	<b>Partial Compliance</b>
<b>24</b>	<p style="text-align: center;"><b><u>Use of Force Reporting Policy</u></b></p> <p>Per the Sixty-Ninth Report of the Independent Monitor, “<i>OPD had been in compliance with Tasks 24 and 25 since 2015, and we were not actively reviewing these Tasks. In November 2018, as a result of concerns that we brought forward regarding the identification, potential underreporting, and investigation of uses of force, the Court reactivated Tasks 24 and 25.</i>”</p> <p>Per the Seventy-Second Report of the Independent Monitor, the Monitor’s most recent report inspections (sample consisting of 109 lower-level force reports from Oct. 2019-Feb. 2020) uncovered a single failure to report force and one delayed report, both timely and effectively addressed by supervisors. The Monitor found no failures to report pointing of a firearm at a person. The Monitor found no instances where officers failed to attempt verbal communications and de-escalation where appropriate, prior to using force. The Monitor found no instances where officers could have made additional efforts to explain to persons being detained why the detention was occurring prior to using force.</p>
<b>25</b>	<p style="text-align: center;"><b><u>Use of Force Investigation and Report Responsibilities</u></b></p> <p>See Task 24, above.</p>
<b>34</b>	<p style="text-align: center;"><b><u>Vehicle Stops, Field Investigation and Detentions</u></b></p> <p>The Department continues to refine its use and analysis of Stop Data to understand and reduce racial disparity and enhance and improve risk management.</p> <p>Per the <a href="#">Fifty-Eighth Report</a> of the Independent Monitor, “<i>Compliance with this Task includes: (1) the collection of specific, detailed stop data; (2) staff analyses of the data to ascertain the presence or absence of indicators of disparate treatment among the population groups; and, where indicated, (3) the implementation of corrective measures – i.e., policy revisions, training, or other individualized intervention where warranted.</i>”</p> <p>The Sixty-Ninth Report of the Independent Monitor noted, “<i>The Negotiated Settlement Agreement’s requirements regarding stop data have become an integral part of the analysis and remediation of risk as described in Task 41.</i>” In that report, the Monitor assessed OPD “in partial compliance.” The Monitor’s previous assessment of this task in 2019 did not include an express finding on compliance</p>

	status.
45	<p style="text-align: center;"><b><u>Consistency of Discipline</u></b></p> <p>Since the 21<sup>st</sup> Reporting period of December 2014, OPD has been in partial compliance with Consistency of Discipline. The Department has followed the Court Appointed Investigator’s recommendations on improving the Department’s Disciplinary Process. Since January 2015, the Monitor has reviewed 441 disciplinary cases, 61 Skelly hearings and four arbitration findings. The Department has implemented all required recommendations stemming the Court-appoint investigators report. The Monitor found the Department is doing what the task requires: documenting and maintaining an adequate system for tracking discipline and corrective action; consistently imposing discipline; and appropriately training <i>Skelly</i> officers.</p> <p>Per the <a href="#">Seventieth Report</a> of the Independent Monitor, “<i>As noted in our last report, we are closely following the Department’s response to the recent study on discipline disparity, which was conducted by a consulting firm, Hillard Heintze, on behalf of the Department.</i>”</p>

<b>Task</b>	<b>Deferred Compliance</b>
41	<p style="text-align: center;"><b><u>Use of Personnel Assessment System (PAS)</u></b></p> <p>Per the Seventy-First Report of the Independent Monitor, the compliance status on this task is deferred “due to the ongoing reconstruction of the Vision database.”</p> <p>The Department is working to fully utilize this new technology in its risk management process.</p>

Moving forward under Chief Armstrong’s leadership, OPD will focus on getting each NSA task in compliance, while practicing constitutional policing. In his first statement upon being sworn in as Chief of Police, Chief Armstrong stressed that moving the Department into compliance with the NSA is one of his top priorities.

In the past year, we have seen the devastating impact of the pandemic on Oakland residents, the livelihood of families, and the City’s finances. Simultaneously, the City has seen a significant increase in violent crime. Despite these challenges, the Department has made significant progress in the last year toward NSA compliance and plans to continue its advance toward full compliance.

**Internal Race & Equity Work**

Following the Department’s May 2020 release of the *Oakland Police Department Police Discipline Disparity Study*, the Department has now implemented eleven of the Study’s fourteen recommendations in whole and two in part, as well as two additional measures: anonymizing race, ethnicity, and gender information during (1) the Character Review portion of the Hiring and

## HONORABLE MAYOR AND CITY COUNCIL

Subject: Bi-Monthly OPD NSA Status Update

Date: February 8, 2021

Page 5

Background process, and (2) when appropriate during Internal Affairs case presentations. A chart summarizing the ongoing progress of this race and equity work is attached to this report. Additions made between September 2020 and February 2021 are featured in yellow. Attachment 1, *Race and Equity Work on Discipline Disparity Study Recommendations (Feb. 2021)*.

### **Reducing Racial Disparities in Policing**

Between 2016 and 2019, the City reported an overall reduction in police stops as well as a significant reduction in the racial disparity in the Department's stop rates, with both reductions having the greatest impact on African Americans. The non-dispatch stop rate for African Americans decreased from 62% in 2016 to 51% in 2019 and 52% in 2020.

### **Policy Development and Publication**

The Department and the Police Commission have collaborated on, and are continuing to develop and implement, important policies that move the City toward NSA compliance.

<b>POLICY</b>	<b>STATUS</b>
Training Bulletin (TB) III-P.01 – Armed Unresponsive Persons	Published. Effective March 1, 2021 to allow time for training.
TB III-P.03 –Dedicated Arrest Teams	Published. Effective March 1, 2021 to allow time for training.
TB III-P.04 – Armored Vehicles	Published. Effective March 15, 2021 to allow time for training.
Internal Affairs Policy & Procedure Manual	Draft sent to Police Commission on February 9, 2021. Status report due to Court on April 8, 2021.
CID Level 1 Investigations Policy & Procedure	In development. Status report due to Court on April 8, 2021.
Chief's Directive Memorandum Re Administrative Leave and Modified Duty After Major Force Incidents	In development. Status report due to Court on April 8, 2021.
Department General Order (DGO) D-17 – Personnel Assessment System (PAS) Policy	In development. Status report due to Court on or about May 21, 2021.
DGO K-03 – Use of Force Policy	Developed in collaboration with Police Commission. Approved by Commission. Publication pending completion of the meet and confer process.
Special Order (SO) 9205 – Banning of the Carotid Restraint and All Forms of Asphyxia	Published November 2020. Currently in effect.

### **Force Investigation and Reporting**

The Department has made significant sustained advancements in the accuracy and consistency of force reporting, as noted above.

## **HONORABLE MAYOR AND CITY COUNCIL**

Subject: Bi-Monthly OPD NSA Status Update

Date: February 8, 2021

Page 6

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In early 2020, the Department established new policy intended to improve accuracy and consistency of reporting force used to overcome resistance of a person during an arrest or detention, or defending against combative action. These are the lowest level reportable uses of force, and are classified as “Type 32” uses of force. Unfortunately, in February 2020 the Department experienced a massive delay in calls for service when it implemented the new Type 32 reporting policy. As a result, and with the Monitor’s concurrence, OPD temporarily modified the reporting requirement and is currently capturing Type 32 uses of force using alternative methods while it develops a more permanent solution. OPD completed a workload study on sergeants to help identify realistic, feasible options for reporting-and-reviewing solutions, and to assist analyzing of the benefits and detriments of such potential options. OPD anticipates sharing a proposed solution with the Monitor within the next month.

### **FISCAL IMPACT**

This report is for informational purposes only and does not have a direct fiscal impact or cost.

### **PUBLIC OUTREACH / INTEREST**

No public outreach was necessary outside of standard Council noticing and publishing requirement.

### **COORDINATION**

OPD regularly consults with the City Administrator’s Office and the Office of the City Attorney on NSA matters and reports.

### **SUSTAINABLE OPPORTUNITIES**

***Economic:*** There are no economic opportunities associated with this report.

***Environmental:*** There are no environmental opportunities associated with this report.

***Race and Equity:*** In March 2019, the Department hired a consulting firm to conduct a review of potential disparities in the Department’s internal investigations of police misconduct and any resulting discipline. In response to the Police Discipline Disparity Study conducted by the consulting firm Hilliard Heintze, The Department created a working group and Steering Committee on Racial Disparity in conjunction with the Internal Race & Equity Team (IRET) and Stanford researchers. The purpose of this collaboration was to conduct an initial impact analysis of the Discipline Disparity Study and to identify quantitative and qualitative data sets to support the Department in measuring the effectiveness of the implemented strategies borne out of the Discipline Disparity Study. From this partnership, a Racial Disparity Working Group was formed and has since fully or partially implemented the recommendations from the Discipline Disparity Study.

**HONORABLE MAYOR AND CITY COUNCIL**

Subject: Bi-Monthly OPD NSA Status Update

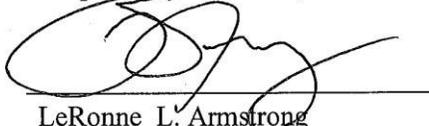
Date: February 8, 2021

Page 7

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For questions regarding this report, please contact Christopher Sansone, Lieutenant of Police, Office of Inspector General, at (510) 238-3533.

Respectfully submitted,



LeRonne L. Armstrong  
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Oakland Police Department

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# **ATTACHMENT A**

## RACE AND EQUITY WORK ON DISCIPLINE DISPARITY STUDY RECOMMENDATIONS (Feb. 2021 Update)

REC. NO.	RECOMMENDED ACTION	STATUS
1	Regularly audit and spot check processes and monitor data regarding <b>internal investigation outcomes and discipline</b> to measure progress in eliminating disparities based on race.	Implemented.  Discussing data sets with Stanford team.
2	Exercise caution in using the IAD investigator as both <b>fact finder and adjudicator</b> , as this raises challenges to principles of investigative neutrality and may contribute to perceptions of investigator bias. The fact finder for an internal investigation should not be the same individual who makes the determination of the finding. At a minimum, the next-level supervisor should read the investigative report and decide as to the finding of the complaint.	In progress.  Decided to run a pilot program in a subset of investigations where investigators send only findings of fact to supervisors and supervisors makes independent adjudications. Investigators will reach their own determination (for comparison to aid in the assessment of the pilot program) but the supervisor/adjudicator will not receive that determination.
3	Have the lieutenant or command staff member who approved the sustained finding present the <b>reasoning for the investigation's outcome</b> to the Chief's disciplinary roundtable, rather than the investigator. The investigator should be available for questions.	Implemented.
4	Explore the possibility of assigning an <b>administrative sergeant</b> within a division to assist with DLIs.	Implemented.  Exploration ongoing but complicated by budget and reimagining public safety initiatives.
5	Increase the number of <b>DLI sergeants</b> in the IAD to conduct more of the preliminary work related to a DLI and to aid field sergeants assigned to investigate complaints.	Implemented.  Added DLI sergeant. Request to City for additional staffing. Added sergeant from patrol to respond to need to investigate influx of complaints.

## RACE AND EQUITY WORK ON DISCIPLINE DISPARITY STUDY RECOMMENDATIONS (Feb. 2021 Update)

<b>6</b>	<p>Have field sergeants and IAD investigators provide <b>additional training</b> on internal investigation techniques, including report writing and guidance to ensure that complainant, subject member or witness statements are not written in the first person. Statements should be attributed properly to avoid a charge that the investigator is biased when choosing a perspective to believe. Training should also include guidance on how to incorporate procedural justice concepts into the internal investigation and discipline process.</p>	<p>Partially implemented.</p> <p>Increased sergeant training on internal investigations. Internal investigation training scheduled in anticipation of sergeant promotions to ensure timely training of new sergeants. Developing procedural justice (level 3) curriculum focused specifically on racial/gender bias and equity. Internal Race and Equity Team involved to ensure race and equity training module is consistent with the City's Department of Race and Equity training module. Anticipate beginning roll out Spring/Summer 2021.</p>
<b>7</b>	<p>Increase the <b>transparency</b> of internal investigation and disciplinary outcomes by distributing quarterly summaries of open cases, cases closed with a finding, and disciplinary outcomes. While protecting the identity of accused Department members, the summaries should include brief fact patterns and reference the number of prior sustained findings when discussing case outcomes.</p>	<p>Implemented.</p> <p>IAD will continue to explore ways to improve quarterly summaries.</p>
<b>8</b>	<p>Ensure that PDRs only include disciplinary history of sustained cases within the <b>five-year period</b>, consistent with statutes in the California Peace Officer Bill of Rights.</p>	<p>Implemented.</p>
<b>9</b>	<p>Have the academy integrate opportunities for <b>FTOs</b> to engage with the candidates before they are formally released to the Field Training Program to establish some familiarity and rapport. This could be accomplished through guest lecture opportunities or meet-and-greets on topics and scenarios to expect when the recruits enter the FTO stage.</p>	<p>Implemented.</p> <p>Academy has mentoring program for trainees and guest lecturers who are currently Field Training Officers (FTOs).</p>
<b>10</b>	<p>Ensure that command staff have some consistent <b>visibility</b> at the academy to provide new officers with a familiarity of their command structure prior to graduation.</p>	<p>Implemented.</p> <p>Starting with the 184th Academy and continuing in the 185th Academy, the</p>

## RACE AND EQUITY WORK ON DISCIPLINE DISPARITY STUDY RECOMMENDATIONS (Feb. 2021 Update)

		Department holds a command staff forum every other week and is mindful about including additional command staff interaction with trainees when possible and appropriate.
11	Start the OPD's mentoring program for trainees at the beginning of the academy and continue through the Field Training Program to provide additional assistance or mentoring as the trainees move through various stages of the process.	Implemented.  Implemented initially by Background/Recruiting and further modified by Training Division.
12	Expand the practice of conducting focus groups of trainees in the Field Training Program to include additional feedback mechanisms such as pre- and post-surveys and listening sessions. Continue to conduct confidential exit interviews with trainees who did not successfully complete the academy or field training program.	Implemented.  Increased involvement at the Captain level. The Captain meets with the Field Training Unit weekly to discuss each trainee's performance development plan.
13	Develop a policy that states that once a decision is made to release a trainee from probation during the Field Training Program, the trainee should be placed on administrative leave or in an assignment that does not involve public contact until all appropriate paperwork is completed.	Implemented.  Department General Order (DGO) B-08, <i>Field Training Program</i> , provides guidance on removing a trainee from field training, to include administrative leave.
14	Expand the tracking of trainees after completion of their training program so that leadership can gain additional feedback about the success rate of individuals who leave the program, especially those who have been provided additional chances to meet training standards. This expands upon the recommendation of the OPD's Inspector General to prioritize an electronic system of record keeping allowing for a quick and comprehensive review of all trainees and academy performance.	Partially implemented. The Training Division is working with Stanford Professors to implement assessments even beyond the completion of training.
<b>Additional Measure</b>	Hiring and Background process: anonymize demographic information in Character Review to minimize potential bias based on the race and gender of the applicant.	Implemented.

**RACE AND EQUITY WORK ON DISCIPLINE DISPARITY STUDY  
RECOMMENDATIONS (Feb. 2021 Update)**

<b>Additional Measure</b>	IA Case Presentations: when possible and appropriate, anonymize demographic information about the subject officer or professional staff to minimize potential bias based on race and gender of the subject officer.	Implemented.
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