

The Oakland Police Department's Response to the Police Discipline Disparity Study

In March 2019, the Oakland Police Department engaged enterprise risk management consulting firm Hillard Heintze to review the Department's internal investigative and discipline processes to identify potential racial and gender disparities in its internal officer discipline. The study's most important finding is that statistical analysis indicated over the five-year study period between 2014 and 2018, Black officers were on average 37% more likely to have an investigated complaint of misconduct sustained against them than officers of other races. This disparity increased to 39% for Class One complaints. For Class Two complaints (less serious), Black officers were 25% more likely to have the complaint sustained. Once a case was sustained, however, there were no disparities found in imposed sanctions.

This study identified disparities and the Department affirms that these findings are unacceptable. The guiding principles of the Department embrace fairness and procedural justice, and it is vital that those tenets are adhered to both internally and externally. We are committed to mitigating any and all race and gender disparities within our systems and processes to ensure our employees regain a sense of trust and equitable treatment.

While the study could not identify the specific reasons that caused the disparity in investigative outcomes, we embrace the findings and will engage in an aggressive process designed to identify and mitigate these disparities. To help achieve this goal, the Oakland Police Department's Race and Equity Team will partner with our City's Department of Race and Equity to conduct a Race and Equity Impact Analysis on the Department's disciplinary process. During this analysis, we will seek out and welcome input and collaboration with noted experts in the field, to include Dr. Jennifer Eberhardt, as well as our employees and the involved stakeholder groups in this endeavor.

The study also revealed disparate outcomes based on race and gender with regard to releases from the Academy and Field Training Programs. This finding is also significantly troubling as it is a key imperative for the Department to reflect its community and ensure a diverse and local police force. Because the study

noted the data was too limited to reach meaningful conclusions about disparity among trainee releases, the study provided scant recommendations to address possible racial bias in the Academy and Field Trainee Programs. As a result, the Department will utilize the Race and Equity Impact Analysis to further assess and address potential racial and gender disparities in these programs. The Department is committed to ensuring fair and equitable treatment to all those who are under its command and recognizes the importance of ensuring equity and representing and reflecting the communities served.

Racial disparity within the Department, in the Academy and beyond has been and remains a primary concern for Department staff and we thank our employee organizations and community for assisting in this study. This study reflects the Department's commitment to self-evaluation, evidence-based decision-making, and continuous improvement. We appreciate that this study has given us direction about where disparity exists, and some measure of that disparity. It is our intent to continue investigation into the discipline process and academy and recruit training by conducting the Race Equity Impact Analysis to determine which policies and practices can be adjusted to reduce the disparities and protect against bias and disparity based on race and gender.

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The Department embraces and holds as core principles equity and procedural justice. We believe that these principals begin internally with our systems and processes to ensure equitable and fair treatment of our employees as well as potential recruits. We embrace many of the recommendations in the Hillard Heintze study and recognize that there are still unanswered questions which additional analysis may help address. Hillard Heintze found that disparities exist in the internal investigative process but did not identify if the disparities were due to implicit bias, external bias, or inconsistent systems.

The Department looks forward to engaging our Race and Equity team with the expertise and consultation of the City's Department of Race and Equity and with technical assistance from Dr. Eberhardt. This Race Equity Impact Analysis will work to identify what aspects of the investigative process may be leading to disparate outcomes and to design additional recommendations to cover areas not addressed by the Hillard Heintze recommendations. We look forward to ongoing

collaboration with the stakeholder group and the Police Commission on this important work.

We have already implemented and will continue to build on measures that are underway to improve the equity and consistency of internal investigative and disciplinary processes and will continue to identify and implement additional actions to further improve internal and disciplinary processes. Rigorous efforts to define and clarify investigative standards and enhance consistency throughout the disciplinary process have been ongoing since the issues first surfaced and will continue.

Between 2015 and 2017, a Court appointed investigator issued three separate reports on aspects of the Department's discipline process. The three reports made several recommendations, which the Department has implemented over the course of the past five years. The changes made resulting from the reports, along with the additional measures we have taken, are listed below.

- The Department has strengthened its partnership with the Office of the City Attorney (OCA), involving OCA staff throughout the investigative process (assisting with investigative questions through arbitration).
- A City Attorney staff position has been dedicated to the Department.
- The Department and the OCA have provided more comprehensive training to Commanders who serve as Skelly Officers (officers in discipline hearings).
- The Internal Affairs Division (IAD) Commander meets with the Chief of Police and City Administrator on a regular basis to discuss IAD matters.
- IAD has issued clear guidance on the review process to ensure fair, thorough, and prompt internal investigations, and to increase accountability.
- IAD has increased the amount of training provided to supervisors on conducting internal investigations, including both routine training courses and individualized training opportunities.
- IAD reallocated current staff and was provided additional staff on loan pending budget approval from the City of Oakland.
- The Academy has implemented a number of new programs, such as a trainee mentoring program and guest speakers to enhance trainee

perspectives. The Training Division is implementing adult-based, service-oriented learning strategies, which is an approach to training outlined in the President's Task Force on 21st Century Policing.

- The Department provided implicit bias training to all sworn members and Procedural Justice training to all employees.
- In conjunction with the Director of the City's Department of Race and Equity, the Department provided Race and Equity Training for commanders and managers. In addition, several employees attended a Race and Equity Academy hosted by the City's Department of Race and Equity. The Race and Equity training consisted of four modules totaling 14-16 hours.
- The Department has a Race and Equity Team, trained by the City's Department of Race and Equity, to work on issues of race and equity within the Oakland Police Department. The Department's Team will continue to work closely with the Department of Race and Equity Director and staff, and Department leadership, to address equity and work to identify root causes of disparities in policies and procedures, and to advise changes to address them. Among its planned efforts, the interagency team will conduct a Race Equity Impact Analysis on the Department's disciplinary process.

In addition to the steps already taken, the Department will work with the Department of Race and Equity to evaluate the fourteen recommendations made by Hillard Heintze and develop appropriate measures for assessing the extent to which those recommendations reduce disparities based on race and gender. The recommendations include bolstering staffing for internal investigations, enhancing investigative training, increasing data analysis and transparency, and augmenting programs in the Academy and Field Training. While the Department has already implemented some of the recommendations, there are recommendations that require a resource assessment, such as additional staffing for division level investigations and building new reports to capture discipline data. Also, there are some recommendations that require additional research and analysis, for example, the recommendation to separate the role of fact finder and adjudicator in the investigative process.

Although the Hillard Heintze study includes several recommendations that may reduce bias in the internal investigative process, we recognize that none of the

recommendations in the study pertaining to the Academy and Field Training Program directly reference race and gender, and do not provide any explanation about why or how these recommendations may tend to reduce potential race and gender disparity. The Department must track and analyze future outcomes to determine whether any of the implemented recommendations have the desired impact on disparity, what that impact is, and what other measures may be taken to precisely target and protect against bias and disparate treatment in the Academy and Field Training Program.

The Department's initiative to enact a Race Equity Impact Analysis will identify where in the investigative process bias may be leading to disparate outcomes, and how to mitigate them. We are committed to working toward equitable outcomes and ensuring policies and practices safeguard against bias and disparate treatment based on race and gender. This is paramount to maintaining trust within all of our employee groups, and credibility within the communities we serve.

Background

Hillard Heintze was selected by a small group of stakeholders (including the Director of Oakland's Department of Race and Equity, one of the Plaintiffs' Attorneys [in *Allen*] and Department staff, including the IAD Commander, a Professional Staff Supervisor and the Deputy Director of Bureau of Services) and tasked with conducting a review of the discipline process and administrative investigation of complaints of misconduct for sworn personnel of all ranks, Police Officer Trainees in the Academy, and probationary officers in the Field Training Program for the five-year period from January 1, 2014, through December 31, 2018.

Upon completion of the firm's initial draft of the study, a larger stakeholder group, including sworn union representatives, the Plaintiffs' Attorneys [in *Allen*], the Director of the City's Department of Race and Equity, the Community Police Review Agency (CPRA) Director, and Department staff, reviewed and discussed the study. The stakeholder group identified significant shortcomings in the study, ranging from a failure to remove non-sworn personnel from the population it reviewed to a lack of detailed analysis. The stakeholder group shared its concerns with Hillard Heintze and asked the firm to re-run the data pursuant to the

contracted scope of work. After several additional months, following the firm's re-run of the data and multiple discussions among the stakeholder group, the group continued to have concerns about the study. At the last meeting (during which the Chair of the City of Oakland's Police Commission also joined the stakeholder group), the Department and the stakeholder group decided to accept the study rather than amend the contract with Hillard Heintze to have the firm perform additional analysis.

The final Hillard Heintze study does not address numerous concerns expressed by the stakeholder group, including the following:

- The analysis lacks detail. For example, it did not assess if disparity exists among certain types of allegations or in findings other than those that were "sustained."
- The findings and recommendations do not provide detail about which step or steps in the investigative process may be leading to disparate outcomes.
- The data was not analyzed on a year-by-year basis to identify if disparity had changed over time.
- The study was unable to address differences between complaints that were internally versus externally generated.
- The study did not include an in-depth analysis on the Academy and Field Training Program. It only focused on 17 trainees who resigned or were released from the Academy and field training.

Notwithstanding the study's shortcomings, the findings showed and provided a measure of racial disparity in the internal investigative process, specifically for Black sworn employees. It also revealed disparity based on race and gender with regard to releases from the Academy and Field Training Programs. These are concerning findings that warrant the Department's immediate attention and additional investigation, analysis, and discussion to ensure that the Department employs practices that most effectively safeguard against implicit and explicit racial bias.

Although not included as a key finding in its study, Hillard Heintze conducted an anonymous survey, to which 260 sworn employees responded, revealing concerns about the fairness of the internal investigation and discipline process. Over 80% of survey respondents disagreed or strongly disagreed that the

Department's disciplinary process is fair and transparent. Nearly 80% of survey respondents agreed or strongly agreed that **rank** plays a factor in both the outcome of internal investigations and discipline determinations. Approximately 36% of survey respondents agreed or strongly agreed that **race** plays a factor in both the outcome of internal investigations and discipline determinations. The survey findings were also concerning to the Department as an indication of reduced trust that Department leadership must work to repair.

The Department embraces and expects that all of our members will practice Procedural Justice when dealing with the public. There can be no question that these principles of equity, respect, and fairness must begin internally and be modeled throughout the Department.