



AGENDA REPORT


TO: Jestin D. Johnson
City Administrator

FROM: Floyd Mitchell
Chief of Police

SUBJECT: OPD NSA Status Update

DATE: November 4, 2024

City Administrator Approval


Jestin Johnson (Nov 21, 2024 22:24 PST)

Date: Nov 21, 2024

RECOMMENDATION

Staff Recommends That The City Council Receive An Informational Report From OPD On OPD's Progress Toward Compliance With The Negotiated Settlement Agreement (NSA) In The Case Of Delphine Allen, Et Al., V. City Of Oakland, Et Al.

EXECUTIVE SUMMARY

In a Court Order dated May 12, 2022, the Honorable William H. Orrick declared that the Oakland Police Department had achieved substantial compliance with the NSA and ordered the one-year sustainability period¹ to begin as of June 1, 2022. On April 11, 2023, the Court expressed concerns about the City's inability to sustain compliance and subsequently issued an Order dated April 18, 2023, extending the sustainability period and reducing the number of actively monitored tasks from eleven to five². At the January 23, 2024, Case Management Conference (CMC), the Court stated that the Department was not ready to exit the NSA due to remaining concerns about Task 45 (Consistency of Discipline). The Court set the next CMC for June 4, 2024, which was rescheduled to September 4, 2024, to allow the newly appointed Chief of Police time to gain an in-depth understanding of OPD's policies and practices.

Since the January CMC, the Monitor has published two additional sustainability reports. In the most recent report, [Eight Sustainability Report](#), filed August 2, 2024, the Monitor found the Department in compliance with three of the five actively monitored tasks. Task 45 (Consistency of Discipline) remained in a status of "no compliance finding," and Task 5 (Complaint Procedures for IAD) fell out of compliance. At the most recent CMC on September 4, 2024, the Court expressed concern about OPD's lack of commitment and failure of oversight to hold members of OPD accountable for their violations of OPD rules and the law. The Court issued a subsequent Order dated September 6, 2024, continuing Court oversight and requiring the Internal Affairs Division to report directly to the Chief of Police. The Court's Order also removed

¹ Once the City achieves substantial compliance with all provisions of the NSA, the City must maintain that compliance for one-year. The City has not yet maintained substantial compliance for one consecutive year.

² The five actively monitored Tasks include Task 2 (Timeliness of IAD investigations), Task 5 (Complaint Procedures for IAD), Task 24 (Use of Force Reporting), Task 25 (Use of Force Investigations), and Task 45 (Consistency of Discipline).

Tasks 24 and 25 (Use of force reporting and investigation) from active monitoring, leaving only three actively monitored Tasks (2, 5, and 45). The Court set the next CMC for January 8, 2025.

This report provides an update on compliance and the Department's progress in implementing the Court-ordered changes.

BACKGROUND

In 2003, the City of Oakland entered into the NSA with the Plaintiffs to settle the *Allen v. City of Oakland* lawsuit (the "Riders" case). The NSA requires the 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 determines whether the task is "in compliance." On October 24, 2019, the Council requested via the Rules and Legislation Committee a "Negotiated Settlement Agreement (NSA) Bi-Monthly Update." On January 14, 2020, OPD presented a report to the Public Safety Committee. OPD later released a "Bi-Monthly OPD NSA Status Update" memorandum dated February 8, 2021, to the City Council and Mayor, which was published on the City's website.³ At the May 11, 2021, Public Safety Committee, the Council's request for a bi-monthly update *report* was changed to a *verbal* bi-monthly update. At the June 14, 2022, Public Safety Committee meeting, the bi-monthly update was amended to become a quarterly written informational report. OPD's last informational report was presented to the Public Safety Committee on March 12, 2024.

ANALYSIS AND POLICY ALTERNATIVES

Monitor's Seventh And Eighth Sustainability Period Reports (April And August 2024)

During the sustainability period, which began on June 1, 2022, the Monitor has conducted virtual quarterly site visits and issued quarterly reports. The Monitor published two reports since the last update to the Council in March 2024.

In the [Seventh Sustainability Report](#) (April 2024), the Monitor continued to find Tasks 2, 5, 24, and 25 in compliance. Task 45 remained in a "no compliance finding" status. In the [Eighth Sustainability Report](#), the compliance status remained the same for all tasks except Task 5, which the Monitor found out of compliance.

As of the [Eighth Sustainability Report](#), OPD is in compliance with all Tasks, except Tasks 5 and 45. Although Task 2 has been in compliance for the entire sustainability period, it is still being actively monitored due to its relationship to Task 5. Task 5 focuses on the sufficiency of investigations and Task 2 focuses on timeliness, both critical aspects of internal investigations.

Task 5 (Complaint Procedures For IAD)

Task 5 was in compliance during the sixth and seventh sustainability periods, but the Monitor found it out of compliance during the eighth period. While the Monitor found the Department's performance with the subtasks of Task 5 to be satisfactory during the eighth sustainability

³ <https://www.oaklandca.gov/resources/info-memo>

period, they found the Department out of compliance with Task 5 due to investigations conducted by the Community Police Review Agency (CPRA) and an outside investigator that resulted in serious discipline against senior members of the Department. In their report, they stated that the personnel findings and systemic deficiencies call into question the integrity and capacity of the Department's internal investigatory process.

Task 45 (Consistency Of Discipline Policy)

In the [Third Sustainability Report](#) (April 2023), the Monitor rated Task 45 as “no compliance finding,” citing the Department's recently released analysis of 2022 data in its [Internal Investigation Outcome and Discipline Report](#), which highlighted the disparity in discipline between black and white officers for violations of Failure to Accept or Refer a Complaint (unintentional). Since the [Third Sustainability Report](#), the Monitor has continued to rate Task 45 as “no compliance finding.” In the [Eighth Sustainability Report](#), the Monitor stated that the Department's efforts continue to be more in the form of studies and analyses instead of real cultural change.

Case Management Conference

The most recent CMC was on September 4, 2024. The Court acknowledged the Department does not get the credit it deserves for its hard work which has radically reduced negative racially charged interactions with the people it serves. The Court also recognized the work of Dr. Eberhardt and Stanford for the outstanding job they have done for the City and hopes to see the work with Stanford continue.

However, the Court also stated that the failure to be honest and transparent when addressing officer misconduct is inexcusable, and the handling of the Sergeant Chung and Officer Tran cases was a leadership failure.

On September 6, 2024, the Court issued an Order which included the following:

1. Court oversight shall continue.
2. Until further order of the Court, the City shall restructure the organizational chart of the Oakland Police Department. The Internal Affairs Division of the Oakland Police Department shall be a “direct-report” to the Chief of Police. The Chief of Police shall, on a daily basis, bear final and full responsibilities for the activities of the Internal Affairs Division. The Commander of the Internal Affairs Division shall be an individual who holds the rank of Deputy Chief of Police.
3. The Mayor or a mayoral representative, the City Administrator, a representative of the Office of the City Attorney, the Chief of Police, and a representative from the Monitoring team are required to meet every two weeks. The Chief of Police shall update the participants on important cases that are being investigated, the status of the investigations, and the timelines for completion relevant to Task 2 of the NSA and California Government Code Section 3304 (d) (1).
4. The City shall file a Status Report on October 8, 2024, that explains how this Order has been implemented and provides the dates when meetings have occurred.
5. Tasks 24 and 25 will no longer be subject to active monitoring, as those tasks have been in compliance with the requirements of the NSA since the sustainability period began

more than two years ago. However, the Monitor may, at his discretion, seek information and clarification regarding any uses of force and internal investigations of those incidents that are of concern.

See **Attachment A** for the Transcript of the September 4, 2024, CMC and **Attachment B** for the September 6, 2024, Court Order. The Court scheduled the next CMC for January 8, 2025.

OPD's Compliance Efforts

The City is working to regain in-compliance assessments on Tasks 5 and 45. Pursuant to the Court's September 6th Order to help us do that, OPD has restructured the Internal Affairs Division (IAD). The IAD has been formally transitioned into the Internal Affairs Bureau (IAB). The Commander of the IAB is a Deputy Chief who reports directly to the Chief of Police. Deputy Chief Angelica Mendoza has been appointed to lead the IAB, and she is responsible for overseeing all internal administrative investigations. The Bureau's leadership team also includes a captain and three lieutenants.

On October 8, 2024, the City submitted a status report to the Court confirming the implementation of the Court's order. The City reported that the City restructured the Department's organizational chart as ordered and that the City began holding the Court mandated meetings on September 26, 2024. The City Administrator has set recurring two-hour weekly meetings for the Chief of Police to provide updates on important internal investigations. These meetings occur at least every other week and include the Inspector General, Police Commission Chair, and Director of the Community Police Review Agency (CPRA) (or representatives), in addition to those listed in the Court Order. See **Attachment C** for the filed Status report.

The Department's restructuring of IAB, along with the policy revisions implemented at the end of 2023, provide additional oversight and accountability in the investigative process. These changes will positively impact the Department's efforts to achieve and maintain compliance with Tasks 5 and 45, which, according to the Court, are "completely intertwined."

Task 45

The Department's [study](#) of 2022 internal investigation outcomes and discipline found that Black officers were disciplined more severely than white officers for the allegation of Failure to Accept or Refer a Complaint (FTARC). The Monitor, concerned by the findings, put the Department in "no compliance finding" status after the study was released and has kept Task 45 in "no compliance findings" status since April 2023. The Department responded to its own study by revising Department General Order M-03, Complaints Against Department Personnel and Procedures. Additionally, the Parties agreed to adjust NSA requirements for allegations of FTARC, allowing for informal corrective action (supervisory notes file entry) rather than formal investigation in some circumstances. Allegations of FTARC that don't demonstrate a pattern of misconduct for an employee are allowed to be resolved via a supervisory notes file entry. However, if an employee has received multiple FTARC allegations, a formal investigation will likely be initiated.

The Department's most recent [study](#) of internal investigation outcomes and discipline (2023 data) revealed that the disparity observed in the 2022 data – Black officers sustained at a higher rate for FTARC allegations – was not observed in the 2023 data. A [follow-up analysis](#) of the 2022 data was initiated by the Department which identified inconsistencies in FTARC allegations partly due to policy and processes leading to policy revisions. The study of 2023 data found no statistical evidence of disparity in the treatment of non-white sworn members regarding sustained findings and discipline. The Department will continue its efforts to monitor the fair and consistent application of discipline. See **Attachment D**: Joint Case Management Statement, August 28, 2024.

Community Safety

OPD's efforts to develop processes and procedures to address all NSA tasks support the citywide priority of **holistic community safety**, as well as **responsive, trustworthy government**. These efforts support contemporary, procedurally just policing that promotes community trust and public safety. OPD's efforts to show progress with the NSA tasks, as outlined in this report, support the City's efforts toward increased responsiveness and trust and community safety.

FISCAL IMPACT

This report is for informational purposes only and has no direct fiscal impact or cost.

PUBLIC OUTREACH / INTEREST

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

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.

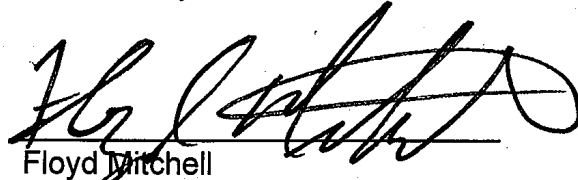
Race and Equity: The OPD continues its work with Dr. Eberhardt, a distinguished social psychologist from Stanford University, who has previously collaborated with us on advancing race and equity best practices and training. The on-going partnership between OPD and Stanford underscores OPD's commitment to fostering an inclusive environment, ensuring that all department members are equipped to serve our community with fairness and respect.

ACTION REQUESTED OF THE CITY COUNCIL

Staff Recommends That The City Council Receive An Informational Report From OPD On OPD's Progress Toward Compliance With The Negotiated Settlement Agreement (NSA) In The Case Of Delphine Allen, Et Al., V. City Of Oakland, Et Al.

For questions regarding this report, please contact Deputy Chief Lisa Ausmus, Bureau of Risk Management, at lausmus@oaklandca.gov.

Respectfully submitted,



Floyd Mitchell
Chief of Police
Oakland Police Department

Reviewed by:
Lisa Ausmus, Deputy Chief
OPD, Bureau of Risk Management

Prepared by:
Kristin Burgess-Medeiros, Data Manager
OPD, Bureau of Risk Management

Attachment (4):

- A: Allen CMC transcript
- B: Court Order, September 6, 2024
- C: City's filed status report, October 8, 2024
- D: Joint Case Management Statement, September 4, 2024