



AGENDA REPORT

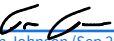
TO: Jestin D. Johnson
City Administrator

FROM: Floyd Mitchell
Chief of Police

SUBJECT: OPD NSA Status Update

DATE: August 25, 2025

City Administrator Approval


Jestin Johnson (Sep 23, 2025 18:21:00 PDT)

Date: 09/23/2025

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 five. At the September 4, 2024, CMC, the Court stated that the failure of the Department to be honest and transparent when addressing officer misconduct is inexcusable and a leadership failure, and issued a Court order dated September 6, 2024, directing the Department and City to make changes to the Internal Affairs Division structure and coordination with the City leadership. The Court also removed Tasks 24 and 25 (reporting and investigating use of force) from active monitoring, leaving only three actively monitored tasks focused on Internal Affairs investigations and discipline (Tasks 2, 5, and 45). The Court set the next CMC for January 8, 2025, which was rescheduled to July 10, 2025.

The City implemented the Court's directives outlined in the September 6, 2024, Court Order, including creating the Internal Affairs Bureau (IAB) led by a Deputy Chief who is a direct report to the Chief of Police, and scheduling regular meetings with City leadership and the Monitor to discuss important cases and investigative timelines. In the Monitor's most recent report (See **Attachment A: Tenth NSA Sustainability Period Report**, filed June 3, 2025), it determined that two of the three remaining tasks were Not in Compliance (Tasks 2 and 5) and one was in Partial Compliance (Task 45). At the July 10, 2025, CMC, the Court stated that progress seems to have stalled and that leadership from the City and OPD is key to addressing the cultural issues hindering compliance. The Court welcomed Mayor Lee and expressed hope that her commitment to constitutional policing in Oakland will bring an end to Court oversight in short

¹ Once the City achieves substantial compliance with all provisions of the NSA, the City must maintain that compliance for one-year.

order. The Court also asked for status reports on the City's efforts to achieve compliance to be submitted by August 26, 2025, and October 21, 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." 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 December 10, 2024.

ANALYSIS AND POLICY ALTERNATIVES

Monitor's Ninth And Tenth NSA Sustainability Period Reports (December 2024 and June 2025)

Since the sustainability period began on June 1, 2022, the Monitor has conducted virtual quarterly site visits and issued regular reports. The Monitor published two reports, since the last update to the Council in December 2024, focusing on the three remaining tasks.

- Task 2, Timeliness of Internal Affairs investigations
- Task 5, Complaint Procedures for Internal Affairs
- Task 45, Consistency of Discipline

In the *Ninth NSA Sustainability Period Report* filed in December 2024 (See **Attachment B**), the Monitor continued to find Task 2 in compliance, although there was concern about one case failing to meet Government Code § 3304. Task 5, which fell out of compliance in the [Eighth NSA Sustainability Period Report](#), remained out of compliance, due to IAB being in a transition stage. Task 45 remained in a "no compliance finding" status.

As of the *Tenth NSA Sustainability Period Report*, OPD is in compliance with all Tasks, except the remaining three actively monitored Tasks. Task 2 fell out of compliance due to missing the compliance requirement for Class I investigations completed during the fourth quarter of 2024 and failing to meet Government Code § 3304² in two cases. Task 5 remained Not in

² California Government Code § 3304 states, "no punitive action, nor denial of promotion on grounds other than merit, shall be undertaken for any act, omission, or other allegation of misconduct if the investigation of the allegation is not completed within one year of the public agency's discovery by a person authorized to initiate an investigation of the allegation of an act, omission, or other misconduct."

Compliance for the same reason cited in the Ninth Report, Task 45 was moved from a no compliance finding status to partial compliance.

Task 2 (Timeliness of Internal Investigations)

Until the Monitor's *Tenth Sustainability Period Report*, the Department had been in compliance with Task 2 since October 2021 ([79th Report of the Independent Monitor](#), Feb. 22, 2022) and remained in compliance through the Sustainability period (*Ninth NSA Sustainability Period Report*, December 20, 2024). The *Tenth NSA Sustainability Period Report* covered cases closed during the fourth quarter of 2024. During this time period, the Department completed 84% of Class I cases within 180 days, just shy of the 85% requirement. The Department also missed § 3304 in two cases, one of which did not result in any sustained findings. The other case resulted in a sustained finding for use of force (making threatening remarks during the mental health hold of an uncooperative man who had assaulted his father), but because of missing § 3304, discipline could not be imposed. This followed an earlier, separate § 3304 miss discussed in the *Ninth NSA Sustainability Period Report*. In that case, which was concurrently investigated by the CPRA, the subject officer was sustained for *Conduct Toward Others – Demeanor* but could not be disciplined due to the failure to comply with § 3304.

Task 5 (Complaint Procedures For IAD)

Task 5 was in compliance during the sixth and seventh sustainability periods, but moved to not in compliance in the [Eighth NSA Sustainability Report](#) (September 2023) because of high profile investigations involving senior members of the Department. Task 5 remained not in compliance in the two most recent reports. In the ninth and tenth sustainability period reports, the Monitor reviewed 24 cases closed between July and December 2024 and found the Department's performance with the subtasks of Task 5 to be satisfactory. Both reports included the following language under Task 5:

The Internal Affairs Bureau is in a transition stage, following the Court's Order of September 6, 2024. The Department must rectify myriad issues pertaining to leadership, structure, and personnel management relevant to the Internal Affairs Bureau.

Additionally, in the *Tenth NSA Sustainability Period Report*, the Monitor expressed concerns with the Department's use of unfounded and exonerated findings, though the concerns did not affect compliance during the period of review. However, the Monitor did credit the Department for authorizing additional staffing for IAB, holding bi-weekly meetings with the Community Police Review Agency (CPRA), reducing the backlog of cases in which individuals are awaiting Skelly hearings, and improving communication between IAB and the Criminal Investigation Division on cases where there are indications of possible criminal misconduct.

Task 45 (Consistency of Discipline Policy)

Task 45 had been in a status of "no compliance finding" since the [Third NSA Sustainability Period Report](#) (April 2023), when the Monitor cited the Department's 2022 [Internal Investigation Outcome and Discipline Report](#) that highlighted the disparity in discipline between black and white officers for violations of Failure to Accept or Refer a Complaint (unintentional). Task 45 remained in "no compliance status" until the Monitor found it in "partial compliance" in the *Tenth NSA Sustainability Period Report*. In the report, the Monitor recognized the annual IA Outcome

and Discipline Report and the 2025 employee survey stated, “While OPD has made progress with Task 45, recent metrics that the Department displayed during our most recent site visit give pause for concern.”

Case Management Conference

The most recent CMC was on July 10, 2025. The Court praised the Department for what has been accomplished since the NSA was first signed and expressed admiration for Mayor Lee, who the Court hopes will bring Court oversight to an end in short order. The Court also stated that there are Tasks still out of compliance, and progress has stalled. With regards to Task 2, the Court agreed with the Plaintiff’s Attorney’s concern about the “staggering number of excuses for not being in compliance,” and that the 180-day investigation completion requirement is consistent with national practices and generous. With regards to Tasks 5 and 45, the Court stressed the key role of City leadership, stating, “Executive leadership has to drive culture. The culture cannot drive the leadership.”

The Court expects the City to move rapidly to full compliance now that leadership is in place and encouraged the City to call on the Monitor and Compliance Director if it thinks they can be of more benefit. The Court also requested status reports due on August 26, 2025, and October 21, 2025, on the ongoing and new efforts to achieve compliance.

See ***Attachment C*** for the Transcript of the July 10, 2025, CMC. The Court scheduled the next CMC for December 9, 2025.

OPD’s Compliance Efforts

With the recent swearing in of Mayor Barbara Lee and the welcoming back of Michelle Phillips (former City of Oakland Inspector General), who is expected to join the City as an Assistant City Administrator on August 30, the City is gearing up for a focused effort to achieve full NSA compliance as quickly as possible. The Department has continued its partnership with Stanford University, including a newly executed data sharing agreement giving Stanford access to body-worn camera footage that allows for ongoing innovative research on racial disparity and bias in policing. Stanford has also assisted with the Department’s annual report on internal affairs investigation outcomes and discipline and the biannual employee survey to gauge perceptions about discipline equity and fairness. Stanford’s technical assistance contract with the City expires in August 2025. Stanford’s continuing technical assistance with data analysis is critical to achieve and sustain substantial compliance on Task 45. The Department is currently seeking appropriate City approval on a new contract.

Over the past year, the Department has benefitted from the Court-ordered restructuring that led to the creation of the Internal Affairs Bureau (IAB), which is now overseen by a Deputy Chief who reports directly to the Chief of Police. The City has also been holding biweekly meetings since October 2024 for the Department to update City leadership and the Monitor on important internal investigations. In addition to the Department and City Administrator, the meetings include representatives from the Mayor’s Office, City Attorney’s Office, the monitoring team, the Inspector General, the CPRA, and the Police Commission Chair. Over the past year, IAB has been improving communication with the CPRA, CID, and City Leadership. The restructuring of IAB and the regular update meetings create accountable leadership and have resulted in

improved communication between IAB and the CPRA and between IAB and the Criminal Investigation Division. IAB has also reduced the backlog of cases in which members are awaiting Skelly hearings.

Task 2

With the recent out of compliance finding for Task 2, the City is working on a comprehensive Citywide strategy to address case completion timelines. Department policy requires internal investigations to be completed within 180 days, and to be in compliance, the 180-day timeline must be met 85% of the time for Class I and Class II investigations. Class I investigations involve more serious allegations of misconduct and are typically more complicated and time consuming to conduct. There are also far fewer Class I than Class II investigations, and a single late investigation closure is often the difference between compliance and non-compliance.

Although the monitor solely uses the Department's investigation completion rate to measure compliance, whether CPRA completes its investigations within 180 days impacts the Department's completion rate. When the Department completes an investigation in 180 days, but CPRA's parallel investigation is incomplete, the monitor does not credit the Department for timely completing its investigation. *See, e.g., Tenth NSA Sustainability Period Report p. 3.* Instead, the monitor completely removes from its calculations any cases that the Department timely completes but CPRA does not. Given that most CPRA investigations involve Class I (more serious) allegations, the impact is more pronounced in the monitor's calculations of Class I completion rates. Recognizing this impact, the City has embraced a citywide approach to improve long-term stability in Task 2 compliance.

While the City observed some improvements since the Monitor's last report (*Tenth NSA Sustainability Period Report*), the City's data analysis shows that it did not meet the Task 2 compliance threshold for Class I cases in the first two quarters of 2025. Since January 1, 2025, however, the City has met the § 3304 deadline in 100% of cases. Moreover, the Department's Class II timely completion rate remains consistently above 85%, nearing 95% in the second quarter of 2025. The upcoming third-quarter data will provide more information about the impact of the City's interventions on Class I completion rates. At this time, however, the City remains out of compliance on Task 2. Its next chance to regain compliance will be in September 2025, based on its case completion rate between July and September 2025.

Task 5

The Department has maintained compliance with Task 5 subtasks throughout the sustainability period, which began in 2022. However, the Monitor found the Department out of compliance with Task 5 in the [*Eighth NSA Sustainability Period Report*](#) due to investigations conducted by the CPRA and outside investigators that resulted in serious discipline for several senior members of the Department. The report stated, "these personnel findings and systemic deficiencies transcend the Department as a whole and call into question the integrity and capacity of the Department's internal investigatory process." The Department acknowledged the investigatory failures and revised policy and procedure to prevent such failures from recurring. Additionally, the Department completed its own "lessons learned" report to guide future performance.

Task 45

The Department remains committed to collecting and analyzing investigation and discipline data at least annually to assess disparity. The analysis of 2024 data is still being finalized. Preliminary results from the 2024 analysis show that Black and Hispanic sworn members had a significantly higher sustained rate than white members, which was a reversal from the 2023 findings. However, when looking at the five-year average (2020 to 2024), the sustained rates evened out among all race groups, with white members having the highest sustained rate. Additionally, the Department distributed an anonymous survey to employees in June and July 2025 about perceptions of the investigation and discipline process and is currently analyzing the results.

In the *Tenth NSA Sustainability Period Report*, the Monitor credited the Department with its efforts to collect and analyze discipline data annually and its upcoming anonymous survey. While they acknowledged the progress made with Task 45, they also expressed concern about preliminary results from the 2024 investigation and discipline analysis.

The Department has also recommitted to the equity measures it promised to implement in 2020. An internal audit conducted in 2024 by the Department's Office of Internal Accountability found that some equity measures had fallen out of practice. The Department subsequently re-established its Race and Equity Team with a new chair and members, and updated its quarterly complaint and discipline report to include race and gender. The quarterly report provides transparency to its members about recently completed administrative cases. See **Attachment D**: Joint Case Management Statement, Filed July 3, 2025, and its exhibits.

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, 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.

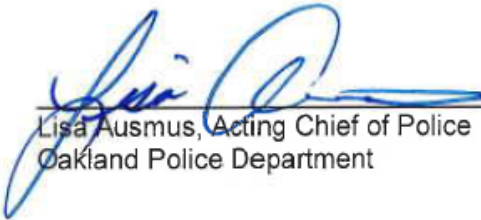
Environmental: There are no environmental opportunities associated with this report.

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.



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Attachments (5):

- A: Tenth NSA Sustainability Period Report of the Independent Monitor, Filed June 3, 2025
- B: Ninth NSA Sustainability Period Report of the Independent Monitor, Filed December 21, 2024
- C: Allen July 10, 2025 CMC transcript
- D: Joint Case Management Statement, Filed July 3, 2025
- E: Joint Case Management Statement, Filed July 3, 2025, exhibits