



AGENDA REPORT

TO: Edward D. Reiskin
City Administrator

FROM: LeRonne L. Armstrong
Chief of Police

SUBJECT: OPD NSA Status Update

DATE: May 19, 2022

City Administrator Approval

Date: May 26, 2022

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

Since the last update to Council on March 8, 2022, the Department has made momentous progress in *Allen v. City of Oakland*. On May 12, 2022, the Honorable William H. Orrick issued an order in *Allen* finding that the Department has achieved substantial compliance with the Negotiated Settlement Agreement (NSA), and placing the Department in a one-year sustainability period as of June 1, 2022 (see **Attachment A**).

This report provides a description of the Court's order setting forth the contours of the sustainability period and an update on the Department's continued work pursuant to the NSA and the Court's May 12 order. The next court hearing in *Allen* is set for September 14, 2022 at 3:30p.m.; the hearing will be conducted via Zoom.

BACKGROUND/LEGISLATIVE HISTORY

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 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, 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 is published on the City's website.¹ At the May 11, 2021 Public Safety Committee, Council's request for a bi-monthly update *report* was changed to a *verbal* bi-monthly update. At the July 22, 2021 Rules Committee, however, Council renewed its request for an informational *report* to the Public

¹ <https://www.oaklandca.gov/resources/info-memo>

Safety Committee on progress with the NSA. OPD's last informational report was presented to the Public Safety Committee on March 8, 2022.

ANALYSIS AND POLICY ALTERNATIVES

OPD has achieved full compliance with 50 of the 51 original NSA tasks and pursuant to the Court's May 12 Order is therefore in substantial compliance overall with the NSA. Since OPD's March 8 update to Council, the Monitor has published two reports. In the Eightieth Report², filed on March 18, 2022, the Monitor found the Department in full compliance with Task 34 (Vehicle Stops, Field Investigations and Detentions). In the Eighty-First report, filed on April 26, 2022, the Monitor found the Department in full compliance with Task 25 (Use of Force Investigations). Only one task remains in partial compliance, Task 45 (Consistency of Discipline). Pursuant to the Court's May 12 Order, OPD will continue and complete its work on Task 45 as it enters the sustainability period.

Task 45 (Consistency of Discipline)

The Monitor's last assessment in the Eighty-First Report critiqued the Department's recent internal discipline disparity study. As a reminder, the Department had an external consulting firm complete a discipline disparity study in 2020 which found that Black officers were 37% more likely to have investigations result in sustained findings than white officers. Unfortunately, we later determined that the firm appeared to have relied on flawed data. Therefore, the Department subsequently employed its data manager and an internal team to conduct its own study that included a review of clean, reliable data for the time-period covered in the 2020 study as well as a review of more recent data. The Monitor expressed concerns about the scope of the Department's study and its recommendations and agreed with the Department that additional work still needs to be done. Task 45 remains in partial compliance.

As a result of its recent internal study, the Department has initiated a review of cases which came to sustained findings in 2019 to determine if there were any indications of disparate treatment based on race. The Department will also be conducting annual reviews of case outcome data.

May 12, 2022 Court Order

The Court's order acknowledges that the Department has achieved substantial compliance with the NSA. As of June 1, 2022, the Department will enter a one-year sustainability period to make sure it continues to maintain substantial compliance with the NSA. The Court's order outlines the procedures that will be in place during the sustainability period.

- The sustainability period will involve monitoring the most critical negotiated settlement agreement tasks:

TASK 2	Timeliness Standards & Compliance with IAD Investigations
TASK 5	Complaint Procedures for IAD Review
TASK 20	Span of Control
TASK 24	Use of Force Reporting Policy

² All IMT Reports are available to the public here: <https://www.oaklandca.gov/resources/opd-independent-monitoring-team-imt-monthly-reports-2>

TASK 25	Use of Force Investigation & Report Responsibilities
TASK 26	Use of Force Review Board
TASK 30	Executive Force Review Board
TASK 31	Officer Involved Shooting Investigations
TASK 34	Vehicle Stops, Field Investigations & Detentions
TASK 41	Performance Assessment System (PAS)
TASK 45	Review Findings & Disciplinary Recommendations

Absent extraordinary circumstances, the Monitor will only assess compliance for the above listed tasks.

- The assessment of the Department's compliance will be the principal responsibility of the Monitor, Chief Warshaw, and two team members. The other two team members will have intermittent roles as circumstances warrant.
- To help build capacity and support sustaining NSA compliance, the Monitor, after consulting with the Chief, will designate an individual to be assigned to OPD's Office of Internal Accountability (OIA), formally known as the Office of Inspector General, and serve as the Department's NSA sustainability liaison. This individual will help the Monitor prepare reports relevant to the eleven tasks listed above.
- During the sustainability period, the Monitor will conduct three quarterly site visits, in August 2022, November 2022 and February 2023, and issue four reports, with the final report to be issued in May 2023.
- The Monitoring Team will meet with OIA to explain the methodology used during the sustainability period and the role that OIA is expected to play.
- Prior to and at the start of the sustainability period, the Monitor will oversee the completion of the follow-up work on the disparity in discipline study and crucial pending policies recommended by the court-appointed independent investigator of the Instagram case.
- The Monitoring Team will also meet with the Police Commission Chair and the Inspector General to review scope and methodology and share lessons learned during the course of oversight.
- During the sustainability period, Plaintiffs' attorneys will continue their participation in this process.

Community Safety

OPD's efforts to develop processes and procedures to address all NSA tasks support the citywide priority of community safety, as well as responsive, trustworthy government. These efforts support contemporary, procedurally just policing that promote police-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 does not have a 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.

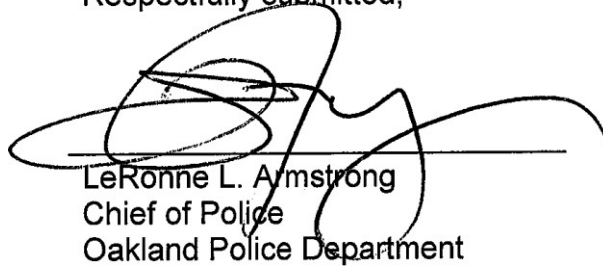
Race and Equity: In March 2019 OPD hired a consulting firm to conduct a review of potential disparities in the department's internal investigations of police misconduct and any resulting discipline. In response to the Police Discipline Disparity Study conducted by the consulting firm Hillard Heintze, OPD created a working group and Steering Committee on Racial Disparity in conjunction with the Internal Race & Equity Team (IRET) and Stanford researchers. All recommendations from the Hillard Heintze report have been implemented. The Department's Race & Equity Team continues to meet with the goal of ensuring the Department continues to build upon the progress made as a result of the recommendations. Every member of the Department will participate in Project Reset over the next year. OPD continues to partner with Stanford researchers and will produce an annual equity study to regularly monitor case outcomes and discipline for disparity.

ACTION REQUESTED OF THE CITY COUNCIL

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For questions regarding this report, please contact Hamann Nguyen, Lieutenant, Bureau of Risk Management, at hnguyen@oaklandca.gov.

Respectfully submitted,



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Reviewed by:
Deputy Chief Clifford Wong
OPD, Bureau of Risk Management

Prepared by:
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OPD, Bureau of Risk Management

Attachments: (1)

A: May 12, 2022 Court Order Placing Oakland Into Sustainability Period

