



**OAKLAND POLICE DEPARTMENT  
MONTHLY PROGRESS REPORT  
DECEMBER 1, 2013**

**OFFICE OF THE COMPLIANCE DIRECTOR  
UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

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## Office of the Compliance Director

U.S. District Court, Northern District of California

December 1, 2013

This is the sixth monthly progress report, issued as required by Judge Thelton E. Henderson's Compliance Director Court Order dated December 12, 2012.

Notable progress across a broad range of complex issues and projects continues at an acceptable pace. A number of these projects and issues are extremely close to completion. Completion, however, has eluded our joint efforts for a variety of reasons. One of the primary objectives already outlined for our efforts in December is to identify a number of these "low hanging fruit" issues, focus on them, and bring them to closure.

Of particular note in November was the collaborative effort between the Compliance Director and the Independent Monitor to identify, develop, and publish several new benchmarks specifically designed to bring the Monitor's auditing process and the Compliance Director's benchmark process into closer alignment. We jointly feel that this is an important evolutionary step in our working relationship. We will continue to build on this alignment strategy in our future efforts.

A handwritten signature in dark ink that reads "Thomas C. Frazier". The signature is written in a cursive, flowing style.

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## **INTRODUCTION**

The Compliance Director Court order dated December 12, 2012, addresses the reporting duties of the Compliance Director and delineates, among other requirements, the following:

1. "Within 30 days of his or her appointment, the Compliance Director will file a remedial action plan ('Plan') that both addresses deficiencies that led to noncompliance and explains how the Plan will facilitate sustainable compliance with all outstanding tasks by December 2013 or as soon thereafter as possible."
2. "Within 60 days of his or her appointment, the Compliance Director will file a list of benchmarks for the OPD to address, resolve, and reduce: (1) incidents involving the unjustified use of force, including those involving the drawing and pointing of a firearm at a person or an officer-involved shooting; (2) incidents of racial profiling and bias-based policing; (3) citizen complaints; and (4) high-speed pursuits. In developing these benchmarks, the Compliance Director will consult with the Monitor, Plaintiffs, the Mayor, the City Administrator, the Chief of Police, the OPOA, and, as necessary, subject-matter experts to ensure that the benchmarks are consistent with generally accepted police practices and national law enforcement standards."
3. "Beginning on May 15, 2013, and by the 15th of each month thereafter, the Compliance Director will file a monthly status report that will include any substantive changes to the Plan, including changes to persons responsible for specific tasks or action items, and the reasons for those changes. The monthly status reports will also discuss progress toward achieving the benchmarks, reasons for any delayed progress, any corrective action taken by the Compliance Director to address inadequate progress, and any other matters deemed relevant by the Compliance Director."

On April 3, 2013, the Court issued an order extending these deadlines as follows:

- "1. The Compliance Director will file a remedial action plan on or before May 1, 2013.
2. The Compliance Director will file a list of benchmarks on or before May 31, 2013.
3. The Compliance Director will begin filing monthly reports on July 1, 2013, and reports will be due on the 1st of each month thereafter."

## **SIGNIFICANT EVENTS IN NOVEMBER**

1. The Compliance Director and staff spent considerable time this month attending Internal Affairs meetings, Force Review Boards, and Executive Force Review Boards. It is the Compliance Director's opinion that much needs to be done in the further refinement of these critical processes.
2. The Compliance Director and staff met with the City Administrator to discuss how best to build the new early warning system (PAS2). The Compliance Director recommended certain efficiencies regarding building this system. Both OPD and the City Administrator seemed receptive to these suggestions. All parties recognize that an updated, sustainable PAS2 system is an essential part of reaching compliance with the NSA.
3. The Compliance Director notes that a total of 73 OPD officers took, and 52 passed, the recent sergeant's written exam. This is nearly double the number from the last test, and virtually ensures that significant progress can be made in dealing with the remaining non-compliant elements of NSA Task 20 (span of supervisory control) in the near future. The leaders of the Oakland Police Officers' Association are to be commended for their efforts in encouraging qualified members to take this promotional examination.
4. The Compliance Director's Office reviewed and revised a draft version of OPD's Personal Digital Recording Device (PDRD) policy. This draft was returned to OPD for further revisions. OPD has completed this second update, and the Compliance Director has approved the changes, conditional on the fact that more changes may occur in the months ahead as the Force Review Board and the Executive Force Review Board processes undergo changes. This revised/approved policy has been forwarded to the IMT for review as well. This revised PDRD policy is an integral part of the current significant efforts underway to upgrade both the Force Review Boards and the Executive Force Review Boards.
5. The Compliance Director's Office reviewed and approved the revised draft version of OPD's Training Bulletin III-H (Specialty Impact Munitions).
6. The Compliance Director's Office reviewed and approved the revised draft version of OPD's Departmental General Order K-3 (Use of Force).
7. The Compliance Director met with the City Administrator to discuss:
  - Progress on the CAD/RMS project.
  - Progress on the PAS2 RFP.

- Progress towards the recruitment and hiring of a City Chief Information Officer.
- Progress in recruitment and hiring of OPD's Information Technology Manager.
- Progress in formulating a business plan for city-wide IT services and for police-specific IT services.

8. At the request of the City, the Compliance Director reviewed and commented on the draft job announcement for the OPD IT Manager position.

9. The Compliance Director participated in a meeting with the Mayor and the City Administrator concerning OPD's radio system, EBRSCA, and the RCC Inc. report comparing the two systems.

10. The Compliance Director's Office participated in a conference call with representatives of City IT and the vendor (PSCI) regarding the development of the CAD/RMS RFP.

11. At the request of OPD, the Compliance Director reviewed and commented on OPD's draft Retention Plan.

12. At the request of OPD, the Compliance Director reviewed and commented on OPD's draft Departmental General Order M-4 (Coordination of Investigations). Recommendations were made, and the draft policy was returned to OPD for consideration and/or further refinement.

13. The Compliance Director sent a critique letter to the Interim Chief of Police regarding Force Review Boards and Executive Force Review Boards monitored by the Compliance Director's staff.

14. The Compliance Director's staff and members of the Independent Monitor's Team jointly attended meetings with OPD discussing the following topics:

- PAS and PAS2 updates.
- PAS semi-annual meeting, as required by the amended NSA MOU.
- Stop Data.
- Officer involved shooting updates and a field walk-through of one incident.
- Department General Order K-4.1 (Force Review Boards and Executive Force Review Boards; policy and practices).
- PDRD policy and practices.

15. The Compliance Director's staff attended two Executive Force Review Boards.

16. After a thorough analysis of the Independent Monitor's Fifteenth Quarterly Report, the Compliance Director's staff drafted a series of new benchmarks designed to bring the benchmark process into closer alignment with the remaining non-compliant and

partially compliant NSA Tasks. These new benchmarks are included later in this report, and are a joint product between the Independent Monitor and the Compliance Director.

17. At the request of OPD, the Compliance Director provided recommendations regarding a course of action for dealing with at-risk employees.

18. At the request of OPD, the Compliance Director's staff provided OPD with recommendations and documentation of force review policies and practices from other law enforcement agencies.

19. The Compliance Director offered a research and development plan to OPD that utilizes a contract firm to consolidate, organize, and update the large body of OPD policies and plans.

20. The Compliance Director recommended to OPD that OPD increase the level of management of the Field Training Program to include a full-time command officer.

21. At the request of OPD, the Compliance Director's staff reviewed a draft revision of the NSA-required discipline matrix. The Compliance Director's Office has requested and is awaiting additional documentation necessary for a comprehensive review of the matrix.

## **CHANGES IN BENCHMARK RESPONSIBLE PARTIES**

Due to internal workload redistributions within OPD, the following changes in Benchmark Responsible Parties have been made:

1. Benchmark #18 (Less Lethal Weapons/Munitions Use Policy) – From Deputy Chief D. Outlaw to Deputy Chief D. Downing.
2. Benchmark #9a (Use of Force Policy) – From Deputy Chief D. Outlaw to Deputy Chief E. Breshears.
3. Benchmark #10 (Executive Force Review Boards) – From Deputy Chief D. Outlaw to Deputy Chief D. Downing.
4. Benchmarks #13a and 13b (PAS Policy and Training) – From Deputy Chief E. Breshears to Deputy Chief D. Outlaw.



## **BENCHMARK PROGRESS**

Following are the agreed-upon benchmarks missed from prior months and the November 2013 benchmarks extracted from the Compliance Director's Benchmarks Plan published May 31, 2013. Each benchmark contains a short summary of progress achieved towards completion during the month of November 2013.

NOTE 1: The identifying benchmark numbers in this summary refer to the corresponding number in the "top twenty" priorities identified in the Benchmark Plan.

NOTE 2: Items identified as "Tasks" refer to specific non-compliant or partially compliant items from the Independent Monitor's quarterly reports of OPD compliance with the Negotiated Settlement Agreement.

NOTE 3: Items NOT identified as "Tasks" are items identified and inserted in the benchmark process by the Compliance Director.

NOTE 4: For purposes of this report, the Compliance Director considers policy modifications to be a three-part process. Part one of this process is the OPD drafting/modification and Compliance Director/Monitor review/approval of the policy document. Part two is the development and approval of OPD training bulletins and training syllabi supporting the newly revised/approved policy. Part three is documentation of completion of required training and policy implementation.

NOTE 5: Each benchmark in the following list includes steps the Compliance Director deems necessary for OPD to gain compliance with each benchmark. Only when OPD demonstrates that all steps listed have been satisfactorily achieved will the benchmark be considered to be "completed." Items identified as NSA-related Tasks will then be referred to the Independent Monitor for final compliance review.

NOTE 6: "Progress" entries for each benchmark are color-coded. **Blue** highlights indicate benchmark completion. **Red** highlights indicate that the benchmark remains pending, with a revised due date set. Blue and red text indicates progress during the month of September only.

## **JULY 2013 BENCHMARKS PENDING**

### **BENCHMARK #15a**

Submit backlogged DNA samples to the FBI's Combined DNA Index System database (CODIS). **Complete implementing the procedures and protocols necessary to permit outsourcing of all backlogged unprocessed DNA kits.**

**OPD RESPONSIBLE PARTY:** Deputy Chief D. Outlaw.

**STEPS NECESSARY TO ACHIEVE COMPLIANCE:** Completed Compliance Director review and approval of procedures and protocols.

**JULY PROGRESS:** PENDING. OPD draft procedures and protocols have been submitted to the Compliance Director for review. This review will be completed in August. The completion date for this benchmark has been reset to 30 August 2013.

**AUGUST PROGRESS:** PENDING. OPD draft procedures and protocols have been submitted to the Compliance Director in a timely fashion. On August 21, 2013, the Compliance Director's Office met with OPD executive and command staff members, and representatives from the OPD laboratory. Issues regarding Sexual Assault Response Team (SART) kits and non-SART kit biological evidence were discussed, including matters associated with contracting DNA analysis. OPD draft procedures and protocols are expected to be approved by the Compliance Director the week of September 1, 2013.

**SEPTEMBER PROGRESS:** PENDING. After further consultation with the Alameda County District Attorney's Office (DA's Office), it has been mutually agreed that OPD and the DA's Office will enter into a Memorandum of Understanding (MOU) that SART kits will be dealt with on a county-wide basis by the DA's Office. The DA's Office is currently drafting this MOU to include OPD's technical specifications. OPD anticipates taking this draft MOU to the Oakland City Council Public Safety Committee for review and approval on November 11, 2013. Upon receiving anticipated Committee approval, the MOU will go before the Council on November 19, 2013, for final debate and approval.

**OCTOBER PROGRESS:** PENDING. The District Attorney's Office (DA's Office) reports that Bode, Inc. and the Alameda County Sheriff's Office are close to completing the MOU covering outsourced analysis of DNA evidence. Per agreement between OPD and the DA's Office, this MOU will be modified by the DA's Office and republished as the agreement between OPD and the DA's Office.

**NOVEMBER PROGRESS:** PENDING. A revised draft of the OPD/DA's Office MOU has completed City Attorney's office legal review and has been forwarded to the Compliance Director for review. OPD and Bode, Inc. (outsourcing contractor for the DNA analysis) remain engaged in negotiations over unresolved contract issues. It should be noted that the Alameda County Sheriff's Office is also in similar contract negotiations with Bode.

### **BENCHMARK #18**

Purchase and deploy modern crowd control weapons/munitions, TASERS, and additional PDRDs - **Complete update of the less lethal weapons/munitions use policy.**

**OPD RESPONSIBLE PARTY:** Deputy Chief D. Downing.

**STEPS NECESSARY TO ACHIEVE COMPLIANCE:**

- 1) Compliance Director review and approval of the revised Department Crowd Control and Crowd Management Policy is necessary prior to the completion of this Benchmark.
- 2) Following approval of the revised Crowd Control and Crowd Management Policy, OPD is required to submit revisions to the less lethal weapons/munitions policy for Compliance Director review and approval. Compliance Director approval of the revised less lethal weapons/munitions policy is also necessary for completion of this benchmark.
- 3) Upon Compliance Director approval of both the revised crowd control policy and the revised less lethal weapons/munitions policy, new benchmarks will be established for completion, review, and approval of supporting training materials. Additional future benchmarks will also be established for completion of necessary training and full policy implementation.

**JULY PROGRESS:** PENDING. Completion of this policy revision is dependent upon completion of the current initiative to revise OPD's Crowd Control and Crowd Management Policy. This policy revision is being developed in cooperation with the plaintiffs' attorneys and other stakeholders, and is at about the 90% completion point. Upon completion of the Crowd Control Policy redraft, and its review/approval by the Compliance Director, the final revisions to the less lethal weapons/munitions use policy can be completed and sent to the Compliance Director for review.

The benchmark for completion of this item has been reset for 30 August 2013.

**AUGUST PROGRESS:** PENDING. Completion of the Less Lethal and Specialty Impact Munitions (SIM) policy revision, referred to as Training Bulletin III-H, is dependent upon completion of the current initiative to revise OPD's Crowd Control and Crowd Management Policy. This policy revision is being developed in cooperation with the plaintiffs' attorneys and other stakeholders, and is at about the 98% completion point. A meet-and-confer meeting requested by the National Lawyers Guild and the American Civil Liberties Union with the City on the remaining issues was held on August 30, 2013. All but one of the remaining issues was resolved. That issue has been referred back to OPD for further discussion. Upon completion of the Crowd Control and Crowd Management Policy redraft, and its review/approval by the Compliance Director, the final revisions to Training Bulletin III-H can be completed and sent to the Compliance Director for review.

**SEPTEMBER PROGRESS:** PENDING. The revised draft Crowd Control and Crowd Management Policy was reviewed and approved by the Compliance Director on September 25, 2013. Progress on benchmark 18 can now move forward.

**OCTOBER PROGRESS:** PENDING. OPD delivered the revised draft policy (TB III-H – Specialty Impact Munitions) to the Compliance Director for review on October 29, 2013.

**NOVEMBER PROGRESS:** COMPLETED. The Compliance Director reviewed and approved the revised draft policy on November 27, 2013.

PENDING: OPD has not yet developed the required training curricula, lesson plans, and training plans to support this newly revised policy. Due dates for these products will be negotiated in December.

### **BENCHMARK #19a**

Develop needed training programs - **Increase Patrol level use of force training for Officers by 20 hours per year.**<sup>1</sup>

**OPD RESPONSIBLE PARTY:** Deputy Chief D. Outlaw.

**STEPS NECESSARY TO ACHIEVE COMPLIANCE:** Provide the Compliance Director with a training proposal for review. Approval of this proposal is necessary to achieve completion of this benchmark

**JULY PROGRESS:** PENDING. Conversations between OPD and the Compliance Director's staff have led to the realization that a blend of training is more realistic than simply depending on increased simulator (MILO) training to achieve the desired goal of providing patrol officers with increased capabilities to deal with potential violence under stress short of using deadly force. OPD's Training Division will craft a proposal to blend increased simulator time and reality-based training. Upon the Compliance Director's review and approval of this revised training plan, a revised benchmark timeline for development and implementation of this training will be crafted and inserted in the updated Benchmark Plan.

The first step is the development/presentation of the OPD blended training proposal. A benchmark for this to be completed has been set as 30 August 2013.

**AUGUST PROGRESS:** PENDING. A revised training proposal and a suggested source of reality-based training were submitted in a timely fashion. The Compliance Director responded with a variety of questions regarding the curricula, instructor qualifications, and manner of presentation. The OPD subsequently provided additional information to the Compliance Director late in the month. This supplemental information is currently under review by the Compliance Director. Communications regarding the crafting of

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<sup>1</sup> The original benchmark was to increase training to 20 hours per year. In consultation with the OPD, the Compliance Director has determined that a more appropriate benchmark would be to increase training by 20 hours per year, so that officers receive an additional 20 hours per year of training in this critical area. The OPD has agreed to this change.

lesson plans and instructor characteristics have been exchanged between the Compliance Director's office and OPD.

**SEPTEMBER PROGRESS:** TRAINING PROPOSAL COMPLETED. Compliance Director review of the proposal submitted by OPD has been completed. The proposal is approved.

DEVELOPMENT AND IMPLEMENTATION OF TRAINING REMAINS PENDING. This benchmark requires the development and implementation of a recurring training program. While OPD has satisfactorily developed the training plan, a final determination of "COMPLETED" cannot be determined until OPD provides documented evidence that this training plan has been implemented, and that the ongoing training has commenced. OPD advises that the revised lesson plans will be completed by October 11. Training will commence on January 14, 2014.

**OCTOBER PROGRESS:** PENDING. OPD reports that the MILO training portion of the training has been completed. Other videos for use in the program are on order. OPD has provided the Compliance Director with a link to a Power Point lesson plan for roll call training addressing the use of the Taser (ECW). Taser training is but one piece of the total curriculum in the additional 20 hours per annum required in the Benchmark. OPD has been advised by the Compliance Director that the Power Point lesson plan for the ECW alone is inadequate and does not complete the step necessary for Benchmark #19a. OPD advises that curriculum development, lesson plans, and scheduling are in the development process and should be completed by November 30, 2013.

**NOVEMBER PROGRESS:** PENDING. Curriculum development and lesson plans have been completed, with the last segment being forwarded to the Compliance Director for review on November 27, 2013. OPD has also forwarded to the Compliance Director the California POST "Ethical Use of Force Lineup Training" for review. OPD also reported that enhanced patrol level community policing officer/citizen training (Benchmark #19c, deferred earlier to January 2014) has started earlier for sergeants (underway at the present time). Officer training is still deferred until January 2014.

## **AUGUST 2013 BENCHMARKS PENDING**

### **BENCHMARK #9a**

Task 25: Use of Force Investigations and Report Responsibility - **Finalize the new Use of Force (UOF) Policy K-3.**

**OPD RESPONSIBLE PARTY:** Deputy Chief E. Breshears.

## **STEPS NECESSARY TO ACHIEVE COMPLIANCE:**

- 1) Provide the Compliance Director with a copy of the revised policy for review. Compliance Director approval of the revised policy is necessary for completion of this benchmark.
- 2) Upon Compliance Director review and approval of the revised policy, OPD is required to provide the Compliance Director with a revised training syllabus supporting the newly revised/approved policy for review and approval.
- 3) Upon Compliance Director review and approval of the revised training syllabus, OPD is required to provide documentation that this training has been delivered to appropriate personnel, along with training record copies of five randomly selected personnel who have received the training.

**AUGUST PROGRESS:** PENDING. The draft policy revision was provided to the Compliance Director in a timely manner and on schedule. The proposed revision is pending approval by the Compliance Director. A meet-and-confer meeting requested by the National Lawyers Guild and the American Civil Liberties Union with the City on the remaining issues of the Crowd Control and Crowd Management policy was held on August 30, 2013. All but one of the remaining issues was resolved. That issue has been referred back to OPD for further discussion. Upon completion of the Crowd Control and Crowd Management Policy redraft, and its review/approval by the Compliance Director and the Independent Monitor, the final revisions to the less lethal weapons/munitions use policy can be completed and sent to the Compliance Director and the Independent Monitor for review. The less lethal weapons/munitions use policy, which is also the subject of Benchmark #18, is the only outstanding item in Policy K-3.

**SEPTEMBER PROGRESS:** PENDING. The revised draft Crowd Control and Crowd Management Policy was reviewed and approved by the Compliance Director on September 25, 2013. Progress on Benchmark #9a can now move forward.

**OCTOBER PROGRESS:** PENDING. OPD delivered the revised policy (DGO K-3 – Use of Force) to the Compliance Director for review on October 29, 2013. This policy will also require approval by the IMT.

**NOVEMBER PROGRESS:** COMPLETED. The revised policy was approved by the Compliance Director on November 27, 2013.

**PENDING:** OPD has not yet developed the required training curricula, lesson plans, and training plans. Due dates for these products will be negotiated in December.

## **BENCHMARK #10**

Task 30: Executive Force Review Board (EFRB) - **Complete the review of the revision of policy K-4.1 (EFRB). Implement the revised policy.**

**OPD RESPONSIBLE PARTY:** Deputy Chief D. Downing.

**STEPS NECESSARY TO ACHIEVE COMPLIANCE:**

1) Provide the Compliance Director with a copy of the revised policy for review. Compliance Director approval of the revised policy is necessary for completion of this benchmark.

2) Upon Compliance Director review and approval of the revised policy, OPD is required to provide the Compliance Director with a revised training syllabus supporting the newly revised/approved policy for review and approval.

3) Upon Compliance Director review and approval of the revised training syllabus, OPD is required to provide documentation that this training has been delivered to appropriate personnel, along with training record copies of five randomly selected personnel who have received the training.

**AUGUST PROGRESS:** PENDING. OPD provided the Compliance Director with a proposed revision of the draft policy in a timely manner and on schedule. The revised draft is extensive and addresses a function in the Department which directly relates to issues of force and accountability. The significance of the policy, coupled with the observations of the Compliance Director's staff who have attended Force Review and Executive Force Review Boards, requires a diligent and studious review.<sup>2</sup> Due to the infrequent occurrence of these boards, more time is necessary for comprehensive review of this process.

**SEPTEMBER PROGRESS:** PENDING. A review of revisions and implementation to this policy is underway within the Compliance Director's Office.

**OCTOBER PROGRESS:** PENDING. Steps 2 and 3, training and policy implementation are incomplete. Joint review of the conduct of these boards is underway between the Compliance Director's Office and the staff of the Independent Monitor.

**NOVEMBER PROGRESS:** PENDING. Subsequent to attendance and evaluation of Boards held by OPD in November, both the Compliance Director's staff and the Independent Monitor's Team met with OPD executives and staff to offer a variety of recommendations to improve both policy and implementation of policy as they relate to OPD DGO K-4.1 and NSA Task 30, particularly sub-Task 30.3. At present, both are inadequate. The Oakland Interim Chief of Police agreed that opportunities exist to improve these critical processes. The Chief had already prepared a draft version of suggested internal work flow procedures which are directly related to Force and

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<sup>2</sup> The Compliance Director and staff have attended a variety of Force Review and Executive Force Review Boards. The boards attended in August were deficient, as were others dating back to the Occupy Oakland Report of June 2012. Memoranda expressing concerns and recommendations in areas ranging from preliminary force investigations to objective fact presentation about the August 2013 boards were prepared and forwarded to the Chief of Police.

Executive Force Review Boards, and the Internal Affairs process. Ultimately, it was agreed to by all three parties that future evaluation and discussion should occur, with the objectives of collaboratively re-writing DGO K-4.1 and restructuring its implementation. This process is to commence in December 2013. Thus, the current draft version of the revised FRB and EFRB policy is preliminary at best, and will be re-written subsequent to the December meeting. The Compliance Director has supplemented Benchmark #10 with one additional step [Step 4] necessary to achieve compliance:

- 4) Both the Compliance Director and the Independent Monitor shall review and approve the re-written OPD DGO K-4.1. The Compliance Director shall review and approve the revised training syllabus, and implementation of training by OPD. The Compliance Director shall attend and approve a minimum of three consecutive EFRB hearings for the Benchmark to be completed. Measurement shall be weighed against approved policy and training, and contemporary preferred practices.

### **BENCHMARK #12**

Task 40 - Personnel Assessment System (PAS) – Purpose – **Complete personnel training.**

**OPD RESPONSIBLE PARTY:** Deputy Chief E. Breshears.

**STEPS NECESSARY TO ACHIEVE COMPLIANCE:** Provide the Compliance Director with a copy of the training curricula delivered, and copies of five randomly selected officer training records showing completion of this training.

**AUGUST PROGRESS:** PENDING. Benchmarks #13a and 13b (revisions of Department General Order D-17 and Bureau of Risk Management Policy 13.01) must be completed before the training required by this benchmark can be designed and delivered.

**SEPTEMBER PROGRESS:** The Compliance Director's Office identified two additional issues that must be addressed before the PAS Policy can be finalized. This training cannot be developed until the revised policy has been reviewed and approved. OPD advises that revised documents incorporating the additional changes will be submitted to the Compliance Director's Office for review. A revised due date of November 30, 2013, has been established for this benchmark.

**OCTOBER PROGRESS:** PENDING. As a prerequisite to OPD completing Benchmark #12, both policy and procedures related to PAS required updating, revision, and subsequent approval by the Compliance Director. Training needs to be predicated on current policy and procedure, which are outlined and required in Benchmark #13a and Benchmark #13b. The Compliance Director has reviewed and approved the changes



made to both of these Benchmarks, permitting OPD to develop curricula as required in the Benchmarks. When curricula are approved by the Compliance Director, the OPD will implement training as required in Benchmark #12.

**NOVEMBER PROGRESS:** COMPLETED. Both DGO D-17 (PAS) and BRM 13-01 were published by OPD in November. Lesson plans for the required subsequent training were also completed and approved.

PENDING. OPD has committed to completing the training by December 31, 2013.

### **BENCHMARKS #13a AND 13b**

**#13a:** Task 41- Use of Personnel Assessment System (PAS) - **Revise Department General Order D-17 (PAS Policy).**

**OPD RESPONSIBLE PARTY:** Deputy Chief D. Outlaw.

**#13b:** Task 41- Use of Personnel Assessment System (PAS) – **Revise Policy 13.01 - Bureau of Risk Management Policy and Procedures.**

**OPD RESPONSIBLE PARTY:** Deputy Chief D. Outlaw.

#### **STEPS NECESSARY TO ACHIEVE COMPLIANCE:**

- 1) Provide the Compliance Director with a copy of the revised policy for review. Compliance Director approval of the revised policy is necessary for completion of this benchmark.
- 2) Upon Compliance Director review and approval of the revised policy, OPD is required to provide the Compliance Director with a revised training syllabus supporting the newly revised/approved policy for review and approval.
- 3) Upon Compliance Director review and approval of the revised training syllabus, OPD is required to provide documentation that this training has been delivered to appropriate personnel, along with training record copies of five randomly selected personnel who have received the training.

**AUGUST PROGRESS:** PENDING. OPD provided the Compliance Director with a proposed revised policy as it relates to the current PAS. The revision was provided in a timely manner and on schedule. OPD reported that this proposed revision had been provided to all parties as required. Two issues have surfaced requiring supplemental review and probable revision of the PAS policy, which were not known until after the revision was submitted. First, information which may impact the current PAS policy has been provided at workshops conducted by Sierra Systems.<sup>3</sup> Second, a meeting with

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<sup>3</sup> The City of Oakland has contracted with Sierra Systems for the purpose of developing a Request for

OPD executive staff, the Compliance Director's staff, and the Independent Monitor's staff revealed information about internal OPD processes which, if verified, will require revision to the proposed policy. The information has been provided to OPD executive staff, who will be responsible for decisions regarding further revisions, submission to all parties to the NSA, and ultimate submission to the Compliance Director for review and approval.

**SEPTEMBER PROGRESS:** PENDING. In August, the Compliance Director's Office identified two additional issues that must be addressed before the PAS Policy can be finalized. Training cannot be developed until the revised policy has been reviewed and approved. OPD has recently submitted the revised documents incorporating the additional changes for Compliance Director review.

**OCTOBER PROGRESS:** PENDING. OPD provided the Compliance Director with draft versions of DGO D-17 and Bureau of Risk Management Policy and Procedure 13.01. However, subsequent to this submission, discussions about PAS policy occurred between the Compliance Director, the IMT, and OPD. Information exchanged in these discussions was not congruent with the draft policy, e.g., issues associated with the role of supervisors, command, and executive personnel and the mechanics of evaluation, determination, and implementation. OPD submitted revised drafts of DGO D-17 and BRM PP 13.01 to the Compliance Director, who approved both policies. Completion of revised training curricula and delivery of training on both revised and approved policies remains to be accomplished.

**NOVEMBER PROGRESS:** COMPLETED. Both DGO D-17 (PAS) and BRM 13-01 were published by OPD in November. Lesson plans for the required subsequent training were also completed and approved.

PENDING. OPD has committed to completing the training by December 31, 2013.

## **SEPTEMBER 2013 BENCHMARKS PENDING**

### **BENCHMARK #4**

High Speed Pursuits – **Adopt new policy.**

**OPD RESPONSIBLE PARTY:** Assistant Chief P. Figueroa.

**STEPS NECESSARY TO ACHIEVE COMPLIANCE:** Identify and contract with a Subject Matter Expert (SME) qualified to review OPD's existing policy.

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Proposal for the new PAS2 system. A significant part of the development process requires workshop discussions with stakeholders. One workshop example is the modification of the role of supervisors and the PAS Board when determining when personnel monitoring or interventions are considered necessary.

**SEPTEMBER PROGRESS:** PENDING. The Compliance Director has engaged an SME. OPD is in contact with the SME and has provided the current policy for review. Further benchmarks will be determined upon completion of the review of the SME's analysis.

**OCTOBER PROGRESS:** PENDING. AC Figueroa has had two policy discussions with the Compliance Director's SME. A draft of the revised policy is anticipated to be delivered to the City Attorney's Office for review by November 30, 2013, with the final OPD-approved draft delivered to the Compliance Director for review by December 15, 2013.

**NOVEMBER PROGRESS:** COMPLETED. A teleconference between OPD, the SME, and the Compliance Director completed work on the policy on November 26, 2013. The revised policy is approved.

PENDING: OPD has committed to developing required training curricula, lesson plans, and training plans by December 31, 2013.

#### **BENCHMARK #15d**

Submit backlogged DNA samples to the National DNA database (CODIS) - **Work with the District Attorney's Office to immediately outsource all DNA evidence identified in the "Category A" analysis.**

**OPD RESPONSIBLE PARTY:** Deputy Chief D. Outlaw.

**STEPS NECESSARY TO ACHIEVE COMPLIANCE:** Provide the Compliance Director with documentation indicating that the DNA evidence identified in the "Category A" analysis has been outsourced for analysis.

**SEPTEMBER PROGRESS:** PENDING. No DNA evidence has been outsourced to date. Outsourcing cannot commence until the OPD/DA MOU is in place.

**OCTOBER PROGRESS:** PENDING. No DNA evidence has been outsourced to date. Outsourcing cannot commence until the OPD/DA MOU is in place.

**NOVEMBER PROGRESS:** PENDING. No November progress due to the lack of an approved MOU between OPD and the District Attorney's Office.

# **OCTOBER 2013 BENCHMARKS PENDING**

## **BENCHMARK #17**

Formalize a career development program of rotational assignments and temporary detail assignments - **Develop draft plan for rotations as an adjunct to the existing Departmental transfer policy.**

**OPD RESPONSIBLE PARTY:** Deputy Chief D. Outlaw.

### **STEPS NECESSARY TO ACHIEVE COMPLIANCE:**

1. Utilize an intra- and inter-Department collaborative process to research and determine:
  - a. Why the Program is necessary, to include the necessity/advantage of meeting and conferring with the Oakland Police Officers' Association. Determine goals, objectives, and outcomes of the program including structure and implementation models.
  - b. Components of the Program, e.g. mandatory rotation of assignments within the Department, mandatory and discretionary training, promotional preparation, real-time exposure to internal and external events, participation in organizational and community projects, and mentoring sessions.

The intermediate benchmark due date for completion of these components of the program is December 15, 2013. Deliverables to the Compliance Director for these components will be a revised draft Departmental Transfer Policy for review and approval.

2. Ensure ongoing interaction with the Compliance Director's Office as research and development advance, and during formal implementation. The intermediate due date for final completion and adoption of the revised Policy is February 15, 2014. Final completion of Benchmark #17 shall be defined as full and sustainable implementation of the policy for 6 months.

**OCTOBER PROGRESS:** PENDING. The development of a comprehensive revision to OPD's existing rotation policy has yet to begin. However, during the month of October, OPD, with significant Compliance Director's Office involvement, has worked on revising the SWAT rotation policy.

**NOVEMBER PROGRESS:** PENDING. OPD has completed a draft of this plan and has submitted it to the Compliance Director for review. OPD has scheduled a meet and confer with OPOA on December 5, 2013. As per earlier agreements, the due date for completion of this project remains December 15, 2013.

## **NOVEMBER 2013 BENCHMARKS**

### **BENCHMARK #12a<sup>4</sup>**

Task 40 - Personnel Assessment System (PAS) – Purpose – **Complete the RFP for PAS2 with database, servers, and licenses.**

**OPD RESPONSIBLE PARTY:** Deputy Chief E. Breshears.

**STEPS NECESSARY TO ACHIEVE COMPLIANCE:** Deliver a completed draft RFP to the Compliance Director for review and approval.

Compliance Director's comment: This benchmark is not completely within the abilities of OPD to control progress, as it involves a number of City of Oakland entities in addition to the vendor and OPD. Good progress towards a completed RFP has been made during the month of October 2013, and it appears to the Compliance Director that a completed RFP may be possible during the month of December 2013. The Compliance Director thereby extends the original benchmark completion date of November 1, 2013, to December 31, 2013.

**NOVEMBER PROGRESS:** PENDING. OPD has continued to work with Sierra Systems to edit and refine the draft RFP document. Meetings occurred with Sierra Systems the week of November 18th to finalize the RFP based upon OPD comments regarding the source systems. The RFP has been provided to the City Attorney's Office, which has also discussed the draft with Sierra Systems. It is anticipated that that the RFP edits will be completed in December 2013. The timeline appears to be on schedule.

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<sup>4</sup> Benchmark #12 remains open from previous reports. Benchmark #12a has been added to bring forward a new element of the existing benchmark from the Benchmark Plan of May 31, 2013, and to link it to the existing benchmark.

## **BENCHMARK #17**

Formalize a career development program of rotational assignments and temporary detail assignments - **Develop draft plan for rotations as an adjunct to the existing Departmental transfer policy.**

**OPD RESPONSIBLE PARTY:** Deputy Chief D. Outlaw.

**STEPS NECESSARY TO ACHIEVE COMPLIANCE:** This benchmark was discussed in detail above as a pending benchmark from October. The Benchmark Plan as published on May 31, 2013, contains two additional components of Benchmark #17 scheduled for completion in November:

- 1) Meet/confer with OPOA concerning the draft policy.
- 2) Implement the revised policy.

These two components are adequately addressed by the steps necessary to achieve compliance noted in the October discussion.

**NOVEMBER PROGRESS:** PENDING, for the reasons discussed above. Future progress will be noted under the October 2013 pending benchmark.

## **BENCHMARK #19b<sup>5</sup>**

Develop needed training programs – **Commence college-level leadership academy.**

**OPD RESPONSIBLE PARTY:** Deputy Chief D. Outlaw.

**STEPS NECESSARY TO ACHIEVE COMPLIANCE:** Provide the Compliance Director with a training proposal for review. Approval of this proposal is necessary to achieve completion of this benchmark.

**NOVEMBER PROGRESS:** PENDING. OPD has committed to researching the availability of programs similar to the one offered by Johns Hopkins from West Coast Colleges and Universities. This research will be completed by December 31, 2013, and a summary report sent to the Compliance Director for review.

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<sup>5</sup> Benchmark #19a remains open from previous reports. Benchmark #19b has been added to bring forward a new element of the existing benchmark from the Benchmark Plan of May 31, 2013, and to link it to the existing benchmark.

# **NEW BENCHMARKS ADDED IN NOVEMBER**

During the month of November 2013, the Compliance Director and his staff spent considerable time analyzing the Independent Monitor's Fifteenth Quarterly Report. The purpose of this analysis was to compare the seven remaining non-compliant or partially compliant Tasks listed in the Monitor's Report with current open benchmarks. After this comparison was completed, opportunities to better align the benchmark process with the Monitor's reporting became evident. The Compliance Director then directed the development of a series of new (or reopened) benchmarks that would focus on the Monitor's reported non-compliant or partially compliant Tasks. These benchmarks were drafted by the Compliance Director's Office, and reviewed by the Independent Monitor's Team. Following are the results of this month-long process that was only completed on November 26, 2013. Due to the late completion of these items, no progress towards completion by OPD in November was possible. The Compliance Director will work with OPD during the month of December to establish appropriate and reasonable intermediate due dates for these new benchmarks, ensuring that the IMT is also kept involved in this negotiation. The results, plus initial progress towards completion, will appear in the Compliance Director's report of December accomplishments. This review and analysis process is still ongoing, and may result in the creation of additional benchmarks as required during December.

## **BENCHMARK #6a<sup>6</sup>**

NSA Task 20: Span of Control for Supervisors – **Ensure relevant squads are supervised by primary or relief sergeants a minimum of 85% of work shifts.**<sup>7</sup>

**OPD RESPONSIBLE PARTY:** Deputy Chief D. Downing.

### **STEPS NECESSARY TO ACHIEVE COMPLIANCE:**

- 1) Provide the Compliance Director with an established sergeant's promotion eligibility list which is certified by the City of Oakland's Human Resources Department.
- 2) Provide the Compliance Director with revised Department policy which documents the commitment to discontinue utilizing "certified acting sergeants." This revised policy requires the approval of both the Compliance Director and the Independent Monitor. If OPD determines that additional supervisory promotions are necessary to

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<sup>6</sup> Benchmark #6 was initially closed after the existing 2013 sergeant's promotion list was exhausted. It is reopened here and renumbered as Benchmark #6a to facilitate the expansion of the pool of permanent sergeants to the point where the span of control components of Task 20 can be satisfied.

<sup>7</sup> Relates to NSA Sub-Task 20.2 documented in the IMT 15<sup>th</sup> quarterly report. Relevant squads include patrol squads, problem-solving officer units, crime reduction teams, neighborhood enforcement teams, gang/gun investigation task force, and foot patrol.

meet the 85% requirement, provide the Compliance Director with affirmation that funding and authorization to promote the necessary supervisory positions have been provided by City of Oakland officials.

- 3) Provide the Compliance Director with validation that compliance with the 85% requirement has been maintained for a period of three consecutive months. Compliance will be measured utilizing the same process utilized by the IMT, and may be subject to certified auditing.

### **BENCHMARK #6b<sup>8</sup>**

NSA Task 20: Span of Control for Supervisors – **Ensure a Department supervisor's span of control for relevant squads does not exceed a ratio of 1:8 on a day-to-day basis for a minimum of 90% of work shifts.**<sup>9</sup>

**OPD RESPONSIBLE PARTY:** Deputy Chief D. Downing.

### **STEPS NECESSARY TO ACHIEVE COMPLIANCE:**

- 1) Provide the Compliance Director with revised Department policy which documents the process to be utilized, and meets the criteria of the requirements of the Benchmark. The policy requires approval of both the Compliance Director and the Independent Monitor.
- 2) Provide the Compliance Director with validation of the means utilized by the Department to assign, track, and internally audit the requirements of the Benchmark.
- 3) Provide the Compliance Director with validation that compliance with the 90% requirement and 1:8 ratio requirements have been maintained for a period of three consecutive months. Compliance will be measured utilizing the same process utilized by the IMT, and may be subject to certified auditing.

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<sup>8</sup> Benchmark #6 was initially closed after the existing 2013 sergeant's promotion list was exhausted. It is reopened here and renumbered as Benchmark #6b to facilitate the expansion of the pool of permanent sergeants to the point where the span of control components of Task 20 can be satisfied.

<sup>9</sup> Relates to NSA Sub-Task 20.3 documented in the IMT 15<sup>th</sup> quarterly report. Relevant squads include patrol squads, problem-solving officer units, crime reduction teams, neighborhood enforcement teams, gang/gun investigation task force, and foot patrol. Supervisors refer only to primary and relief sergeants.



## **BENCHMARK #21**

NSA Task 33: Reporting Misconduct – **Use of the Personal Digital Recording Device (PDRD) platform to identify misconduct and/or failure to report misconduct.**<sup>10</sup>

**OPD RESPONSIBLE PARTY:** Deputy Chief D. Outlaw.

### **STEPS NECESSARY TO ACHIEVE COMPLIANCE:**

- 1) Provide the Compliance Director with revised PDRD policy which is specific, articulable, comprehensive, and contemporary. The policy requires the approval of both the Compliance Director and the Independent Monitor.
- 2) Provide the Compliance Director with revised OPD Discipline Matrix which reflects appropriate and contemporary discipline guidelines for violation of PDRD policy. The draft requires the approval of both the Compliance Director and the Independent Monitor.
- 3) OPD shall meet and confer, regarding the above two items, with the Oakland Police Officers' Association as required by law and their memorandum of understanding.
- 4) Additional steps necessary to achieve compliance may be developed and required by the Compliance Director at a future date. This will depend upon future compliance with PDRD policy as it relates to NSA Task 33. These steps may include, but are not limited to, training requirements, internal performance auditing, review of administrative investigations associated with PDRD use and NSA Task 33, technology system build-up, and supervisory accountability.

## **BENCHMARK #22**

NSA Task 34: Vehicle Stops, Field Detentions, and Investigations – **Analysis and reporting of stop data archived in the Forensic Logic Quicksearch program.**<sup>11</sup>

**OPD RESPONSIBLE PARTY:** TBD

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<sup>10</sup> Review of the IMT 15<sup>th</sup> quarterly report, and discussion with members of the IMT, reveals that the OPD remains in partial compliance for Phase 2 in part because of some membership failure to utilize their PDRD in accordance with policy. This significantly impedes review of video which may or may not reveal misconduct.

<sup>11</sup> Relates to NSA Sub-Task 34.3.1 documented in the IMT 15<sup>th</sup> quarterly report.

### **STEPS NECESSARY TO ACHIEVE COMPLIANCE:**

- 1) Assuming the data entered into the OPD tech program remains accurate as evidenced by a review of the data since April 2013, OPD shall provide the Compliance Director with demonstrative validation that the Quicksearch program can be summarized, searched, queried and reported for a period of three consecutive months.
- 2) Referencing November 2004 policy, the OPD Racial Profiling Manager shall provide the Compliance Director with a draft version of each semi-annual report to the Chief of Police. Each report shall contain analysis of collected data and policy recommendations and shall require the approval of both the Compliance Director and the Independent Monitor.<sup>12</sup>
- 3) The Chief of Police shall provide to the Compliance Director a written response to the final version of each semi-annual report within 30 days of receipt.<sup>13</sup>

### **BENCHMARK #23**

NSA Task 37: Internal Investigations: Retaliation against Witnesses – **Officers held to account for retaliation [Task 37.1]. Supervisory, command and manager personnel held to account [Task 37.2].**

**OPD RESPONSIBLE PARTY:** Deputy Chief D. Outlaw.

### **STEPS NECESSARY TO ACHIEVE COMPLIANCE:**

- 1) Provide the Compliance Director with a roster documenting the following information:
  - a. All administrative allegations related to retaliation against witnesses spanning April 1, 2013 to November 1, 2013.
  - b. Status of each allegation/investigation, to include but not be limited to administratively closed, closed with a finding and recommendation [if applicable], open investigation, and pending review and decisions in the chain of command. Include status of both NSA-imposed timelines and

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<sup>12</sup> The IMT acknowledges that approximately eight months of accurate data is archived in Quicksearch, and that approximately 12 months of data would be necessary to establish definitive conclusions. However, the IMT also notes that the current aggregate data would suffice to conduct preliminary analysis regarding disparate treatment.

<sup>13</sup> This is not a requirement of the NSA; however, the Compliance Director believes this report from the Chief of Police is a contemporary practice which ensures his/her analysis, review, comment, and action.

Government Code section 3304 timelines. If open, estimated timeline for completion.

- c. Results of OPD consideration when evaluating criteria established in Task 37.2, and subsequent course of action, if applicable.
- 2) Subsequent to review of the roster and a sampling of investigations by the Compliance Director, meet with the Compliance Director to identify shortfalls, trends, patterns, and practices which, if resolved, would enhance compliance with the Benchmark. Identify appropriate work which may be reinforced by training.
- 3) If opportunities to advance compliance with the NSA Tasks are identified, the Compliance Director and OPD shall meet and discuss issues related to cause and effect. A strategy plan shall be prepared and implemented, and results monitored. Additional steps necessary to achieve compliance may be developed and required by the Compliance Director in the future.

## **CONCLUDING THOUGHTS**

It is important to note that only six months ago working relationships between the new Compliance Director's Office, City Administration, the City Attorney's Office, and to some extent, OPD itself were strained at best. I note with a great deal of satisfaction that these relationships have improved on all fronts. Disagreements still occur, but all parties have settled into a professional relationship that permits progress to be made across a wide range of activities and projects. Above and beyond the daily, specific project accomplishments, this evolution of the basic working environment is a huge step forward that should be publicly noted.