



Sixteenth Quarterly Report
of the Independent Monitor
for the Oakland Police Department

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Independent Monitor

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Section One

Introduction

This is the sixteenth quarterly report of the Monitor of the Negotiated Settlement Agreement (NSA) in the case of *Delphine Allen, et al., vs. City of Oakland, et al.*, in the United States District Court for the Northern District of California. In January 2010, under the direction of Judge Thelton E. Henderson, the Parties agreed to my appointment as Monitor of the Oakland Police Department (OPD). In this capacity, I oversee the monitoring process that began in 2003 under the previous monitor. The current Monitoring Team conducted our sixteenth quarterly site visit from November 4, through November 8, 2013, to evaluate the Department's progress with the NSA during the three-month period of July 1, through September 30, 2013.

In the body of this report, we again report the compliance status with the remaining active Tasks of the Agreement. By the end of the seven-year tenure of the previous monitor, the Department was in full compliance with 32 of the 51 required Tasks, and in partial compliance with 16 additional Tasks. As a result, the Parties agreed to reduce the number of Tasks under "active" monitoring to the current list of 22.

During this reporting period, we continue to find the Department in Phase 1, or policy compliance, with all 22 of the remaining active Tasks. With regard to Phase 2, or full compliance, we find that OPD is in compliance with 14 of the 22 remaining Tasks, and in partial compliance with eight Tasks. These overall numbers reflect a change from in compliance to partial in compliance with Task 26, Force Review Board (FRB). That Task had moved from partial to full compliance in our last report. During the last (fifteenth) reporting period, we found the Department in Phase 2 compliance with 15 Tasks, and in partial compliance with seven Tasks.

The decline in compliance is a disappointment. Although we noted improvement in our previous report, we find there should be more positive movement in a core of approximately seven of the 22 Tasks. Some, such as Task 40 and 41, which address risk management; and Task 34, which covers stop data; appear to be moving forward – as a result of focused and organized efforts to solve the problems that have been obstacles to progress. In other areas, however, the attention has been less systematic; and there are concerns that remain. While we determine Task 26 (Force Review Boards) and Task 30 (Executive Force Review Boards) to be in partial compliance, we do so with the expectation that a consistent structure and review process will be maintained in those proceedings, and that progress will be made. We are concerned with the conduct of the Force Review Boards and the Executive Force Review Boards. Since the end of the reporting period in question (September 30, 2013), we have observed a new resolve on the part of the Department to address these processes. We will closely monitor if the Department's resolve culminates in positive outcomes. Likewise, we find the Department in partial compliance with Task 20, regarding span of control; and Task 33, regarding reporting misconduct. In these areas, little progress is again noted.

As we note above, the progress we have seen has been the result of determined efforts – characterized by attention to detail and the commitment to careful review and managed improvement – to move forward. Mayor Quan has been actively engaged in the efforts to bring about reform in the agency – and both she and Interim Chief Whent have been at the forefront of the City’s efforts. Where we see success, that course has been directed by the leadership of the Department, and endorsed and implemented down the chain of command. In some areas – risk management, for example – this has been aided by well managed externally driven efforts. In others – stop data, for example – progress is coming through internally driven organized and incremental steps forward. Where we report less progress, the Tasks do not seem to benefit from the same careful attention and commitment to improvement. The matter of the proper use of the Department’s PDRDs remains a concern. In too many instances, there are questions about the measure to which personnel throughout the Department understand the use, review, and utility of these devices. During our early reviews of the PDRDs, we found that officers often failed to activate their devices during interactions with subjects who were being arrested, and in incidents where force was used. We found that many officers reported their devices to be broken and/or lost. We also noted that there was little – if any – auditing by supervisors to assess whether officers had properly utilized their PDRDs.

More recently – primarily during the two most recent reporting periods – we have found that PDRD use has become more common, as evidenced by the amount of video recorded and the increase in storage volume. Still, our recent assessments of force cases revealed several serious incidents in which officers – who were in a position to obtain evidence of the facts and circumstances surrounding the use of force – did not have or activate their PDRDs. We are concerned that OPD does not have a sufficient inventory of PDRDs to equip each officer, and that an officer could go for a lengthy period of time before his/her unit is repaired or replaced. We have shared these concerns with responsible OPD staff in our meetings over the past several months. During our most recent site visit, OPD officials committed to acquiring and making available additional units to immediately replace malfunctioning or inoperable units while they are being repaired. The Department also informs us that it is taking steps to add a MOR violation specific to PDRD use when officers do not turn on their devices. It is essential for the Department to strive diligently to achieve these stated objectives.

Unquestionably, we sense changes in the OPD – and there have been measureable accomplishments that have shown there to be progress. We encourage the leadership to hold to account those members of the chain of command whose commitments are incongruous with those of the Department and the City’s senior executives. These factors will, no doubt, hold the key to continued progress.



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Compliance Assessment Methodology

The body of this report is comprised of our assessments of compliance with the individual requirements of the 22 active Tasks of the NSA. Each requirement is followed by information about the compliance status of the requirement during our previous reporting period, a discussion regarding our assessments and the current status of compliance, a summary notation of Phase 1 and Phase 2 compliance (see below), and our planned next steps in each area.

The Monitor's primary responsibility is to determine the status of the Oakland Police Department's compliance with the requirements of the 22 active Tasks. To accomplish this, the Monitoring Team makes quarterly visits to Oakland to meet with OPD's Office of Inspector General (OIG) and other Department personnel – at the Police Department, in the streets, or at the office that we occupy when onsite in the City. We also observe Departmental practices; review Department policies and procedures; collect and analyze data using appropriate sampling and analytic procedures; and inform the Parties and, on a quarterly basis, the Court, with information about the status of OPD's compliance.

Our Team determines compliance through an examination of policies and implementation of practices that are relevant to each of the active Tasks. First, we determine if the Department has established an appropriate policy or set of procedures to support each requirement. Following this, we determine if the Department has effectively implemented that policy.

Based on this process, we report the degree of compliance with requirements on two levels. First, we report if the Department has met policy compliance. Compliance with policy requirements is known as **Phase 1 compliance**, and the Department achieves it when it has promulgated appropriate policies and trained relevant Department members or employees in their content. Second, we report on the extent to which the Department has implemented the required policies. Implementation-level compliance is reported as **Phase 2 compliance**. In general, to achieve full compliance, the Department must achieve both Phase 1 and Phase 2 compliance; that is, an appropriate policy must be adopted, trained to, and operationally implemented.

Our conclusions with regard to Phase 1 or Phase 2 compliance will fall into the following categories:

- **In compliance:** This is reported when policy requirements are met (Phase 1) or effective implementation of a requirement has been achieved (Phase 2).
- **Partial compliance:** This is reported when at least one, but not all, requirements of a Task have achieved compliance, showing progress toward full compliance. Tasks will remain in partial compliance as long as we determine there is continued progress toward reaching substantial, or full, compliance.

- **Not in compliance:** This is reserved for instances where partial compliance has not been achieved and no progress has been made.

Many sub-requirements of the 22 active Tasks require the analysis of multiple instances of activity, cases, or observations. In these circumstances, our analysis is based on a review of all cases or data, or, when appropriate, on statistically valid samples of the population. To reach our conclusions based on analyses of cases, the Department must meet a minimal standard. The Parties have agreed upon these compliance standards, which range from 85% to 95%, or a Yes/No standard.

This methodology supports a sound and rigorous review of the Department's compliance with the requirements of the 22 active Tasks. We recognize, however, that the high demands of this methodology may not be fully realized in all elements of all reviews. There will be circumstances in which we will be unable to determine fully the compliance status of a particular requirement due to a lack of data, incomplete data, or other reasons that do not support the completion of our work in a manner consistent with timely reporting. Under such circumstances, we will opt not to compromise our methodology by forcing a conclusion regarding compliance levels. Instead, we will report a finding as "**Deferred.**" This finding is not intended to reflect negatively on the Department or to otherwise imply insufficient progress. In such circumstances, we expect that a more complete assessment of compliance in the area in question will be determined in our next report.

Our compliance assessment methodology directs the Monitoring Team in our work and underlies the findings presented in this report. We fully expect that this methodology will govern our work throughout our tenure in this project. Any consideration of revision or change of this methodology will be presented to the Parties and the Court.

Executive Summary

This is the sixteenth report of the Monitoring Team in the case of *Delphine Allen, et al., vs. City of Oakland, et al.* This Executive Summary is not intended to replicate the body of the entire report. Instead, it highlights the more significant findings, trends, patterns, or concerns that materialized as a result of our evaluation.

From November 4, through November 8, 2013, we conducted our sixteenth site visit to Oakland. As we do during each site visit, we met with several Department officials, including the Chief and Assistant Chief of Police and Deputy Chiefs; as well as personnel from the Office of Inspector General (OIG), Bureau of Field Operations (BFO), Bureau of Investigations (BOI), Bureau of Services (BOS), Internal Affairs Division (IAD), Training Section, and Communications Section; OPD officers, managers, supervisors, and commanders – including sergeants, lieutenants, and captains. We also conferred with the Plaintiffs’ attorneys, City Administrator, and Office of the City Attorney (OCA). During and since the time of our site visit, we attended Department meetings and technical demonstrations; reviewed Departmental policies; conducted interviews and made observations in the field; and analyzed OPD documents and files, including misconduct investigations, use of force reports, crime and arrest reports, Stop Data Forms, and other documentation.

For the quarter under review, we once again found OPD in Phase 1 compliance with all 22 of the remaining active Tasks. The Department is in Phase 2 compliance with 14 (64%) of the 22 active Tasks and in partial compliance with eight (36%) Tasks. Task 26 (Force Review Boards) fell from in compliance in our last report to partial compliance for the quarter currently under review. This report, then, shows a decline in compliance levels by one Task.

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| Task | Phase 1: Policy and Training | Phase 2: Implementation | | | |
|--|------------------------------------|----------------------------|-----------------------|----------------------|----------|
| | In Compliance | In Compliance | Partial Compliance | Not in Compliance | Deferred |
| Task 2: Timeliness Standards and Compliance with IAD Investigations | √ | √ | | | |
| Task 3: IAD Integrity Tests | √ | √ | | | |
| Task 4: Complaint Control System for IAD and Informal Complaint Resolution Process | √ | √ | | | |
| Task 5: Complaint Procedures for IAD | √ | √ | | | |
| Task 6: Refusal to Accept or Refer Citizen Complaints | √ | √ | | | |
| Task 7: Methods for Receiving Citizen Complaints | √ | √ | | | |
| Task 16: Supporting IAD Process - Supervisor/ Managerial Accountability | √ | √ | | | |
| Task 18: Approval of Field-Arrest by Supervisor | √ | √ | | | |
| Task 20: Span of Control for Supervisors | √ | | √ | | |
| Task 24: Use of Force Reporting Policy | √ | √ | | | |
| Task 25: Use of Force Investigations and Report Responsibility | √ | √ | | | |
| Task 26: Force Review Board (FRB) | √ | | √ | | |
| Task 30: Executive Force Review Board (EFRB) | √ | | √ | | |
| Task 33: Reporting Misconduct | √ | | √ | | |
| Task 34: Vehicle Stops, Field Investigation, and Detentions | √ | | √ | | |
| Task 35: Use of Force Reports – Witness Identification | √ | √ | | | |
| Task 37: Internal Investigations - Retaliation Against Witnesses | √ | | √ | | |
| Task 40: Personnel Assessment System (PAS) – Purpose | √ | | √ | | |
| Task 41: Use of Personnel Assessment System (PAS) | √ | | √ | | |
| Task 42: Field Training Program | √ | √ | | | |
| Task 43: Academy and In-Service Training | √ | √ | | | |
| Task 45: Consistency of Discipline Policy | √ | √ | | | |
| <i>Total Tasks</i> | 22 | 14 | 8 | 0 | 0 |

Section Two

Compliance Assessments

Task 2: Timeliness Standards and Compliance with IAD Investigations

Requirements:

Fairness to complainants, members/employees and the public requires that internal investigations be completed in a timely fashion.

- 1. On or before December 1, 2003, OPD shall develop policies regarding timeliness standards for the completion of Internal Affairs investigations, administrative findings and recommended discipline.*
- 2. Compliance with these timeliness standards shall be regularly monitored by IAD command and the Department's command staff. If IAD experiences an unusual proliferation of cases and/or workload, IAD staffing shall be increased to maintain timeliness standards.*

(Negotiated Settlement Agreement III. B.)

Background:

During the last reporting period, we found OPD in compliance with Task 2. Per Departmental policy, in order to be considered timely, at least 85% of Class I misconduct investigations and at least 85% of Class II misconduct investigations must be completed within 180 days.¹

Discussion:

As previously reported, OPD published Department General Order M-03, *Complaints Against Department Personnel and Procedures*, which incorporates the requirements of Task 2, on December 6, 2005. General Order M-03 was revised in February 2008, and again in June 2013. The revised policy also incorporates the requirements of Task 2. As the Department has trained at least 95% of relevant personnel on this revised policy, we find OPD in continued Phase 1 compliance with this Task.

Task 2.1 requires that internal investigations (IAD and Division Level) – including review, approval, findings, and discipline – be completed in accordance with the timeliness standards developed by OPD (compliance standard: 85%). To assess this subtask, we reviewed a list of all internal investigations resulting in formal findings (unfounded, sustained, exonerated, or not sustained) that were approved between July 1, and September 30, 2013, and calculated the number of days between the complaint date and the approval date for each case. We excluded from the dataset cases that were administratively closed, those that involved on-duty traffic accidents or service complaints, and those that did not involve Manual of Rules (MOR)

¹ OPD classifies misconduct as either “Class I” or “Class II.” Per DGO M-03, Class I offenses “are the most serious allegations of misconduct and, if sustained, shall result in disciplinary action up to and including dismissal and may serve as the basis for criminal prosecution.” Class II offenses include “all minor misconduct offenses.”

violations. We segregated the remaining cases into Class I or Class II categories. If a case involved at least one alleged Class I violation, we classified it as Class I.

As noted above, Departmental policy requires that investigations be completed within 180 days. Of the 64 Class I cases we reviewed, 58, or 91%, were in compliance with established timelines – a slight increase from the 90% we found during the last reporting period. Two of the Class I cases were completed in exactly 180 days, and 40 cases were completed in between 170 and 179 days. Of the 137 Class II cases we reviewed, 135, or 99%, were in compliance with established timelines – an increase from the 93% we found during the last reporting period. Three of the Class II cases were completed in exactly 180 days, and 66 cases were completed in between 170 and 179 days. Of the 26 sustained findings that we reviewed, all (100%) were in compliance with established discipline timelines.² This was a slight increase from the 97% that we found during the last reporting period.

OPD is in compliance with Task 2.1.

Task 2.2 requires that IAD and OPD command staff regularly monitor compliance with these timeliness standards (compliance standard: Yes/No). The primary responsibility for monitoring compliance with timeliness standards rests with IAD, which generates weekly reports listing the Department's open investigations and critical deadlines for investigations retained in IAD and those handled at the Division level. The reports are distributed to IAD command staff and the respective Bureau Deputy Chiefs.

In addition to the reports, the IAD Commander discusses pending deadlines for key open investigations during IAD's weekly meetings with the Chief; the deadlines are also reflected in written agendas for these meetings. IAD also occasionally, as needed, emails individual reminders on cases approaching due dates to investigators and their supervisors. During this reporting period, we received and reviewed copies of individual Bureau and Department-wide Open Investigation Reports, Cases Not Closed Reports, 180-Day Timeline Reports, and agendas for the weekly meetings between the Chief and IAD staff. The content of these documents demonstrates active monitoring of case timeliness. A Monitoring Team representative occasionally attends and observes these weekly meetings. The Department is in compliance with Task 2.2.

Task 2.3 requires that if IAD experiences an unusual proliferation of cases and/or workload, IAD staffing be increased to maintain timeliness standards (compliance standard: Yes/No). During the current reporting period, IAD opened 316 cases, a decrease of 162 cases from the last reporting period. The Chief approved 509 cases, a decrease of 290 cases from the last reporting period. According to the Department, there was a 58% decrease in opened cases from the same time period last year. IAD attributes these significant reductions to the revisions of DGO M-03.

² We reviewed 16 cases involving sustained findings; several cases involved more than one sustained finding.

In addition, during this reporting period, there were no additional personnel added to IAD; one IAD intake officer was transferred to the Patrol Division based on the Chief's accurate projection that IAD would receive fewer cases following the implementation of the revised DGO M-03. As of the end of this reporting period, there were 23 sworn personnel and five civilian personnel assigned to IAD.

OPD is in compliance with Task 2.3.

OPD is in Phase 2 compliance with Task 2.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

Next Steps:

During the next reporting period, we will again confer with IAD command staff regarding workload trends and staffing requirements.

Task 3: IAD Integrity Tests

Requirements:

IAD shall be proactive as well as reactive.

1. *IAD shall conduct integrity tests in situations where members/employees are the subject of repeated allegations of misconduct.*
2. *IAD shall have frequency standards, among other parameters, for such integrity tests.*

(Negotiated Settlement Agreement III. C.)

Background:

OPD has been in compliance with this Task since the sixth reporting period.

Discussion:

As previously reported, OPD published Internal Affairs Policy & Procedures 07-01, *Integrity Testing*, which incorporates the requirements of this Task on January 25, 2007. The Department updated this policy in January 2009. The revised policy also incorporates the requirements of Task 3. As the Department has trained at least 95% of relevant personnel on this revised policy, we find OPD in continued Phase 1 compliance with this Task.

Task 3.1 requires that IAD conduct integrity tests in situations where members/employees are the subject of repeated allegations of misconduct (compliance standard: Yes/No); and **Task 3.2** requires that IAD's integrity tests be conducted in accordance with the frequency standards and other parameters IAD has established (compliance standard: 90%).

To assess the Department's Phase 2 compliance with these subtasks, we reviewed files – including operations plans, after-action reports, supporting documents and evidence – related to the nine integrity tests that were conducted from July 1, through September 30, 2013. Our review focused on the scope of the investigations, whether OPD conducted integrity tests on members and employees who were the subject of repeated allegations, and whether the selective integrity tests that OPD conducted complied with the parameters established by IAD. Of the nine tests conducted during this reporting period, two were planned tests, in which the Integrity Testing Unit reviewed the records of OPD members and employees to verify that their vital information and records were current and therefore followed Departmental policy.³ We found that both focused on individual members and employees of OPD who were the subjects of high numbers of allegations of misconduct over the prior 18 months; both planned tests passed.

The remaining seven integrity tests were selective tests, focusing on whether the officers who were subjects of the test failed to adhere to OPD policies.⁴ One of these tests was conducted on officers who were the subjects of repeated allegations, and addressed the sources of the repeated allegations. Of the seven selective tests, three passed. One of the tests was inconclusive, and three failed administratively.

The selective tests during this reporting period covered a broad range. They included a test, in response to complaints of alleged abuses, on overtime usage among Major Crime Personnel. This investigation identified inconsistencies of documentation for the unit commander regarding the use of vacation days; the test failed, and it was referred to IAD for investigation.

Two of the selective tests focused on the use of Personal Digital Recording Devices (PDRDs) by OPD members. One sought to determine if personnel on PAS intervention for IAD complaints were utilizing their PDRDs in accordance with their stated intervention strategies and Department policy. The first PDRD-related test found that three members who were on PAS intervention for IAD complaints went for extended periods of time without possessing their PDRDs. Further investigation revealed that the officers had turned their PDRDs into the Technology Unit for repairs and did not receive them back for a few weeks. This test failed administratively, and the findings were referred to IAD commander to address. The second PDRD-related test audited whether or not officers were documenting use of force incidents in the UOF Daily Log. As part of this test, if the offense report indicated that the PDRD was activated to record the incident, ITU investigators reviewed the actual footage to confirm that the incident report was accurate. All of the force incident reports were logged in the Daily Log, and ITU was able to locate PDRD footage for all of the incidents; the test passed.

³ Planned integrity tests are designed specifically to test the compliance – with Departmental policies or procedures – of specific members or employees who are identified as the subject of the test.

⁴ Pursuant to Internal Affairs Policy & Procedures 07-01, selective integrity tests are targeted enforcement tools aimed at addressing specific issues regarding specific members, employees, or units.

In one selective test, ITU audited the release of sensitive police-related information by email to Department employees. A review of the list found that several former employees – including some who had been terminated – continued to receive sensitive information via email. The test failed, and ITU notified the relevant Department officials; ITU followed up on this test and found that the problem had been corrected.

There were two personnel-related selective tests this quarter. The first investigated a civilian employee who was alleged to have used illegal controlled substances. No information was located, and the test was closed as inconclusive. The second resulted from the Department's monthly Management Level Liaison report, which noted that the District Attorney's Office refused to charge a felony due to a discrepancy between an officer's robbery report and the available PDRD footage. ITU reviewed six months of the officer's offense reports, and found accurate documentation in the officer's reports compared to the PDRD recordings; the ITU test passed.

In the remaining selective test, ITU conducted an audit of the Major Crime imprest accounts and Field Support Services undercover expenditures. The audit found that the commanders of the unit are properly securing, tracking, and auditing their imprest accounts in accordance with Department Policy. This test passed.

OPD is in Phase 2 compliance with Task 3.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

Next Steps:

During our next site visit, we will again meet with ITU and the IAD Commander to discuss the Integrity Testing Unit and its testing.

Task 4: Complaint Control System for IAD and Informal Complaint Resolution Process

Requirements:

1. *Within 90 days, OPD shall develop a policy regarding an informal complaint resolution process which may be used by supervisors and IAD to resolve service complaints and Class II violations that do not indicate a pattern of misconduct as described in Section III, paragraph H (2). This process shall document the receipt of the complaint, date, time, location, name or the person making the complaint, the name of the person receiving the complaint, how the matter was resolved and that the person making the complaint was advised of the formal complaint process with the CPRB. The documentation shall be forwarded to an*

IAD Commander for review. If the informal complaint resolution process fails to resolve the complaint or if the person making the complaint still wishes to make a formal complaint, the person receiving the complaint shall initiate the formal complaint process pursuant to Section III, paragraph E. An IAD Commander shall make the final determination whether the ICR process will be utilized to resolve the complaint. OPD personnel shall not unduly influence persons making a complaint to consent to the informal complaint resolution process.

2. *IAD shall establish a central control system for complaints and Departmental requests to open investigations. Every complaint received by any supervisor or commander shall be reported to IAD on the day of receipt. If IAD is not available, IAD shall be contacted at the start of the next business day. Each complaint shall be assigned an Internal Affairs case number and be entered into a complaint database with identifying information about the complaint. OPD personnel shall notify IAD and the Chief of Police, or designee, as soon as practicable, in cases likely to generate unusual public interest.*
3. *Criteria shall be established which must be met prior to moving, from “open” to “closed,” any investigation in the complaint database.*⁵

(Negotiated Settlement Agreement III. D.)

Background:

Only two provisions of Task 4 (4.7 and 4.10) are being actively monitored under the MOU. During all of the previous reporting periods, we found OPD in compliance with both of these requirements. Overall, we found that complaints received by any supervisor or commander were reported to IAD on the day of receipt or at the start of the next business day. We also found that OPD complied with criteria it has established when resolving complaints via informal complaint resolution, administrative closure, or summary finding.

Discussion:

There are four Departmental policies that incorporate the requirements of Tasks 4.7 and 4.10:

- **Department General Order M-03:** As previously reported, OPD published Department General Order M-03, *Complaints Against Department Personnel and Procedures*, on December 6, 2005. General Order M-03 was revised in February 2008, and again in June 2013. The revised policy also incorporates the requirements of these subtasks.
- **Department General Order M-3.1:** As previously reported, OPD published Department General Order M-3.1, *Informal Complaint Resolution Process*, which incorporates the requirements of these subtasks, on December 6, 2005. General Order M-3.1 was revised in February 2008, and August 2008. The revised policy also incorporates the requirements of these subtasks.

⁵ The underlined requirements are the only provisions of Task 4 that are being actively monitored under the MOU.

- **Special Order 8552:** As previously reported, OPD published Special Order 8552, *Update of Departmental Training Bulletin V-T.1, Internal Investigation Procedure Manual*, on February 1, 2007. This policy incorporates the requirements of these subtasks.
- **Communications Division Policy & Procedures C-02:** As previously reported, OPD published Communications Division Policy & Procedures C-02, *Receiving and Logging Complaints Against Personnel and Use of Force Incidents*, on April 6, 2007. This policy incorporates the requirements of these subtasks.

As the Department has trained at least 95% of relevant personnel on these policies, we find OPD in continued Phase 1 compliance with this Task.

Task 4.7 requires that every complaint received by any supervisor or commander be reported to IAD on the day of receipt (compliance standard: Yes/No). If IAD is not available, the supervisor or commander shall contact IAD at the start of the next business day. To assess Phase 2 compliance for Task 4.7, we reviewed 91 Daily Incident Log (DIL) entries and a random sample of 95 IAD case files that were approved during the period of July 1, through September 30, 2013. The Office of Inspector General forwards completed DILs to us on a daily basis. We found no evidence of unwarranted delay in the delivery of these complaints or in the intake process once IAD was made aware of them. OPD is in compliance with Task 4.7.

Task 4.10 requires that OPD comply with criteria it has established when resolving complaints through informal complaint resolution (ICR), administrative closure, or summary finding (compliance standard: 90%).⁶ This subtask is intended to ensure that OPD provides the proper level of investigation for each complaint, and does not resolve meritorious complaints of misconduct without determining – and documenting – whether the OPD member or employee committed misconduct.

During this reporting period, from a sample of IAD cases that were approved between July 1, and September 30, 2013, we reviewed 13 cases in which at least one allegation was resolved via administrative closure, eight cases in which at least one allegation was resolved via informal complaint resolution (ICR), and five cases in which at least one allegation was resolved via summary finding.

⁶ Summary findings are investigations in which the Department believes a proper conclusion can be determined based on a review of existing documentation with limited or no additional interviews and follow-up.

In all but one of the ICRs we reviewed, the complainants agreed to the informal complaint resolution process. Where an agreement was secured in a telephone conversation, that information was contained in the case documentation (in many cases, the exact minute/second mark of the agreement was recorded) and in follow-up letters to the complainants. One of the cases stemmed from complainant's dissatisfaction with OPD's response time to a call for service. In another case, a citizen complained that civilian crossing guards stop traffic for inordinate periods of time. In still another case, the complainant was dissatisfied with the accuracy of the motor vehicle accident report she filed.

As mentioned above, in one case the complainant did not agree to the ICR process. However, she expressly indicated that she did not want to file a complaint against the involved officers, although she was upset with their response time and she believed that they did not conduct a neighborhood canvass. The commanding officer of IAD approved the ICR as is allowed by policy.

Three ICRs involved allegations of poor demeanor. One complaint stemmed from the officers' handling of a felony car stop, and the other two were generated from the officers' response to dispatched calls for service.

The administrative closures that we reviewed were investigated before IAD arrived at the determination that such a closure comported with policy. One of the cases was administratively closed because it was determined that OPD employees were not the subject of the complaint. OPD officers were on the scene, but they were assisting Alameda County Sheriff's Office (ACSO) deputies with the service of a search warrant. The investigation revealed that the deputies were the personnel complained of.

Five cases were administratively closed because they only involved complaints of delayed response times. Four cases were administratively closed because they did not involve MOR violations. For example, in one, a citizen merely walked into the PAB and requested a complaint form, but never articulated that he had any type of complaint. In another case, a citizen was upset because she became stuck in a PAB elevator. While unfortunate, the complaint process should not have been invoked. In still another case, the complainant alleged that the dispatchers ask "stupid questions."

The remaining allegations that were administratively closed comported with policy, in that the complaints either lacked specificity, claimed innocence of charges best left to appropriate adjudication venues to decide, or otherwise did not constitute MOR violations. Where they were accompanied by allegations that warranted a full investigation, these additional allegations were investigated in accordance with policy. We also identified several administrative closures in our Task 7.3 (Anonymous Complaints) review, and they are further discussed in that section.

The cases resolved via summary finding were approved for such designation as required by policy. In all of these cases, the interactions between officers and citizens were recorded on PDRDs, negating the need to interview all of the involved officers. Two of the cases involved demeanor allegations, and in the other cases, the complainants alleged improper or false arrests. Summary findings are further discussed in Task 5.

OPD is in compliance with Task 4.10.

OPD is in Phase 2 compliance with Task 4.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

Task 5: Complaint Procedures for IAD

Requirements:

1. *On or before December 1, 2003, OPD shall develop a policy so that, OPD personnel who become aware that a citizen wishes to file a complaint shall bring such citizen immediately, or as soon as circumstances permit, to a supervisor or IAD or summon a supervisor to the scene. If there is a delay of greater than three (3) hours, the reason for such delay shall be documented by the person receiving the complaint. In the event that such a complainant refuses to travel to a supervisor or to wait for one, the member/employee involved shall make all reasonable attempts to obtain identification, including address and phone number, as well as a description of the allegedly wrongful conduct and offending personnel, from the complainant and any witnesses. This information, as well as a description of the complaint, shall immediately, or as soon as circumstances permit, be documented on a Complaint Form and submitted to the immediate supervisor or, in his/her absence, the appropriate Area Commander, and shall be treated as a complaint. The supervisor or appropriate Area Commander notified of the complaint shall ensure the Communications Division is notified and forward any pertinent documents to the IAD.*
2. *An on-duty supervisor shall respond to take a complaint received from a jail inmate taken into custody by OPD, who wishes to make a complaint of Class I misconduct contemporaneous with the arrest. The supervisor shall ensure the Communications Division is notified and forward any pertinent documents to the IAD. All other misconduct complaints, by a jail inmate shall be handled in the same manner as other civilian complaints.*
3. *In each complaint investigation, OPD shall consider all relevant evidence, including circumstantial, direct and physical evidence, and make credibility determinations, if feasible. OPD shall make efforts to resolve, by reference to*

physical evidence, and/or use of follow-up interviews and other objective indicators, inconsistent statements among witnesses.

4. *OPD shall develop provisions for the permanent retention of all notes, generated and/or received by OPD personnel in the case file.*
5. *OPD shall resolve each allegation in a complaint investigation using the “preponderance of the evidence” standard. Each allegation shall be resolved by making one of the following dispositions: Unfounded, Sustained, Exonerated, Not Sustained, or Administrative Closure. The Department shall use the following criteria for determining the appropriate disposition:*
 - a. *Unfounded: The investigation disclosed sufficient evidence to determine that the alleged conduct did not occur. This finding shall also apply when individuals named in the complaint were not involved in the alleged act.*
 - b. *Sustained: The investigation disclosed sufficient evidence to determine that the alleged conduct did occur and was in violation of law and/or Oakland Police Department rules, regulations, or policies.*
 - c. *Exonerated: The investigation disclosed sufficient evidence to determine that the alleged conduct did occur, but was in accord with law and with all Oakland Police Department rules, regulations, or policies.*
 - d. *Not Sustained: The investigation did not disclose sufficient evidence to determine whether or not the alleged conduct occurred.*
 - e. *Administrative Closure: The investigation indicates a service complaint, not involving an MOR violation, was resolved without conducting an internal investigation; OR*
 - f. *To conclude an internal investigation when it has been determined that the investigation cannot proceed to a normal investigative conclusion due to circumstances to include but not limited to the following:*
 - 1) *Complainant wishes to withdraw the complaint and the IAD Commander has determined there is no further reason to continue the investigation and to ensure Departmental policy and procedure has been followed;*
 - 2) *Complaint lacks specificity and complainant refuses or is unable to provide further clarification necessary to investigate the complaint;*
 - 3) *Subject not employed by OPD at the time of the incident; or*
 - 4) *If the subject is no longer employed by OPD, the IAD Commander shall determine whether an internal investigation shall be conducted.*
 - 5) *Complainant fails to articulate an act or failure to act, that, if true, would be an MOR violation; or*
 - 6) *Complaints limited to California Vehicle Code citations and resulting tows, where there is no allegation of misconduct, shall be referred to the appropriate competent authorities (i.e., Traffic Court and Tow Hearing Officer).*
 - g. *Administrative Closures shall be approved by the IAD Commander and*

- entered in the IAD Complaint Database.*
6. *The disposition category of "Filed" is hereby redefined and shall be included under Administrative Dispositions as follows:*
 - a. *An investigation that cannot be presently completed. A filed investigation is not a final disposition, but an indication that a case is pending further developments that will allow completion of the investigation.*
 - b. *The IAD Commander shall review all filed cases quarterly to determine whether the conditions that prevented investigation and final disposition have changed and may direct the closure or continuation of the investigation.*
 7. *Any member or employee who is a subject of an internal investigation, as well as any other member or employee on the scene of an incident at which misconduct has been alleged by a complainant, shall be interviewed and a recorded statement taken. However, investigators, with the approval of an IAD Commander, are not required to interview and/or take a recorded statement from a member or employee who is the subject of a complaint or was on the scene of the incident when additional information, beyond that already provided by the existing set of facts and/or documentation, is not necessary to reach appropriate findings and conclusions.*

(Negotiated Settlement Agreement III. E.)

Background:

During the last two reporting periods, we found OPD in compliance with Task 5. In each of the prior reporting periods, we found the Department in partial compliance with Task 5.⁷

Discussion:

There are several Departmental policies that incorporate the various requirements of Task 5:

- **Departmental General Order M-03:** As previously reported, OPD published Department General Order M-03, *Complaints Against Department Personnel and Procedures*, on December 6, 2005. General Order M-03 was revised in February 2008, and again in June 2013. (The revised policy also incorporates the requirements of Task 5.)
- **Communications Division Operations & Procedures C-02:** As previously reported, OPD published Communications Division Policy & Procedures C-02, *Receiving and Logging Complaints Against Personnel and Use of Force Incidents*, on April 6, 2007.
- **Training Bulletin V-T.1:** As previously reported, OPD published Training Bulletin V-T.1, *Internal Investigation Procedure Manual*, on June 1, 2006.

⁷ Pursuant to an agreement among the Parties, Tasks 5.7- 5.11, and 5.13-5.14 are not subject to active monitoring.

- **Special Order 8270:** As previously reported, OPD published Special Order 8270, *Booking of Prisoners at the Glenn E. Dyer Detention Facility*, on June 24, 2005.
- **Special Order 8565:** As previously reported, OPD published Special Order 8565, *Complaints Against Department Personnel*, on May 11, 2007.
- **IAD Policy & Procedures 05-02:** As previously reported, OPD published IAD Policy & Procedures 05-02, *IAD Investigation Process*, on December 6, 2005.

In addition, NSA stipulations issued on December 12, 2005, and March 13, 2007, incorporate the requirements of this Task.

As the Department has trained at least 95% of relevant personnel on the above-listed policies, we find OPD in continued Phase 1 compliance with this Task.

To verify Phase 2 compliance with Tasks 5.1 through 5.5, we reviewed 91 entries that appeared on the Daily Incident Logs (DILs) that were completed between July 1, and September 30, 2013. We identified these by randomly selecting 38 dates during this reporting period and reviewing the entries for each of those dates.

Task 5.1 requires that when a citizen wishes to file a complaint, the citizen is brought to a supervisor or IAD, or a supervisor is summoned to the scene (compliance standard: 95%). During the last reporting period, we found OPD in compliance with this subtask. During the current reporting period, of the 91 DIL entries, two cases were received by IAD, which, in turn, notified the Communications Division. Supervisors took 21 complaints in the field; and in the remaining 68 cases, complainants called 911 to express their dissatisfaction. In these latter cases, IAD or field supervisors were notified, except when the complaints were against Communications personnel (these were handled by a Communications supervisor) or were clearly service complaints (e.g., slow response time with no specific officer complained of). We noted 51 such service complaints. Three of these cases, however, did not include any detail that would allow us to verify that they were appropriately classified. We remind OPD that the DIL entry should contain some notation as to the nature of the service complaint. During this reporting period, OPD remains in compliance with Task 5.1.

Task 5.2 requires that if there is a delay of greater than three hours in supervisory response, the reason for the delay be documented (compliance standard: 85%). OPD has added a checkbox to the DIL to record such delays. In addition to reviewing this section of the logs, we also checked the times of complaint receipt and supervisor contact with the complainant (or attempted contact where the complainant was unavailable – see Task 5.3). We identified two cases in which there appeared to be greater than a three-hour delay in contacting the complainant. One complaint was received in Communications at the height of the Department’s response to the “Zimmerman verdict” protests. The complainant was advised that a supervisor would call her back as soon as possible, and she spoke with a supervisor several hours later. The other case involved an IAD

mobilization initiated in the middle of the night, and the DIL contained the notation: “call out team currently working on incident (contact still pending with citizen involved), this is why ‘Over 3 hours’ box is checked.” Since the reasons for the delays in contacting the complainants were explained in each of these instances, OPD remains in compliance with Task 5.2.

Task 5.3 requires that where a complainant refuses to travel to a supervisor, or wait for one, personnel make all reasonable attempts to obtain specific information to assist in investigating the complaint (compliance standard: 90%). Of the 91 records in our dataset, we identified four instances in which the complainant “refused” interaction with a supervisor. In all of these cases, the complainants did not answer the callback numbers provided, and supervisors left messages where voicemail was available. In one of these cases, a supervisor also responded to the complainant’s address, also with negative results. OPD is in compliance with Task 5.3.

Task 5.4 requires that specific information be documented on a complaint form and submitted to the immediate supervisor or, in his/her absence, the appropriate Area Commander (compliance standard: 85%). In order to achieve compliance with this subtask, the DIL should contain the identification of personnel; witnesses or identifying information, if known (the log should state “unknown” if not known); the date, time, and location of the incident; and the time of contact or attempt to contact the complainant by a supervisor.

During the last reporting period, OPD had a 100% compliance rate with this subtask. During this reporting period, all of the logs we reviewed contained the required information (“unknown” was checked in 10 records). OPD has a 100% compliance rate during this reporting period, and is in compliance with Task 5.4.

Task 5.5 requires that the supervisor or Area Commander notify Communications and forward any pertinent documents to IAD (compliance standard: 95%). OPD had a compliance rate of 100% with this subtask during the last reporting period. The DILs are administered by the Communications Section and forwarded to IAD each business day. Additionally, the DIL contains a field to record the name of Area Commander notified and the time of notification. This field was properly completed in all of the records we reviewed. OPD is in 100% compliance with Task 5.5 during this reporting period.

Task 5.6 requires that an on-duty supervisor respond to take a complaint received from a jail inmate taken into custody by OPD, who wishes to make a complaint of Class I misconduct contemporaneous with the arrest of the inmate. To assess Task 5.6 during this reporting period, we reviewed all complaints that appeared to have originated from North County Jail, Santa Rita Jail, Glenn E. Dyer Detention Facility, or Juvenile Hall, and were approved between July 1, and September 30, 2013. We identified four such complaints using the IAD database. We reviewed these complaints for two triggering events: an allegation of Class I misconduct; and the complaint lodged at the time of arrest. If both of these were not present, the case was deemed in compliance if it was “handled in the same manner as other civilian complaints.”

Two of the four complaints were lodged contemporaneous to the arrest of the complainants, but neither of these contained at least one allegation of Class I misconduct. We note, however, that in both of these incidents, on-duty supervisors responded to North County Jail and interviewed the complainants. In one, the complainant alleged that he was falsely arrested and an officer laughed at him. In the other, the complainant alleged that officers did not conduct an appropriate investigation prior to taking him into custody. He also alleged that an electronic control weapon (ECW) was inappropriately pointed at him. Both cases were handled as summary findings because of the availability of PDRD video evidence.

Two complaints were not lodged contemporaneous with the arrests of the complainants. In one, the complainant went to IAD to allege false arrest 50 days after he was taken into custody. The investigation revealed that he was arrested by Oakland Housing Authority officers, and the case was administratively closed. The other case did not even involve an arrestee. The complainant, an employee of John George Pavilion, called to complain about the time it took for officers to respond to transport a patient to Santa Rita Jail. This service complaint was also administratively closed, and most likely made it into our sample because of the reference to the detention facilities.

OPD is in compliance with Task 5.6.

Task 5.12 requires that the Watch Commander ensure that any complaints that are applicable to Task 5.6 are delivered to and logged with IAD (compliance standard: 90%). Since by definition these complaints must be made contemporaneous with the arrest, an on-duty supervisor must respond to the jail. Under current policy, the Communications Section must record on the DIL complaints that are received and/or handled by on-duty supervisors; the DIL is forwarded daily to IAD. As mentioned in past reports, we deem the DIL system as functionally equivalent to the requirements of Task 5.12, and the Department remains in compliance with this subtask.

To assess **Tasks 5.15 through 5.19**, and **Task 5.21**, we reviewed a random sample of 25 IAD cases that were approved between July 1, and September 30, 2013. This sample included investigations completed by IAD and Division-level investigations (DLIs). It also included cases that were resolved via formal investigation and investigations that were resolved via summary finding.

As in our previous reviews, we treated **Tasks 5.15 and 5.16** as a single subtask with several elements, specifically that OPD: gathers all relevant evidence; conducts follow-up interviews where warranted; adequately considers the evidence gathered; makes credibility assessments where feasible; and resolves inconsistent statements (compliance standard: 85%). During the previous assessment period, we deemed the Department in compliance with *all* of these required elements 88% of the time. Of the 25 investigations we reviewed for this reporting period, we deemed 23, or 92%, in compliance with *all* of these required elements.

In seven cases, investigators conducted follow-up interviews with officers or civilians to seek clarification. In six of the cases, complainants and/or witnesses were re-interviewed. In the remaining case, the complainant was interviewed three times and the subject officer twice.

In two cases, credibility assessments were problematic. In one case, the investigator failed to assess the credibility of three of the witnesses. In this same case, the complainant was improperly deemed not credible because he initially provided a false name to officers when he was first contacted, and he was also intoxicated. Neither of these has any bearing on his credibility as it relates to his allegation of excessive force. In the other case, a complainant was deemed not credible because she indicated in her complaint that she provided an officer with a possible address for an individual she wanted arrested, but a PDRD recording revealed that she provided the officer with a general location and description of a house – not an address. This type of discrepancy is immaterial to the original complaint and should not affect the complainant's credibility. In the same case, similar impreciseness on the part of the subject officer had no bearing on his credibility.

In four other cases, complainants or witnesses were appropriately deemed not credible. In two of the cases, PDRD recordings directly contradicted their statements. In the other two cases, unbiased witnesses or physical evidence refuted the complainants' allegations. In seven cases, credibility assessments were not completed. These were all summary finding investigations, and credibility assessments are not required by policy in these instances.

We did not identify any cases in which relevant evidence was not identified or considered during this review.

Task 5.17 requires that OPD permanently retain all notes generated and/or received by OPD personnel in the case file (compliance standard: 85%). OPD personnel document that all investigative notes are contained within a particular file by completing IAD Form 11 (Investigative Notes Declaration). During the previous reporting period, we found OPD in 100% compliance with this subtask. During this reporting period, the form was again properly completed in all 25 cases we reviewed. OPD is in compliance with this subtask.

Task 5.18 requires that OPD resolve each allegation in a complaint investigation using the preponderance of the evidence standard (compliance standard: 90%). During the last reporting period, OPD complied with this subtask in 92% of the cases we reviewed. During this reporting period, OPD complied with this subtask in 23, or 92%, of the 25 cases in our sample. In one of the noncompliant cases, a complainant alleged that officers choked him as he was being taken into custody. We believe that the finding for this case should be not sustained rather than unfounded. The complainant was inappropriately deemed not credible. Additionally, two witnesses were interviewed at the same time, which is contrary to proper investigative protocol, and several leading questions were asked during their interview.

The other case involved a dispute between neighbors over parking on their street. The officers appear to have handled the call properly, but one of the parties nonetheless lodged a complaint.

While reviewing PDRD videos as part of the intake process, an IAD officer observed that the complainant was noticeably upset with the way the call was handled, and made references to contacting a prominent attorney and IAD. He appropriately added the allegations of failing to initiate the complaint process to the investigation as “discovered violations” – ones initiated by OPD and not the complainant. In our opinion, the allegations could have been sustained based on the PDRD videos. The investigator determined the allegations to be unfounded and not sustained, and the IAD commanding officer decided that no violations occurred and administratively closed the case. The investigation was replete with rationalizations as to why the officers failed to perceive that the complainant was upset with the service she was provided, despite the fact that the PDRD recordings are clear and she called 911 to lodge a complaint as soon as she parted ways with the officers.

OPD is in compliance with Task 5.18.

Task 5.19 requires that each allegation of a complaint is identified and resolved with one of the following dispositions: unfounded; sustained; exonerated; not sustained; or administrative closure (compliance standard: 95%). Our sample of 25 cases contained 48 allegations that received dispositions as follows: 17 exonerated; seven not sustained; 17 unfounded; two sustained; and five administratively closed. PDRD video continues to be used in more and more cases to arrive at definitive conclusions. Overall, we disagreed with three of the findings, as described in Task 5.18. With a 94% compliance rate, OPD remains in Phase 2 compliance with this subtask, but risks falling out of compliance if they do not achieve the required 95% compliance standard during the next reporting period.

Task 5.20 requires that the IAD Commander review all “filed” cases quarterly to determine whether the conditions that prevented investigation and final disposition have changed (compliance standard: 90%). A filed case is defined as an investigation that cannot be presently completed and is pending further developments that will allow completion of the investigation; filed is not a final disposition. As part of our review of this Task, we also review cases that are tolling. OPD defines a tolled case as an administrative investigation that has been held in abeyance in accordance with one of the provisions of Government Code Section 3304.

During our most recent site visit, we met with the Deputy Chief of the Bureau of Risk Management and the commanding officer of IAD, who advised that as of that date, no cases were classified as filed, and one case was designated as tolling. In this case, the subject officer has been out on extended medical leave and is unavailable to be interviewed. The case appeared to be tolling according to policy. Filed and tolling cases are reviewed with the Chief during his weekly IAD meetings and are listed by case number on the printed meeting agendas. OPD is in compliance with this subtask.

Task 5.21 requires that any member or employee who is a subject of an internal investigation, as well as any other member or employee on the scene of an incident at which misconduct has been alleged by a complainant, shall be interviewed and a recorded statement taken (compliance standard: 90%). However, with the approval of the IAD Commander, investigators are not

required to interview and/or take a recorded statement in all cases. For example, interviews are not needed from a member or employee who is the subject of a complaint, or who was on the scene of the incident when additional information – beyond that already provided by the existing set of facts and/or documentation – is not necessary to reach appropriate findings and conclusions. Nine of the 25 cases we reviewed were resolved via summary finding, and all were appropriately approved for such closure. (These do not include the cases referenced in Task 4, for which summary findings were also appropriate.) In seven of these cases, the availability of PDRD video was the primary reason interviews were unnecessary.

OPD is in compliance with Task 5.21.

OPD is in Phase 2 compliance with Task 5.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

Task 6: Refusal to Accept or Refer Citizen Complaints

Requirements:

Refusal to accept a citizen complaint, failure to refer a citizen to IAD (when that citizen can be reasonably understood to want to make a citizen's complaint), discouraging a person from filing a complaint, and/or knowingly providing false, inaccurate or incomplete information about IAD shall be grounds for discipline for any OPD member or employee.

(Negotiated Settlement Agreement III. F.)

Background:

During the previous reporting period, we found the Department in Phase 2 compliance with Task 6.

Discussion:

As previously reported, OPD published Department General Order M-03, *Complaints Against Department Personnel and Procedures*, which incorporates the requirements of Task 6, on December 6, 2005. General Order M-03 was revised in February 2008, and again in June 2013. The revised policy also incorporates the requirements of Task 6. The requirements of this Task are also incorporated into Manual of Rules Sections 314.07, 398.70, and 398.76. As the Department has trained at least 95% of relevant personnel on this policy, we find OPD in continued Phase 1 compliance with this Task.

Task 6 requires that OPD members and employees who refuse to accept a citizen complaint, fail to refer a citizen to IAD (when the citizen can be reasonably understood to want to make a citizen's complaint), discourage a person from filing a complaint, and/or knowingly provide false, inaccurate, or incomplete information to IAD, are disciplined (compliance standard: 95%).

To assess Phase 2 compliance with this Task, we reviewed a random sample of 91 Daily Incident Log entries from July 1, through September 30, 2013; and a random sample of 25 IAD investigations (conducted by both IAD and via Division-level investigation) that were closed during the same period. We found no cases in which an allegation of Failure to Accept or Refer a Complaint went unaddressed.

We also queried the IAD database to identify any allegations of MOR 398.70-1, Interfering with Investigations; MOR 398.76-1, Refusal to Accept or Refer a Complaint; and MOR 398.76-2, Failure to Accept or Refer a Complaint; that were investigated and approved during this same time period. We identified six such cases. However, only one of these cases resulted in sustained findings for one or more of the applicable MOR violations.

In this case, the complainant called Communications and spoke to a Police Communications Dispatcher (PCD), lodging a complaint about a lack of police response to his call. During the conversation, the complainant indicated that he was going to contact Internal Affairs, and the PCD failed to initiate the complaint process. The allegation was sustained, and the Chief recommended a 10-day suspension.⁸

We reviewed the investigations in the remaining cases, and we concur with the findings as they pertain to the applicable MOR violations in all cases but one. In two cases, the allegations of failing to accept a complaint were internally generated based on a review of PDRD footage. However, no sustained findings resulted. We believe that sustained findings were appropriate in one of these cases, as it was clear in the video that the complainant was upset with the officers' handling of the incident and threatened to contact IAD and a well-known attorney. She also immediately called Communications after her contact with the officers to lodge a complaint.

In another case stemming from the service of a search warrant, it was determined that the "officers" complained of were actually Alameda County Sheriff's Office deputies. This case was administratively closed.

OPD remains in Phase 2 compliance with Task 6, but risks falling out of compliance during our next review if the Department does not reach the appropriate findings in the cases applicable to this Task.

⁸ As of this writing, the case was scheduled for a Skelly hearing, and the penalty may be modified as a result of that process. We were also provided with another case involving the same employee, in which the Chief recommended a 20-day suspension.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

Task 7: Methods for Receiving Citizen Complaints

Requirements:

On or before December 1, 2003, OPD shall develop a policy to strengthen procedures for receiving citizen complaints:

- 1. IAD or Communication Division personnel shall staff a recordable toll-free complaint phone line, 24-hours a day, and receive and process complaints in accordance with the provisions of Departmental General Order M-3. The complainant shall be advised that the call is being recorded when a complaint is taken by IAD.*
- 2. Guidelines for filing a citizen's complaint shall be prominently posted and informational brochures shall be made available in key Departmental and municipal locations.*
- 3. OPD shall accept anonymous complaints. To the extent possible, OPD shall ask anonymous complainants for corroborating evidence. OPD shall investigate anonymous complaints to the extent reasonably possible to determine whether the allegation can be resolved.*
- 4. OPD personnel shall have available complaint forms and informational brochures on the complaint process in their vehicles at all times while on duty. Members/employees shall distribute these complaint forms and informational brochures when a citizen wishes to make a complaint, or upon request.*
- 5. IAD shall be located in a dedicated facility removed from the Police Administration Building.*
- 6. Complaint forms and informational brochures shall be translated consistent with City policy.*
- 7. Complaint forms shall be processed in accordance with controlling state law.⁹*

(Negotiated Settlement Agreement III. G.)

Background:

Only one provision of Task 7 (7.3) is being actively monitored under the MOU. During the past several reporting periods, we found OPD in compliance with this Task.

Discussion:

OPD published Departmental General Order M-03, *Complaints Against Department Personnel and Procedures*, which incorporates the requirements of Task 7, on December 6, 2005. General

⁹ The underlined requirement is the only provision of Task 7 that is being actively monitored under the MOU.

Order M-03 was revised in February 2008, and most recently in June 2013. The revised policy also incorporates the requirements of Task 7. As the Department has trained at least 95% of relevant personnel on this revised policy, we find OPD in continued Phase 1 compliance with this Task.

To assess Phase 2 compliance with this Task, we reviewed all cases listed in the Internal Affairs Division database as originating from complainants who were “anonymous,” “unknown,” “refused,” or any forms of those terms (such as “unk”) and that were approved between July 1, and September 30, 2013. We also reviewed all complaints during this selected time period that were tagged by IAD as originating from an anonymous complainant, and complaints in which the complainant field in the database was blank, to determine whether any were made anonymously.

Based on the above-listed criteria, we identified 31 cases as potential anonymous complaints during this reporting period. After review, we determined that 27 were true anonymous complaints. Of these 27, the complainant was identified during the course of the investigations in two cases. In one, the complainant alleged that force was used when she was taken into custody for a psychiatric hold. She refused to identify herself at the scene, but she was eventually identified after she was transported to John George Pavilion. In the other case, the “anonymous” complainant identified herself to the supervisor dispatched to take her complaint.

Sixteen of the remaining 25 complaints were received via telephone calls to the Communications Division. Six were reported to officers or supervisors in the field, and two were received in the mail. One case was referred from a California Highway Patrol dispatcher.

Where possible, complainants were asked to provide corroborating evidence. In most of the cases, the complainants terminated the contact before OPD could secure additional details of the complaint. However, the complaints were investigated to the extent reasonably possible as required by this subtask. IAD or field supervisors attempted to re-contact complainants if a callback number was available, even if the complainants expressly stated they wished to remain anonymous. In one case, calling back an uncooperative complainant resulted in an additional complaint for not adhering to the complainant’s request.

Eighteen of the 25 cases were closed via administrative closure, and one was informally resolved. Each met the criteria for such closure, and most lacked the details to identify the specific alleged misconduct and/or OPD personnel involved in the incidents. Five involved complaints of poor response time to calls for service. Three involved complaints of displeasure with general service delivery, alleging failure to address quality of life issues such as parking complaints, drug activity, and sideshows. The case that was informally resolved involved perceived rudeness by a Public Safety Dispatcher.

One case did not, in our opinion, rise to the level of a complaint. A citizen called to express displeasure with OPD’s helicopter flying overhead. The fact that OPD classified this as a complaint is not a compliance concern; we merely make the observation that the complaint

process could have been avoided. Since we have brought such cases to the attention of IAD during our onsite case reviews, we have noticed a considerable decrease in them. OPD has also instituted a policy of providing citizens with “informational business cards” when their intent to file a complaint is unclear. The cards contain the information necessary to file a complaint at a later time if desired, and these citizen contacts are documented in a separate log in Communications. Like the Daily Incident Logs, these are forwarded to IAD – and the Monitoring Team – on a daily basis. This is the first review period in which this system has been used, and it appears to be having the desired effect of limiting those cases in which the complaint process is invoked unnecessarily.

The Department remains in Phase 2 compliance with Task 7.3.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

Task 16: Supporting IAD Process - Supervisor/Managerial Accountability

Requirements:

On or before December 1, 2003, OPD shall develop a policy to ensure that supervisors and commanders, as well as other managers in the chain of command, shall be held accountable for supporting the IAD process. If an IAD investigation finds that a supervisor or manager should have reasonably determined that a member/employee committed or violated a Class I offense, then that supervisor or manager shall be held accountable, through the Department’s administrative discipline process, for failure to supervise, failure to review, and/or failure to intervene.

(Negotiated Settlement Agreement III. O.)

Background:

In the last reporting period, we found the Department to be in Phase 2 compliance with Task 16.

Discussion:

As previously reported, two Department policies, Department General Order M-03 and Training Bulletin V-T.1, incorporate the requirements of Task 16. OPD published Department General Order M-03, *Complaints Against Department Personnel and Procedures*, on December 6, 2005. General Order M-03 was revised in February 2008, and again in June 2013. (The revised policy also incorporates the requirements of Task 16.) OPD published Training Bulletin V-T.1, *Internal Investigation Procedure Manual*, on June 1, 2006; and Special Order 8552, *Update of Departmental Training Bulletin V-T.1, Internal Investigation Procedure Manual*, on February 1, 2007. As the Department has trained at least 95% of relevant personnel on these policies, we find OPD in continued Phase 1 compliance with this Task.

Task 16.1 requires that supervisors and commanders, as well as other managers in the chain of *command*, are held accountable for supporting the IAD process (compliance standard: Yes/No); and **Task 16.2** requires that if an IAD investigation finds that a supervisor or manager should have reasonably determined that a member/employee committed or violated a Class I offense, the supervisor or manager is held accountable, through OPD's administrative discipline process, for failure to supervise, failure to review, and/or failure to intervene (compliance standard: 90%).

To assess Task 16 during this reporting period, we examined 91 Daily Incident Log entries from July 1, through September 30, 2013; a random sample of 95 IAD cases (investigated by both IAD and via Division-level investigation, or DLI) that were approved by the Chief between July 1, through September 30, 2013; and the nine sustained Class I investigations that were approved by the Chief between July 1, through September 30, 2013.

Each of the nine sustained Class I investigations showed acceptable analyses of supervisors' abilities to identify the sustained misconduct. Of these nine cases, two resulted from off-duty conduct outside of Oakland: one involved the arrest of an officer for assault; and the other involved the arrest of a dispatcher for domestic violence.

Four of the cases involved allegations of excessive force. Two of the four resulted from OPD's response to Occupy Oakland-related activities. In one case, the officer jabbed the complainant with a baton; in the other, the officer struck the protestor with a baton. The IAD investigations of both incidents analyzed the supervisors' accountability, and concluded in both cases that at the time of the incidents, officers or supervisors did not identify the conduct as improper. While these findings are concerning due to the number of officers and supervisors who participated in the Occupy response, there was no evidence of any failure to supervise in the investigations.

The third force-related case resulted from an officer-involved shooting, and the fourth case involved the use of a Taser along with kicking a suspect. In both cases, supervisors took appropriate actions. In the officer-involved shooting, the Executive Force Review Board found the officer's actions in compliance; however, when the Chief reviewed the case, he reversed the finding, finding that the officer had not used reasonable force. In the case involving the use of the Taser and kicking the subject, when the Assistant Chief learned of the concerns in reviewing reports associated with the incident, he reassigned the case to IAD for further investigation.

The final three sustained cases involved general operational allegations against OPD dispatchers for failure to accept a citizen complaint, insubordination, and performance-related issues. We found no evidence that a supervisor knew of the conduct prior to it being discovered.

As we discussed with OPD during our last site visit, the investigation report's member/employee accountability section should include an analysis of whether it was reasonable for a supervisor – through reviewing reports, investigating force, or supervising an officer – to identify misconduct. A transparent organization identifies – through close and effective supervision – any possible misconduct of its members.

During this reporting period, the cases that we reviewed properly evaluated supervisors' accountability. OPD is in compliance with this Task.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

Next Steps:

During our next site visit, we will, as in the past, meet with the IAD Commander to discuss any Task 16-applicable cases for the next reporting period and steps the Department is taking to improve IAD investigators' evaluations of supervisors' accountability.

Task 18: Approval of Field-Arrest by Supervisor

Requirements:

Within 260 days from the effective date of this Agreement, the Chief of Police shall, based on contemporary police standards and best practices, develop and implement policies to address the following standards and provisions:

Approval of Field-Arrest by Supervisor

1. *OPD shall develop standards for field supervisors that encourage or mandate close and frequent supervisory contacts with subordinates on calls for service. The policies developed in this Section shall require supervisors to respond to the scene of (at least) the following categories of arrest, unless community unrest or other conditions at the scene make this impractical:*
 - a. *All Felonies;*
 - b. *All drug offenses (including narcotics, controlled substances and marijuana arrests if the subject is taken to jail).*
 - c. *Where there is an investigated use of force;*
 - d. *Penal Code §§69, 148 and 243(b)(c).*

The responding supervisor shall review the arrest documentation to determine whether probable cause for the arrest, or reasonable suspicion for the stop, is articulated, to ensure that available witnesses are identified, to approve or disapprove the arrest in the field, and to log the time of the contact.¹⁰

(Negotiated Settlement Agreement IV. A.)

Background:

Only one provision of Task 18 (18.2.2) is being actively monitored under the MOU. During all of the previous reporting periods, we found the Department in compliance with this subtask.

¹⁰ The underlined requirement is the only provision of Task 18 that is being actively monitored under the MOU.

Discussion:

Three Departmental policies relate to Task 18.2.2:

- **DGO M-18, *Arrest Approval and Review in the Field*:** As previously reported, this arrest approval and report review policy, DGO M-18, *Arrest Approval and Review in the Field* (May 13, 2004; and updated October 1, 2005), incorporates the requirements of Task 18.
- **Special Order 8536, *Probable Cause Arrest Authorization and Report Review*:** In December 2006, OPD published Special Order 8536, *Probable Cause Arrest Authorization and Report Review*. This policy incorporates the requirements of Task 18.
- **Training Bulletin I-O.4, *Legal Aspects Of Searching Persons On Parole And Probation*:** In November 2011, OPD published Training Bulletin I-O.4, *Legal Aspects Of Searching Persons On Parole And Probation*. The purpose of the Training Bulletin is to guide OPD members on documenting the means of confirming the status of the parolee or, if a probationer, their status and whether an appropriate search clause exists. The Training Bulletin also provides guidance in situations where inconsistent information is discovered in AWS, CORPUS, or CRIMS regarding a probationer's status.¹¹

As the Department has trained at least 95% of relevant personnel on the above-listed policies, we find OPD in continued Phase 1 compliance with this Task.

Task 18.2.2 requires that supervisors review arrest documentation to verify that available witnesses are identified (compliance standard: 90%). To assess Phase 2 compliance with this subtask, we reviewed arrest documentation for all of the applicable arrest categories, as well as documentation for arrests resulting in an investigated use of force. Specifically, we reviewed a random sample of 72 adult and two juvenile arrest reports documenting felony arrests; drug arrests; and arrests for Penal Code 69, 148, and 243(b)(c); as well as documentation for 17 arrests resulting in an investigated use of force; that occurred between July 1, and September 30, 2013. We reviewed these arrests to determine if supervisors reviewed the reports that listed witnesses or appropriately noted "no known witnesses," or referred to a canvass with no witnesses produced. In keeping with previous practice, if there was no mention of any witnesses in the crime report narrative, we accepted a "0" in the "witness" box on the cover sheet as sufficient documentation.

Of the 72 adult arrest reports, we excluded 51 from our dataset; and of the two juvenile arrest reports, we excluded both from our dataset; for one or more of the following reasons: the arrest involved a warrant or probation or parole warrant detention; the arrest occurred outside of our selected time period; the incident was, in fact, a psychiatric detention that did not involve an arrest; or the arrest involved a misdemeanor offense that was not one of the arrests applicable to Task 18.2.2. Of the remaining 21 adult arrests, there was one report that did not document the

¹¹ Automated Warrant System, Criminal Oriented Records Production Unified System, or Consolidated Records Information Management System.

presence of witnesses or no known witnesses; and all arrests were approved by a supervisor. This represents a 95% compliance rate relating to adult/juvenile arrests for this subtask. In addition, of the 17 arrests resulting in an investigated use of force, all were in compliance with Task 18.2.2.¹² This represents a 100% compliance rate among arrests resulting in an investigated use of force for this subtask.

Our review revealed an overall 97% compliance rate for Task 18.2.2. OPD is in Phase 2 compliance with this requirement.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

Next Steps:

We will meet with OIG to discuss the Department's protocols for conducting audits of this Task to ensure sustainability.

Task 20: Span of Control for Supervisors

Requirements:

On or before August 14, 2003, OPD shall develop and implement a policy to ensure appropriate supervision of its Area Command Field Teams. The policy shall provide that:

1. *Under normal conditions, OPD shall assign one primary sergeant to each Area Command Field Team, and, in general, (with certain exceptions) that supervisor's span of control shall not exceed eight (8) members.*
2. *During day-to-day operations, in the absence of the primary supervisor (e.g., due to sickness, vacation, compensatory time off, schools, and other leaves), the appropriate Area Commander shall determine, based on Department policy and operational needs, whether or not to backfill for the absence of the sergeant on leave.*
3. *If a special operation, (e.g., Beat Feet, Special Traffic Offenders Program (STOP), etc.) requires more than eight (8) members, the appropriate Area Commander shall determine the reasonable span of control for the supervisor.*
4. *If long-term backfill requires the loan or transfer of a supervisor from another unit, the Chief of Police and/or the Deputy Chief of Police shall make that decision.*

(Negotiated Settlement Agreement IV. C.)

¹² This number includes only Level 1, 2, and 3 uses of force because per DGO K-4, the documentation of witnesses of Level 4 uses of force is not required.

Background:

During all of the previous reporting periods, we found OPD in partial Phase 2 compliance with Task 20.

Discussion:

As previously reported, directives relevant to this Task include: Departmental General Order A-19, *Supervisory Span of Control*, issued on July 26, 2006; Departmental General Order D-13, *Assignment to Acting Higher Rank or Classification*, issued on June 17, 1999; and Special Order 8435, *Acting Sergeant Selection Process*, issued on July 26, 2006.

As the Department has trained at least 95% of relevant personnel on the above-listed policies, we find OPD in continued Phase 1 compliance with this Task.

Task 20.1 requires that sufficient primary sergeants be assigned at the draw board/master detail level to permit one primary sergeant for every eight officers under normal conditions (compliance standard: Yes/No). During the third reporting period, we were granted access to Telestaff, the Department's electronic scheduling system. Telestaff continues to function as a "master detail" that is updated at least daily as loans, transfers, and other personnel changes alter supervisory assignments. OPD remains in compliance with Task 20.1.

Task 20.2 requires that relevant squads – that is, Patrol squads, Problem-Solving Officer units, Crime Reduction Teams, Neighborhood Enforcement Team, Gang/Guns Investigation Task Force, and Foot Patrol – are actually supervised by their primary, or assigned, supervisors (compliance standard: 85%).

As we have reported previously, in February 2012, OPD implemented a new, tiered system of supervision in the Bureau of Field Operations (BFO). Under this system, each squad is assigned one primary sergeant and one relief sergeant. In the absence of both the squad's primary and relief sergeants, the squad is supervised by one of four "Tier 2 relief supervisors." As we have noted in past quarterly reports, these changes significantly alter the way in which we assess both Tasks 20.2 and 20.3: we no longer examine the supervision of patrol squads on only a random sample of days, but the supervision of *each squad* on *each day* of the reporting period.

We consider supervision by both primary sergeants and relief sergeants as in compliance for this subtask. We do not, however, consider OPD's "certified acting sergeants" to be legitimate supervisors for this purpose – even if, according to the Department, these individuals were "assigned" as primary or relief sergeants for a particular squad. Since the beginning of our tenure, we have expressed our concerns regarding the Department's practice of certified acting sergeants. Sergeants are the building blocks of a police department's supervisory structure – they respond to scenes, handle complaints from citizens, approve arrests made by officers, and review and write reports that are eventually sent up the chain of command. Officers must know

who they report to; the consistency of supervision makes a police organization effective and increases officers' accountability to their department, and the department's accountability to the community it serves. A so-called acting sergeant who is assigned to supervise a squad of officers does not provide the mentoring, training, guidance, and intervention that his/her squad needs.

As noted previously, Department officials recently informed us that OPD is discontinuing its use of certified acting sergeants for patrol-related duties. The Department continues to place certified acting sergeants in non-patrol assignments. We have asked the Department to revise its policy accordingly; we will follow up on this issue during the next reporting period and discuss it further in our next quarterly report.

To assess Task 20.2 during this reporting period, we reviewed spreadsheets prepared by the Department for the months of July, August, and September 2013 that, by date, note which type of sergeant supervised each squad – a primary sergeant, relief sergeant, Tier 2 relief sergeant, or other. (Using Telestaff, we also spot-checked this data to verify its accuracy.) We calculated per squad the compliance percentages for this subtask during this reporting period. Every Task 20.2-applicable squad must be supervised by a legitimate primary or relief sergeant at least 85% of its working shifts in order for the Department to be in compliance with this subtask.

During the last reporting period, 22 of the 43 applicable squads were in compliance with this subtask. During this reporting period, of 44 applicable squads, 27 were in compliance – that is, 27 squads were supervised by either a primary or relief sergeant at least 85% of the reporting period. As 17 squads were not in compliance with this subtask, OPD is not in compliance with Task 20.2.

The Department plans to add a significant number of sergeants in the near future; we look forward to monitoring how this change affects OPD's compliance with this subtask.

Task 20.3 requires that a supervisor's span of control for the Department's relevant squads – that is, Patrol squads, Problem-Solving Officer units, Crime Reduction Teams, Gang/Guns Investigation Task Force, and Foot Patrol – does not exceed a 1:8 ratio on a day-to-day basis (compliance standard: 90%).¹³ As noted above, the Department's new, tiered system of supervision in BFO significantly affects the way in which we assess Task 20.3. During the last reporting period, we were unable to assess this subtask due to technical difficulties; as a result, we deferred our assessment. During this reporting period, 41 of the 44 applicable squads were in compliance – that is, 41 squads did not exceed the 1:8 supervisor:officer ratio at least 90% of the reporting period. As three squads were not in compliance with this subtask, OPD is not in compliance with Task 20.3.

Task 20.4 requires that the Department's Area Commanders make backfill decisions and that these decisions are consistent with policy and operational needs (compliance standard: 90%).

¹³ The Department recently disbanded its Neighborhood Enforcement Team.

Due to the Department's new supervisory structure, this subtask may no longer be applicable. As noted in our last quarterly report, we have initiated conversations with the Parties regarding this issue. For now, we are deferring our compliance determination with Task 20.4.

Task 20.5 requires that the span of control for special operations is determined by an Area Commander and is reasonable (compliance standard: 90%). In addition, the Department requires that sergeants supervise all special operations. To assess this subtask, we reviewed a random sample of 25 special operations plans of the 88 total operations conducted between July 1, through September 30, 2013, to determine whether the span of control for these operations was determined by the relevant commander and was reasonable. Our review found that all 25 of the special operations in our sample met these requirements. OPD is in compliance with Task 20.5.

Task 20.6 requires that the Chief or his designee make decisions regarding any loans or transfers for long-term backfill (compliance standard: 85%). An Area Commander "backfills" a sergeant's slot when the primary, or assigned, sergeant is unable to supervise his/her squad on a short-term basis. However, the Chief or his designee (generally, the Assistant Chief or Deputy Chief) is required to determine any loans or transfers for *long-term* backfill.

We reviewed the Department's weekly Personnel Orders issued between July 1, through September 30, 2013, for the signature of the Chief or his designee. We found that all of the Personnel Orders during this time period contained such a signature, indicating the Chief's approval. The NSA does not require written documentation of loans and transfers for long-term backfills – merely that the Chief or his designee approves such loans and transfers. However, OPD policy requires such documentation. Specifically, Departmental General Order B-4, *Personnel Assignments, Selection Process, and Transfers*, states, "A unit commander/manager who needs a loan of personnel shall submit a justifying loan request to his/her Deputy Chief/Director requesting the loan." Based on our recent discussions with the BFO Deputy Chief and other BFO personnel, as well as our review of Personnel Orders for other purposes (see above), it appears that OPD's practice comports with Departmental policy. OPD is in compliance with Task 20.6.

OPD is in partial Phase 2 compliance with Task 20.

Compliance Status:

Phase 1: In compliance

Phase 2: Partial compliance

Task 24: Use of Force Reporting Policy

Requirements:

The policy shall require that:

1. *Members/employees notify their supervisor as soon as practicable following any investigated use of force or allegation of excessive use of force.*
2. *In every investigated use of force incident, every member/employee using force, and every member/employee on the scene of the incident at the time the force was used, shall report all uses of force on the appropriate form, unless otherwise directed by the investigating supervisor.*
3. *OPD personnel document, on the appropriate form, any use of force and/or the drawing and intentional pointing of a firearm at another person.*
4. *A supervisor respond to the scene upon notification of an investigated use of force or an allegation of excessive use of force, unless community unrest or other conditions makes this impracticable.*
5. *OPD notify:*
 - a. *The Alameda County District Attorney's Office immediately or as soon as circumstances permit, following a use of lethal force resulting in death or injury likely to result in death.*
 - b. *The City Attorney's Office as soon as circumstances permit following the use of lethal force resulting in death or serious injury. At the discretion of the City Attorney's Office, a Deputy City Attorney shall respond to the scene. The Deputy City Attorney shall serve only in an advisory capacity and shall communicate only with the incident commander or his/her designee.*
 - c. *Departmental investigators regarding officer-involved shootings, in accordance with the provisions of Section V, paragraph H, of this Agreement.*
6. *OPD enter data regarding use of force into OPD's Personnel Assessment System (PAS).*

(Negotiated Settlement Agreement V. A.)

Comments:

During the last reporting period, we found OPD in compliance with Task 24.

Discussion:

As previously reported, OPD published Departmental General Order K-4, *Reporting and Investigating the Use of Force* (February 17, 2006), which incorporates the requirements of Task 24. OPD revised DGO K-4 on August 1, 2007. On April 15, 2009, OPD issued Special Order 8977, amending DGO K-4. The revised policy also incorporates the requirements of Task 24. On November 23, 2010, OPD issued Special Order 9057, amending DGO K-4 to extend Level 1 and Level 4 reporting timelines. In December 2012, OPD issued a revision to Special Order 8977, *Use of Force Reporting – Pointing of Firearm/Restrained Subject/Use of Vehicle to Intentionally Strike a Subject*. The revision to this policy allows OPD officers to use a “low

ready"/retention position when un-holstering their firearms. In this position, the firearm is pointed at a 45-degree angle or less and not at a person. The Department began training on the revised policy immediately after its authorization.¹⁴ As the Department has trained at least 95% of relevant personnel on these above-listed policies, we find OPD in continued Phase 1 compliance with this Task.

During our August 2013 site visit, we again met with OPD command personnel and OIG to discuss ongoing issues in the Department's use of force reports and their supervisory reviews, and the Force Review Boards (FRB)/Executive Force Review Boards. We also reminded the Department of our continued concern with the lack of adequate justification in citizen encounters that lead to an investigated use of force. We continue to encourage OPD command personnel to pay close attention to these issues.

During this reporting period, the sample we requested for review (90 total) included: six Level 2; 11 Level 3; and 73 Level 4 reports completed between July 1, and September 30, 2013.

Task 24.1 requires that members/employees notify their supervisor as soon as practicable following any reportable use of force or allegation of excessive use of force (compliance standard: 95%). To assess this subtask, we reviewed the UOF reports, crime reports (when applicable), and Computer Assisted Dispatch (CAD) purges for all of the force incidents in our dataset. The documentation for all of the incidents we reviewed was in compliance with this requirement.

Level 4 uses of force are self-reporting, and consequently, less documentation is required than for Level 1, 2, and 3 incidents. DGO K-4, Section VI A.1., states that involved personnel shall notify and brief their supervisors immediately or as soon as practicable. In 88 of the 90 incidents in our sample, a supervisor was promptly notified regarding the force incident. In the two incidents we reviewed that supervisor notification was not prompt, the response time ranged from 55 minutes to one hour and sixteen minutes; however, the supervisors reviewing these two Level 4 cases identified the supervisor notification issue in their report reviews and took the necessary corrective action to address the deficiencies. Both supervisors counseled their subordinates and placed documentation in their respective Supervisory Notes Files. Based on the corrective action taken for the two aforementioned cases, OPD has a 100% compliance rate with this subtask. OPD is in compliance with Task 24.1.

¹⁴ Special Order 8977 affords officers an intermediate option that does not require them to point their firearm(s) directly at a person, as was allowable by past Departmental policy. For this reason, following the adoption of this policy, we expected a decline in the number of gun pointing events. However, the number of events where OPD members have intentionally pointed their firearms has decreased *considerably* – significantly way more than expected. The Department experienced a 15% reduction in Level 4 uses of force from the last to the current reporting period (from 483 to 412) after five consecutive reporting periods of steady decline. During our next site visit, we will discuss this with Department officials.

Task 24.2 requires that in every reportable use of force incident, every member/employee on the scene of the incident at the time the force was used, reports all uses of force on the appropriate form, unless otherwise directed by the investigating supervisor (compliance standard: 95%); and **Task 24.3** requires that OPD personnel document, on the appropriate form, every use of force and/or the drawing and intentional pointing of a firearm at another person (compliance standard: 95%). All of the use of force reports, crime reports, and supplemental reports for the incidents in our sample met these requirements. We found that for Level 1 deadly force incidents, this information was contained in the crime and Internal Affairs Division reports; for Level 2 and Level 3 incidents, this information was contained in the use of force reports; and for Level 4 incidents, the information frequently appeared in the actual use of force, crime, or offense reports. Accordingly, we find OPD in compliance with Tasks 24.2 and 24.3.

Officers Pointing Firearms: During this reporting period, we reviewed a total of 90 use of force incidents; 65 of those incidents involved officers pointing firearms. The 65 incidents included one Level 2, five Level 3, and 59 Level 4 uses of force; and involved 154 instances of OPD officers drawing and pointing their firearms.¹⁵

Overall, we determined officers' pointing of their firearms to be appropriate in 151, or 98%, of the 154 instances we assessed.¹⁶ We were unable to find the pointing of a firearm necessary or justified in three instances of the 154 events we assessed, due to the absence of any indication that the officer(s) or others faced imminent threat of harm.

The total racial breakdown for the 65 use of force events reviewed is as follows: Black, 65%; Hispanic, 22%; White, 8%; Asian, 0%; and Other, 3%. We also tabulated the racial breakdown of the subjects involved in the events where, in our opinion, the pointing of a firearm was not necessary or appropriate and found the following: the three unjustified pointing of firearms involved two Black subjects and one Hispanic subject.

In all cases, the supervisory review found the officers' use of force appropriate, objectively reasonable for a legitimate law enforcement purpose, and in compliance with OPD policy. While officers' actions in particular cases are troubling, the continued unquestioned supervisory and command approval – of both the documentation of officers' actions and the actions themselves – is illustrative of a need to address supervisory deficiencies.

OPD is in compliance with Tasks 24.2 and 24.3.

¹⁵ The majority of the incidents we reviewed fell into one of the following categories: officers making high-risk vehicle stops; officers searching and entering buildings or premises with or without search warrants; and officers were attempting to detain subjects, either by foot pursuit or by searching areas such as alleys and yards.

¹⁶ As in our more in-depth assessment of such incidents during the sixth reporting period, we gave the benefit of the doubt to involved officers whenever there was a question as to whether an officer's action was appropriate. We also assumed that the pointing of firearms was justified in cases where officers were responding to a burglary or criminal trespass involving an actual structure search, or when making a high-risk vehicle stop based on the legitimate belief that the vehicle was stolen.

Task 24.4 requires that a supervisor respond to the scene upon notification of a Level 1, 2, or 3 use of force or an allegation of excessive use of force, unless community unrest or other conditions makes such response impracticable (compliance standard: 95%). Supervisors responded to the scene in all 17 applicable Level 2 and 3 incidents in our sample. This represents a 100% compliance rate. OPD is in compliance with Task 24.4.

Tasks 24.5, 24.6, and 24.8 require certain notifications in uses of force relative to officer-involved shootings and the use of lethal force.¹⁷ Specifically, **Task 24.5** requires that following every use of lethal force resulting in death or injury likely to result in death, OPD notify the Alameda County District Attorney's Office immediately or as soon as circumstances permit (compliance standard: 95%). **Task 24.6** requires that following every use of lethal force resulting in death or injury likely to result in death, OPD notify the City Attorney's Office as soon as circumstances permit (compliance standard: 95%). **Task 24.8** requires that following every officer-involved shooting, OPD notify Homicide and Internal Affairs investigators (compliance standard: 95%). During this reporting period, there were no Level 1 use of force reports in our dataset. OPD remains in compliance with these subtasks.

Task 24.9 requires OPD to enter data regarding use of force into OPD's Personnel Assessment System (PAS) (compliance standard: 95%). PAS now allows personnel to access use of force reports directly. OPD is in compliance with Task 24.9.

OPD is in Phase 2 compliance with Task 24.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

Next Steps:

We will continue to meet with OPD to provide feedback on specific use of force reports and to assess how the Department is addressing the serious issue of pointing firearms – the act of which may not only be unnecessary and inappropriate, but which also elevates the risk for unfortunate and unjustified firearm discharges.

¹⁷ Task 24.7 is no longer applicable.

Task 25: Use of Force Investigations and Report Responsibility

Requirements:

An on-scene supervisor is responsible for completing an investigated use of force report in accordance with the provisions of Departmental General Order K-4, "Reporting and Investigating the Use of Force."

1. *OPD shall develop and implement a policy for conducting and documenting use of force investigations that include, at a minimum:*
 - a. *Documentation of the incident in either an Offense or Supplemental Report from the member(s)/employee(s) using force; and/or, when necessary, a statement taken from the member(s)/employee(s) using force;*
 - b. *Separating and separately interviewing all officers who were at the scene at the time of the incident;*
 - c. *A Supplemental Report from other members/employees on the scene or a statement taken, if deemed necessary by the investigating supervisor;*
 - d. *Identification and interviews of non-Departmental witnesses;*
 - e. *Consideration of discrepancies in information obtained from members, employees and witnesses, and statements in the reports filed;*
 - f. *Whether arrest reports or use of force reports contain "boilerplate" or "pat language" (e.g., "fighting stance", "minimal force necessary to control the situation");*
 - g. *Documentation of physical evidence and/or photographs and a summary and analysis of all relevant evidence gathered during the investigation; and*
 - h. *Consideration of training/tactical issues involving the availability and practicality of other force options.*
 - i. *Supervisor's justification as to why any element of the policy was not documented; and*
2. *All supervisors shall be trained in conducting use of force investigations and such training shall be part of a supervisory training course.*
3. *Use of force investigations shall include a recommendation whether the use of force was objectively reasonable and within Department policy and training. The recommendation shall be based on the totality of the circumstances and shall consider, but is not limited to, the following factors:*
 - a. *Whether the force used was pursuant to a legitimate law-enforcement objective;*
 - b. *Whether the type and amount of force used was proportional to the resistance encountered and reasonably related to the objective the members/employees were attempting to achieve;*
 - c. *Whether the member/employee used reasonable verbal means to attempt to resolve the situation without force, if time and circumstances permitted such attempts;*
 - d. *Whether the force used was de-escalated or stopped reasonably when resistance decreased or stopped;*

4. *use of force reports shall be reviewed by the appropriate chain-of-review as defined by policy.
The type of force used, the identity of the involved members, and the report preparer shall be the determining criteria for utilizing the appropriate chain-of-review. Reviewers may include, when appropriate, the chain-of-command of the involved personnel, the appropriate Area Commander on duty at the time the incident occurred, other designated Bureau of Field Operations commanders, and as necessary, the chain-of-command of the involved personnel up to the Division Commander or Deputy Chief/Director, and the Internal Affairs Division. Reviewers for Level 1-3 use of force investigations shall:*
 - a. *Make a recommendation as to whether the use of force was in or out of policy,*
 - b. *Order additional investigation and investigative resources when necessary, and*
 - c. *Comment on any training issue(s) when appropriate.*
5. *Any recommendation that the use of force did not comply with Department policy shall result in the incident being referred to the Internal Affairs Division to conduct additional investigation/analysis, if necessary.*
6. *Members/employees involved in a use of force incident resulting in serious injury or death and/or an officer-involved shooting, shall be separated from each other as soon as practicable at the incident scene, and kept apart until they have completed their reports and been interviewed.*
(Negotiated Settlement Agreement V. B.)

Comments:

During the last reporting period, we found OPD in compliance with Task 25.

Discussion:

As previously reported, OPD published Departmental General Order K-4, *Reporting and Investigating the Use of Force* (February 17, 2006), which incorporates the requirements of Task 25. OPD revised DGO K-4 on August 1, 2007. The revised policy also incorporates the requirements of Task 25. On November 23, 2010, OPD issued Special Order 9057, amending DGO K-4 to extend Level 1 and Level 4 reporting timelines. As the Department has trained at least 95% of relevant personnel on these policies, we find OPD in continued Phase 1 compliance with this Task.

During this reporting period, we requested and reviewed 90 use of force reports, including: six Level 2; 11 Level 3; and a random sample of 73 Level 4 use of force reports; that were completed between July 1, and September 30, 2013.

Task 25.1 requires IAD to complete a use of force report for every Level 1 use of force, and an on-scene supervisor to complete a use of force report for every Level 2 and 3 use of force (compliance standard: 95%). To assess this requirement during this reporting period, we reviewed documentation for 17 Level 2 and 3 incidents. In all of the incidents, a supervisor

responded to the scene and completed a use of force investigation. In addition, eight Level 3 incidents in our Level 4 sample of 73 incidents were downgraded appropriately to a Level 4 use of force by a supervisor who was at the scene; the changes were documented and comported with the governing documents. OPD is in compliance with Task 25.1.

Task 25.2 requires that use of force reports/investigations include NSA-required elements (compliance standard: 90%) and are timely pursuant to DGO K-4 (compliance standard: 95%). All of the reports we reviewed for this subtask included the NSA-required elements. To assess investigation timeliness, we used a 75-day time limit for Level 1 incidents (including IAD Commander approval) plus one documented extension approved by the Chief of Police in advance of the due date, and a 15-day time limit for Level 2 and Level 3 incidents. For Level 4 incidents, as of November 23, 2010, OPD requires a review of the report by the end of the reviewing supervisor's next scheduled workday. This is a change – which we supported – from requiring a supervisor's review by the end of the tour of duty; it became effective by Special Order 9057.

During this reporting period, 89, or 99%, of the 90 reports we examined were submitted within the time limits established by this subtask. As noted above, Level 2 and Level 3 force investigations are considered timely if they are completed (including Division Commander approval) within 15 calendar days of the incident, with one documented approved extension by the Division Commander allowed. We only consider extensions if they were approved by the appropriate personnel *prior* to the pre-extension due date.

During this reporting period, we noted slight improvement in the documentation of physical evidence, the inclusion of photographs, analyses of relevant evidence gathered, and consideration of tactical and training issues.

Although we noted some instances in which supervisors addressed officers who did not use their Portable Digital Recording Devices (PDRDs), we are again troubled by the number of officers opting not to activate their recording devices when required. During this reporting period, OPD commanders took supervisory action by admonishing officers for not using their PDRDs as required in the Level 2, 3, and 4 cases we assessed. We are further troubled that many supervisory personnel routinely address these violations of policy merely as training matters requiring counseling and an entry into officers' Supervisory Notes Files.

OPD's overall compliance rate for timeliness is 99%, and for NSA-required elements is 100%. OPD is in compliance with Task 25.2.

Task 25.3 requires that all supervisors are trained on how to conduct use of force investigations and such training is part of a supervisory training course (compliance standard: 95%). OPD is incorporating use of force training into its sergeants' continued professional training that is offered every 18 months to two years. As we have noted previously, we encourage OPD to

continue to provide periodic refresher training to underscore to supervisors the importance of conducting complete, thorough, and impartial use of force investigations that are submitted in a timely fashion. OPD is in compliance with Task 25.3.

Task 25.4 requires that the investigations include required recommendations (compliance standard: 90%). Areas of recommendation include: whether the force used was pursuant to a legitimate law enforcement objective; whether the type and amount of force used was proportional to the resistance encountered and reasonably related to the objective the officers were attempting to achieve; whether the officers used reasonable verbal means to attempt to resolve the situation without force, if time and circumstance permitted such attempts; and whether the force used was de-escalated or stopped reasonably when resistance decreased or stopped.

During this reporting period, we reviewed two Level 4 and one Level 2 use of force incidents that involved the unjustified pointing of firearms. These three reports did not comport with NSA-required elements; each of the incidents involved an unnecessary escalation to potentially using lethal force in situations where other less lethal force options were available to the officers or should have been considered.

The remainder of the cases, however, contained information showing that the force was used for a legitimate law enforcement purpose, was reasonable to the resistance encountered, and was de-escalated when resistance decrease or stopped; and that verbal means were used to attempt to resolve the situation without force.

OPD's compliance rate for this subtask is 97%. OPD is in compliance with Task 25.4.

Task 25.5 speaks to the review process, which includes chain of command review, making assessments as required by the NSA and policy, and ensuring that any violation of policy results in the incident being referred to Internal Affairs to conduct additional investigations or analysis (compliance standard: 95%). During this reporting period, we found that the supervisors included the required details, and the chain of command conducted critical reviews. In all of the Level 2, 3, and 4 reports we reviewed, the chain of command reviewed and commented on the quality of the investigations, any corrective action that was identified, and the appropriate documentation required for Supervisory Notes Files.

OPD's compliance rate for this subtask is 100%. OPD is in compliance with Task 25.5.

Task 25.6 addresses the need to keep officers involved in use of force incidents resulting in serious injury or death, or involved in a shooting, be separated from each other at the scene, and kept apart until they have been interviewed and completed their reports (compliance standard: 95%). We found the applicable Level 1 and Level 2 reports in compliance with this requirement. OPD is in compliance with Task 25.6.

OPD is in Phase 2 compliance with Task 25.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

Next Steps:

During our next site visit, we will continue to discuss with OPD the use of force command review process, investigator impartiality, and lack of use of the Portable Digital Recording Devices (PDRDs) by officers in violation of OPD policy.

Task 26: Force Review Board (FRB)

Requirements:

OPD shall develop and implement a policy concerning its FRB proceedings. The policy shall:

- 1. Set out procedures, membership and a timetable for FRB review of use of force investigations involving Level 2 incidents, as defined in Department General Order K-4, REPORTING AND INVESTIGATING THE USE OF FORCE;*
- 2. Require the FRB to review all use of force investigations;*
- 3. Require the FRB to make a recommendation as to whether the use of force was in policy or out of policy;*
- 4. Require the FRB to forward sustained policy violations to the Discipline Officer.*
- 5. Require the FRB not to review any use of force allegation until the internal investigations has been completed;*
- 6. Authorize the FRB to recommend to the Chief of Police additional use of force training or changes in policies or tactics, or additional standards, investigatory policies, or training for use of force investigations;*
- 7. Require the FRB to conduct an annual review of use of force cases examined, so as to identify any patterns of use of force practices that may have policy or training implications, and thereafter, issue a report to the Chief of Police;*
- 8. Require that the FRB membership include, at a minimum, one member from the Training Division, one member from the Field Training Officer program, and either the Bureau of Field Operations Deputy Chief or his/her designee;*
- 9. Minimally, that one member of the FRB shall be replaced at least annually.*

(Negotiated Settlement Agreement V. C.)

Background:

During the last reporting period, we found OPD in partial compliance with Task 26.

Discussion:

As previously reported, our review of Department General Order K-4.1, *Force Review Boards* (August 1, 2007), determined that this policy comports with the requirements of Task 26. As the Department has trained at least 95% of relevant personnel on these policies, we find OPD in continued Phase 1 compliance with this Task.

Task 26.1 requires that the Force Review Board (FRB) review all Level 2 use of force investigations following the completion of the internal investigation (compliance standard: 95%). DGO K-4.1 requires that the FRB chair convene an FRB to review the factual circumstances of all Level 2 cases within 90 days of receipt of the use of force packet from IAD. OPD provided documentation for all eight incidents that were heard by the board during this reporting period of July 1, through September 30, 2013. We determined that all eight of the FRB reports we reviewed were timely. OPD is in compliance with this subtask.

Task 26.2 requires that for every Level 2 use of force investigation, the FRB make a recommendation as to whether the use of force was in or out of policy (compliance standard: 95%). All eight FRB reports we reviewed contained recommendations noting that the use of force was in or not in compliance with policy, and all eight noted agreement with the recommendation of the FRB by the Chief or his designee. However, we attended one of the eight FRB proceedings mentioned above that involved Taser use on a handcuffed suspect. Our assessment included reviewing the related ancillary reports and noting deficiencies that were not addressed in the final FRB report, which include but are not limited to: a deficient tactical analysis by the investigator and the FRB of the initial encounter with suspects; the force investigator providing an explanation or additional justification for the motives of the involved officer; the lack of clear understanding (in our assessment, a training issue) of OPD Taser policy by various OPD personnel.

Additionally, IAD recommended all Taser deployments resulting from this incident were in compliance with policy. Yet the FRB found the officer's two additional Taser deployments unreasonable and out of compliance with policy. These two very opposite findings in this process are troubling due to IAD's role in investigating and assessing violations of OPD policy.

OPD is not in compliance with Task 26.2.

Task 26.3 requires that all FRB determinations that a use of force is out of compliance with OPD policy be forwarded to the Internal Affairs Division for disposition (compliance standard: 95%). Of the eight incidents that were heard by the board during this reporting period, two events were found out of compliance, thereby requiring a referral to IAD that was appropriately initiated. OPD is in compliance with this subtask.

Task 26.4 requires that the FRB make recommendations to the Chief of Police regarding additional use of force training, changes in policies or tactics, additional standards, investigatory policies, or training for use of force investigations (compliance standard: Yes/No). During the current reporting period, the FRBs identified training issues; and discussed improper tactics, use of force reporting, activation of the PDRD, and the need for corrective supervisory counseling. OPD is in compliance with this subtask.

Task 26.5 requires that the FRB conduct an annual review of use of force cases examined to identify any patterns of use of force practices (including K-3) that may have policy or training implications (compliance standard: Yes/No); and **Task 26.6** requires that the FRB issue an

annual report to the Chief of Police reporting on its annual review (compliance standard: Yes/No). The FRB issued its most recent annual review on April 23, 2013. The review identified several patterns and practices, including: officers are continuing to chase suspects who they believed to be armed with handguns into yards; and are striking resisting suspects to the head with either their fists and/or palm-hammer strikes. In addition, the review found that many officers are documenting in their reports that they *had* to use force because of the risk that a suspect may be armed; and that they are not appropriately considering tactics during high-risk situations. The review also emphasized the need for canine officers, supervisors, and commanders to consider modifying the canine announcement to fit the incident in question – for example, circumstances in which a warning announcement could jeopardize officer safety.

According to the annual review, the FRBs have been tasking supervisors to train their officers after the board has identified training issues. The supervisors are required to document this training in the officers' Supervisory Notes Files and enter the information into PAS. Subject-matter experts conduct more involved training, and a training roster is submitted to the Training Section. The involved officer(s) are directed to be present during the presentation to receive training from the board's voting members and subject-matter experts, and/or praise for any outstanding work. Additionally, as a result of the findings of the FRB, the Department revises or develops new information or training bulletins, which are distributed to OPD personnel via the Department's electronic PowerDMS system. OPD is in compliance with these subtasks.

OPD is in partial Phase 2 compliance with Task 26.

Compliance Status:

Phase 1: In compliance

Phase 2: Partial compliance

Next Steps:

Since the beginning of our tenure, we have requested – in meetings with OPD and in all of our quarterly reports – that the Department schedule FRBs during our quarterly site visits, so that we may attend and observe the proceedings. The Department scheduled four FRBs during our most recent site visit; we will discuss these in our next report. We again request that the Department schedule its FRB hearings during our quarterly site visits; it is critical to our assessments that we be able to observe and evaluate the FRB process.

Task 30: Executive Force Review Board (EFRB)

Requirements:

1. *An EFRB shall be convened to review the factual circumstances surrounding any Level 1 force, in-custody death, or vehicle pursuit-related death incidents. A firearm discharge at an animal shall be reviewed by the EFRB only at the direction of the Chief of Police. The Board shall have access to recordings and/or transcripts of interviews of all personnel on the scene, including witnesses, and shall be empowered to call any OPD personnel to provide testimony at the hearing.*
2. *OPD shall continue the policies and practices for the conduct of EFRB, in accordance with the provisions of DGO K-4.1, FORCE REVIEW BOARDS.*

(Negotiated Settlement Agreement V. G.)

Background:

During the last reporting period, we found OPD in partial compliance with this Task. In our report, we noted that, despite the Department's technical adherence to the requirements, we observed that the board's informality and lack the structure is not consistent with the conduct of a review process of this nature.

Discussion:

As previously reported, OPD published Departmental General Order K-4.1, *Force Review Boards* (February 17, 2006), which incorporates the requirements of Task 30. OPD revised DGO K-4.1 on August 1, 2007. The policy also incorporates the requirements of Task 30. As the Department has trained at least 95% of relevant personnel on these policies, we find OPD in continued Phase 1 compliance with this Task.

To assess the Department's compliance with this Task, in addition to reviewing EFRB documentation, we observed one EFRB during our August site visit. The EFRB determined that the officers' use of lethal force, resulting in an injury, was in compliance with OPD policy. This critical firearm discharge incident is summarized (as the first incident) below.

Task 30.1 requires that OPD convene an EFRB within 45 days of the completion of the use of force (UOF) report by IAD (compliance standard: 95%). The EFRB reviewed two incidents during this reporting period:

- The first incident involved a report to 911 of a burglary in progress. OPD officers were dispatched and responded to the location. The officers observed one of the suspects running down an alley. The first officer who encountered this suspect observed him holding a pistol in his right hand and pointing it directly at her. The officer fired one round, striking the suspect in the left shoulder area. The suspect's pistol was recovered and determined to be a replica. The suspect's injuries were not life-threatening, and the use of force was found in compliance with policy.

- The second incident involved a critical firearm discharge by an officer pursuing an armed robbery suspect. The complainant alleged that two suspects robbed him at gunpoint. An officer engaged in a foot pursuit of a suspect who eventually looked back at the officer. The officer fired two rounds at the fleeing suspect, with one round striking the suspect in the lower back. The suspect's injuries were not life-threatening. The officer's use of lethal force was found out of compliance with policy.

We verified that the EFRBs held during this reporting period fell within 45 days of the completion of the use of force reports covering the incidents.

OPD is in compliance with this subtask.

Task 30.2 requires that the EFRB has access to recordings and/or transcripts of interviews of all personnel on scene, including civilian witnesses, and is empowered to call in any OPD personnel it believes should testify (compliance standard: Yes/No). In the documentation we reviewed, recorded statements and/or transcripts were available from all officers on the scene and other personnel needed to testify. OPD is in compliance with this subtask.

Task 30.3 requires that OPD complies with the policies and procedures set forth in DGO K-4.1, *Force Review Boards* (compliance standard: Yes/No). This policy outlines several requirements, including who comprises the board, the material to be made available for the board, the conduct of the board, the information to be memorialized and follow-up actions, if warranted. We reviewed the reports that were prepared for the two incidents that were heard by the board during the current reporting period. The required attendees were present in both cases. After review and deliberations, the board determined that the subject officers' actions in all four cases were in compliance with Departmental policy. The Chief endorsed the EFRB findings within 60 days of the board's decision. The board identified the adequacy of equipment, tactics, an analysis of each application of force, investigative concerns, and training issues that required the appropriate corrective action.

However, despite the Department's technical adherence to these provisions, we have observed during our recent site visits and technical assistance visits that the board's informality and lack of structure is not consistent with the conduct of a review process of this nature. We intend to continue discussions with the Department regarding the necessity to improve the conduct of these boards. OPD is currently revising DGO K-4.1, *Force Review Boards*, and has sought the input of the Monitor. The policy revisions are still pending at this time. Accordingly, OPD is not in compliance with this subtask.

OPD is in partial Phase 2 compliance with Task 30.

Compliance Status:

Phase 1: In compliance

Phase 2: Partial compliance

Task 33: Reporting Misconduct

Requirements:

Within 154 days from the effective date of this Agreement, OPD shall establish policy and procedures for the following:

Misconduct

OPD personnel shall report misconduct by any other member or employee of the Department to their supervisor and/or IAD. The policy shall state that corrective action and or discipline shall be assessed for failure to report misconduct. OPD shall require every member and employee encountering a use of force that appears inappropriate, or an arrest that appears improper, to report the incident to his/her supervisor and/or IAD. OPD shall establish and maintain a procedure for a member/employee to report police misconduct on a confidential basis.

- 1. Any member/employee of OPD may report a suspected case of police misconduct confidentially to the commander of IAD.*
- 2. The member/employee reporting this conduct shall indicate clearly to the commander of IAD that the report is being made under these confidential provisions.*
- 3. The report may be made in person, by telephone, or in writing. The IAD Commander shall document the report in a confidential file that shall remain accessible only to the IAD Commander.*
- 4. The case shall be investigated without disclosure of the complainant's name, unless and until such disclosure is required by law.*
- 5. This confidential reporting procedure shall be made known to every member/employee of OPD and to all new members/employees of OPD within two (2) weeks of hiring.*

(Negotiated Settlement Agreement VI. A.)

Background:

Since monitoring under the NSA began, OPD has received confidential reports of misconduct in only four cases. During the last three reporting periods, we found OPD to be in partial compliance with Task 33.

Discussion:

As we have noted previously, OPD has developed several policies that, in concert, incorporate the requirements of this Task. These include: Manual of Rules (MOR) Section 314.48, Reporting Violations of Laws, Ordinances, Rules or Orders; MOR Section 314.49, Confidential Reporting of Police Misconduct; Departmental General Order D-16, Check-In and Orientation; MOR Section 370.18, Arrests; and MOR Section 370.27, Use of Physical Force. The Department has trained at least 95% of relevant personnel on these policies, and remains in Phase 1 compliance with this Task.

Reporting Misconduct

Task 33.1 requires that in all sustained internal investigations, OPD conduct an assessment to determine whether members/employees/supervisors knew or should have known that misconduct occurred (compliance standard: 95%); and **Task 33.2** requires that where OPD determines that members/employees/supervisors knew or should have known that misconduct occurred but did not report it as required, OPD is required to take appropriate action (compliance standard: 95%).

In the twelfth reporting period, we found OPD to be not in compliance – and during the last three reporting periods, we found OPD to be in partial compliance – with these subtasks, as a result of IAD cases involving incidents that occurred during Occupy Oakland demonstrations. In those cases, many officers claimed not to have observed actions that occurred close to them; OPD officers consistently avoided commenting about the misbehavior – and sometimes, felonious actions – of their fellow officers; and while officers apparently remembered seeing participants in the demonstrations and riots clearly, they often could not say which officers were next to them even when they viewed videos of the incidents.

To assess OPD’s Phase 2 compliance with these subtasks during this reporting period, we met with the Deputy Chief of the Bureau of Risk Management; and queried the IAD database to identify any cases with sustained findings and discipline that were approved between July 1, and September 30, 2013, that were applicable to Task 33. We identified and reviewed 28 cases with a total of 40 sustained findings involving 29 officers that were approved during this reporting period. We found no instances where OPD disregarded indications that its employees or officers failed to report misconduct.

Management Action to Address Reluctance to Report Misconduct

We commented in our last two reports that “the activation of PDRDs can be key in resolving allegations of use of force that arise from citizen contacts – particularly during demonstrations. Accordingly, it is a serious violation for an officer dealing with such circumstances to fail to activate his/her PDRD.” This is especially critical in a police department where there is a culture that officers do not report serious misconduct by fellow officers.

In our review of the 28 cases, we found 11 in which an officer was equipped with an operational PDRD and should have activated it. In one of the 11 cases, the officer retired before discipline was imposed; in six cases, the PDRD was activated; and in three cases, the officers’ failure to activate the PDRD was considered for discipline. In only one case was an officer’s failure to activate his PDRD unaddressed.

We were pleased to see that the OPD’s is proposing MOR revisions to include addressing the failure to activate a PDRD in a new section entitled, “314.39-2 Performance of Duty – Personal Digital Recording Device (PDRD),” that, if implemented, will carry more significant discipline than we have observed in the past.

OPD also developed a training session to address the reluctance of supervisors to report serious misconduct and criminal behavior on the part of subordinates. The session was comprised of a

PowerPoint presentation that addressed the obligations and responsibilities of supervisors and officers. According to the Department, the training was delivered to all supervisors in a session that was expected to last 30 minutes; yet it stimulated so much discussion that it ran for over two hours. Subsequently, the IAD Commander has received a number of inquiries from OPD supervisors and managers seeking guidance concerning incidents and matters that could be the subject of IAD actions.

Confidential Reporting

Task 33.3 requires that OPD must maintain a functioning procedure that incorporates the NSA requirements related to establishing and maintaining confidential reporting of misconduct. These requirements include: **Task 33.3.1:** confidential reports of suspected misconduct may be made in person, by telephone, or in writing (compliance standard: Yes/No); **Task 33.3.2:** any OPD member/employee may report suspected misconduct confidentially to the IAD Commander, who shall document the report in a confidential file that shall remain accessible only to this IAD Commander (compliance standard: Yes/No); **Task 33.3.3:** confidentially reported cases are investigated without disclosure of the complainant's name, unless and until such disclosure is required by law (compliance standard: 95%); and **Task 33.3.4:** OPD informs all new and current employees of OPD's confidential reporting procedures (compliance standard: 95%).

As we have reported previously, OPD has established procedures as required by Tasks 33.3.1, 33.3.2, 33.3.3, and 33.3.4. Confidential reports of suspected misconduct may be made by various means to the IAD Commander; cases are investigated without identifying the complainant; and documentation of the report and investigation are kept in a confidential file maintained by the IAD Commander. Since monitoring began under the NSA, OPD has received only four such confidential reports. One new confidential report was received during the current reporting period. The IAD Commander has taken responsibility for reviewing and handling the new report and protecting the complainant. We reviewed the file that has been established to document the confidential report.

There were 56 new hires during the current reporting period. All were briefed/trained on confidential reporting procedures as required by Task 37. All of the new employees signed documents to memorialize the training that is a part of the hiring module/practice before new employees report for duty/assignment.

We removed OPD from Phase 2 compliance due to the failure of its officers to report misconduct during the Occupy Oakland events. OPD management is making progress in this area through training and efforts to secure use of PDRDs by its officers. The Department is in compliance with confidential reporting requirements and, accordingly, remains in partial Phase 2 compliance with Task 33.

Compliance Status:

Phase 1: In compliance

Phase 2: Partial compliance

Task 34: Vehicle Stops, Field Investigation, and Detentions

Requirements:

- OPD shall require members to complete a basic report on every vehicle stop, field investigation and every detention. This report shall include, at a minimum:*
- a. Time, date and location;*
 - b. Identification of the initiating member or employee commencing after the first year of data collection;*
 - c. Reason for stop;*
 - d. Apparent race or ethnicity, and gender of individual(s) stopped;*
 - e. Outcome of stop (arrest, no arrest);*
 - f. Whether a search was conducted, and outcome of search;*
 - g. Offense categories (felony, misdemeanor or infraction).*
2. *This data shall be entered into a database that can be summarized, searched, queried and reported by personnel authorized by OPD.*
 3. *The development of this policy shall not pre-empt any other pending or future policies and or policy development, including but not limited to "Promoting Cooperative Strategies to Prevent Racial Profiling."*
- (Negotiated Settlement Agreement VI. B.)

Background:

OPD has been in partial compliance with this Task for the past 12 reporting periods. We noted that officers were entering the required stop data into the Field Based Reporting (FBR) computer system; however, we found that the reported and documented "reason for the stop" did not consistently and/or sufficiently meet Constitutional requirements and/or provide authority for the stops. We additionally found that when officers engaged a group of individuals, data was often recorded for one member of the group, but not for the remaining members, which significantly distorted the stop data. And finally, we found that officers were often incorrectly classifying the "reason for the stop." Due in part to these issues, which in effect, invalidated the accuracy of the collected stop data, the Department has not conducted an analysis of the data as prescribed and required by Department policy.

Discussion:

As previously reported, General Order M-19, *Prohibitions Regarding Racial Profiling and Other Bias-Based Policing*; and Report Writing Manual (RWM) Inserts R-2, N-1, and N-2 incorporate the requirements of Task 34. The Department trained 95% of relevant personnel on these policies as required; we found and continue to find OPD in Phase 1 compliance with this Task.

In June of 2010, OPD issued Special Order 9042, *New Procedures Regarding Stop Data Collection*, which revised DGO M-19 and RWM R-2 to provide further guidance regarding requirements related to consensual encounters and detention. This Special Order was appropriately disseminated via OPD's electronic PowerDMS system. During the sixth reporting period, OPD began training on these revisions, which included the definition and articulation of a consensual encounter and detention, along with training on how to complete Field Investigation

Reports to adequately document investigative encounters. During the eighth reporting period, we verified that OPD trained at least 95% of relevant personnel on these subjects and Special Order 9042.

In November 2012, OPD issued Special Order 9101, *Revised Stop Data Collection Procedures*, which further revised DGO M-19, *Racial Profiling* in order to further clarify and define racial profiling, consensual encounters, detention, and the scope of the policy. We verified that the Department trained at least 95% of relevant personnel on these revisions as required.

During the fourteenth reporting period (March 2013), OPD issued revised Special Order 9101, *Revised Stop Data Collection Procedures*, which further revises DGO M-19, *Racial Profiling*. Shortly thereafter, OPD issued a revision to the Report Writing Manual to address issues relating to completion of the Stop Data Form, specifically clarifying that a Stop Data Forms must be completed when self-initiated encounters are conducted and that Stop Data Forms are not required for radio dispatch calls for service, citizen flag-downs, search warrants, and community caretaking incidents. Also during the current reporting period, OPD continued training on the definitions of racial profiling to include the definition of a consensual encounter, what a detention is, and the scope of the policy. OPD has trained at least 95% of relevant personnel on these subjects and the above-described policy revisions.

Task 34.1 requires that Stop Data Forms be filled out for every vehicle stop, field investigation, and detention (compliance standard: 90%). To assess Task 34.1 during this reporting period, we reviewed a random sample of 375 stops to match them with corresponding completed Stop Data Forms. This sample included 125 Computer Aided Dispatch (CAD) entries, 125 Field Contact Cards, and 125 traffic citations. Using the Department's Forensic Logic Quicksearch program, we were able to locate a corresponding Stop Data Form for 97% of the stops in our sample. OPD is in compliance with Task 34.1.

Task 34.2 requires that Stop Data Forms be filled out with the following information: 1) time; 2) date; 3) location; 4) identification of member making stop; 5) reason for stop; 6) apparent race/ethnicity of individual(s) stopped; 7) gender of individual(s) stopped; 8) outcome of stop (arrest or no arrest); 9) whether a search was conducted; 10) outcome of any search; and 11) offense category (felony, misdemeanor, or infraction) (compliance standard: 85%). The entry of stop data into the Field Based Reporting (FBR) system requires officers to make a selection in each form field. If an officer fails to fill in the information in any field, the system does not allow the form to be completed.

During this reporting period, OPD OIG did not conduct any internal audit of its stop data forms. We learned that the sergeant who oversees the FBR system conducts biweekly audits of the system, and OPD has begun to send them to us for our review. We encourage OPD to continue to conduct these audits in future reporting periods. After over two years of urging the Department to focus its attention on making and implementing applicable policy revisions – and developing necessary training – to ensure that the justification exists *prior* to the temporary detention of persons; that data be entered on each person who is detained; and that the reason for

the encounter be properly identified; the Department adopted these recommendations during the tenth reporting period. The purpose of implementing such a strategy continues to help the Department identify any disparities in its treatment of citizens. We saw an improvement with OPD documenting the reason for the stop – and as such, OPD is in compliance with Task 34.2.

Task 34.3.1 requires that OPD have a stop data database that can be summarized, searched, queried, and reported by personnel authorized by OPD (compliance standard: Yes/No). As per Special Order 9042, officers “complete an electronic FBR [Field Based Reporting] Stop Data Collection Form (SDF) for certain arrests, every detention not resulting in an arrest (vehicle, walking, and bicycle stops), every consent search of a person conducted and any other investigative encounter. A SDF shall also be completed for consensual encounters (contacts) where the member talks with a person to confirm or dispel a suspicion that the person may be involved in criminal activity, although the person is free to leave.” Data from the electronic Field Based Reporting system is automatically sent to the Department’s Forensic Logic Quicksearch program. Quicksearch allows Department personnel to search for and query officers’ stop data. During this reporting period, we continued to experiment with the Quicksearch program and found that the stop data is summarized and easy to review. As noted above, in May 2011, OPD merged the Stop Data Form with the Field Contact Card, intending to provide one document for officers to enter stop data and providing them with a narrative portion for which they can articulate the factual support for the stop.

During our most recent site visit, we again met with OPD personnel responsible for data collection and analysis. We found that the Department’s revisions to policies and additional training have resulted in the collection of what appears to be accurate data since April 2013. OPD has further organized this data into tables and graphs depicting – both globally and by district – the breakdown of stops, reasons for the stops and resulting action taken, including searches, the results of searches and arrests and other actions. Although the data is sufficient to conduct preliminary analyses to determine whether there appears to be any disparate treatment within one or more population groups, we have cautioned OPD to defer drawing definitive conclusions until the database is of sufficient size to preclude numerical distortions. We have suggested that 12 months of data should be sufficient.

We have recommended that, in the meanwhile, OPD take steps to elevate interest in and attention to stop data by officers, supervisors, and command staff through the issuance of training bulletins; and by way of briefings and general discussions about the present data. In addition, we have recommended that command staff commence the development of possible intervention protocols should the data appear indicative of disparate treatment of any population group or groups.

While OPD has not produced an official report that documents a summary of the data collected or analysis of data, the data described above is indicative of OPD progress with this requirement reflected provided in the November 15, 2004 policy. That policy requires that the Racial Profiling Manager shall produce a written report to the Chief of Police at least twice per year that includes an analysis of the data collected, and appropriate policy recommendations. Based on

our knowledge, while OPD has not prepared such a report in the last three years, we are hopeful that, even though such a report may be preliminary, this will occur during prior the close of the next reporting period. Although we are encouraged with the progress made during recent reporting periods, OPD is not in full compliance with Task 34.3.1.

Task 34.3.2 requires that the data captured on the Stop Data Forms be entered completely and accurately into the database (compliance standard: 85%). As noted above, the entering of stop data into the Field Based Reporting system requires officers to make a selection in each form field. If an officer fails to fill in the information in any field, the system will not allow the form to be completed. Task 34.3.2 was created to govern the submission of data from the written forms to the computerized system. Since this type of data entry is no longer necessary, the Department is in compliance with Task 34.3.2.

OPD is in partial Phase 2 compliance with Task 34.

Compliance Status:

Phase 1: In compliance

Phase 2: Partial compliance

Next Steps:

During our next site visit and upcoming technical assistance visits, we will again meet with relevant Department personnel to discuss the Department's progress in this area. We will further discuss the Department's various Task 34-related data systems to assess their operability, accuracy, and utility in storage, and ease of access to stop data. We will continue to work with OPD on ways to verify the legal basis for stops, searches, and other related activities expeditiously. We will also discuss how conducting internal audits of its stop data forms can help the Department to identify any disparities in its treatment of citizens.

Task 35: Use of Force Reports - Witness Identification

Requirements:

1. *OPD shall require, by policy, that every use of force report, whether felonies were involved or not, include the names, telephone numbers, and addresses of witnesses to the incident, when such information is reasonably available to the members/employees on the scene.*
2. *In situations in which there are no known witnesses, the report shall specifically state this fact. Policy shall further require that in situations in which witnesses were present but circumstances prevented the author of the report from determining the identification or phone number or address of those witnesses, the report shall state the reasons why the member/employee was unable to obtain that information. Reports shall also include the names of all other members/employees of OPD witnessing the use of force incident.*
3. *Reports shall also include the names of all other members/employees of OPD witnessing the use of force incident.*

(Negotiated Settlement Agreement VI. C.)

Comments:

During all of the previous reporting periods, we found OPD in compliance with Task 35.

Discussion:

As previously reported, OPD published Special Order 8066, *Use of Force—Witness Identification* (April 12, 2004), which incorporates the requirements of Task 35. Additionally, OPD published Departmental General Order K-4, *Reporting and Investigating the Use of Force* (February 17, 2006), which also incorporates the requirements of Task 35. OPD revised DGO K-4 on August 1, 2007. The revised policy also incorporates the requirements of Task 35. As the Department has trained at least 95% of relevant personnel on these policies, we find OPD in continued Phase 1 compliance with this Task.

To assess Phase 2 compliance for Task 35 for this reporting period, we reviewed 17 use of force reports, including: six Level 2 and 11 Level 3 use of reports covering incidents that occurred between July 1, and September 30, 2013. (Per DGO K-4, Level 4 use of force reports do not require witness identification.)

We assessed Task 35.1 in conjunction with Task 35.2. **Task 35.1** requires that use of force reports include the name, telephone number, and addresses of witnesses to the incident when such information is reasonably available to the members/employees on the scene (compliance standard: 90%); and **Task 35.2** requires that when there are no known witnesses, the use of force reports specifically state this fact (compliance standard: 90%). All 17 reports that we reviewed comported with these requirements. OPD is in compliance with these subtasks.

Task 35.3 requires reports to document instances where witnesses are present but circumstances prevent the author of the report from gathering the data (compliance standard: 90%). During this reporting period no incidents fell into this category. OPD is in compliance with Task 35.3.

Task 35.4 requires that use of force reports include the names of all other OPD members/employees witnessing the incident (compliance standard: 90%). We found no instances when an OPD witness was not documented in the 17 reports we reviewed. OPD is in compliance with Task 35.4.

OPD is in Phase 2 compliance with Task 35.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

Next Steps:

During our next site visit, we will continue to request and examine any related audits completed by OIG to ensure that OPD is moving toward the long-term sustainability of this Task.

Task 37: Internal Investigations-Retaliation Against Witnesses

Requirements:

OPD shall prohibit retaliation against any member or employee of the Department who:

- 1. Reports misconduct by any other member or employee, or*
- 2. Serves as a witness in any proceeding against a member or employee.*

The policy prohibiting retaliation shall acknowledge that retaliation may be informal and subtle, as well as blatant, and shall define retaliation as a violation for which dismissal is the presumptive disciplinary penalty. Supervisors, commanders and managers shall be held accountable for the conduct of their subordinates in this regard. If supervisors, commanders or managers of persons engaging in retaliation knew or reasonably should have known that the behavior was occurring, they shall be subject to the investigative, and if appropriate, the disciplinary process.

(Negotiated Settlement Agreement VI. E.)

Background:

Following our review of retaliation cases in the fourteenth reporting period, we found OPD not in compliance with Task 37. In that report, we cited a case we regarded as involving serious retaliation after an officer provided information about another officer's beating a handcuffed prisoner. We noted that not enough was done to identify the perpetrator or protect the reporting officer when the retaliation came to light. In our last report, we found that OPD had properly handled three cases involving allegations of retaliation; and we found the Department in partial compliance with this Task.

Discussion:

As previously reported, we have found OPD in continued Phase 1 compliance with this Task. OPD published Special Order 8092 on November 23, 2003, which incorporated the requirements

of Task 37. This policy consists of two Manual of Rules (MOR) Sections: 398.73, *Retaliation Against Witnesses*; and 398.74, *Retaliation Against Witnesses, Accountability*. These MOR provisions (revised in lieu of a City policy on retaliation) incorporate the requirements of Task 37. OPD has trained at least 95% of relevant personnel on these policies.

Task 37.1 requires that officers be held accountable for retaliating against employees or members who report misconduct or serve as witnesses in proceedings against other members/employees (compliance standard: 95%); and **Task 37.2** requires that supervisors, commanders, and managers be held accountable if they knew or reasonably should have known that persons under their supervision engaged in retaliation (compliance standard: 95%).

OPD identified six cases that it considered as containing allegations of retaliation during the period of July 1, through September 30, 2013. Three of the cases were not yet complete. We reviewed the remaining three cases; and found that in all three cases, OPD conducted a thorough investigation and concluded that the charge of retaliation was unfounded.

Inasmuch as OPD failed to respond fully to the most serious allegation of retaliation that we observed during the past year, but has handled the routine allegations of retaliation appropriately, the Department remains in partial Phase 2 compliance with Task 37. There has been no evidence that OPD has made any changes to address the serious transgressions that we noted; we will continue to monitor this issue closely in future reporting periods.

Compliance Status:

Phase 1: In compliance

Phase 2: Partial compliance

Task 40: Personnel Assessment System (PAS) – Purpose

Requirements:

Within 635 days from the effective date of this Agreement, OPD shall enhance its existing complaint-tracking and select indicator systems so that it has a fully implemented, computerized relational database for maintaining, integrating and retrieving data necessary for supervision and management of OPD and its personnel. This data shall be used by OPD: to promote professional police practices; to manage the risk of police misconduct; and to evaluate and audit the performance of OPD members of all ranks, employees, and OPD units, subunits and shifts. PAS shall contain information on the following:

- 1. All uses of force required to be reported by OPD;*
- 2. OC spray canister check-out log (see Section V, paragraph D)*
- 3. All police-canine deployments; where the canine is deployed in a search for or to apprehend a suspect(s). It does not include, deployments for the purpose of locating bombs, narcotics, missing persons, etc., where the canine is not involved in an investigated use of force (i.e., deliberately or inadvertently bites or injures a person)*

If such force occurs, a Use of Force report is required.

4. *All officer-involved shootings and firearms discharges, both on duty and off duty, excluding an intentional discharge while at a range facility; a discharge while engaged in a lawful recreational activity, such as hunting or target practice; a discharge by Criminalistics Division personnel for the purpose of scientific examination; and a discharge at an object (e.g., street light, alarm box, door lock or vehicle tire) to accomplish a tactical police purpose that does not result in injury;*
5. *All on-duty vehicle pursuits and on-duty vehicle collisions;*
6. *All complaints, whether made to OPD or CPRB;*
7. *All civil suits and/or tort claims related to members' and employees' employment at OPD, or which contain allegations which rise to the level of a Manual of Rules violation;*
8. *Reports of a financial claim as described in Section VI, paragraph G (3).*
9. *All in-custody deaths and injuries;*
10. *The results of adjudications of all investigations related to items (1) through (9), above, and a record of investigative findings, including actual discipline imposed or non-disciplinary action administered;*
11. *Commendations and awards;*
12. *All criminal arrests of and charges against OPD members and employees;*
13. *All charges of resisting or obstructing a police officer (Penal Code §§69 and 148), assault on a police officer (Penal Code §243(b)(c), or assault-with-a-deadly-weapon on a police officer [Penal Code §245(c)(d)];*
14. *Assignment history and rank history for each member/employee;*
15. *Training history for each member/employee;*
16. *Line-of-duty injuries;*
17. *Sick leave usage, particularly one-day sick leaves;*
18. *Report Review Notices or Case Evaluation Reports for the reporting member/employee and the issuing investigator;*
19. *Criminal cases dropped due to concerns with member veracity, improper searches, false arrests, etc.; and*
20. *Other supervisory observations or concerns.*

(Negotiated Settlement Agreement VII. A.)

Comments:

In the last seven reporting periods, we found OPD to be in partial Phase 2 compliance with Task 40 – following reporting periods of non-compliance that were related to data problems. The temporary solution to these problems has been to enter arrest data by hand and move forward with plans for the arrest data to be incorporated into the County's data system. As of the quarter under review, arrest data have remained problematic. However, the Department has been working for some time on a direct feed from electronically entered arrest reports to the County records system and then uploaded into the PAS database. Testing occurred during the current reporting period, and a final test is planned for shortly after our most recent site visit, with full

implementation expected in November 2013. (We will discuss the results of this test in our next quarterly status report.) In the interim, to assure accuracy in PAS, arrest data continue to be entered manually. These data issues are now relevant to both the new IPAS2 project and the development of a new Records Management System (RMS) for the Department.

The development of a new risk management database has continued to progress. The request for proposals for IPAS2, as the system is known, is in the final stages of review; and, according to the Department, is expected to be released shortly after our most recent site visit. The Department is examining approaches to coordinate the risk management system and the development of the new Records Management System as the development of an RFP for that project moves forward. The work on IPAS2 has also been accompanied by personnel changes. The long-term director of the PAS unit has been assigned full-time to oversee the development and implementation of the new system. A sergeant has taken on the responsibility for the day-to-day management of the risk management system. This transition appears to support a continuation of work on both generations of the system.

The Department is also moving forward in establishing its own subject matter expert position to oversee technology in the agency. This issue is relevant to concerns over how maintenance will provide for the new technology systems. With regard to IPAS2, the current plan will involve the City IT Department as the first level of service and gatekeeper for referral to the vendor.

One area where substantial progress has been made since our last report concerns the fundamentals of the design of the new risk management database. The project has adopted a model of integration of current disparate databases into a single database with electronic data entry of the various categories of information. This is a significant advancement over the past approach and will make for a more robust and reliable system to meet the requirements of Tasks 40 and 41.

Discussion:

General Order D-17, Personnel Assessment Program, which incorporates the requirements of Tasks 40 and 41, was revised in July 2012; however, a significant revision was undertaken more recently but has not been signed off on as of the time of our most recent site visit. Final signoff remains forthcoming. In the existing draft, the relevant material is divided into two separate policies, one addressing general risk management issues and the other dealing with the technical aspects of managing the database. The policy also alters the PAS review procedures to incorporate an initial internal review by the PAS Unit when officers meet thresholds, and then engaging supervisors in developing and implementing risk reduction plans when appropriate. This procedure is intended to reduce the number of false positive findings that have created substantial work for supervisors and, in some cases, required resubmission when the supervisory reviews were judged inadequate.

We look forward to completion with signoff of the new policy so that progress on the process of internal initial reviews within the PAS Unit can be made.

Tasks 40 and 41 are divided into 33 practice-related subtasks that include 12 additional lower-level provisions. As with all previous reviews, we requested and received material for each of the Tasks and subtasks. Our data request allowed for the replication and extension of the data analysis reflected in our earlier reports.

PAS records for the quarter of July 1, through September 30, 2013 indicate that data were entered for all of the fields required by Task 40 – including the arrest data. The required data for the quarter included reports of 431 uses of force. This is a reduction of over 17% from the previous quarter and continues a downward trend begun over a year ago and mostly closely linked to declines in Level 4 uses of force. The data for the current reporting period indicate that there were 2,759 arrests, a decrease of nearly 25% from the previous quarter. This is a significant decline from the unusually high levels last quarter. We will continue to focus on these large changes in arrests to ensure that they do not represent problems in data management.

A further breakdown of the types of use of force shows that, for this reporting period, there were three Level 1 uses of force. There were 12 Level 3, four Level 2, and 412 Level 4 uses of force. These are mostly minor differences but they do show mostly declines from the previous quarter. The table also shows a significant decrease of 15% in Level 4 uses of force. This is the sixth consecutive quarter with substantial reductions in that number. (See Task 24 for further discussion on this issue.) As expected, the overall drop in uses of force to a total of 412 reflects the major drop in Level 4 cases. The data count for the current reporting period and the seven prior reporting periods is presented in the table below.

| OPD Performance Activity Comparison by Quarter | | | | | | | | |
|--|--------------------------------|-------------------------|--------------------------|------------------------------|--------------------------------|-----------------------------|-------------------------|-------------------------|
| Performance Activity | October 1 to December 31, 2011 | Jan 1 to March 31, 2012 | April 1 to June 30, 2012 | July 1 to September 30, 2012 | October 1 to December 31, 2012 | January 1 to March 31, 2013 | April 1 to Jun 30, 2013 | July 1 to Sept 30, 2013 |
| Level 1 Uses of Force | 3 | 4 | 3 | 1 | 0 | 1 | 3 | 3 |
| Level 2 Uses of Force | 48 | 28 | 14 | 5 | 7 | 3 | 10 | 4 |
| Level 3 Uses of Force | 108 | 50 | 31 | 29 | 15 | 26 | 26 | 12 |
| Level 4 Uses of Force | 797 | 1034 | 962 | 741 | 612 | 509 | 483 | 412 |
| Unintentional Firearms Discharge | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Sick Leave Hours | 12084.56 | 12734.56 | 11229.36 | 9634.3 | 9857.65 | 11286.53 | 11041.94 | 1139 |
| Line of Duty Injuries | 43 | 47 | 50 | 46 | 30 | 32 | 54 | 54 |
| Narcotics Related Possessory Offenses Arrests | 445 | 641 | 452 | 508 | 280 | 407 | 560 | 496 |
| Vehicle Collisions | 7 | 13 | 15 | 15 | 7 | 18 | 12 | 6 |
| All Vehicle Pursuits | 89 | 77 | 99 | 83 | 57 | 18 | 64 | 87 |
| All Arrest | 3402 | 3656 | 3649 | 3516 | 2943 | 2853 | 3697 | 2759 |
| Arrests including PC 69, 148(a), 243(b)(c) & 245(c)(d) | 61 | 58 | 72 | 58 | 31 | 34 | 36 | 28 |
| Arrests only for PC 69, 148(a), 243(b)(c) & 245(c)(d) | 24 | 38 | 24 | 8 | 7 | 9 | 4 | 5 |
| Awards | 65 | 66 | 99 | 121 | | 76 | 55 | 65 |
| Assignment History | 9498 | 9414 | 9588 | 9720 | 9791 | 10361 | 10337 | 10257 |
| Case Evaluation Reports | 193 | 209 | 191 | 453 | 203 | 635 | 444 | 338 |
| Report Review Notices--Positive | 1 | 6 | 7 | 12 | 12 | 5 | 8 | 1 |
| Report Review Notices--Negative | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 |
| Canine Deployments | 71 | 96 | 93 | 63 | 43 | 64 | 59 | 57 |
| Financial Claims | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Internal Affairs Complaints | 316 | 404 | 375 | 465 | 277 | 186 | 295 | 140 |
| In-Custody Injuries | 97 | 75 | 39 | 24 | 13 | 21 | 13 | 2 |
| Civil Suits (Tort Claims) | 22 | 11 | 7 | 11 | 3 | 4 | 4 | 2 |
| Criminal Cases Dropped | 0 | 20 | 87 | 300 | 91 | 416 | 282 | 207 |
| O.C. Checkouts | 34 | 55 | 29 | 15 | 11 | 58 | 16 | 61 |
| Officer Involved Shootings | 2 | 4 | 3 | 2 | 1 | 2 | 3 | 1 |
| Rank / Class History | 2336 | 2286 | 2272 | 2338 | 2326 | 2391 | 2334 | 2357 |
| Training History | 21084 | 26100 | 11255 | 5182 | 2096 | 20108 | 19589 | 8557 |
| Supervisory Notes | 3281 | 3568 | 3139 | 3072 | 3117 | 3139 | 3304 | 2852 |
| Arrest Made Against OPD | 0 | 0 | 2 | 1 | 0 | 0 | 0 | 0 |

The status of the PAS data issues remains largely unchanged from our last report. The Department continues to move forward in three areas relevant to compliance. The relevant policy awaits final approval, the RFP for IPAS2 should be released shortly and the solution to the problems with the arrest data appears to be at hand. We will reexamine these areas for progress in our next report. At the current time, these issues support continued recognition of partial compliance with Task 40.

Compliance Status:

Phase 1: In compliance

Phase 2: Partial compliance

Task 41: Use of Personnel Assessment System (PAS)

Requirements:

Within 375 days from the effective date of this Agreement, OPD shall develop a policy for use of the system, including supervision and audit of the performance of specific members, employees, supervisors, managers, and OPD units, as well as OPD as a whole. The policy shall include the following elements:

- 1. The Chief of Police shall designate a PAS Administration Unit. The PAS Administration Unit shall be responsible for administering the PAS policy and, no less frequently than quarterly, shall notify, in writing, the appropriate Deputy Chief/Director and the responsible commander/manager of an identified member/employee who meets the PAS criteria. PAS is to be electronically maintained by the City Information Technology Department.*
- 2. The Department shall retain all PAS data for at least five (5) years.*
- 3. The Monitor, Inspector General and Compliance Coordinator shall have full access to PAS to the extent necessary for the performance of their duties under this Agreement and consistent with Section XIII, paragraph K, and Section XIV of this Agreement.*
- 4. PAS, the PAS data, and reports are confidential and not public information.*
- 5. On a quarterly basis, commanders/managers shall review and analyze all relevant PAS information concerning personnel under their command, to detect any pattern or series of incidents which may indicate that a member/employee, supervisor, or group of members/employees under his/her supervision may be engaging in at-risk behavior. The policy shall define specific criteria for determining when a member/employee or group of members/employees may be engaging in at-risk behavior.*
- 6. Notwithstanding any other provisions of the PAS policy to be developed, the Department shall develop policy defining peer group comparison and methodology in consultation with Plaintiffs' Counsel and the IMT. The policy shall include, at a minimum, a requirement that any member/employee who is identified using a peer group comparison methodology for complaints received during a 30-month period, or any member who is identified using a peer group comparison methodology for Penal Code §§69, 148 and 243(b)(c) arrests within a 30-month period, shall be identified as a subject for PAS intervention review. For the purposes of these two criteria, a single incident shall be counted as "one" even if there are multiple complaints arising from the incident or combined with an arrest for Penal Code §§69, 148 or 243(b)(c).*
- 7. When review and analysis of the PAS threshold report data indicate that a*

member/employee may be engaging in at-risk behavior, the member/employee's immediate supervisor shall conduct a more intensive review of the member/employee's performance and personnel history and prepare a PAS Activity Review and Report. Members/employees recommended for intervention shall be required to attend a documented, non-disciplinary PAS intervention meeting with their designated commander/manager and supervisor. The purpose of this meeting shall be to review the member/employee's performance and discuss the issues and recommended intervention strategies. The member/employee shall be dismissed from the meeting, and the designated commander/manager and the member/employee's immediate supervisor shall remain and discuss the situation and the member/employee's response. The primary responsibility for any intervention strategies shall be placed upon the supervisor. Intervention strategies may include additional training, reassignment, additional supervision, coaching or personal counseling. The performance of members/ employees subject to PAS review shall be monitored by their designated commander/manager for the specified period of time following the initial meeting, unless released early or extended (as outlined in Section VII, paragraph B (8)).

8. *Members/employees who meet the PAS threshold specified in Section VII, paragraph B (6) shall be subject to one of the following options: no action, supervisory monitoring, or PAS intervention. Each of these options shall be approved by the chain-of-command, up to the Deputy Chief/Director and/or the PAS Activity Review Panel.*

Members/employees recommended for supervisory monitoring shall be monitored for a minimum of three (3) months and include two (2) documented, mandatory follow-up meetings with the member/employee's immediate supervisor. The first at the end of one (1) month and the second at the end of three (3) months.

Members/employees recommended for PAS intervention shall be monitored for a minimum of 12 months and include two (2) documented, mandatory follow-up meetings with the member/employee's immediate supervisor and designated commander/manager: The first at three (3) months and the second at one (1) year. Member/employees subject to PAS intervention for minor, easily correctable performance deficiencies may be dismissed from the jurisdiction of PAS upon the written approval of the member/employee's responsible Deputy Chief, following a recommendation in writing from the member/employee's immediate supervisor. This may occur at the three (3)-month follow-up meeting or at any time thereafter, as justified by reviews of the member/employee's performance. When a member/employee is not discharged from PAS jurisdiction at the one (1)-year follow-up meeting, PAS jurisdiction shall be extended, in writing, for a specific period in three (3)-month increments at the discretion of the member/employee's responsible Deputy Chief. When PAS jurisdiction is extended beyond the minimum one (1)-year review period, additional review meetings involving the member/employee, the member/ employee's designated commander/manager and immediate supervisor, shall take place no less

- frequently than every three (3) months.*
9. *On a quarterly basis, Division/appropriate Area Commanders and managers shall review and analyze relevant data in PAS about subordinate commanders and/or managers and supervisors regarding their ability to adhere to policy and address at-risk behavior. All Division/appropriate Area Commanders and managers shall conduct quarterly meetings with their supervisory staff for the purpose of assessing and sharing information about the state of the unit and identifying potential or actual performance problems within the unit. These meetings shall be scheduled to follow-up on supervisors' assessments of their subordinates' for PAS intervention. These meetings shall consider all relevant PAS data, potential patterns of at-risk behavior, and recommended intervention strategies since the last meeting. Also considered shall be patterns involving use of force, sick leave, line-of-duty injuries, narcotics-related possessory offenses, and vehicle collisions that are out of the norm among either personnel in the unit or among the unit's subunits. Division/appropriate Area Commanders and managers shall ensure that minutes of the meetings are taken and retained for a period of five (5) years. Commanders/managers shall take appropriate action on identified patterns of at-risk behavior and/or misconduct.*
 10. *Division/appropriate Area Commanders and managers shall meet at least annually with his/her Deputy Chief/Director and the IAD Commander to discuss the state of their commands and any exceptional performance, potential or actual performance problems or other potential patterns of at-risk behavior within the unit. Division/appropriate Area Commanders and managers shall be responsible for developing and documenting plans to ensure the managerial and supervisory accountability of their units, and for addressing any real or potential problems that may be apparent.*
 11. *PAS information shall be taken into account for a commendation or award recommendation; promotion, transfer, and special assignment, and in connection with annual performance appraisals. For this specific purpose, the only disciplinary information from PAS that shall be considered are sustained and not sustained complaints completed within the time limits imposed by Government Code Section 3304.*
 12. *Intervention strategies implemented as a result of a PAS Activity Review and Report shall be documented in a timely manner.*
 13. *Relevant and appropriate PAS information shall be taken into account in connection with determinations of appropriate discipline for sustained misconduct allegations. For this specific purpose, the only disciplinary information from PAS that shall be considered are sustained and not sustained complaints completed within the time limits imposed by Government Code Section 3304.*
 14. *The member/employee's designated commander/manager shall schedule a PAS Activity Review meeting to be held no later than 20 days following notification to the Deputy Chief/Director that the member/employee has met a PAS threshold and when intervention is recommended.*

15. *The PAS policy to be developed shall include a provision that a member/employee making unsatisfactory progress during PAS intervention may be transferred and/or loaned to another supervisor, another assignment or another Division, at the discretion of the Bureau Chief/Director if the transfer is within his/her Bureau. Inter-Bureau transfers shall be approved by the Chief of Police. If a member/employee is transferred because of unsatisfactory progress, that transfer shall be to a position with little or no public contact when there is a nexus between the at-risk behavior and the "no public contact" restriction. Sustained complaints from incidents subsequent to a member/employee's referral to PAS shall continue to result in corrective measures; however, such corrective measures shall not necessarily result in a member/employee's exclusion from, or continued inclusion in, PAS. The member/employee's exclusion or continued inclusion in PAS shall be at the discretion of the Chief of Police or his/her designee and shall be documented.*
16. *In parallel with the PAS program described above, the Department may wish to continue the Early Intervention Review Panel.*
17. *On a semi-annual basis, beginning within 90 days from the effective date of this Agreement, the Chief of Police, the PAS Activity Review Panel, PAS Oversight Committee, and the IAD Commander shall meet with the Monitor to review the operation and progress of the PAS. At these meetings, OPD administrators shall summarize, for the Monitor, the number of members/employees who have been identified for review, pursuant to the PAS policy, and the number of members/employees who have been identified for PAS intervention. The Department administrators shall also provide data summarizing the various intervention strategies that have been utilized as a result of all PAS Activity Review and Reports. The major objectives of each of these semi-annual meetings shall be consideration of whether the PAS policy is adequate with regard to detecting patterns of misconduct or poor performance issues as expeditiously as possible and if PAS reviews are achieving their goals.*
18. *Nothing in this Agreement, and more specifically, no provision of PAS, shall be construed as waiving, abrogating or in any way modifying the Department's rights with regard to discipline of its members/employees. The Department may choose, at its discretion, to initiate the administrative discipline process, to initiate PAS review or to use both processes concurrently or consecutively.*

(Negotiated Settlement Agreement VII. B.)

Comments:

This requirement addresses the effectiveness of the use of PAS to manage risk in the Department. Much of the discussion below addresses to process with regard to identifying and assessing individual officers based on risk related behavior and intervening as appropriate. The system also supports a broader approach to managing risk in which the Department continuously assesses activity and seeks to incorporate those assessments more broadly. The Department has taken steps to adopt this perspective. Monthly risk management meetings are held in which police district data are reviewed with command and district staff. We reviewed presentations

from these meetings and found that they incorporate a broad set of indicators – including use of force and complaint data and other measures that include sick time use, missing court, stop-and-frisk data, and use of the Personal Digital Recording Devices (PDRD).

Consistent with the requirements of this Task, the Department also held the Semi-Annual Risk Management Meeting with the Monitoring Team during our most recent site visit. During the meeting, the Department discussed data on the use of the system and a broad range of related issues. The discussion included concerns over the need for supervisory training on the system, particularly as they adopt the process of initial reviews by the PAS Unit. There was also a discussion of issues of under-performing officers and the relationship between risk behavior and work assignments. An extensive discussion also took place regarding the relationship of risk behavior and the benefits of a general “wellness” orientation by supervisors as well as the role of a Departmental wellness program.

The semiannual meeting included an engaging discussion of risk-related issues. It provided support for the view that the leadership of the Department was incorporating a concern for risk management into its ongoing and routine activities.

Discussion:

As noted above and in our last report, OPD revised and issued Departmental General Order D-17, Personnel Assessment Program in July 2012. A new version is currently in revision awaiting final signatures. Based on the existing policy, we again find OPD in continued Phase 1 compliance with this Task. We must note again, however, our expectations that the revised policy will be fully adopted in the near future.

For this reporting period, we continued our examination of the stages of the PAS process consistent with this Task. We examined the threshold analyses that were performed for the period of July 1, through September 30, 2013. This included a review of peer-based threshold analyses completed by the PAS Administration Unit and the identification of officers meeting the single-event threshold.

In accordance with this Task requirement, we reviewed PAS processes for the system’s use in placement of officers on special assignment, transfer of officers, and commendations. An important function of PAS is to regularly provide supervisors with relevant information on officers. To consider that function, we again reviewed reports of regular quarterly PAS command reviews of officers by supervisors. We found appropriate use of the system and no significant issues.

The PAS process also calls for follow-up reports of officers under supervision or monitoring, as well as reports of officers not discharged from the process by the end of one year. We again reviewed reports that were completed during the current reporting period. These document supervisory reviews of officers who have been selected for some form of action as a result of PAS reviews.

For the reporting period ending September 30, 2013, OPD concluded a total of 21 PAS reviews; down from 35 in the previous quarter. Reviews are included in the table below only after they are signed off through the level of the PAS Review Panel. The table below tracks the review process and shows that supervisors recommended that no action be taken in 15, or 71%, of the 21 reviews for the current reporting period. That is down from 86% the previous quarter, which was substantially higher than expected. The table also shows that Commanders disagree with lower-level recommendations in two of the cases. Deputy Chiefs disagreed with the commanders' decisions in one case, and the PAS Review Panel suggested revisions in two additional cases.

For the quarter, the process shows a desirable scrutiny up the chain of command and an improvement over the previous reporting period. Continuing this way should provide a sound foundation for the forthcoming process of internal review by the PAS Unit when thresholds are exceeded. That should reduce the workload on first-line supervisors, while also reducing the number of false positive that occur when thresholds are exceeded but closer attention finds no significant problems.

The value of the data in the chart below is in tracking data over time, and using it to increase the rigors of the review process as it serves the goal of risk reduction.

| Summary of PAS Reviews and Recommendations 2012-13 | | | | | | | | | | | | | | | | | |
|---|-----------------------|---------------------------|------|-------------|-----|-----------------------------|-----|------------------------------|-----|------------------------------------|------|--------------------------------|------|------------------------|------|---------|---|
| | PAS Reviews Completed | Supervisor Rec- no action | % | Recognition | % | Supervisor Rec - Monitoring | % | Supervisor Rec- Intervention | % | Commander rec Concurs w Supervisor | % | Dep. Chief Concurs w Commander | % | PAS Panel Concurs w DC | % | Pending | Number of personnel that exceeded a threshold |
| 2012 | | | | | | | | | | | | | | | | | |
| January | 7 | 5 | 71% | 0 | 0% | 2 | 29% | 0 | 0% | 7 | 100% | 7 | 100% | 7 | 100% | 7 | 14 |
| February | 5 | 4 | 80% | 0 | 0% | 1 | 20% | 0 | 0% | 2 | 40% | 2 | 40% | 2 | 40% | 0 | 59 |
| March | 19 | 12 | 63% | 0 | 0% | 4 | 21% | 3 | 16% | 18 | 95% | 17 | 89% | 18 | 95% | 33 | 7 |
| April | 25 | 17 | 68% | 0 | 0% | 5 | 20% | 3 | 12% | 25 | 100% | 25 | 100% | 25 | 100% | 22 | 41 |
| May | 27 | 17 | 63% | 0 | 0% | 2 | 7% | 0 | 0% | 26 | 96% | 25 | 92% | 27 | 100% | 14 | 58 |
| June | 43 | 41 | 95% | 0 | 0% | 2 | 5% | 0 | 0% | 41 | 95% | 42 | 98% | 43 | 100% | 15 | 17 |
| July | 66 | 61 | 92% | 1 | 5% | 3 | 5% | 2 | 30% | 65 | 98% | 65 | 98% | 64 | 97% | 0 | 18 |
| August | 32 | 29 | 90% | 1 | 0% | 2 | 6% | 0 | 0% | 27 | 84% | 26 | 81% | 27 | 84% | 8 | 35 |
| September | 15 | 10 | 67% | 1 | 0.1 | 3 | 20% | 1 | 7% | 15 | 100% | 11 | 73% | 13 | 87% | 1 | 16 |
| October | 12 | 10 | 83% | 0 | 0% | 2 | 17% | 0 | 0% | 11 | 92% | 11 | 92% | 12 | 100% | 0 | 26 |
| November | 16 | 11 | 69% | 1 | 1% | 2 | 13% | 3 | 19% | 15 | 94% | 10 | 63% | 12 | 75% | 0 | 47 |
| December | 22 | 16 | 73% | 0 | 0% | 6 | 27% | 0 | 0% | 21 | 95% | 19 | 86% | 22 | 100% | 0 | 14 |
| Total | 289 | 233 | | 4 | | 34 | | 12 | | 273 | | 260 | | 272 | | 100 | 352 |
| Average | 24.1 | 19.4 | 76% | 0.3 | 1% | 2.8 | 0 | 1.0 | 7% | 22.8 | 91% | 21.7 | 84% | 22.7 | 90% | 8.3 | 29.3 |
| 2013 | | | | | | | | | | | | | | | | | |
| January | 27 | 19 | 70% | 1 | 4% | 7 | 26% | 0 | 0% | 27 | 100% | 27 | 100% | 24 | 89% | 5 | 14 |
| February | 13 | 13 | 100% | 0 | 0% | 0 | 0% | 0 | 0% | 9 | 69% | 8 | 62% | 10 | 77% | 5 | 7 |
| March | 10 | 10 | 100% | 0 | 0% | 1 | 10% | 0 | 0% | 10 | 100% | 10 | 100% | 6 | 60% | 6 | 11 |
| April | 10 | 10 | 100% | 0 | 0% | 0 | 0% | 0 | 0% | 10 | 100% | 10 | 100% | 9 | 90% | 2 | 4 |
| May | 14 | 8 | 57% | 2 | 14% | 2 | 14% | 2 | 14% | 14 | 100% | 13 | 93% | 12 | 86% | 8 | 18 |
| June | 11 | 10 | 91% | 0 | 0% | 1 | 9% | 0 | 0% | 11 | 100% | 10 | 91% | 8 | 73% | 1 | 4 |
| July | 4 | 2 | 50% | 0 | 0% | 1 | 25% | 1 | 25% | 4 | 100% | 4 | 100% | 4 | 100% | 2 | 12 |
| August | 9 | 6 | 67% | 0 | 0% | 3 | 33% | 0 | 0% | 7 | 78% | 8 | 89% | 7 | 78% | 1 | 12 |
| September | 8 | 7 | 88% | 0 | 0% | 0 | 0% | 1 | 13% | 8 | 100% | 8 | 100% | 7 | 88% | 0 | 0 |
| Total | 106 | 85 | | 3 | | 15 | | 4 | | 100 | | 98 | | 87 | | 30 | 82 |
| Average (yr to date) | 11.8 | 9.3 | 79% | 0.3 | 2% | 1.7 | 13% | 0.4 | 6% | 11.1 | 94% | 10.9 | 93% | 9.7 | 82% | 3.3 | 9.1 |

For our quarterly reports, we also review the PAS histories of officers who had either a Level 1 use of force or been arrested for a criminal offense in the past quarter. As was true the previous quarter, for the period under review, three officers met these criteria for examination by virtue of a Level 1 use of force. The officers had prior history of meeting PAS thresholds, including complaint and Level 4 thresholds, but showed no significant patterns of problems.

As noted above, the Department is making progress in several areas relating to risk management. The arrest data issues are being addressed, and progress has been made on the development of PAS2. The RFP should be released during the next reporting period, and the process of selecting vendor is expected to be well underway by our next visit. In our last report, we noted that this was an appropriate time to address issues regarding the use of the risk management system. The Department is making progress toward that goal with attention to the policy changes, continued practice on completion of internal reviews within the Risk Management Unit, and with the

orientation and training of new staff and managers within the unit. We look forward to monitoring increased progress in both the technical and applied dimensions of the risk management process.

Compliance Status:

Phase 1: In compliance

Phase 2: Partial compliance

Next Steps:

We anticipate that there will be significant further developments regarding risk management by the time of our next site visit. The revised policy should be fully effective and the internal review process begun in earnest. The problems with the arrest data should, at long last, be completely resolved. The RFP for IPAS2 should have been released and related activity undertaken. Issues of coordination with the developing RMS should be resolved, as should any lingering concerns over how the new technology will be maintained. The Department's own technology subject matter expert may be in place and fully functioning by the time of our next site visit. We will consider all of these matters in the next reporting period.

We will also continue to work with the Department to examine the processes of collecting and storing data, and the use of that data in the PAS review process. Our chief focus will remain on the effective use of the risk management system during the quarter.

Task 42: Field Training Program

Requirements:

Within 323 days of the effective date of this Agreement, OPD shall develop and implement a plan to enhance its Field Training Program. This plan shall address the criteria and method for selecting FTOs, the training provided to FTOs to perform their duty, supervision and evaluation of FTOs, the length of time that trainee officers spend in the program, and the methods by which FTOs assess and evaluate trainee officers in field training. The plan must ensure proper reporting, review and approval of probationary officers' reports.

Field Training Program Coordinator

The Chief of Police shall assign a full-time sergeant for the first year who shall develop and implement the new policies and procedures described in this section. The Chief of Police shall determine, upon successful completion of the development and implementation of these policies, if it is necessary to continue the position at the rank of sergeant, but in any event, the position shall continue as a full-time position.

Trainee Rotation

During their field training, trainee officers shall rotate to a new FTO and a new geographic area of the City at predetermined intervals. Prior to rotation, trainee officers shall be interviewed by

the Field Training Program Coordinator or his/her designee and given an opportunity to raise any questions or concerns they may have about the quality of training provided to them.

FTO Participation Incentives

OPD shall increase the incentives for participation in the FTO program so that the Department will have a larger pool of qualified, experienced candidates from which to choose.

FTO Candidate Nomination and Requirements

FTO candidates shall be nominated by field supervisors and commanders, but shall be approved for assignments to this duty, and for retention in it, by the Chief of Police. All FTO candidates must have completed three (3) years of Departmental service before selection, unless specifically authorized by the Chief of Police. FTO candidates shall be required to demonstrate their commitment to community policing, and their problem-solving and leadership abilities. Ethics, professionalism, relationships with the community, quality of citizen contacts and commitment to OPD philosophy shall be primary criteria in the selection of FTOs. Excessive numbers of sustained and not sustained complaints completed within the time limits imposed by Government Code Section 3304, or excessive numbers of use of force incidents shall bar a candidate from selection as an FTO for no less than two (2) years.

Decertification

The presumptive result of sustained disciplinary action, completed within the time limits imposed by Government Code Section 3304, against an FTO or the FTO Program Coordinator for excessive force, unlawful arrest, false testimony, racial, ethnic, sexual-orientation or gender-based discrimination or slurs, or other serious examples of police misconduct, shall be removal from the FTO program. The Deputy Chief of the member's chain of command may recommend to the Chief of Police to grant an exception to this presumption after conducting a hearing on the facts of the matter. The Chief of Police shall document the approval/disapproval in writing.

FTO Assignment

Assignment to an FTO position shall be contingent upon successful completion of a training course designed for this position and shall be approved by OPD and the State of California Peace Officers' Standards and Training.

FTO Evaluation

At the end of a complete FTO cycle, trainee officers leaving the FTO program shall anonymously evaluate each of their FTOs. OPD shall develop a form for such evaluations which emphasize effectiveness at training and effectiveness at supervision. The evaluation form shall also assess the degree to which the FTO program reflected policies, procedures, values and other information taught in the recruit academy. The FTO evaluation forms shall be reviewed by the Field Training Program Coordinator and the individual FTO's commander and supervisor. The Field Training Program Coordinator shall provide evaluation information to the FTOs as a

group, concerning program effectiveness. Each FTO shall also be provided with evaluation information regarding their individual performance. The individual evaluation forms shall not be made available to individual FTOs in the interest of maintaining anonymity of trainee officers who have completed the forms.

Daily Evaluation Audit

The Field Training Program Coordinator, or his/her designee, shall conduct random audits of the FTO program to ensure that FTOs complete daily evaluations of trainee officers and that the selection standards for FTOs are maintained.

Trainee Officer Assignment

When a trainee officer's FTO is absent, the trainee officer shall not be assigned to field duties with an "acting" FTO. They shall be placed with another certified FTO, or shall be assigned to non-field duties, pending the availability of a certified FTO.

Field Commander and FTO Supervisor Training

OPD shall provide field commanders and supervisors with training on the FTO program, including the field-training curriculum, the role of the FTO, supervision of FTOs and probationary employees, the evaluation process and the individual duties and responsibilities within the FTO program.

Focus Groups

The Field Training Program Coordinator and Academy staff shall conduct focus groups with randomly selected trainee officers midway through the field-training cycle, upon completion of field training, and six (6) months after completion of the field training program, to determine the extent to which the Academy instructors and curriculum prepared the new officers for their duties.

Consistency of Training

The results of these focus group sessions shall be reviewed at a meeting to include the Training Division Commander, the FTO Program Coordinator, the BFO Deputy Chief, and the BOS Deputy Chief. If it is determined that there is a substantial discrepancy between what is taught in the Academy and what is taught in the FTO program, there shall be a determination as to which is correct, and either the training Academy or the FTO program shall make the necessary changes so that the desired training information is consistent. In the event that the discrepancies appear to be the result of one or more individual FTOs, rather than the FTO program as a whole, the review group shall determine whether the discrepancies are serious enough to warrant removal of that officer or officers from the FTO program. The results of the meeting of this review group shall be documented and this information shall be provided to the Monitor. (Negotiated Settlement Agreement VIII. A.-L.)

Background:

In 2009, the Parties agreed that there would be no active monitoring of this Task, since hiring had ceased and no Academy was planned for the near future. OPD decertified all then-current

Field Training Officers. We deferred our compliance finding for Task 42 until the program was reinstated to address the needs of new officers.

During the twelfth reporting period, we found that OPD had followed the FTO selection procedures required by the NSA and was, for the first time, in compliance with Task 42. We also found OPD in compliance with this Task during the last three reporting periods.

Discussion:

During our most recent site visit, we met with and interviewed the officer who serves as Field Training Coordinator; and reviewed related memoranda, evaluation forms, and other documentation.

At the time of our November 2013 site visit, 36 trainees were in the field assigned to FTO officers. These trainees began their FTO Program assignments on September 28, 2013 and have been rotated to different FTOs once since then.

Since this cohort entered the FTO Program, one trainee has resigned, but another returned from maternity leave, leaving the total number of trainees in the FTO Program at 36.

The FTO coordinator will be rotated to a new patrol assignment, and OPD is now in the process of selecting his replacement. When the new coordinator is assigned, the current coordinator will be temporarily assigned to the FTO Program to ensure proper training and transition to the new coordinator.

At time of our last site visit, there were 55 FTOs – seven of whom were unavailable for assignment as an FTO due to their current work assignment and 23 officers were being processed to serve as FTOs. At the time of our November 2013 site visit, OPD had 51 FTOs with eight in assignments that precluded their working with trainee officers. The same 23 officers had been selected as FTO candidates and vetted. These officers still await a panel interview and selection by the Chief.

Task 42.1 requires that the Field Training Program Coordinator is a full-time position (compliance standard: Yes/No). A full-time officer is currently assigned to supervise the program. OPD is in compliance with this subtask.

Task 42.2.1 requires that trainee officers rotate to a new Field Training Officer (FTO) and a new geographic area of the City at predetermined intervals (compliance standard: 90%). Trainees are rotated every four weeks to a new assignment and new FTO. While the FTO Program coordinator tries to assign trainees to different sections of the city when the rotations occurred in October 2013, the limited number of FTOs available precluded the rotation of six trainees to different parts of the city. These trainees were, however, rotated to different FTOs and will be

rotated to different parts of the city on the next rotation. While the limited number of FTOs may prevent 100% of trainees to be assigned to different geographic areas each rotation, OPD has rotated all trainees to different assignments shifts and areas throughout the overall training period and remains in compliance with this subtask.

Task 42.3.1 requires that incentives for participation as an FTO are increased (compliance standard: Yes/No). Officers who serve as FTOs are paid incentive pay for their service. In addition, the program includes several incentives (e.g., chevrons, administrative days, and priority for selection as training) as incentives for participation. No changes to the incentives for participation in the FTO Program have occurred during the current reporting period. OPD is in compliance with this subtask.

Task 42.4.1 requires that field supervisors and commanders nominate FTO candidates (compliance standard: 90%), and the Chief of Police determines FTO assignments and retention (compliance standard: Yes/No); **Task 42.4.2** requires that FTO candidates complete three years of service before selection, unless authorized by the Chief (compliance standard: Yes/No); **Task 42.4.3** requires that FTO candidates are required to demonstrate commitment to community policing and problem solving and leadership abilities (compliance standard: 95%); **Task 42.4.4** requires that ethics, professionalism, relationships with the community, quality of citizen contacts and commitment to OPD philosophy are primary criteria in the selection of FTOs (compliance standard: 95%); and **Task 42.4.5** requires that candidates with excessive numbers of citizen complaints, sustained investigations or excessive numbers of use of force incidents are barred from selection as an FTO for no less than two years (compliance standard: 95%). Candidates are recommended by their supervisors and commanders; and must have work and performance records as required by this section. FTOs are screened for commitment to community policing and candidates with excessive numbers of complaints and/or sustained instances of uses of force are not selected. The selection of all FTOs to be certified (newly selected FTOs) and those to be recertified (FTO previously selected and decertified when new officers were not being hired) followed the requirements outlined in the NSA. As noted above, the screening of the 23 new candidates to be added to the FTO Program had been completed at the time of our August 2013 review but awaits command review and selection. OPD is in compliance with these subtasks.

Task 42.5 requires that FTOs be decertified following sustained disciplinary action for serious misconduct specified (compliance standard: Yes/No). During the current reporting period, two officers were sustained for Class I violations. These officers were identified by the FTO Program coordinator in his monthly review of IAD sustained findings, and they were removed from the FTO Program. OPD is in compliance with this subtask. .

Task 42.6 requires that assignment to a FTO position is contingent upon successful completion of a training course for the position (compliance standard: Yes/No). FTOs are not assigned until they have successfully completed program training. OPD is in compliance with this subtask.

Task 42.7.1 requires that at the end of a complete FTO cycle, trainee officers anonymously evaluate each of their FTOs (compliance standard: 95%); **Task 42.7.2** requires that FTO evaluation forms are reviewed by the Program Coordinator and the FTO's commander and supervisor (compliance standard: 95%); **Task 42.7.3** requires that the Field Training Program Coordinator provides evaluation information to the FTOs as a group, concerning program effectiveness (compliance standard: Yes/No); **Task 42.7.4** requires that each FTO is provided with evaluation information regarding his/her individual performance (compliance standard: Yes/No); and **Task 42.7.5** requires that individual evaluation forms are not made available to individual FTOs in the interest of maintaining anonymity of trainee officers who have completed the forms (compliance standard: Yes/No). Trainees are evaluated by their FTOs on a daily basis beginning with their second week of field assignment. The patrol sergeant prepares a weekly progress report; and at the end of each four-week cycle, the FTO prepares an end-of-phase report. Trainee officers anonymously evaluate their FTOs at the end of each phase. Trainees are provided evaluations of their performance throughout the program. FTOs do not receive individual evaluation forms but do receive feedback regarding their performance. The evaluation forms are reviewed by the FTP Coordinator, commander, and supervisor; and filed in the FTO Coordinator's office. OPD is in compliance with these subtasks.

Task 42.8 requires that the Field Training Program Coordinator, or his/her designee, conduct random audits of the FTO program to ensure that FTOs complete daily evaluations of trainee officers (compliance standard: Yes/No). FTOs complete a daily evaluation of the trainees; and the program coordinator receives, reviews, audits, and files all evaluation forms. OPD is in compliance with this subtask.

Task 42.9 requires that when a trainee officer's FTO is absent, the trainee officer is not assigned to field duties with an "acting" FTO, but is placed with another certified FTO, or assigned to non-field duties, pending the availability of a certified FTO (compliance standard: 95%). If a trainee's FTO is unavailable, the trainee is assigned to another FTO. If no FTO is available, the trainee is assigned to a sergeant or non-patrol assignment. In the past there have been situations in which the FTO Coordinator discovered that a trainee officer had been assigned for a brief period to work with an officer who had not been approved as an FTO by the Chief. The FTO Coordinator moved quickly to ensure that the trainee was reassigned to an approved FTO and that the supervisors and commanders were aware of the requirement that trainees can only work with Department-certified FTOs. No such incident occurred during the third quarter of 2013. OPD is in compliance with this subtask.

Task 42.10 requires that Field Commanders and FTO Supervisors be provided training (compliance standard: 95%). All sergeants and commanders to whom FTOs would be assigned were trained by the program in both group and individual sessions before they were assigned FTO duties. OPD is in compliance with this subtask.

Task 42.11 requires that focus groups are conducted by the Field Training Program Coordinator and Academy staff with randomly selected trainee officers midway through the field-training cycle, upon completion of field training, and six months after completion of the field training

program (compliance standard: Yes/No). The coordinator conducts focus groups with randomly selected trainees, as required by the NSA. The focus group is designed to elicit issues encountered in the program and ensure that inconsistencies in training are identified and rectified. The first focus group of with the current trainees was scheduled for November 11, 2013, at the halfway mark in the FTO training. According to the Department, Training Section personnel and FTO officers are expected to attend this meeting. OPD is in compliance with this subtask.

Task 42.12 requires that the results of the focus group sessions be reviewed at a meeting to include the Training Section Commander, the FTO Program Coordinator, the BFO Deputy Chief, and the BOS Deputy Chief (compliance standard: Yes/No). The coordinator explores the consistency of field training with that of the Academy at several points during the program. He interviews every trainee every four weeks before they are rotated to new assignments and new FTOs. He also participates in biweekly meetings with the Training Commander in which the FTO training is discussed to identify training issues. At the end of the FTO training cycle, a final evaluation report of the trainee's performance is prepared; and trainees rate the FTOs and the program. In order to ensure that training and the FTO Program are consistent, biweekly meetings attended by the Training Commander, the FTO Coordinator, and his lieutenant are held. A quarterly review panel – composed of the two Deputy Chiefs of the BFOs, the Training Division lieutenant's designee, the FTU supervisor and FTO coordinator – met and reviewed the previous Panel suggestions from the Focus Group of 166th Academy, First Focus Group meeting held on May 23, 2013. The panel also reviewed suggestions from the Focus Group of the 166th Academy, Second Focus Group meeting held on July 18, 2013.

As we observed in our last four reports, OPD has fulfilled the requirements of Task 42. Increasing the number of approved and trained FTOs who are available to work alongside a larger number of trainees is important to the continued success of the program.

OPD is in Phase 2 compliance with Task 42.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

Task 43: Academy and In-Service Training

Requirements:

A. Academy Training Plan

Within 540 days of the effective date of this Agreement, OPD shall develop and implement a plan to enhance its Academy and in-service training to ensure that OPD members, dispatchers, and civilian evidence technicians are adequately trained for their positions, and aware of and able to implement the most contemporary developments in police training. This plan shall include a review of OPD's training curriculum, with additional emphasis on ethics and professionalism, critical thinking and problem solving, conflict resolution, and relationships with the community. The plan shall also address the criteria and method for selecting OPD training instructors, the training provided to instructors, procedures for evaluating the content and quality of training provided to OPD personnel and procedures for maintaining training records for OPD personnel. In arriving at the plan regarding staffing, training content and methodology, OPD shall consult with at least four (4) other, large law-enforcement agencies within the United States which have excellent reputations for professionalism. In particular, OPD shall consult with these agencies about qualifications and other criteria to be used in selecting staff for training positions. OPD shall also review the approach of these other law enforcement agencies in training both new staff and experienced staff on ethics and professionalism, critical thinking and problem solving, conflict resolution, and relationships with the community.

B. Professionalism and Ethics

OPD shall expand professionalism and ethics as a training topic within the recruit academy, in-service training, and field training. Wherever possible, OPD shall include and address issues of professionalism and ethics using curricula that employ realistic scenario-based training exercises.

C. Supervisory and Command Training

OPD shall provide all sergeants and commanders with mandatory 40-hour in-service supervisory and leadership training. Officers shall attend training prior to promotion to the rank of sergeant. Lieutenants shall attend training within six (6) months of promotion. Such training shall include supervisory and command accountability, and ethics and professionalism, with emphasis on supervisory and management functions and situations, and shall include both scenario-based training and case studies.

D. In-Service Training

OPD shall provide all members with forty (40) hours of in-service training every eighteen (18) months.

- 1. Sergeants shall receive at least 20 hours of training designed for supervisors every 18 months.*
- 2. Members at the rank of lieutenant and above shall receive at least 20 hours of training designed for commanders every 18 months.*

E. Training Staff Record Review

Appointment to the Academy staff or other staff training position shall also require a review of the record of the individual being considered, to ensure that the individual does

*not have a record of any Class I offense, as defined in Section III, paragraph H (1), within the prior two (2) years, and that the individual is supportive of the philosophy and values of OPD.*¹⁸
(Negotiated Settlement Agreement IX. A.-E.)

Background:

Only one provision of Task 43 (43.1.1) is being actively monitored under the MOU. This subtask requires OPD to ensure that OPD members, dispatchers, and civilian evidence technicians are adequately trained for their positions. During the last reporting period, we found that 97% of the members and employees in our sample received the required in-service training.

Discussion:

As previously reported, OPD published General Order B-20, *Departmental Training Program* (April 6, 2005), which incorporates the requirements of Task 43. As the Department has trained at least 95% of relevant personnel on these policies, OPD is in continued Phase 1 compliance with this Task.

Task 43.1.1 requires that OPD's training plan ensure that OPD members, dispatchers, and civilian evidence technicians are adequately trained for their positions (compliance standard: Yes/No). For this reporting period, inasmuch as OPD has been in compliance since our first report dated April 22, 2010 with providing adequate training to its officers, sergeants and dispatchers for over two years, we reduced the numbers of records we sampled to 25 for these employees. Our sample included 15 officers, five sergeants, and five dispatchers to determine if the members and employees received adequate training for their positions. Because of our concern about the training afforded PETs as expressed in our last report, we reviewed the training records for all 12 PETs.

The Department produced a record for each member and employee in our sample. For each, we reviewed the training s/he received during previous years, and calculated the number of hours recorded in his/her record. For the sworn officers in our sample, we credited the California Peace Officer Standards and Training (POST)-certified Continued Professional Training (CPT) as counting toward the requirement. CPT is, according to California state requirements, to be delivered to every officer every two years; OPD uses an 18-month cycle.

Training of PETs

Training of police evidence technicians (PET) is the responsibility of the BFO where they are assigned. A new training coordinator was appointed in January 2013. During our last two reviews, we found that four of the six PETs selected in our random reviews did not receive training adequate for their positions.

We commented that during the past two years, we had examined the training received by the PETs who were identified in our random reviews. OPD has made some progress in this area

¹⁸ The underlined requirement is the only provision of Task 43 that is being actively monitored under the MOU.

since we have begun to examine PET training by arranging for PETs to attend segments of the officers' CPT training and for several PETs to receive training by OPD Crime Laboratory employees. We said that overall training of PETs, however, has been disorganized and needs to be improved. We also noted that we had requested the training files for all PETs and would be reviewing them for our November 2013 site visit.

Our review revealed several continuing deficiencies in PET training. The PETs are assigned to the BFO, and the PET coordinator is a police officer. The first and most obvious deficiency is the absence of an initial training program. The Department recently recruited a new PET and is conducting interviews to hire as many as four additional PETs. New PETs are trained on-the-job, but OPD has no fixed training requirements or program for either initial or continuing job training. There is not even a checklist of topics in which new employees are to be trained to guide the process. We observed in our last report that while the cost of training may be a factor, there are many ways in which good training can be arranged at reasonable costs. For instance, OPD placed some PETs in the officers' CPT course when the information presented was of value to their work. This should be pursued more diligently. The Department's Crime Laboratory is another resource that has barely been tapped. While OPD Crime Laboratory employees provide training to other police agencies in California, this unit does not have a formal role in training OPD's PETs.

We reviewed the training records for each of the 12 current PETs and found several lacking adequate training. The chart below shows total hours received in 2012 and to mid-September in 2013, and evidence related training (legal, investigative and evidence training) and our judgment as to its adequacy. Only seven (58%) of the 12 PETs have received adequate training in 2012 and through September 2013.

| PET | 2013 | 2012 | EVIDENCE RELATED TRAINING | ADEQUATE/ INADEQUATE |
|------------|-------------|-------------|----------------------------------|-----------------------------|
| PET 1 | 2.5 | 21 | 4 | INADEQUATE |
| PET 2 | 3 | 34 | 31.5 | ADEQUATE |
| PET 3 | 44.5 | 7.5 | 47.5 | ADEQUATE |
| PET 4 | 81.5 | 85 | 139 | ADEQUATE |
| PET 5 | 2.5 | 3.5 | 0 | INADEQUATE |
| PET 6 | 2 | 1 | 0 | INADEQUATE |
| PET 7 | 42 | 33 | 44 | ADEQUATE |
| PET 8 | 43 | 13 | 7.5 | INADEQUATE |
| PET 9 | 26 | 61.5 | 35.5 | ADEQUATE |
| PET 10 | 1 | 10 | 0 | INADEQUATE |
| PET 11 | 53 | 29 | 61.5 | ADEQUATE |
| PET 12 | 29.5 | 21 | 28 | ADEQUATE |

The remainder of the files in our random sample revealed training appropriate to their position. One officer and one sergeant in our survey were excused for medical reasons. Overall, 23 (100%) of the 23 members and employees in our sample who were available to train received appropriate training to their jobs. The following chart reflects the results of our survey.

| | Records Reviewed | Retired, Resigned or Medical | Available to Train | Adequate Training Received | % |
|----------------------|------------------|------------------------------|--------------------|----------------------------|------|
| Officers | 15 | 1 | 14 | 14 | 100% |
| Sergeants | 5 | 1 | 4 | 4 | 100% |
| Dispatchers | 5 | 0 | 5 | 5 | 100% |
| Evidence Technicians | 12 | 0 | 12 | 7 | 56% |
| Total | 37 | 2 | 35 | 30 | 86% |

Given the critical nature of the job performed by PETs in support of OPD investigations and crime reduction efforts, the lack of training for technicians is a serious matter. We have commented on this weakness in several past reports and, to date, little has been done to improve the situation. If we do not find improvement in this area in our next review, we will move this Task to a non-compliant status.

OPD is in Phase 2 compliance with Task 43.1.1.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

Task 45: Consistency of Discipline Policy

Requirements:

On or before October 6, 2003, OPD shall revise and update its disciplinary policy to ensure that discipline is imposed in a fair and consistent manner.

1. *The policy shall describe the circumstances in which disciplinary action is appropriate and those in which Division-level corrective action is appropriate.*
2. *The policy shall establish a centralized system for documenting and tracking all forms of discipline and corrective action, whether imposed centrally or at the Division level.*
3. *All internal investigations which result in a sustained finding shall be submitted to the Discipline Officer for a disciplinary recommendation. The Discipline Officer shall convene a meeting with the Deputy Chief or designee in the affected chain-of-command for a confidential discussion of the misconduct, including the*

mitigating and aggravating factors and the member/employee's overall performance.

4. *The COP may direct the Discipline Officer to prepare a Discipline Recommendation without convening a Discipline Conference.*

(Negotiated Settlement Agreement X. B.)

Background:

During the last reporting period, we found OPD in compliance with Task 45.

Discussion:

There are several Departmental policies that incorporate the requirements of Task 45:

- **Department General Order M-03:** As previously reported, OPD published Department General Order M-03, *Complaints Against Department Personnel and Procedures*, on December 6, 2005. General Order M-03 was revised in February 2008, and again in June 2013. The revised policy also incorporates the requirements of these subtasks.
- **Special Order 8552:** As previously reported, OPD published Special Order 8552, *Update of Departmental Training Bulletin V-T.1, Internal Investigation Procedure Manual*, on February 1, 2007. This policy incorporates the requirements of these subtasks.
- **Internal Investigation Procedure Manual:** OPD published Training Bulletin V-T.1 and V-T.2, *Internal Investigation Procedure Manual*, on June 1, 2006. This policy incorporates the requirements of these subtasks.
- **Internal Affairs Policy and Procedure Manual:** OPD published the Internal Affairs Policy and Procedure Manual on December 6, 2005. This policy incorporates the requirements of these subtasks.
- **Departmental Discipline Policy:** OPD revised the Training Bulletin V-T on September 3, 2010. This policy incorporates the requirements of these subtasks.

As the Department has trained at least 95% of relevant personnel on these policies, we find OPD in continued Phase 1 compliance with this Task.

Task 45.1 requires that OPD maintain a centralized system for documenting and tracking all forms of discipline and corrective action, whether imposed centrally or at the Division level (compliance standard: Yes/No). To assess Phase 2 compliance with this subtask, we queried the IAD database to identify all of the cases with at least one sustained finding that were approved

between July 1, through September 30, 2013. This query yielded 22 cases, containing 32 sustained findings. Of these 22 cases, 20 (90%) and 30 (94%) of the findings contained all of the necessary information. OPD is in compliance with the requirement that it maintain an adequate system for documenting and tracking discipline and corrective action.

We also added six cases with eight findings that were identified during our August 2013 review in which the discipline dates were in the second quarter, not the first, of 2013. We, therefore, examined 28 cases containing 40 findings in which the discipline conference and discipline letter occurred during the third quarter of 2013.

Task 45.4 requires that discipline be imposed in a manner that is fair and consistent (compliance standard: 95%). To this end, the Department has developed and revised a Discipline Matrix. The Department most recently updated and revised its Discipline Matrix on September 2, 2010. A new revised Discipline Matrix is under consideration but has not yet been approved. We reviewed all the cases with sustained findings that were decided during the period of July 1, through September 30, 2013. We found that in 38 of the 40 findings the discipline imposed was reasonable and fell within the Discipline Matrix. In one case, the discipline fell outside the Matrix, but the discipline imposed was reasonable and adequately justified. In a second case, the finding was sustained but an officer or employee who committed the violation was not identified so discipline was not appropriate. We note, as we have previously, that the Discipline Matrix is only a guide and can be departed from with reasonable justification.

During the period of July 1, through September 30, 2013, Skelly hearings were held for 11 IAD cases involving 13 sustained findings in which discipline of a one-day suspension or greater was recommended. In all (100%) of the 11 cases, the recommended discipline was upheld (seven cases) or reduced (five cases) with adequate justification.

OPD is in compliance Phase 2 compliance with Task 45.

Compliance Status:

Phase 1: In compliance

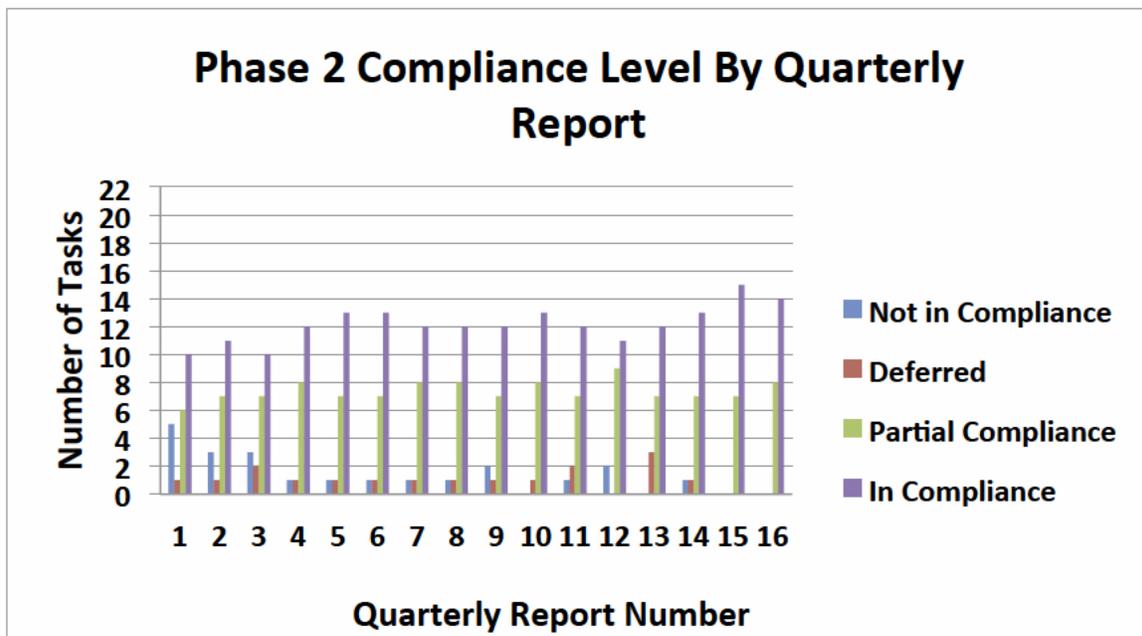
Phase 2: In compliance

Section Three

Conclusion

This is our sixteenth quarterly report. The status of compliance with the 22 active requirements of the Negotiated Settlement Agreement is shown for all of our quarterly reports in the graph below. It shows a decline of one Task in overall compliance, which was at the highest level achieved in our last quarterly report. In all, 14, or 64%, of the Tasks are in Phase 2 compliance.

These overall numbers reflect a change of one Task from in compliance to partial compliance. This Task, Task 26, Force Review Board (FRB), moved from partial compliance to in compliance.



Appendix B

Acronyms

The following is a listing of acronyms frequently used in our quarterly reports.

| Acronym | Definition |
|----------------|---|
| ACSO | Alameda County Sheriff's Office |
| AWS | Automated Warrant System |
| BART | Bay Area Rapid Transit |
| BFO | Bureau of Field Operations |
| BOI | Bureau of Investigation |
| BOS | Bureau of Services |
| CAD | Computer Assisted Dispatch |
| CHP | California Highway Patrol |
| CID | Criminal Investigation Division |
| CORPUS | Criminal Oriented Records Production Unified System |
| CPRB | Citizens' Police Review Board |
| CPT | Continued Professional Training |
| CRIMS | Consolidated Records Information Management System |
| DGO | Departmental General Order |
| DIL | Daily Incident Log |
| DLI | Division-level investigation |
| EFRB | Executive Force Review Board |
| FRB | Force Review Board |
| FTO | Field Training Officer |
| FTP | Field Training Program |
| FTU | Field Training Unit |
| IAD | Internal Affairs Division |
| IB | Information Bulletin |
| ICR | Informal Complaint Resolution |
| IPAS | Input for Personnel Assessment System |
| LEWI | Law Enforcement Warrants Inquiry System |
| MOR | Manual of Rules |
| NSA | Negotiated Settlement Agreement |
| OCA | Office of the City Attorney |
| OIG | Office of Inspector General |
| OPD | Oakland Police Department |
| PAS | Personnel Assessment System |
| PDRD | Portable Digital Recording Device |
| POST | Peace Officer Standards and Training |
| RMM | Risk Management Memorandum |
| RWM | Report Writing Manual |
| SDF | Stop Data Form |
| SME | Subject matter expert |
| SO | Special Order |
| TB | Training Bulletin |
| UOF | Use of force |