



BALTIMORE POLICE DEPARTMENT CONSENT DECREE MONITORING TEAM

COMPLIANCE REVIEW REGARDING
THE PERFORMANCE REVIEW BOARD (PRB)

October 11, 2023

CD
Monitoring
Team

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I. EXECUTIVE SUMMARY

The Monitoring Team has previously reported on BPD's progress in implementing the Consent Decree's requirements relating to officer use of force and the Department's response, reporting, and investigation of force.

The Decree also includes requirements addressing BPD's internal review and oversight of force. As part of the use of force review process, the Consent Decree requires BPD to maintain a Performance Review Board ("PRB"). The PRB generally "conduct[s] timely, comprehensive, and reliable reviews of"¹:

- "[A]ll Level 3 Reportable Force incidents"²;
- "[A]ny fatal motor crash in which the actions of a BPD member were a contributing cause"³;
- "[A]ny other incident or investigation of the Police Commissioner or his/her designee"⁴; and
- "[A]ny Level 2 force incidents referred [to it]."⁵

The Monitoring Team conducted a compliance review relating to BPD's compliance with the portions of the Decree addressing the performance of the Department's Performance Review Board, Paragraphs 207 through 210. Specifically, the Team observed 16 of the 24 normal meetings of BPD's Performance Review Board that BPD certifies to have occurred between April 27, 2022 and March 29, 2023. During these 16 reviewed convenings, the Board considered 41 use of force incidents that occurred between April 26, 2020 and February 8, 2023.

For each individual incident considered in these PRB meetings, a Monitoring Team observer completed a structured assessment instrument evaluating BPD's compliance with various Decree and policy requirements. The Monitoring Team also reviewed aggregate data and records maintained and provided by BPD, including memoranda that PRB prepared summarizing its findings and action steps following the Board's consideration of individual incidents.

Summary of Findings

The Monitoring Team finds that the Performance Review Board is close to being in compliance with relevant Consent Decree requirements. Important findings include:

¹ Dkt. 2-2 ¶ 207(c).

² Dkt. 2-2 ¶ 207(a).

³ Dkt. 2-2 ¶ 207(a).

⁴ Dkt. 2-2 ¶ 207(a).

⁵ Dkt. 2-2 ¶ 207(c).

- **The overall quality of PRB’s discussion and analysis of force incidents is high**, with more than 90% of cases determined by the Monitoring Team to be “thorough, accurate, unbiased, and complete” and the remaining 10% of cases determined to be “adequate” even though particular areas “could be improved” because the Board nonetheless “le[ft] no material questions or concerns unaddressed” in its discussion.
- **Board reviews are comprehensive and sufficiently reliable.** The quality of SIRT presentations to the Board is generally high, and the Board’s consideration of force incidents is sufficiently comprehensive across a vast majority of cases.
- **Board reviews are sufficiently “timely” because they are regularly occurring “as soon as possible” following the conclusion of the Department’s investigation of a reviewable incident.** The Consent Decree requires that PRB conduct “timely” reviews of use of force incidents.⁶ The Monitoring Team concludes PRB’s reviews generally meet that standard, considering the complexity of underlying incidents and the length of time required for BPD to complete a thorough factual investigation of the incident prior to Board consideration. BPD policy sets a more specific requirement – that PRB reviews occur within 30 days of the incident or as soon as possible thereafter. While BPD frequently takes longer than 30 days to conduct its reviews, its timing is nevertheless within the policy because the reviews occur “as soon as possible” given the circumstances and furthermore satisfy the less prescriptive standard in the Decree itself.
- **BPD has satisfactorily met requirements relating to the training of PRB members on use of force topics.**

At the current time, **the primary impediment to BPD’s full compliance with the Decree’s PRB provisions is the length of time that the Board takes to complete required memoranda that memorialize the Board’s findings and recommendations for the Commissioner and other relevant BPD personnel.** While the Decree specifically requires submission of the post-PRB memorandum “within fourteen days” of the SIRT presentation to PRB,⁷ only one of the 18 PRB memoranda reviewed by the Monitoring Team for PRB incidents considered between April 27, 2022 and November 23, 2022 was submitted within that 14-day period. Because this requirement is geared toward ensuring that the Department swiftly takes follow-up action and incorporates lessons learned into its day-to-day performance, the Monitoring Team will follow up in the near future to determine whether memoranda are more timely submitted. The Team anticipates that BPD will be in compliance with Paragraphs 207 through 210 when the Board can regularly submit post-Board memoranda to the Commissioner within the Decree-required 14 days.

⁶ Dkt. 2-2 ¶ 207(c).

⁷ Dkt. 2-2 ¶ 210.

II. Background

A. The Department of Justice’s Investigative Findings Regarding Use of Force

The Department of Justice’s investigation of BPD concluded that the Department’s “officers use unreasonable force in violation of the Fourth Amendment . . . , contributing to the pattern or practice of conduct that violates the constitution and federal law.”⁸

The investigation identified a number of factors that contribute to or “underlie the pattern or practice of unconstitutional force”⁹ – with “[t]he fault for officers’ systemic use of” inappropriate and unlawful force tactics resting “with BPD as an agency.”¹⁰ One factor was BPD’s “fail[ure] to exercise proper oversight over incidents of force and address deficiencies when they occurred, allowing officers to continue using unreasonable force and unsafe tactics.”¹¹ Specifically, the DOJ investigation cited a very low number of incidents where the Department “investigated . . . incidents for excessive force based on concerns identified through its internal review” of force incidents.¹² In addition to concerns about the underlying quality and comprehensiveness of force investigations, the DOJ found that BPD’s supervisors and chain of command systematically failed to “critically examine[.]” uses of force, including serious force, “to ensure that they conform with the Department’s policies and law.”¹³

B. Consent Decree Requirements

Consistent with DOJ’s investigative findings regarding use of force, the Consent Decree includes requirements addressing BPD’s internal review and oversight of force. The Monitoring Team’s previous assessment on use of force addressed the Decree’s many requirements relating to the investigation of force incidents and the review by the chain of command.

As part of the use of force review process, the Consent Decree requires BPD to maintain a Performance Review Board. The PRB generally “conduct[s] timely, comprehensive, and reliable reviews of”¹⁴:

- “[A]ll Level 3 Reportable Force incidents”¹⁵;

⁸ U.S. Department of Justice, *Investigation of the Baltimore Police Department* (Aug. 10, 2016), <https://www.justice.gov/crt/file/883296/download> [hereinafter “DOJ Findings Letter”] at 74.

⁹ DOJ Findings Letter at 98.

¹⁰ *Id.* at 79.

¹¹ DOJ Findings Letter at 98.

¹² DOJ Findings Letter at 102.

¹³ DOJ Findings Letter at 107.

¹⁴ Dkt. 2-2 ¶ 207(c).

¹⁵ Dkt. 2-2 ¶ 207(a).

- “[A]ny fatal motor crash in which the actions of a BPD member were a contributing cause”¹⁶;
- “[A]ny other incident or investigation of the Police Commissioner or his/her designee”¹⁷; and
- “[A]ny Level 2 force incidents referred by the [Use of Force Assessment Unit (‘UOFAU’)].”¹⁸

The PRB may “also . . . conduct the administrative review of other incidents, as the need arises.”¹⁹

The Board is to be made up of “the Commissioner or the Commissioner’s designee (who will chair the PRB),” with “the remaining membership . . . drawn from across the BPD.”²⁰ The Decree requires all PRB members to “receive a minimum of eight hours of training on an annual basis” addressing force topics including “legal updates” and “the Training Academy’s current use of force curriculum.”²¹

Although the Decree is relatively silent as to the specific mechanisms or processes that the Board must use to “examine” force incidents,²² it specifically requires the PRB to “document its findings and recommendations” for those force incidents that were investigated by SIRT “in a memorandum to the Police Commissioner.”²³ “Unless the PRB Chair grants an extension, the memorandum shall be submitted within fourteen days” of SIRT giving the PRB the presentation of an investigation of a force incident.²⁴ The memorandum must “include observations and recommendations for improvements in”:

- “[T]raining”;
- “[P]olicies”;
- “[P]rocedures”;
- “[T]actics”;
- “[E]quipment and technology”;
- “[O]rganization”; and
- “[A]ny other issues that could improve future performance of the member(s) involved, other members, or the BPD as a whole.”²⁵

¹⁶ Dkt. 2-2 ¶ 207(a).

¹⁷ Dkt. 2-2 ¶ 207(a).

¹⁸ Dkt. 2-2 ¶ 207(c).

¹⁹ Dkt. 2-2 ¶ 207(c).

²⁰ Dkt. 2-2 ¶ 208.

²¹ Dkt. 2-2 ¶ 209.

²² Dkt. 2-2 ¶ 207(a).

²³ Dkt. 2-2 ¶ 210.

²⁴ Dkt. 2-2 ¶ 210.

²⁵ Dkt. 2-2 ¶ 210.

In addition to ensuring completion of the memorandum, “[t]he PRB Chair will also ensure that [the Board’s] findings and recommendations are brought to the attention of the relevant commanding officer [of officers involved in the force incident] for appropriate action.”²⁶

The PRB’s review of a force incident may surface or implicate issues related to officer misconduct or violations of BPD policy. Per the Decree, “[t]he PRB will not make recommendations concerning discipline.”²⁷ Those decisions proceed through the chain of command review process described elsewhere in the Decree and in BPD policy. “[H]owever, the Chair of the PRB is obligated to ensure a referral to OPR if potential misconduct is discovered in the review process.”²⁸ Further, “[a]ny member of the PRB may also refer any potential misconduct to OPR, even if the PRB as a whole does not make such a referral.”²⁹

C. BPD’s Implementation Progress to Date

BPD began implementation of the Decree’s requirements relating to the PRB in 2019.³⁰ Unlike some structures addressed in the Decree, the Department maintained a Performance Review Board prior to Decree implementation. However, as the Monitoring Team previously reported:

In recent years, the PRB has not served its intended purpose. It often has not reviewed events until many months (sometimes a year) after they take place, and PRB members have been inappropriately reluctant to conduct meticulous, meaningful reviews out of concern that their findings could result in disciplinary action against the involved officers.³¹

An initial pilot of the new PRB model occurred “in early December 2019.”³² The Monitoring Team reported that the Board’s “members . . . and other attendees were fully engaged, the presentation and discussion prompts were well-structured and thoughtful, and the proposed action items that grew out of the discussion” were appropriate.³³ “In the following months, the PRB reviewed additional events, including officer[-]involved shootings.”³⁴ The Monitoring Team reported to the Court that it remained “encouraged by the pilot program.”³⁵

²⁶ Dkt. 2-2 ¶ 210.

²⁷ Dkt. 2-2 ¶ 210.

²⁸ Dkt. 2-2 ¶ 210.

²⁹ Dkt. 2-2 ¶ 210.

³⁰ Dkt. 178-1 at 70.

³¹ Dkt. 279-1 at 54.

³² Dkt. 279-1 at 54.

³³ Dkt. 279-1 at 55.

³⁴ Dkt. 342-1 at 56.

³⁵ Dkt. 342-1 at 56.

However, with the onset of “the COVID-19 pandemic, PRB meetings had to be canceled for several months.” The Monitoring Team reported in late September 2020 that PRB meetings were “resuming”³⁶ “in a virtual format.”³⁷

The Monitoring Team continued to “attend all” PRB convenings.³⁸ In its Sixth Semiannual Report in 2021, the Monitoring Team reported that PRB’s “sophistication is increasing” along with “its willingness to grapple directly with hard questions, including about the reasonableness of the force used and the practicability of de-escalation.”³⁹

Even as the newly constituted PRB was being piloted, BPD proceeded to memorialize its new PRB approach, and the requirements of the Decree, into policy. “BPD completed revisions to its PRB policy in late 2020,”⁴⁰ with an updated policy being completed in December 2022. In addition to memorializing the requirements of the Decree outlined above, BPD’s Policy 724 provides, among other things, that:

- “The PRB . . . serve as an advisory body to the Police Commissioner that conducts timely, comprehensive, and reliable evaluations of Reviewable Incidents”⁴¹;
- The three voting members of the PRB are the Deputy Commissioner of the Compliance Bureau, “a Lieutenant Colonel or above” of the Operations Bureau, and the Deputy Commissioner of the Public Integrity Bureau;⁴²
- Various non-voting participants “shall attend and participate in the PRB” as required;⁴³
- The Board Chairperson, which is the Deputy Commissioner of Compliance, is responsible for “track[ing] the outcome of all Action Items” identified by the Board;⁴⁴
- The Board “receive[s] a case presentation from the SIRT Lead Investigator or other appropriate BPD investigative unit within 30 days” that the force incident has occurred, “or as soon as possible thereafter” – with the purpose of “the presentation . . . [to] be to objectively demonstrate, in chronological order, the events leading up to, during, and immediately after the incident”;⁴⁵
- The SIRT presentation to the Board may “not include the criminal history or previous law enforcement encounters of any involved citizens unless such context is specifically relevant to the case”;⁴⁶ and

³⁶ Dkt. 342-1 at 56.

³⁷ Dkt. 414-1 at 51.

³⁸ Dkt. 414-1 at 51.

³⁹ Dkt. 414-1 at 51–52.

⁴⁰ Dkt. 414-1 at 52.

⁴¹ BPD Policy 724 at 3.

⁴² BPD Policy 724 at 3–4.

⁴³ BPD Policy 724 at 4.

⁴⁴ BPD Policy 724 at 4.

⁴⁵ BPD Policy 724 at 4.

⁴⁶ BPD Policy 724 at 5.

- The Board will, “[o]n a quarterly basis,” review “a random sample of 10% of Level 2 Use of Force investigations completed during the previous quarter.”⁴⁷

The policy specifically requires that the PRB consider, and include in its memorandum to the Police Commissioner, “Action Items” addressing:

29.1. Policy Update: Recommendations from the PRB on any policy improvements that may provide better or clearer guidance to members.

29.2. Training and Tactical Improvement: Observations of the tactics employed by BPD members, including de-escalation, and how the incident may provide an opportunity to improve BPD training. PRB members should also recommend specific supplemental or remedial training for the members involved in the incident under review, and/or for BPD as a whole, as appropriate.

29.3. Equipment/Technology: Recommendation from the PRB on any equipment, including technology, which may have improved the outcome of the incident under review and should be evaluated for future use.

29.4. Organizational: Any issues observed relating to the structure and function of BPD supervision, command, and control.

29.5. Other Critical Analysis: Any other issues observed that could improve future performance of the member(s) involved, other members, or the BPD as a whole. This includes tactical decisions and other circumstances/considerations leading up to the incident.

29.6. Investigation: Recommendations from the PRB regarding necessary actions the investigator must take to conduct a comprehensive investigation.

29.7. Referral for Potential Misconduct:

29.7.1. The Chairperson shall not make recommendations concerning discipline, but shall ensure a referral to PIB if potential misconduct is discovered in the review process.

⁴⁷ BPD Policy 724 at 7.

29.7.2. If the investigation is complete and a member notes that the SIRT Lead Investigator failed to report police misconduct, they shall report the Investigator to PIB for failing to report the misconduct.⁴⁸

In its Seventh Semiannual Report in February 2022, the Monitoring Team, which attended all PRB meetings that had occurred in the prior reporting period, observed that “[t]he significant progress PRB has made in meaningfully scrutinizing use of force cases” in PRB convenings “demonstrates BPD’s commitment to reform.⁴⁹ Indeed, “[i]n contrast to what the Monitoring Team observed when it first began attending PRB meetings in 2018,” PRB sessions were now appropriately aimed at “improv[ing] department operations and future officer performance.”⁵⁰

⁴⁸ BPD Policy 724 at 6.

⁴⁹ Seventh Semiannual Report at 52.

⁵⁰ Seventh Semiannual Report at 52.

III. SCOPE OF REVIEW, METHODOLOGY, AND STANDARD OF REVIEW

A. Scope of Review

The Monitoring Team has previously described the Consent Decree’s distinction between two types of assessments: (1) compliance reviews, and (2) outcome assessments.

The Consent Decree requires the Monitoring Team to conduct both compliance reviews and outcome assessments. Compliance reviews are . . . evaluations of BPD performance in different areas of the Consent Decree. They are conducted with an eye toward determining how far BPD has come, and how far it still needs to go, to achieve compliance with [particular] Consent Decree requirements

Outcome assessments, by contrast, are [largely] quantitative assessments designed to determine whether the reforms required by the Consent Decree in each area are having a tangible, measurable impact [overall]—whether, independent and apart from BPD’s progress toward compliance with [any specific] Consent Decree requirements, policing is changing in the real world⁵¹

This assessment is a compliance review relating to BPD’s compliance with the portions of the Decree addressing the performance of the Department’s Performance Review Board, Paragraphs 207 through 210.

B. Methodology

The Monitoring Team observed 16 of the 24 normal meetings of BPD’s Performance Review Board that occurred between April 27, 2022 and March 29, 2023.⁵² During the 16 PRB meetings that the Monitoring Team attended, the Board considered 41 incidents that occurred between April 26, 2020 and February 8, 2023. Across all 24 meetings, the Board considered 92 cases. Although the Monitoring Team evaluated the Board’s consideration of 41 of the 92 overall cases, this volume of evaluated cases and deliberations constitutes a sample within a margin of error of 9.6% and a confidence level of 91%. The Team notes that, because BPD was not alerted in advance as to the specific PRB convenings that Team members would attend, the opportunity for results to be artificially skewed based on BPD’s selection of cases for specific meetings was limited.

⁵¹ Dkt. 279-1 at 22–23.

⁵² In addition to 24 regular PRB convenings, BPD conducted 2 “Mini-PRBs.” According to BPD’s communications with the Monitoring Team, Mini-PRBs focused exclusively on Level 3 force incidents that, despite their serious categorization, involve less complex or complicated considerations and do not necessitate the presentation of body-worn camera footage. SIRT presents the details of the incident to the Board, and the Board conducts a standard discussion and deliberation. Fewer BPD representatives participate in the Board during Mini-PRBs. For this assessment, the Monitoring Team did not attend or evaluate either Mini-PRB.

For each individual incident considered in these PRB meetings, the Monitoring Team observer completed a structured electronic assessment instrument in which BPD's compliance with various Decree and policy requirements were evaluated. The results of these evaluations are summarized in Section IV.

Separately, the Monitoring Team audited 18 memoranda produced by BPD that PRB completed to memorialize the Board's discussion prior to November 23, 2022 for those incidents that the Board addressed in 2022. These 18 memoranda were all of the memoranda that BPD produced and indicated that PRB had generated during its various meetings between January 7, 2022 and November 23, 2022.⁵³ To evaluate whether BPD has been appropriately reviewing all eligible cases, the Team also evaluated BPD data regarding use of force and traffic collisions for the period of January 2022 through February 2023. Finally, BPD provided information from PRB – updated most recently in May 2023 – about all incidents that the Board has considered over time. These various data sets and sources are discussed in greater detail in Section IV.

C. Determining Compliance Status

The Consent Decree Monitoring Team is charged with assessing and reporting on whether the requirements of the Consent Decree have been implemented. Although the scheme itself is not required or detailed in the Decree itself, the Parties and Monitoring Team have previously adopted and used a standardized way of characterizing and summarizing BPD's current status across Consent Decree implementation:

0 – Not Assessed: The Monitoring Team has yet to assess if the City/Department has made progress or complied with the requirement.

1 – Not Started: The City/Department has not yet demonstrated progress toward implementing the requirement, possibly in order to work on other, necessary projects.

2 – Planning/Policy Phase: The City/Department is addressing the planning and/or policy provisions for the requirement.

3 – Training Phase: The City/Department is addressing the training provisions for the requirement, based on approved policy.

⁵³ Although this assessment evaluates the quality of PRB in-person *meetings* and *deliberations* about incidents past November 23, 2022 – specifically, between November 23, 2022 and March 29, 2023 – the evaluated, written *memoranda* summarizing PRB recommendations were considered for the period of April 27, 2022 through November 23, 2022.

4 – Implementation Phase: The City/Department is in the implementation phase for the requirement, having developed any required plan or policy and conducted any required training, but has not yet demonstrated compliance with the requirement.

4a – Implementation - Not Assessed: The City/Department has initiated the implementation phase for the requirement, but the Monitoring Team has not yet assessed the City/Department’s progress in implementation.

4b – Implementation - Off Track: The City/Department is not making satisfactory progress toward compliance with the requirement.

4c – Implementation - On Track: The City/Department is making satisfactory progress toward compliance with the requirement.

4d – Implementation - Initial Compliance: The City/Department has demonstrated compliance with the requirement but has not yet demonstrated compliance with all requirements of the section of the Consent Decree in which it is included.

5a – Full and Effective Compliance: The City/Department has demonstrated compliance with all requirements in a Consent Decree section but has not yet sustained compliance for the time period specified in paragraph 504 of the Consent Decree. This score applies only to an entire Consent Decree section, not to individual requirements within a section.

5b – Sustained Compliance: The City/Department has demonstrated sustained compliance with all requirements in a Consent Decree section by consistently adhering to all such requirements for the time period specified in paragraph 504 of the Consent Decree.

Consequently, **this review is largely focused on whether BPD has, or has not, moved from working to implement the Decree’s requirements on the Performance Review Board to having successfully implemented those requirements in practice** across time, Board meetings, and the PRB’s consideration of investigations and incidents.⁵⁴

⁵⁴ See Dkt. 2-2 ¶ 506 (indicating that Initial Compliance with any material requirement of the Consent Decree involves evaluating whether a given requirement “is being carried out in practice by BPD”).

To make these determinations about whether BPD is in Initial Compliance with a material requirement of the Decree, the Monitoring Team weighs – across the Decree’s various requirements and substantive areas – the following factors:

- 1. The quality of BPD’s performance across a material span of time, number of incidents/events, and number of officers.** Successfully carrying out a requirement in practice requires more than meeting expectations on one day, in one case or event, or for one officer. Instead, it requires that BPD adhere to Decree requirements across a material span of time, number and/or portion of incidents, and number of officers. In this way, isolated compliance does not establish “Initial Compliance” in practice. At the same time, however, isolated non-compliance does not, by itself, eliminate the possibility of systemic compliance. The issue is whether, across time, events, and people, BPD is, in aggregate, sufficiently doing what the Decree requires. For some requirements that are applicable only to a relatively small absolute number of incidents or circumstances, performance in a single instance may weigh more significantly than it would in connection with a more commonly implicated requirement.
- 2. The severity or significance of deviations from Consent Decree requirements, BPD policy, and/or law.** The Monitoring Team considers not simply whether BPD’s performance has deviated in some instances from the Decree’s requirements but also the severity or significance of that deviation. Several minor or more technical deviations from administrative requirements may be different in quality than a single significant or gross deviation from core requirements for officer performance in the field. Likewise, deficient performance in connection with less foundational requirements or issues may be different in quality than deficient performance in connection with significant requirements or issues.
- 3. The extent to which BPD is identifying and appropriately addressing problematic performance.** In its focus on accountability, supervision, and mechanisms for fostering critical self-analysis within BPD, the Consent Decree expressly contemplates that a BPD in compliance with the Decree will have mechanisms in place to engage with departmental and officer performance that is deficient in some way. Therefore, the Monitoring Team’s compliance reviews consider whether, when BPD personnel have deviated from policy, law, or Decree requirements, the Department has identified the deviation and, if so, if it has appropriately addressed the issue. With respect to Consent Decree implementation and meaningful organizational change, the Department is in a different condition if a policy deviation is identified and appropriately addressed than if the deviation goes unnoticed and unaddressed.

- 4. BPD’s progress over time.** Where possible, the Monitoring Team aims to situate its evaluation of BPD’s performance in terms of progress over time. Steady improvement may suggest positive, meaningful adoption of Consent Decree requirements in a way that erratic swings in performance over time may not.

Courts regularly apply multi-factor approaches where the application of determinative, bright-line rules are impossible, do not adequately incorporate the array of relevant circumstances at issue, or implicate competing considerations.⁵⁵ Even as the test articulated above requires different considerations to be factored together, the test is an “objective” one because the Monitoring Team “must explain how they derived their conclusions from the verifiable facts.”⁵⁶

In applying this multi-factor test for compliance, the first factor – the quality of BPD’s performance across a material span of time, number of incidents/events, and number of officers – is the initial, threshold inquiry. If the Department’s, and/or its officers’, performance is not what it should be across a sufficient number or portion of relevant circumstances, then things like progress over time or BPD’s identification of the issues are unlikely to cure the basic deficiencies with performance. For example, if BPD meets some Decree requirement in only 25% of cases, the fact that it may have marked an improvement over time would be unlikely to put the Department into compliance with the requirement.

Although the multi-factor test for compliance works to ensure that all relevant objective factors are reasonably weighed, the Monitoring Team seeks to provide guidance to the Department and to the community about the benchmarks that it expects and how various levels of BPD performance may shape compliance determinations.

As a working standard, the Monitoring Team considers a compliance rate with any relevant requirement of 85% or above as *possibly*, though certainly not conclusively or even presumptively, consistent with initial compliance. In such instances, the Team weighs the other factors (severity of deviations, BPD’s identification of noncompliance, and progress over time). Where the Team determines that BPD has adhered to expectations in 95% or more of relevant circumstances, initial compliance will be found unless one of the other factors – severity of deviations, Department identification of noncompliance, and progress over the time – starkly point in the other direction.

⁵⁵ See, e.g., *Murr v. Wisconsin*, 582 U.S. ___ (2017) (adopting a multi-factor test for determining whether governmental regulations effectuated a decline in the value of private property so as to be considered a government taking under the Fifth Amendment); *EBay v. MercExchange*, 547 U.S. 388 (2006) (applying four-factor test to determinations about permanent injunctive relief in disputes arising under the Patent Act); *Mathews v. Eldridge*, 424 U.S. 319 (1976) (articulating three factors for courts to consider when determining whether additional governmental and/or judicial procedures are necessary to satisfy the Due Process Clause).

⁵⁶ James G. Wilson, “Surveying the ‘Forms of Doctrine’ on the Bright Line Balancing Test Continuum,” 27 *Ariz. St. L.J.* 773, 802 (1995).

On the other hand, where BPD has adhered to expectations less than 85% of the time, initial compliance will *not* be certified unless one of the other factors points definitively in a positive direction. For instance, if BPD complied with requirements in 80% of relevant circumstances but the Monitoring Team could certify that the significance or severity of instances where requirements were not followed was relatively minimal, that BPD identified and took appropriate corrective action in instances where requirements were not followed, and the Department had made and maintained progress over time, then finding initial compliance with the Decree requirement may be possible.

Additionally, some important requirements apply to, or are activated by, a relatively more limited number of encounters, incidents, or circumstances. Where the absolute number of instances where the requirement applies becomes lower, the application of the percentage-based rules of thumb for determining compliance becomes less useful.

IV. ASSESSMENT OF THE PERFORMANCE REVIEW BOARD

A. Paragraph 207(a)

Paragraph 207(a) requires the PRB to “examine all Level 3 Reportable Force incidents, any fatal motor crash in which the actions of a BPD member were a contributing cause, and any other incident or investigation of the Police Commissioner or his/her designee.”⁵⁷

Of the 41 force incidents that the Board considered in meetings between April 27, 2022 and March 29, 2023, more than one-third of the incidents (16) were Level 3 incidents. Another third of the cases considered (14 cases) were Level 2 force incidents referred to the PRB. Other incident investigations conducted by SIRT (e.g., a police-involved shooting involving an animal, unintentional discharges, incidents where injuries occurred but a use of force was not involved) accounted for 6 incidents, with motor vehicle crashes and other incidents (e.g., a hospital admission) accounting for the remainder of cases that the PRB considered.

The Monitoring Team’s review of BPD’s records confirms that, of 55 total force incidents that occurred between January 1, 2022 and February 8, 2023 which BPD policy requires that PRB review, all 55 incidents were appropriately considered by the PRB by May 2023. At the same time, PRB appears to have considered a variety of SIRT investigations, occurring as far back as 2017, as the Board worked to both keep up with reviewing more-recent force incidents and work through a backlog of prior incidents that it needed to consider.

The Board considered all four motor vehicle crashes involving fatalities that occurred between January 7, 2022 and February 8, 2023 and that were therefore eligible for PRB to consider during its meetings between April 27, 2022 and March 29, 2023.

Notably, PRB also reviewed a number of incidents that the Decree does not expressly require that it consider. This included 30 Level 2 force incidents – which PRB may review pursuant to Paragraph 207(c) – and 17 additional force incidents that involved SIRT but are not ultimately classified within BPD’s force database as Level 3 incidents. This robust consideration of an additional array of BPD incidents and encounters beyond what the Decree strictly mandates indicates to the Monitoring Team a growing internal acceptance and embrace of PRB as a mechanism for the Department’s self-analysis and self-improvement.

For all of the above reasons, the Monitoring Team finds that BPD is in initial compliance with the requirements of Paragraph 207(a).

⁵⁷ Dkt. 2-2 ¶ 207(a).

B. Paragraph 207(b)

The Decree requires the Department to “develop procedures . . . to govern [the PRB’s] operations.”⁵⁸ Policy 724 outlines procedures and protocols for the operations of the Board. It memorializes both Decree requirements and a host of specific expectations that go beyond the Decree.

The Parties and Monitoring Team have previously approved Policy 724. As the following section discusses in greater detail, PRB appears to be meaningfully implementing the requirements of Policy 724. Consequently, and for the reasons set forth in greater detail in Section C, below, the Monitoring Team finds that BPD has reached initial compliance with Paragraph 207(b).

C. Paragraph 207(c)

For all PRB incident reviews, the Monitoring Team assessed the overall quality of the PRB discussion and evaluation during its regular meetings. The Team concluded that 37 of 41 (90.2% of) incident reviews during PRB convenings were “thorough, accurate, unbiased, and complete” including “a full and competent analysis of the incident” that “critically addressed all outstanding policy and training concerns” and addressed “any material inconsistencies” in the underlying incident investigation. The remaining reviews (4 of 41, or 9.8%) were determined to be “adequate” because, “although the analysis and discussion could be improved, it was adequate overall, leaving no material questions or concerns unaddressed.” Importantly, no discussion across the 41 incidents that the PRB reviewed between April 27, 2022 and March 29, 2023 were judged “inadequate” because they “included material deficiencies or omissions, inaccuracies, evidence of bias, or other significant issues that impeded a thorough, accurate, unbiased, and complete analysis of the force incident.”

Figure 1. Overall Quality of PRB Discussion and Evaluation

The PRB’s discussion and analysis was thorough, accurate, unbiased, and complete. The discussion included a full and competent analysis of the incident, resolved any material inconsistencies identified in the evidence, and critically addressed all outstanding policy and training concerns.	90.2% (37)
The discussion was adequate. Although the analysis and discussion could be improved, it was adequate overall, leaving no material questions or concerns unaddressed.	9.8% (4)
The discussion was inadequate. The discussion included material deficiencies or omissions, inaccuracies, evidence of bias, or other significant issues that impeded a thorough, accurate, unbiased, and complete analysis of the force incident.	0.0% (0)

⁵⁸ Dkt. 2-2 ¶ 207(b).

These overall assessments strongly suggest that BPD is in initial compliance with Paragraph 207(c)'s requirements surrounding the quality and nature of the Board's incident reviews. However, the Decree requires that all reviews of "any Level 2 force incidents referred by the UOFAU and all Level 3 force incidents" be "timely, comprehensive, and reliable."⁵⁹ The following sections consider each of these specific requirements.

1. Timeliness

The Decree does not specify a time within which PRB must consider a force incident. Instead, it requires only that reviews be "timely."⁶⁰ However, BPD Policy 724 is more specific. That policy provides that PRB "shall receive a case presentation from" SIRT "or [an]other appropriate BPD investigative unit within 30 days" of the incident "or as soon as possible thereafter."⁶¹

Of the incidents that the Board considered during PRB meetings that the Monitoring Team audited, the PRB considered very few cases – just 2 of 41 – within 30 days of the incident occurring. The average length of time between an incident occurring and the PRB considering the incident was approximately 154 days, or more than 5 months. The length of time between an incident and PRB considering the case ranged from 27 days at the quickest to 571 days at the longest.

The average length of time – 5 months – is lengthy, but the Monitoring Team nevertheless concludes that the Department is in compliance given the complexity of the investigations and the progress that BPD has made in this area. BPD's progress over time has been noteworthy and encouraging with respect to reducing the length of time between the occurrence of the incidence and the PRB review. For PRB reviews through the end of November 2022, the average length of time between an incident occurring and the PRB considering the incident was nearly 192 days. However, for PRB reviews between December 2022 and March 2023, the average length of time was 121 days – some 37% faster.

Indeed, since the PRB began to convene in accordance with the Consent Decree, the Board has needed to work through a mild "backlog" of unreviewed incidents, and the duration of time between incident and PRB review has decreased as the Board has managed to work through this set of unreviewed cases. As a consequence, by March 2023 the Board was reviewing more recent incidents – those occurring in October 2022, January 2023, and February 2023 – than was typical in earlier Board meetings. BPD's steady improvement over time in terms of PRB timeliness is consistent with initial compliance with Paragraph 207(c).

⁵⁹ Dkt. 2-2 ¶ 207(c).

⁶⁰ Dkt. 2-2 ¶ 207(c).

⁶¹ BPD Policy 724 at 4.

Separately, the Monitoring Team must weigh the severity or significance of Consent Decree deviation when assessing compliance. The Consent Decree does not prescribe a specific time by which PRB must conduct its reviews. Instead, BPD issued policy – established to comply with the Decree – specifying that reviews should occur within 30 days *or* “as soon as possible thereafter.”⁶² Thus, while BPD policy sets a specific 30 day threshold, reviews that occur more than 30 days after the underlying incidents can, nonetheless, fall within the policy if they occur “as soon as possible” after an incident under the circumstances.

The types of cases that PRB must review often involve significant force and complicated fact patterns – thereby requiring more complex investigations. In many instances, the underlying SIRT or other BPD investigation of the incident has not been completed within 30 days of the incident. Because a PRB review must be able to benefit from a complete, exhaustive investigation of the incident in order for PRB reviews to be “comprehensive” and “reliable” in the way that the Decree requires, a period of more than 30 days elapsing between incident and PRB review is often necessary.

Especially in the latter half of PRB meetings considered for this review – occurring between November 2022 and March 2023 – a good portion of the length of time between incident and PRB review is attributable to the length of time necessary for the investigation to be conducted and concluded. As this report discusses further below, the high quality of the BPD investigations presented to the PRB suggests that the time invested to conduct the investigation was necessary.

Additionally, based on the Monitoring Team’s auditing of PRB meetings, it did not appear, for the cases that the Monitoring Team considered, that the duration between incident and review compromised the PRB’s ability to review incidents or minimized the impact of the PRB’s recommendations or analysis with respect to systemic recommendations for the Department. Although feedback and recommendations for future performance is always most impactful and effective when it occurs soon after an incident has occurred, the Monitoring Team did not conclude that the length of time between an incident and PRB review was inhibiting a full PRB review or making PRB’s recommendations irrelevant or not impactful.

⁶² BPD Policy 724 at 4.

Consequently, the Monitoring Team concludes that PRB reviews are sufficiently “timely” because they are regularly occurring “as soon as possible” following the conclusion of the investigation of a reviewable incident. The Team will be suggesting to BPD that it consider amending Policy 724 to include a specific timeline (in the manner of the existing 30-day timeline) that better accounts for the time necessary to complete sometimes lengthy and complex incident investigations (i.e., requiring that PRB reviews occur within 30 days of the conclusion of the investigation of a Reviewable Incident, or as soon as possible thereafter).

2. *Comprehensiveness*

The Decree requires that PRB’s consideration of force incidents not be *pro forma* or cursory in nature but, instead, entail “comprehensive” reviews and analyses of force incidents.⁶³ A number of specific requirements of BPD policy are geared toward ensuring that PRB reviews are comprehensive.

Specifically, BPD policy requires that the SIRT presentation about reviewable incidents “include all relevant evidence” such as “[p]hotos,” “[v]ideos,” “[a]udio recordings,” “[d]iagrams,” and “[o]ther evidence developed during the investigation.”⁶⁴ The Monitoring Team found that the SIRT presentation did include all relevant evidence in all but one instance.

Policy 724 also provides that PRB members must “ask questions” of the SIRT representative making the presentation of the investigation “to establish a comprehensive understanding of the available facts and circumstances of the Reviewable Incident.”⁶⁵ Board members asked relevant questions of SIRT in nearly all (39 of 41) incidents.⁶⁶

Part of the PRB’s charge is to evaluate the comprehensiveness of the underlying investigation of the incident.⁶⁷ In two instances, PRB referred the incident back to SIRT for additional investigation. The Monitoring Team independently identified two cases that, based on the facts presented by SIRT within the PRB review, appeared to require further SIRT investigation – with one of these being one of the two cases that PRB identified while the other was a separate case that PRB did not identify.

⁶³ Dkt. 2-2 ¶ 207(c).

⁶⁴ BPD Policy 724 at 4–5.

⁶⁵ BPD Policy 724 at 5.

⁶⁶ Relevant questions were not asked in 1 case. In 1 additional case, the nature of the facts and circumstances rendered factual questions to the SIRT investigator inapplicable.

⁶⁷ BPD Policy 724 at 5–6.

The Monitoring Team’s December 2022 assessment on use of force inventoried BPD’s progress on meeting the many specific Decree requirements pertaining to SIRT investigations. For at least a few reasons, the conclusions about SIRT that this assessment reaches are somewhat different in nature and scope from the more detailed conclusions about SIRT that the use of force assessment reached. First, because the focus was on the PRB and its performance, the underlying incident and SIRT investigations were not exhaustively evaluated for this assessment. Second, the results presented in the force assessment involved a different time period (2018 through 2020) than considered the present PRB assessment (2022 and early 2023). Third, some incidents that PRB considers (such as traffic accidents) are not necessarily classified as use of force incidents. Consequently, conclusions about SIRT here do not necessarily match conclusions about SIRT in the December 2022 force assessment. The Monitoring Team is finalizing its methodology for conducting a re-assessment of use of force, beginning in the last quarter of 2023, that will examine underlying SIRT investigations and investigative files concerning force incidents occurring more recently.

Most importantly, however, the Monitoring Team witnessed PRB members systematically considering whether the underlying investigation was sufficiently thorough and complete – demonstrating the necessary, systematic consideration of underlying investigative quality.

3. *Reliability*

Finally, Paragraph 207(c) requires that PRB reviews be “reliable.”⁶⁸ The Monitoring Team determined that SIRT’s presentation to the PRB was thorough, accurate, and complete – including all relevant evidence and information and properly addressing all material inconsistencies or questions resulting from the investigation – in 85% of reviewed cases. In the remaining 15% of cases, the SIRT presentation was adequate – meaning that, although some aspects could be improved, any identified flaws did not appear to materially impact the overall accuracy of the presentation. Importantly, no SIRT presentations were determined to be inadequate to the extent that they contained any material deficiencies or omissions, inaccuracies, evidence of bias, or other significant issues. Indeed, the Monitoring Team found that SIRT recommendations appropriately addressed the requirements of BPD Policy 724, as Figure 2 summarizes. The Team emphasizes that the findings in Figure 2 relate predominantly to SIRT’s *presentation* to PRB rather than to the underlying investigation or investigative file.

⁶⁸ Dkt. 2-2 ¶ 207(c).

Figure 2. Features of SIRT/Investigative Presentations to PRB

	Yes		No		Unable to Determine		Not Applicable	
	Count	Percentage	Count	Percentage	Count	Percentage	Count	Percentage
Did the investigative presentation objectively demonstrate, in chronological order, the events leading up to, during, and immediately after the incident?	39	100.0%	0	0.0%	0	0.0%	2	--
Did the presentation include all relevant evidence, including photos; videos, including BWC; audio recordings; diagrams; and any other evidence developed during the investigation?	39	97.5%	1	2.5%	0	0.0%	1	--
Did the PRB ask questions of SIRT necessary to establish a comprehensive understanding of the available facts and circumstances of the incident?	39	97.5%	1	2.5%	0	0.0%	1	--
Based on the nature of the investigation and circumstances of the case, was additional investigation necessary to reach administrative findings?	2	4.9%	39	95.1%	0	0.0%	0	--

Note: Percentages for individual items may in some instances add to more than 100% due to rounding. Instances where a consideration was “not applicable” are not included in the determination of percentages.

As detailed in Figure 3, the Monitoring Team also determined that the PRB, given the facts and circumstances of the incident, discussed and evaluated an array of important considerations “to identify opportunities for organizational and individual improvement, as well as whether the actions were potentially inconsistent with BPD policy or training.”⁶⁹

⁶⁹ BPD Policy 724 at 5.

Figure 3. Features of PRB Deliberation

<i>Did the Board sufficiently discuss and evaluate ?</i>	Yes		No		Unable to Determine		Not Applicable	
Initiation of event and initial contact	41	100.0%	0	0.0%	0	0.0%	0	--
Consistency with use of force policy and training	39	100.0%	0	0.0%	0	0.0%	2	--
De-escalation	36	100.0%	0	0.0%	0	0.0%	5	--
Tactics	39	97.5%	1	2.5%	0	0.0%	1	--
Post-incident response	41	100.0%	0	0.0%	0	0.0%	0	--
Supervisor investigation(s)	38	95.0%	1	2.5%	1	2.5%	1	--
SIRT investigation(s)	31	88.6%	3	8.6%	1	2.9%	6	--
Recommendations (i.e., whether improvements are needed for policy, training, tactics, supervision, organizational structure, equipment, or SIRT investigations)	38	92.7%	3	7.3%	0	0.0%	0	--
Potential misconduct	25	96.2%	0	0.0%	1	3.8%	15	--

Note: Percentages for individual items may in some instances add to more than 100% due to rounding. Instances where a consideration was “not applicable” are not included in the determination of percentages.

Across 95% of PRB reviews, the discussion was based solely on the evidence, without speculation or any indication of bias. Likewise, the Monitoring Team concluded that the Board’s discussion and evaluation was sufficient for identifying opportunities for organizational improvement across 97.6% of incidents, sufficient for identifying opportunities for individual (officer) improvement in 97.2% of incidents, and sufficient for identifying if any actions were potentially inconsistent with policy or training in 97.2% of incidents.

The Monitoring Team asked BPD for information and documentation about the volume of cases heard by PRB that were referred to or followed up by PIB for initial or additional investigation. BPD records indicate that a number of cases from the overall period (April 27, 2022 through March 29, 2023) were subject to further investigation by PIB. Although there are no indications that cases that should have received PIB follow-up did not receive it, in subsequent evaluations of PRB, the Monitoring Team will want to understand with greater precision and certainty when and how issues flagged by PRB as implicating potential misconduct are or are not formally addressed by PIB.

Ultimately, given the high quality of SIRT’s presentations to the Board about the incident investigation and the Board’s discussion and deliberation about them, the Monitoring Team

concludes that PRB's reviews are sufficiently reliable and consistent with initial compliance with Paragraph 207(c).

D. Paragraph 208

The Decree requires that PRB "include the Commissioner or the Commissioner's designee (who will chair the PRB)," with "remaining membership . . . drawn from across the BPD, in accordance with BPD policy."⁷⁰ Per BPD Policy 724, the "voting members of the PRB" are: (1) the "Deputy Commissioner, Compliance Bureau, or designee"; (2) a "Lieutenant Colonel or above" from the "Operations Bureau"; and (3) the "Deputy Commissioner" of the "Public Integrity Bureau, or designee."⁷¹ The Deputy Commissioner of Compliance serves as the Commissioner's designee and chairs PRB meetings.⁷²

Through its attendance at PRB meetings, the Monitoring Team confirmed that the PRB was constituted in compliance with BPD policy across all audited meetings, and for the Board's consideration of all 41 force incidents (100%) considered in those meetings.

Policy 724 also requires that other individuals, "or their designee, . . . attend and participate in the PRB, if deemed necessary by the voting members," including:

- Chief, Legal Affairs[;]
- Commander, Use of Force Assessment Unit[;]
- Commander, SWAT[;]
- Director, Consent Decree Implementation Unit[;]
- Commander, Education and Training[;]
- Commander, Health and Wellness[;]
- Any other unit whose attendance is deemed necessary by the voting members.⁷³

For all 16 audited meetings, and 41 incidents reviewed during those meetings, the Monitoring Team determined that all other relevant individuals attended and participated in the PRB as the Board's voting members deemed necessary. Indeed, depending on the nature of the incident and the issues that the incident implicated, various BPD personnel appropriately attended and contributed. The Monitoring Team could identify no instance in which a necessary or helpful BPD representative or member should have been present but was not.

⁷⁰ Dkt. 2-2 ¶ 208.

⁷¹ BPD Policy 724 at 4.

⁷² BPD Policy 724 at 4.

⁷³ BPD Policy 724 at 4.

Because all PRB meetings, and all analysis of PRB incidents in those meetings, proceeded according to Decree and referenced BPD policy requirements in terms of the composition of the Board, the Monitoring Team finds BPD in initial compliance with Paragraph 208.

E. Paragraph 209

Paragraph 209 requires that every PRB member “receive a minimum of eight hours of training on an annual basis, including legal updates regarding use of force and the Training Academy’s current use of force curriculum.”⁷⁴ In discussions with the Parties, the Monitoring Team has agreed that either PRB-specific training, general use of force training required of all BPD members, or some combination of Board-specific and general training is sufficient to meet the mandated PRB training requirements. Indeed, by attending all general force training that the Training Academy provides to BPD officers, PRB is able to be substantially aware of “the Training Academy’s current use of force curriculum.”⁷⁵

Although the training was not specific or unique to PRB members, all BPD members – including PRB members – have received regular training on use of force. The Monitoring Team’s February 2022 Compliance Review & Outcome Assessment Regarding BPD Training summarized that BPD had successfully completed a 16-hour use of force training for all members in 2019⁷⁶ and a follow-up use of force training in 2021 (concluding in early 2022).⁷⁷ The logistical and operational realities associated with the COVID-19 pandemic regrettably, in the Monitoring Team’s estimation, understandably delayed efforts to ensure sufficient use of force instruction for PRB members in 2020.

As of October 10, 2022, BPD certified to the Court and Parties that all PRB members – encompassing some 25 BPD members – successfully completed 8 hours of standalone training previously approved by the Department of Justice and Monitoring Team that focused on the Department’s policies and procedures relating to PRB, use of force and pursuit policies, and various force-related topics.⁷⁸

In 2023, all BPD sworn personnel – including PRB members – will receive 8 hours of force-related training, including:

- ***Roca Rewire4*** - 2 hours in-person (out of an 8-hour course). This training focuses on self-awareness, self-control, not letting emotions interfere with rational thinking and decision making.

⁷⁴ Dkt. 2-2 ¶ 209.

⁷⁵ Dkt. 2-2 ¶ 209.

⁷⁶ Training Assessment at 23–27.

⁷⁷ Training Assessment at 37–38.

⁷⁸ Dkt. 560-1.

- **Active Shooter** - 2 hours in-person (out of an 8-hour course). This training focuses on how to recognize an active threat/active shooter situation and how to respond, including active drills and scenarios.
- **Insight Policing** - 2 hours in-person (out of an 8-hour course). This material focuses on conflict resolution with emphasis on learning skills for understanding and defusing various conflict situations, including numerous scenarios.
- **Public Order Forces** - 2 hours in-person (out of a 6/7-hour course). This portion of the training course includes review of BPD Use of Force policies and their applicability in protest and related types of situations.
- **Maryland Use of Force legislation** - 2 hours (format tba). This training will provide officers with legal updates with specific focus on the revised Maryland law pertaining to police use of force.

The Monitoring Team finds that, to date, BPD has satisfactorily met requirements relating to the training of PRB members on use of force topics and that the Department has reached initial compliance with Paragraph 209. Despite this determination, the Monitoring Team notes that BPD must continue to meet the Decree’s PRB training requirements for the pendency of the Decree – and that, even after the Decree concludes, BPD’s PRB policy requires that PRB voting members “receive a minimum of eight hours of training annually, to include legal updates regarding the Use of Force and E&Ts current training curriculum on the Use of Force.”⁷⁹

F. Paragraph 210

Paragraph 210 sets forth a number of specific requirements about how PRB “documents its findings and recommendations” and ensures that others within BPD are made aware about the PRB’s analysis and determinations.⁸⁰

Specifically, the Consent Decree requires that PRB:

- “Circulate its findings and recommendations . . . in a memorandum to the Police Commissioner”;
- Submit the memorandum “within fourteen days” of SIRT presenting the case to PRB that “include[s] observations and recommendations for improvements in training, policies, procedures, tactics, equipment and technology, organization, and any other issues that could improve future performance”;
- “[E]nsure a referral to OPR if potential misconduct is discovered in” the Board’s “review process”; and

⁷⁹ Policy 724 at 7.

⁸⁰ Dkt. 2-2 ¶ 210.

- “[E]nsure that [the Board’s] findings and recommendations are brought to the attention of the relevant commanding officer for appropriate action.”⁸¹

The Monitoring Team considered 18 PRB memoranda completed before November 23, 2022 pertaining to incidents that the Board considered during meetings in 2022. For one other Board incident considered by the PRB in August 2022, the Monitoring Team was not provided and could not identify a memorandum.

Each of the 18 memoranda that the Monitoring Team reviewed contained appropriate observations or recommendations for improvements across training, policies, procedures, and other elements of officer and BPD performance consistent with Paragraph 210’s requirements. In many instances, issues were specifically referred to Education and Training, the Policy Unit (the Consent Decree Implementation Unit), the Operations Bureau, or the Records Management Section for additional follow-up. In at least one instance, issues were appropriately sent forward to the Public Integrity Bureau (“PIB”) for follow-up on issues related to potential misconduct. It also appears that several memoranda included referrals back to the Operations Bureau to ensure that relevant commanding officers were made aware of appropriate actions or issues surfaced within the context of PRB review.

Overall, the Monitoring Team can conclude that PRB memoranda sufficiently; adequately and appropriately memorialize the PRB’s discussion; and help to provide information to the Police Commissioner and other parts of the Department about issues raised, areas for follow-up, and lessons learned that can guide departmental improvements.

At the same time, however, only one of the PRB memoranda was submitted within 14 days of the SIRT presentation to the PRB as required by the Consent Decree. Consequently, BPD is not yet in initial compliance with Paragraph 210. Presuming that the level of quality of the memoranda can be sustained, the Monitoring Team anticipates that BPD will be able to meet compliance when the memoranda are submitted within the Consent Decree’s timetable.

⁸¹ Dkt. 2-2 ¶ 210.

VIII. COMPLIANCE ASSESSMENT CONCLUSIONS

Consent Decree Paragraph		Compliance Score
207	<p>BPD will maintain its Performance Review Board in a manner that is consistent with this Agreement.</p> <ul style="list-style-type: none"> a. The PRB will examine all Level 3 Reportable Force incidents, any fatal motor crash in which the actions of a BPD member were a contributing cause, and any other incident or investigation of the Police Commissioner or his/her designee; b. The PRB will develop procedures, outlined in a manual, to govern its operations; c. The PRB will conduct timely, comprehensive, and reliable reviews of any Level 2 force incidents referred by the UOFAU and all Level 3 force incidents. The PRB also will conduct the administrative review of other incidents, as the need arises; and d. Where additional investigation is necessary to reach administrative findings, the PRB will refer to SIRT for additional investigation. 	<p>4d (Initial Compliance)</p>
208	<p>The PRB will include the Commissioner or the Commissioner's designee (who will chair the PRB); the remaining membership will be drawn from across the BPD, in accordance with BPD policy.</p>	<p>4d (Initial Compliance)</p>
209	<p>Each member will receive a minimum of eight hours of training on an annual basis, including legal updates regarding use of force and the Training Academy's current use of force curriculum.</p>	<p>4d (Initial Compliance)</p>
210	<p>The PRB will document its findings and recommendations for SIRT investigations in a memorandum to the Police Commissioner. Unless the PRB Chair grants an extension, the memorandum shall be submitted within fourteen days of the SIRT presentation to the PRB. The PRB will not make recommendations concerning discipline, however, the Chair of the PRB is obligated to ensure a referral to OPR if potential misconduct is discovered in the review process. Any member of the PRB may also refer any potential misconduct to OPR, even if the PRB as a whole does not make such a referral. The PRB's memorandum shall include observations and recommendations for improvements in training, policies, procedures, tactics, equipment and technology, organization, and any other issues that could improve future performance of the member(s) involved, other members, or the BPD as a whole. The PRB Chair will also ensure that its findings and recommendations are brought to the attention of the relevant commanding officer for appropriate action.</p>	<p>4c (Implementation – On Track)</p>