

January 23, 2019

Via First Class Mail and Facsimile

Baltimore Police Department Monitoring Team
c/o Kenneth Thompson
Venable LLP
750 East Pratt Street, Suite 900
Baltimore, Maryland 21202

RE: Comments on Draft Second-Year Monitoring Plan in the Case of *U.S. v. Police Department of Baltimore City, et al.*

Dear Mr. Thompson:

On behalf of the NAACP Legal Defense and Educational Fund, Inc. (LDF), I write to provide comments on the Baltimore Police Department (BPD) Monitoring Team's (the Team's) draft *Second-Year Monitoring Plan* (the Draft Plan) for the federal consent decree in the above-captioned case. Last year, we appreciated providing comments on the Team's *First-Year Monitoring Plan & Budget*¹ and acknowledge the incorporation of several of our recommendations in the final plan. Unlike last year's monitoring plan, the Draft Plan for this year does not include a budget. We recommend that you also release for public comment a proposed budget for the Team's work this year.

Overall, the Draft Plan correctly prioritizes completing changes to BPD policies and training, which will allow the parties in the case to determine whether reforms are having the intended impact on policing practices in subsequent years. Also, it continues to include numerous opportunities for the public to comment on policy changes and training curricula before they are finalized and implemented. That said, below we present several recommendations for advancing the important work of the consent decree and increasing the public's involvement in policing reform efforts during the second year of the agreement's implementation.

I. Distribution of the Community Resident Survey

The Draft Plan indicates that between December 10, 2018 and February 28, 2019, the Team is surveying community residents about their experiences with and perceptions of the BPD and public safety as required by paragraphs 23 through 25 of the consent decree. However, there is very little information available to the public about the individual or entity conducting the survey or the representative population that is being targeted. To ensure that a representative sample of city residents participates in the survey, we urge the Team to consider making the survey available on its website and directing residents from all police districts to participate. This year's community survey will be the first under the consent decree and will serve as a baseline for subsequent surveys. Therefore, the parties and monitor should take steps to ensure that the survey accurately captures the views of city residents.

¹ Letter from Monique L. Dixon, NAACP LDF to Kenneth Thompson, BPD Monitoring Team, dated Feb. 2, 2018, <https://www.naacpldf.org/press-release/ldf-provides-feedback-on-independent-monitors-draft-plan-for-first-year-of-implementing-policing-reform-agreement-in-baltimore/>.

II. Initial Assessment of BPD's Coordination with Baltimore School Police Force

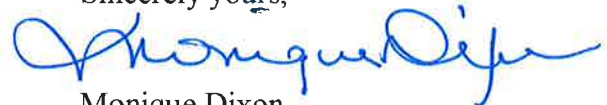
Last year's monitoring plan indicated that the parties and the Team would conduct an initial assessment of the BPD's coordination with the Baltimore School Police Force (BSPF), as required by paragraphs 416-418 of the consent decree, during the second year of the consent decree. We were very disappointed to see the Draft Plan for this year states that the initial assessment will now take place in the third year of the agreement, kicking the can down the road again. As we have done in the past, LDF strongly urges the parties to perform this initial assessment this year for several reasons.

First, in its investigative report, the U.S. Justice Department (DOJ) expressed several concerns about the Memorandum of Understanding (MOU) between BPD and the BSPF, which allows school police to patrol city streets. Specifically, DOJ found that the agreement lacked clarity about which agency is in charge of an incident when both agencies respond and which agency's policies control decisions during an incident.² Additionally, the report noted that the MOU does not provide a process for handling complaints of alleged misconduct by officers of one or both agencies, and it does not require the collection and analysis of data concerning arrests, stops and searches. We are concerned that notwithstanding these findings, the current MOU (attached) does not address all issues raised and is slated to expire in February.³ It would be irresponsible for the parties to delay the assessment, yet another year, given the impending expiration of the current MOU. Indeed, BPD would be ill-advised to negotiate another MOU this year without an initial assessment of its relationship with BSPF.

Also, according to the Draft Plan, BPD and city officials expect to receive a final draft of a *Youth-Criminal Justice Interactions Assessment Report* on February 28, 2019. (The Team's *Second Semiannual Report* indicates that the assessment will be completed March 31, 2019. Please clarify the correct completion date in the final Plan.) It is unclear whether the youth interactions assessment report, which is expected to detail Baltimore City's efforts to decrease youth involvement with the juvenile and criminal justice systems, will include youth's interactions with BSPF under the terms of the MOU. The impending youth assessment would be incomplete if it does not include young people's interactions with BSPF, which serves as auxiliary police for BPD. LDF strongly urges the parties and the Team to conduct BPD's initial assessment of its coordination with the BSPF this year so that it may supplement the city's evaluation of its efforts to divert youth away from the justice systems.

Thank you for considering LDF's comments. Please do not hesitate to contact me with any questions or concerns at 202-682-1300.

Sincerely yours,



Monique Dixon
Deputy Director of Policy & Senior
Counsel

cc: Timothy Mygatt, Deputy Chief, Special Litigation Section, Civil Rights Division, U.S. Justice Department
Andre Davis, Baltimore City Solicitor

² U.S. Department of Justice Civil Rights Division, *Investigation of the Baltimore City Police Department*, 154-55 (Aug. 10, 2016), <https://www.justice.gov/crt/file/883296/download>.

³ See, Memorandum of Understanding between the Police Department of Baltimore City and the Baltimore City Board of School Commissioners, ¶ 32, Feb. 16, 2016 (attached) ("This Agreement shall remain in effect for three (3) years from the date of execution listed below...").

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE
POLICE DEPARTMENT OF BALTIMORE CITY
AND THE
BALTIMORE CITY BOARD OF SCHOOL COMMISSIONERS**

THIS MEMORANDUM OF UNDERSTANDING ("MOU") is made this February
16th day of 2016 by and between the Police Department of Baltimore City, an agency and instrumentality of the State of Maryland ("BPD"), the Baltimore City Board of School Commissioners, a body corporate and politic of the State of Maryland (the "Board"), for the Baltimore City Public School System (the "City Schools") and the Baltimore City School Police Force (the "City School Police Force"). The BPD and the Board are each referred to as a "Party" and collectively as the "Parties".

RECITALS

WHEREAS, BPD's mission, in partnership with the Baltimore community, is to protect and preserve life, enforce the laws of the State and City, protect property, understand and serve the needs of the City's neighborhoods, and to improve the quality of life of the community;

WHEREAS, the Maryland legislature established the City School Police Force whose mission is to ensure that City Schools' students and staff have a safe environment in which to learn and teach so that students can achieve at their maximum potential;

WHEREAS, the City School Police Force's primary jurisdiction ("Primary Jurisdiction") is on City Schools' premises and on any other property used for educational purposes owned, leased, or operated by, or under the control of the Board;

WHEREAS, in furtherance of their missions, the BPD and the City School Police Force coordinate their respective law enforcement activities and cooperate with one another to the fullest extent possible in order to provide professional police services to the citizens of Baltimore City;

WHEREAS, in the interest of public safety, the Police Commissioner of BPD (the "Commissioner") wishes to authorize the City School Police Force to expand its law enforcement activities to include the geographic limits of Baltimore City, and the City School Police Force wishes to expand its law enforcement activities within Baltimore City.

NOW THEREFORE, in consideration of the foregoing and of the covenants and agreements set forth below and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows.

1. The foregoing recitals are hereby incorporated into this Agreement.
2. Md. EDUCATION Code Ann. § 4-318 establishes the City Schools Police Force and vests in Baltimore City school police officers the authority to make arrests and have all of the powers of a law enforcement officer in the State of Maryland, subject to

certain limitations described therein. Section 4-318 provides that Baltimore City school police officers may act in an official capacity only on the premises of schools and any other property used for educational purposes owned, leased, or operated by, or under the control of the Board and not on any other property unless (1) engaged in fresh pursuit of a suspected offender; (2) requested or authorized to do so by the Police Commissioner of BPD; (3) the exercise of power is necessary to facilitate the orderly flow of traffic to and from property owned, leased, operated by, or under the control of the City School System; or (4) ordered to do so by the Mayor of Baltimore City.

3. Md. CRIMINAL PROCEDURE Code Ann. § 2-102 authorizes a sworn law enforcement officer to make arrests, conduct investigations, and otherwise enforce the laws of the State throughout the State without limitations as to jurisdiction where (i)(1) the police officer is participating in a joint investigation with officials from another state, federal, or local law enforcement unit, at least one of which has local jurisdiction; (2) the police officer is rendering assistance to another police officer; (3) the police officer is acting at the request of a police officer or State Police officer; or (4) an emergency exists; and (ii) the police officer is acting in accordance with regulations adopted by the police officer's employing unit to carry out this section.
4. Based on increased security concerns raised by the Department of Homeland Security and other events, and subject to the provisions of Md. CRIMINAL PROCEDURE Code Ann. § 2-102 and Md. EDUCATION Code Ann. § 4-318, the Commissioner hereby authorizes the City School Police Force to exercise full police powers anywhere within the jurisdiction of Baltimore City, Maryland. The manner of providing assistance, as set forth in this agreement, shall not affect the authority granted in matters involving fresh pursuit. Where the City School Police Force acts outside its Primary Jurisdiction, the City School Police Force shall notify the head of the law enforcement agency with primary jurisdiction pursuant to Md. CRIMINAL PROCEDURE Code Ann. §2-102.
5. Whenever a sworn law enforcement officer of City School Police Force takes law enforcement action pursuant to the provisions of this Agreement outside of its Primary Jurisdiction, the officer shall within twelve (12) hours of taking such action, give formal written notice to the Commissioner of BPD, and the Chief of Police of City School Police Force of such law enforcement action under Md. CRIMINAL PROCEDURE Code Ann. § 2-102. Promptly following the execution of this Agreement, the Commissioner of BPD and the Chief of Police of City School Police Force may designate a person to receive such notice.
6. The term "concurrent jurisdiction" shall mean those physical areas in which both the BPD and City School Police Force have jurisdiction within the limits of Baltimore City, Maryland.

7. The term "primary" is defined as the first responsibility for patrolling the buildings and property; responding to and handling all incidents requiring police services, in the areas of concurrent jurisdiction.
8. Members of the BPD shall assume primary responsibility for the investigation and follow-up of UCR Part I crimes, including, without limitation, all homicide, suicide, sudden death and rape, in areas of concurrent jurisdiction. The City School Police Force may assist upon request of BPD.
9. In areas of concurrent jurisdiction, the BPD shall assume primary responsibility for the investigation and follow-up of robbery, aggravated assaults, sexual child abuse, arson, hate crimes, child abuse whether occurring on or off school grounds, and other offenses that necessitate an ongoing investigation. The City School Police Force may assist upon request of BPD.
10. Where BPD assumes primary responsibility for investigations conducted pursuant to sections 8 and 9 above, and the offense occurred on City Schools property, BPD shall provide the City School Police Force with copies of all final investigative reports, notification of issuance of any warrants and resulting arrests.
11. The City School Police Force shall have primary law enforcement responsibility in areas of concurrent jurisdiction for Part II crimes or other incidents occurring in their presence or reported to them, provided the City School Police Force has available manpower and resources, otherwise, BPD shall have primary law enforcement responsibility.
12. When members of the City School Police Force affect an arrest, they shall prepare an official police report. The City School Police Force will transport the arrestee to Baltimore Central Booking Intake Center ("BCBIC"), provided it has available manpower and resources, otherwise the BPD will transport the arrestee.
13. The City School Police Force shall use the official BPD Incident Report, as well as other necessary BPD forms or forms identical to such reports for incidents occurring in areas of concurrent jurisdiction and will print the letters "CSPF Report" on the first line of the narrative section of the report.
14. Persons arrested in areas of concurrent jurisdiction will be processed in accordance with the official policies of the BPD.
15. Whenever a person arrested by City School Police Force is being held at BCBIC, the City School Police Force will ensure that the arrestee's personal property will be held for safekeeping by the Division of Pre-Trial Detention Correctional Services of the Department of Public Safety & Correctional Services or otherwise in accordance with standard BPD procedures.

16. All City School Police Force officers shall make Controlled Dangerous Substance (CDS) submissions to the BPD Evidence Control Unit pursuant to existing BPD policy.
17. City School Police Force is authorized to transmit on the BPD radio frequency for; calls for service, joint operations / investigations, joint special details, and emergencies / natural disaster situations.
18. If a City School Police Force arrestee requires medical attention, the City School Police Force will transport the arrestee to a medical facility and guard him / her if hospitalization is required. Should medical attention become necessary after a City School Police Force arrestee has been booked at BCBIC, appropriate actions should be the responsibility of BCBIC.
19. The City School Police Force and the BPD will appear in court as is necessary to testify in any matter resulting from a joint police action. An officer of each Party will appear and assist as a witness to the extent necessary in any court proceeding.
20. All evidence will be collected, preserved and presented to the Court by the police officer with primary police responsibility and/or who has had the responsibility for investigating the incident. Although in certain cases it is the responsibility of the City School Police Force to collect, preserve and present evidence for court proceedings, the evidence will be maintained in the Evidence Control Unit of the BPD, consistent with existing BPD policy.
21. The City School Police Force will secure and execute search and seizure / arrest warrants necessary to the discharge its official duties in areas of concurrent jurisdiction. Warrants obtained by either Party, shall be served by officers of that Party. Warrants to be served outside the areas of concurrent jurisdiction will be submitted to the appropriate law enforcement agency for service. The BPD Warrant Control Section will retain all search and seizure warrants secured by the City School Police Force that have not been served within fifteen days (15).
22. In the event of a serious injury or death on school property, the notice to the next of kin will be made by the Party with primary responsibility or that has assumed primary responsibility.
23. Authorized City School Police Force personnel shall contact the BPD Central Records Division shift commander to be granted telephonic access to the BPD Hot Desk -- Central Records Section, for warrant / wanted checks.
24. The BPD Accident Investigation Unit (AIU) will investigate all accidents involving City School Police Force vehicles.

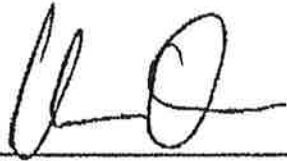
25. BPD Communications shall notify City School Police Force Communications, as soon as possible, of any active shooter, barricade situation, hostage situation or other unusual occurrences on City School property.
26. BPD will provide initial and/or In-Service Training on a schedule to be determined by BPD to City School Police Force civilian or sworn personnel for the same cost as charged to other Baltimore City agencies or departments.
27. The Board shall reimburse the BPD for the full cost of all equipment and uniforms requested from the BPD Quartermaster for the use by the City School Police Force.
28. Subject to appropriation and available funding, overtime compensation accrued by the Party sending personnel to the requesting Party as a result of a staffing request shall be paid by the requesting Party, if, at the time of the request and prior to sending any personnel to the requesting Party, the sending Party provides the requesting Party with a written estimate of overtime costs which may be incurred, and an authorized fiscal officer of the requesting Party acknowledges and agrees to reimburse such overtime costs of the sending Party. The Parties anticipate that requests for personnel will be planned in advance and allow for the prior approval of overtime. However, in urgent matters where a fiscal agent is not available to provide or approve overtime costs in advance, BPD's Chief of Patrol may approve overtime costs for the City School Police Force provided to BPD.
29. The BPD and City School Police Force agree to participate in joint crime suppression deployment initiatives. The BPD shall reimburse the Board for overtime costs incurred by such crime suppression deployment initiatives.
30. The Agreement shall not affect the responsibility of the BPD to patrol in areas where there are City School properties, and to respond to 911 calls for service.
31. City School Police Force shall be permitted to continue its current use of the BPD Emergency Communications Center.
32. This Agreement shall remain in effect for three (3) years from the date of execution listed below. In any event either Party may terminate this Agreement by providing written notice ten (10) days before the date of proposed termination.
33. This Agreement may only be modified by writing and with the permission of both Parties. Any proposed amendment to this Agreement by any Party will be provided, in writing, to the other Party thirty (30) days prior to the effective date of the amendment. The Parties will make best efforts to meet and agree on any proposed amendment to this Agreement.

34. This Agreement shall be governed by and construed under the law of the State of Maryland.
35. This Agreement constitutes the entire and full understanding between the Parties and neither Party shall be bound by any representation, statement, promise or agreement not expressly set forth herein.
36. This Agreement does not create any partnership or employment relationship between City School Police Force law enforcement officers and BPD. The Board's City School Police Force and the BPD are independent contractors. Law enforcement officers of each Party remain employees of their respective law enforcement agencies.
37. This Agreement does not create any legal duty or legal obligation on the part of either Party to indemnify or defend the other from tort liability under the Local Government Tort Claims Act, Md. Code Ann., Cts. & Jud. Proc. § 5-301, et seq.
38. This Agreement does not purport to waive any immunity from tort liability possessed by the BPD, the Board or its City School Police Force. Each Party will be governed by its enabling legislation for any tort liability. Each Party will be responsible for providing civil defense to its personnel in accordance with the enabling legislation for each Party.

This Agreement does not purport to waive any immunity or defense that any individual law enforcement officer has to tort liability under Maryland law.

THIS SPACE
INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the Parties have affixed their hand and seals this day and year as written above.



Kevin Davis
Police Commissioner
Baltimore Police Department

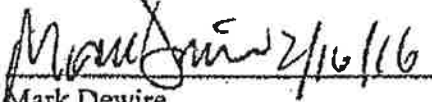


Dr. Gregory E. Thornton
Chief Executive Officer
Baltimore City Public School System

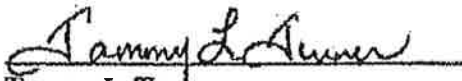


Marshall T. Goodwin
Chief of Police
Baltimore City School Police Force

APPROVED FOR FORM AND LEGAL SUFFICIENCY



Mark Dewire
Chief Solicitor, Police Legal Affairs
Baltimore City Law Department



Tammy L. Turner
Chief Legal Counsel
Baltimore City Public School System