



November 15, 2019

BPD Monitoring Team  
c/o Kenneth Thompson  
Venable LLP  
750 East Pratt Street, Suite 900  
Baltimore MD 21202

**RE: Comments on Baltimore Police Department's Draft Baltimore School Police  
MOU Assessment Report**

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's (BPD) draft Baltimore School Police MOU Assessment Report (MOU Report or Report), which is required by the federal consent decree between the U.S. Department of Justice (DOJ) and BPD.<sup>1</sup> Specifically, the consent decree requires BPD to evaluate the implementation of its February 2016 memorandum of understanding (MOU or Agreement) with the Baltimore School Police (BSP or school police). The Agreement gives school police authority to exercise law enforcement powers throughout the City beyond school premises and properties. BPD's evaluation must include an analysis of the extent to which BSP exercised those police powers, including "calls, incidents, stops, arrests and uses of force."<sup>2</sup> Additionally, the consent decree requires BPD to propose policies and procedures for the investigation of civilian complaints involving BSP officers as they patrol city neighborhoods beyond their primary jurisdiction of city schools.<sup>3</sup> BPD must use the assessment to identify problems and develop and implement corrective actions. The MOU Report, however, fails to include required or needed analyses. Therefore, the recommendations are insufficient.

Before discussing the omissions in the MOU Report, we question the need for the broad policing powers granted to school police by BPD – "full police powers anywhere within the jurisdiction of Baltimore City, Maryland."<sup>4</sup> The Report states that the collaboration between the agencies achieves their "common goals of more effective [] community policing throughout Baltimore City,"<sup>5</sup> yet that type of policing is not defined or referenced in the current MOU. Also,

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<sup>1</sup> See *United States v. Police Department of Baltimore City*, ¶¶ 416-18, Civil Action 1:17-cv-00099-JKB, Doc. 2-2 (D. MD Jan. 12, 2017), <https://www.justice.gov/crt/case-document/file/925036/download>.

<sup>2</sup> *Id.* at ¶ 417.

<sup>3</sup> *Id.* at ¶ 418.

<sup>4</sup> Memorandum of Understanding Between the Police Dep't of Balt. City and the Balt. City Bd. of Sch. Comm'rs, ¶4, (Feb. 16, 2016) (hereinafter MOU between BPD and City Schools).

<sup>5</sup> Baltimore Police Department, *Baltimore School Police MOU Assessment Report (2016-2019)*, Introduction, <https://www.baltimorepolice.org/baltimore-school-police-mou-assessment-report> (last visited Nov. 15, 2019).

based on an analysis of incident reports submitted by school police to BPD from February 2016 to February 2019, less than 5% of the incidents occurred off school property, suggesting that school police is not readily exercising its law enforcement authority under the MOU.<sup>6</sup> In fact, according to the Report, it appears that BSP uses its authority under the Agreement primarily when the BPD needs additional assistance during special events, such as sporting events, for which BSP officers are paid overtime,<sup>7</sup> presumably by BPD.<sup>8</sup>

This begs a question whether the MOU's delegation of policing powers should be limited to circumstances when BPD needs BSP officers as auxiliary police at special events and when BSP officers are in "fresh pursuit of a suspected offender...[and] to facilitate the orderly flow of traffic to and from" school property as permitted by state law.<sup>9</sup> We urge BPD to limit the MOU in this way and to provide more information in the MOU Report about the amount of overtime BPD paid to BSP officers during the period studied.

As to the omitted analyses in the Report, there is no assessment of the current process for investigating civilian complaints filed against BSP officers, which would inform BPD's obligation under the consent decree to propose adequate protocols. This is particularly disturbing given that DOJ found there were incidents "where it appears BPD officers refused to take complaints about school police ...without making any effort to ascertain whether the school police were acting with authority granted by BPD...[thus] undermin[ing] accountability and community confidence in both BPD and [BSP]."<sup>10</sup>

Also, there is no mention of stops and arrests made by BSP while exercising police powers under the Agreement. DOJ has noted that although the MOU requires BSP to submit arrest and field reports, data about stops and searches and other items not specified in the Agreement are not collected or analyzed.<sup>11</sup> DOJ warned that because BPD is using BSP as auxiliary police, its failure to collect and analyze the enforcement activities of school police will make it difficult for BPD to effectively supervise BSP officers and prevent unlawful stops, searches, and arrests.<sup>12</sup> We strongly urge BPD to assess these activities and, if necessary, BPD should revise any future MOU by including standardized policies and procedures for investigating complaints and collecting data on arrests, stops and other police interactions, disaggregated by race, ethnicity, age and gender, that are consistent with the requirements of the consent decree. This should not be a difficult or controversial task, as BPD is already providing initial and in-service training to BSP under the

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<sup>6</sup> *Id.* at Methodology.

<sup>7</sup> *Id.*

<sup>8</sup> See MOU between BPD and City Schools, *supra* note 4, at ¶ 28 ("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...")

<sup>9</sup> See MD CODE ANN., EDUC. §4-318(d)(2)(ii) (LexisNexis 2018).

<sup>10</sup> U.S. Dep't of Justice, Civil Rights Div., INVESTIGATION OF THE BALTIMORE CITY POLICE DEPARTMENT, 155 (2016).

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

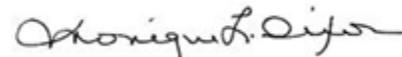
current MOU.<sup>13</sup> This could include training on policies and procedures for data collection and the investigation of complaints.

Additionally, the MOU Report seems to misunderstand the intent of the consent decree's requirement that BPD review school police's use of force incidents. The Report concludes that no incidents occurred while BSP was acting under the authority of the MOU, and BPD keeps no record of the BSP's use of force incidents because school police is a separate entity with its own policies. That is precisely the problem that DOJ highlighted in its investigative report. It noted that there is no guidance in the MOU on which policies to use when BSP officers use force while they are exercising powers under the Agreement. Without such guidance, "BPD risks having a school police officer, acting under the concurrent jurisdiction granted by BPD, use force in circumstances that BPD deem out of policy."<sup>14</sup> The MOU Report's conclusion that BSP did not use force while exercising its authority under the Agreement in the past three years ignores the possibility of school police officers' use of force in the future. If BPD renews its MOU allowing BSP to serve as an auxiliary police force, then BPD must require school police to be held to the same mandatory reporting and accountability standards BPD officers must follow as required under the consent decree.

We appreciate the opportunity to comment on the draft MOU Report and respectfully urge you to consider seriously our recommendations for BPD to: 1) limit policing powers delegated to school police; 2) conduct additional analyses of the current collaboration between the agencies as detailed above to identify problems and corrective actions; and 3) to the extent BPD continues to use BSP as auxiliary police, require school police officers to comply with BPD policies and procedures required under the consent decree, relating to incident reports, including those involving arrests, stops, searches and the use of force, and investigation of complaints. Taking these steps will ensure that all law enforcement officers delegated policing powers by BPD are held to the same standards and accountability measures.

Please do not hesitate to contact me with any questions or concerns at 202-682-1300.

Sincerely yours,



Monique L. Dixon  
Director of State Advocacy/  
Deputy Director of Policy

cc: Michael Harrison, Commissioner, Baltimore Police Department  
Akil Hamm, Chief, Baltimore School Police  
Timothy Mygatt, Civil Rights Division, U.S. Department of Justice  
Stephen Ryals, Civil Rights Division, U.S. Department of Justice  
Andre Davis, Solicitor, Baltimore City

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<sup>13</sup> See MOU between BPD and City Schools, *supra* note 4, at ¶ 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.").

<sup>14</sup> *Id.*