



July 9, 2018

Via First Class and Electronic Mail

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

**RE: *U.S. v. Police Department of Baltimore City*, case no. 1:17-cv-00099-JKB
Comments on Baltimore Police Department's Fair and Impartial Policing
Policy**

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") final Fair and Impartial Policing Policy (Policy 317). LDF has appreciated the opportunity to provide comments on BPD policies. In March and May, we submitted comments on the police department's first group of use of force guidelines¹ and acknowledge BPD for adopting several of our recommendations, including a statement in each policy emphasizing that use of force is a last resort and officers must take steps to de-escalate conflicts. After reviewing Policy 317, we offer the comments below to ensure that BPD officers are aware of all laws that are violated if they engage in discriminatory conduct against members of a protected class of individuals.

1. Include Title II of the Americans with Disabilities Act in the Purpose Section of the Policy

Policy 317 appropriately states in the "Purpose" section the importance of fair, respectful and nondiscriminatory policing. It goes on to list state and federal laws that BPD officers violate if they engage in discriminatory policing. However, the list omits Title II of the Americans with Disabilities Act of 1990 (the ADA), as amended, 42 U.S.C. §§ 12131-12134, which prohibits discrimination based on disability in services, programs and activities provided by state and local governments. During its investigation of BPD, the U.S. Department of Justice (DOJ) found that the police department regularly used unreasonable force against persons with mental health

¹ See Letter from Monique Dixon, LDF Deputy Director of Policy and Senior Counsel, to Kenneth Thompson, BPD Monitor, dated March 15, 2018, <http://www.naacpldf.org/files/about-us/NAACP%20LDF%20Initial%20Comments%20on%20BPD%20Use%20of%20Force%20Policies%20-%20FINAL.pdf>. See also, Letter from Monique Dixon LDF Deputy Director of Policy and Senior Counsel, to Kenneth Thompson, BPD Monitor, dated May 18, 2018. (On file at LDF).

disabilities or otherwise in crisis in violation of the Fourth Amendment, and it failed “to make reasonable modifications necessary to avoid discrimination in violation of Title II of ... [the ADA].”² Consequently, the consent decree in *U.S. v. Police Dep’t of Baltimore City, et al*, includes a lengthy section on how BPD officers must respond to and interact with individuals with behavioral health disabilities or in crisis.³ Accordingly, Policy 317 should give notice to BPD officers that if they interact with persons with disabilities and fail to comply with the policy or the consent decree, then their actions may be in violation of Title II of the ADA.

2. Revise the Definition of Discriminatory Policing to include Discriminatory Impact and Additional Protected Classes

In its investigative report, DOJ found “overwhelming statistical evidence of racial disparities in BPD’s stops, searches, and arrests,”⁴ as well as incidents during which BPD officers used racial slurs or other statements that indicated racial bias.⁵ DOJ uncovered instances of both direct and indirect discrimination. Policy 317 defines discriminatory policing as the “differential treatment ... of any individual or group (i.e., direct or intentional discrimination) on the basis of the following actual or perceived personal characteristics in either deciding to take or refrain from taking law enforcement action.”⁶ This definition fails to consider BPD actions that have an unwarranted discriminatory impact in violation of Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, *et seq.* and its implementing regulations and other federal laws. We urge BPD to revise the definition as follows:

Discriminatory Policing - Practices and policies that result in the differential treatment *of and/or have an unwarranted discriminatory impact on*, any individual or group based on the following actual or perceived personal characteristics in either deciding to take or refrain from taking law enforcement action (revisions in ***bold italics***).

Additionally, the list of personal or protected characteristics, should include “physical disabilities” and “sex assigned at birth.” (The definition of gender identity in Policy 317 does not state explicitly whether sex assigned at birth is included). These revisions will ensure that the policy is consistent with provisions of the consent decree, Policy 317, and state and federal nondiscrimination laws.⁷ Also, the changes will ensure that BPD’s collection, analysis and audit

² U.S. Dep’t of Justice Civil Rights Div., *Investigation of the Baltimore City Police Department*, 80, Aug. 10, 2016, <https://www.justice.gov/opa/file/883366/download> (*DOJ Investigative Report*)

³ See, Consent Decree, *U.S. v. Police Dep’t of Baltimore City, et al.*, 34-42, Jan. 12, 2017.

⁴ See, *DOJ Investigative Report, supra*, note 2 at 48-70.

⁵ *Id.* at 66.

⁶ Baltimore Police Department, *Policy 317 Fair and Impartial Policing*, Draft, 1, Jun. 7, 2018, <https://www.powerdms.com/public/BALTIMOREMD/documents/349731>.

⁷ Title II of the ADA prohibits discrimination based on a physical disability. See, U.S. Dep’t of Justice Civil Rights Division Disability Rights Section, *ADA Update: A Primer for State and Local Governments*, 1, Jun. 8, 2015, https://www.ada.gov/regs2010/titleII_2010/titleII_primer.pdf. See also, Omnibus Crime Control and Safe



of data relating to officers' enforcement activities are comprehensive. The proposed revised list (revisions in ***bold italics***) follows:

- Age
- Disability status (***including physical disabilities***)
- Economic status
- Familial status
- Gender expression
- Gender identity
- HIV status
- Homelessness
- Immigrations status
- Language ability
- Mental Illness
- National origin
- Political ideology
- Race, ethnicity or color
- Religion
- ***Sex assigned at birth***
- Sexual orientation
- Social status
- Veteran status

Thank you for considering these recommendations. If you have any questions, please contact me at 202-682-1300.

Sincerely yours,

A handwritten signature in black ink that reads "Monique L. Dixon".

Monique Dixon
Deputy Director of Policy & Senior
Counsel

cc: Puneet Cheema, Trial Attorney, U.S. Department of Justice, Civil Rights Division
Special Litigation Section
Andre M. Davis, City Solicitor, City of Baltimore
Michelle Bloodsworth Wirzberger, Esq, Chief, BPD Consent Decree Implementation

Streets Act of 1968, 34 U.S.C. § 10228(c) (prohibiting states that receive federal funds from discriminating based on race, color, religion, national origin, or sex).