

**REVISED BART CITIZEN OVERSIGHT MODEL**  
**OFFICE OF THE INDEPENDENT POLICE AUDITOR (OIPA) IMPACT ASSESSMENT MATRIX**  
**(AUGUST 2019)**

#	Recommendation (Verbatim from OIR Group Report)	Location in Revised Model	Impact/Adjustments to OIPA Workload	OIPA Impact Scale (1-5)
1.	The Model should be revised to make clear that the scope of OIPA's authority extends to non-sworn employees of BART PD and to all potential misconduct involving sworn officers whether on or off duty.	N/A Implementation Deferred by Board	No adjustment. OIPA continues to receive complaints regarding fare Inspectors, Community Service Officers (CSOs), and Dispatchers. All such complaints are referred to Internal Affairs for investigation. Implementation of this recommendation would increase the OIPA investigative workload as OIPA would likely elect to independently investigate complaints alleging bias by Fare Inspectors or any non-sworn BPD employee. Therefore, the workload assessment contained herein relates only to the impact to OIPA over the past year.	1
2.	OIPA should consider modifying its monitoring function of BART PD internal affairs investigations to "real-time" monitoring, offering recommendations on the strength of investigations and appropriateness of dispositions prior to BART PD completing the process.	1-04(J)(iii)	Real-time monitoring creates additional work for OIPA as we are more frequently engaged in the initial determination of appropriate allegations (requiring preliminary review of video, data, and reports), and because we review evidentiary analysis and findings prior to notification to officer(s) in order to adhere to timeliness requirements per Gov't Code 3304.	2
3.	Should OIPA move to real-time monitoring, it should be involved in decisions regarding whether a matter should be forwarded to the District Attorney for criminal review, and the appropriate scoping of an investigation.	N/A Implementation Deferred by Board	No adjustment to date (as OIPA has always been ethically required to forward information regarding any potentially criminal activity to the District Attorney via the BPD chain of command).	1
4.	OIPA should make its reported data on investigations and recommended discipline clearer and should publicly report its involvement and auditing functions in detail, setting out its assessment of the quality of each investigation and the appropriateness of each disposition and disciplinary determination. The Model should be modified to provide OIPA the express authority to report any resistance by BART PD to conduct additional investigation to the attention of the Board of Directors, the General Manager, the BART Police Citizen Review Board, and the public.	1-04(D)(iv)	Additional time and work generating monthly reports to include more discussion of auditing function. OIPA also now includes language describing any resistance by BPD to OIPA recommendations for improvement of BPD investigative processes and/or investigative findings.	2
5.	The Model should be revised to provide any persons the ability to file a complaint with OIPA and/or the BART Police Citizen Review Board against any BART PD employee.	1-04(A) 2-07(A)	Increases the number of intake interviews, monitored investigations, and independent investigations. OIPA independently investigated 12 complaints during FY19 and 10 complaints during FY18. This number is unpredictably variable going forward, but there is a correlation between expansion of the definition of a qualified complainant and an increased number of investigations.	2

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#	Recommendation (Verbatim from OIR Group Report)	Location in Revised Model	Impact/Adjustments to OIPA Workload	OIPA Impact Scale (1-5)
6.	The Model should be revised to provide OIPA the ability to investigate any allegation of misconduct that implicates the policies of BART PD.	1-03	Requires additional preliminary assessment of allegations. Because OIPA was formerly required to investigate certain allegations, there was limited up-front analysis of the seriousness of allegations or determination re whether "less-serious" allegations nevertheless warranted independent investigation by OIPA.	3
7.	OIPA and BART PD should develop an investigative paradigm whereby OIPA would determine whether to investigate any complaint allegations received initially by the Office and BART PD would defer investigating allegations that the Auditor opted to investigate.	1-04(A)(i) OIPA also recommended a policy revision to BPD (#1020) and there is an existing MOU Between OIPA and BPD.	Does not require additional work in and of itself because this merely eliminates parallel investigations by BPD's Internal Affairs Bureau of complaints that would be investigated by OIPA. This MOU minimizes the work of IA investigators and alleviates subject officers of the burden of cooperating with two separate investigative processes.	1
8.	OIPA should develop a handbook to provide guidance and expectations for its internal investigations.	N/A	Significant additional work to codify all internal practices. Has not been completed due to limited resources and prioritization of other required activities.	4
9.	OIPA should set out investigative timelines in its internal protocols that not only meet the statutory requirements but also reflect a commitment to prompt and efficient resolution of cases.	N/A	Does not require additional work. Timeline and 180-day target completion date has always existed.	1
10.	The Model should be clarified to reflect that upon the conclusion of an OIPA investigation, OIPA should recommend a finding of sustained, not sustained, exonerated, or unfounded.	1-04(B)(i)	Does not require additional work. These findings have always been employed by OIPA.	1
11.	OIPA should tailor its closing letters to each individual case and provide the complainant additional information about the investigative steps taken to reach its conclusion.	N/A	Requires minimal additional work to customize correspondence. OIPA now tailors each closing letter to include information about investigative methods without revealing protected personnel information per CA Penal Code.	1
12.	When a concluded investigation does not result in a sustained finding, OIPA should offer the complainant the opportunity to view any video account of the incident.	Implementation Deferred by Board.	Not implemented by Board. Would result in significant additional work related to the maintenance of confidentiality (e.g. video redaction, audio redaction). Therefore, the workload assessment contained herein relates only to the impact to OIPA over the past year.	1

#	Recommendation (Verbatim from OIR Group Report)	Location in Revised Model	Impact/Adjustments to OIPA Workload	OIPA Impact Scale (1-5)
13.	The Model should be revised to instruct that the BART Police Citizen Review Board's vote tally by member on the Auditor's case recommendations and findings should be made public. In cases in which a non-unanimous majority agrees with the Auditor's case recommendations and findings, the dissenters should set out their rationale for diverging from the majority's determination.	1-04(B)(iii)	Requires no additional work by OIPA.	1
14.	The Model should be revised to provide the Auditor the discretion to present BART PD internal investigations to the BART Police Citizen Review Board in order to receive input and feedback.	1-05(D)	Would require additional presentation preparation by OIPA. (Has not been employed to date).	3
15.	The Model should be changed to require the Chief to timely put forward the reasons and arguments for appeal in writing and provide the Auditor and the Chair of the BART Police Citizen Review Board the opportunity to respond in writing, to be present at any appeal meeting, and to respond to any additional arguments set forth by the Chief at the appeal meeting. The Model should be further revised to require the General Manager to set out her/his findings in writing.	1-04(B)(iv)	Requires minimal additional preparatory work by OIPA. (Meeting preparation would essentially consist of re-presentation of a completed investigative report).	2
16.	The Model should be changed to require the Auditor to publicly report the results of any such appeal meeting consistent with state law confidentiality requirements.	1-05(C)	Would require minimal additional work generating language for public reporting. (Has not been employed to date).	2
17.	The Model should be changed so that when the BART Police oversight entities disagree on a case disposition, the General Manager will convene a meeting and, after receiving input from the oversight entities and the Chief of Police, render a disposition determination.	1-04(B)(iv)	Requires minimal additional work by OIPA (and meeting attendance).	2
18.	The Model should be revised to provide complainants the right to appeal to OIPA the findings of any internal affairs investigation conducted by BART PD.	1-04(I)	Complainants have always had a path to appeal, and this does not require any additional work by OIPA for which we were not already responsible prior to the Model revision.	1

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19.	BART and OIPA should work with BART PD to ensure that the Police Department's required notification letter to the complainant regarding case outcome also informs the complainant of his/her right to appeal the finding to OIPA.	Practice recommendation was sent to BPD by OIPA.	This required minimal work conferring on language in Internal Affairs letters but is now complete and requires no ongoing effort from OIPA.	1
20.	OIPA should regularly report on the number of appeals received and the results of those appeals.	1-04(N)	OIPA has always reported these data, and this does not, therefore, require any additional work by OIPA.	1
21.	The Model should be revised to require the Chief of Police to consult with the Auditor prior to modifying any initial disposition or disciplinary determinations. The Model should provide the Auditor an appeal process to the General Manager should he believe that any modification would result in a serious erosion of accountability. The Model should require the Auditor to publicly report on any modification of an initial disposition or disciplinary modification and whether he agreed with the modification.	1-04(B)(vi)	This would require some additional work by the IPA related to the review of the case materials, discussion with the Chief, and generation of language for reporting.	2
22.	The Model should be revised to require BART to apprise OIPA of any offers to settle cases after discipline has been imposed and provide the Auditor an opportunity for consultation. The Model should provide the Auditor the opportunity to appeal any intention to settle the matter to the General Manager should the Auditor find that the settlement would amount to a serious erosion of individual accountability. The Model should require the Auditor to publicly report on any cases settled at the post-discipline stage and whether OIPA agreed with the decision to settle.	Implementation Deferred by Board.	Not implemented by the Board of Directors. Therefore, the workload assessment contained herein relates only to the impact to OIPA over the past year.	1
23.	The Model should be revised to require the Auditor to report on any arbitration determinations that modify or rescind initial disposition and disciplinary decisions and to evaluate the reasons for any modification. The Model should require the Auditor to identify any systemic issues that formed the basis for any modification and work with BART PD to remediate those issues.	1-04(B)(vi)	Some additional work would be required by OIPA related to the review of materials and the identification of systemic implications.	3
			Significant additional work related to remediation of any identified systemic issues.	4

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24.	OIPA should publicly report on every investigation from inception to conclusion, providing information about the case result and the degree to which OIPA and the BART Police Citizen Review Board recommendations were implemented.	2-08(A)(iv)	This does not require any additional work by OIPA. OIPA has always reported on the results of all investigations.	1
25.	OIPA should be provided authority to review claims and lawsuits to ensure allegations of misconduct are thoroughly investigated.	1-04(C)(i)	This will require significant additional work by OIPA to review all related case files, transcripts, and materials to ensure that all allegations are identified and fully investigated.	5
26.	OIPA should review any significant settlements and adverse judgments involving BART PD performance and work with BART PD to develop corrective actions intended to remediate any systemic issues.	1-04(C)(ii)	Some additional work would be required by OIPA related to the review of materials and the identification of systemic implications.	3
			Significant additional work related to remediation of any identified systemic issues.	4
27.	OIPA should report publicly on its work in reviewing civil litigation.	1-04(C)(iii)	Some additional work generating additional component of Annual Report	2
28.	OIPA should redouble its efforts to create a mediation process that is attractive to complainants and officers and provides an effective alternative dispute resolution process.	1-04(H)	This process is in place and OIPA believes we have fully explored the issues underlying the unwillingness of complainants and subject officers to avail themselves of the option. Therefore, minimal additional work would be required and would consist only of maintaining an awareness of the successes and failures of other existing mediation programs.	1
29.	The Model should be enhanced to ensure that OIPA is timely notified of any critical incident including all officer-involved shootings (on duty or off duty) regardless of whether the use of deadly force resulted in injury or death, any use of force resulting in significant injury, and any in-custody death.	1-04(J)(i)	This required some additional work to revise applicable BPD policy, but this work is now completed and is not ongoing.	1
30.	The Model should be revised to provide OIPA the authority for and responsibility of reviewing use of force incidents by BART PD, regardless of whether the incident is a subject of a complaint.	1-04(E)(i)	Review of all use of force incidents requires significant additional work by OIPA. Despite ongoing efforts, it has proven difficult to fully and carefully review each incident (Approximately 440 incidents in 2017-2018. Reviewed for justification, camera activations, supervisory review quality, internal review system effectiveness, mental health considerations, Constitutional violations, etc.)	3
31.	OIPA should regularly participate in BART PD's use of force review boards.	1-04(E)(ii)	Requires some additional time and preparation but has not been implemented to date.	2

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32.	OIPA should report publicly on its use of force review program including the outcome of BART PD's use of force review boards.	1-04(E)(iii)	Will require and has required significant additional work and public report cannot be generated until after completion of review process described above in connection with Recommendation #30.	5
33.	OIPA should report publicly on the internal review of any officer-involved shootings, in-custody deaths, or serious uses of force.	Practice recommendation.	Will require significant work, but this is reporting that would have been completed and produced pursuant to Senate Bill 1421 (effective January 1, 2019) regardless of public reporting recommendation.	5
34.	The Model should be revised to provide authority and responsibility for OIPA to regularly participate in BART PD's early identification process.	1-04(F)	OIPA already participates insofar as OIPA has access to early warning system and communicates with BPD to ensure that flagged officers are promptly reviewed. There is some additional work related to the presentation and discussion of concerns with BPD command staff.	2
35.	OIPA should report regularly on the status of the Department's early identification system and results.	1-04(F)(ii)	Will require some additional work but has not been implemented or reported to date.	2
36.	The Model should be revised to provide OIPA the authority, access to data and records, staffing, and responsibility to conduct systemic audits of BART PD functions that impact the quality of the Department and the service provided to its public.	1-04(G)	Any systemic audit will require significant additional work. (See for example systemic review of all use of force incidents (Recommendation #30)).	4
37.	The Model should be revised to provide OIPA the authority and responsibility to monitor any audits conducted by BART PD regarding similar issues and report publicly the results of those audits.	1-04(G)(ii)	Monitoring and reporting on any systemic audit by BPD will require significant additional work.	4
38.	The Model should be revised to provide OIPA the authority and responsibility to be involved in any policy or training initiatives being developed by BART PD and to report publicly on any reforms.	1-04(K)(iii)	OIPA has typically participated in major policy initiatives, so this should not require significant additional work by OIPA going forward. However, BPD's effort to streamline its policy manual over the past year has generated additional work reviewing a significant number of amended, revised, and rescinded policies.	3
39.	The Model should be revised to provide OIPA the express authority to forward policy recommendations to the General Manager and/or Board of Directors. In situations in which OIPA's recommendations are not accepted by BART PD, OIPA should consider whether to forward its recommendations for further consideration to BART's governing entity.	1-04(K)(ii)	Would only require some additional work by OIPA in the event that recommendations are not accepted by BPD, which has not occurred to date.	2

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40.	In its annual report, OIPA should include an update on any previous outstanding recommendations and the degree to which the recommendations were endorsed by the Review Board and accepted by BART PD.	1-04(K)(iv)	Will require some additional work by OIPA related only to the preparation of the annual report.	2
41.	BART and OIPA should work with BART PD to ensure that BART PD's General Orders [policies] incorporate the authority of its oversight entities and the duty of members to cooperate in the execution of that authority.	Policy recommendation delivered to BPD by OIPA	This required some additional work to revise applicable BPD policy, but this work is now completed and is not ongoing.	1
42.	OIPA and the BART Police Citizen Review Board should attempt to schedule a meeting at least annually with the two BART Police Associations. The oversight entities should annually report on whether such meetings occurred.	1-04(L) 2-07(E)	This is in keeping with past practice by OIPA and does not, therefore, require any additional work by OIPA.	1
43.	The Model should be revised to expressly clarify the independent yet complementary roles of the BART Police Citizen Review Board and OIPA.	1-05(A)	This language change to the Citizen Oversight Model does not require any additional work by OIPA.	1
44.	BART should consider creating an Executive Assistant position for the BART Police Citizen Review Board to assist with administrative tasks now assigned to OIPA.	1-08(C)	These tasks are now managed entirely by the DSO and required some additional work related to training DSO staff and transferring responsibilities. This work is completed but may need to be revisited in light of recent (June 2019) changes to DSO personnel assignments.	1
45.	The Model should be revised to acknowledge that the BART Police Citizen Review Board is one potential source of information when the Board of Directors is seeking input on the performance of OIPA.	2-08(D)	This language change does not require any additional work by OIPA.	1
46.	The Model should be revised to provide OIPA the opportunity for input when a BART Police Citizen Review Board member seeks reappointment.	2-05(E)	This language change does not require any significant additional work by OIPA.	1
47.	The Model should clarify that former BART PD personnel are ineligible to serve on the BART Police Citizen Review Board.	2-03(E)	This language change does not require any additional work by OIPA.	1

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48.	A Training Curriculum Should Be Devised for Incoming BART Police Citizen Review Board Members, and In-Service Training Should Be provided at least semi-annually to current Review Board members.	2-07(K)(v-vi)	This does not require any additional work by OIPA other than when the BPCRB requests that the IPA provide a training session (historically 1x/year).	1
49.	The BART Police Citizen Review Board should consider rotating its meetings to a wider array of locales served by BART.	2-07(F)	This does not require any additional work by OIPA other than traveling to an off-site location to present monthly and investigative reports to the BPCRB.	1
50.	Procedures should be adopted by the BART Police Citizen Review Board intended to ensure that the Model's commitment to outreach is achieved. To that end, each incoming member should be alerted to outreach expectations by his/her appointing authority. On an annual basis, each Review Board member should report publicly on the outreach he/she has undertaken the previous year. Finally, the degree of each member's public outreach will be considered prior to reappointing the Review Board member to an additional term.	Practice recommendation for BPCRB and Board of Directors; 2-05(F) 2-07(F)	This does not require any additional work by OIPA.	1
51.	The Model should be revised to authorize excused absences for good cause that would not count against the absence limitations.	2-04(B)	This does not require any additional work by OIPA.	1
52.	The Model should be revised to expressly authorize OIPA and the BART Police Citizen Review Board to make public statements about their oversight work.	1-04(O) 2-07(I)	This does not require any additional work by OIPA.	1
53.	The Model should be revised to call for periodic reviews of BART's oversight entities at a minimum of four-year intervals.	3-01	This requires significant additional work by OIPA every 3 years to facilitate the external review process.	4
54.	The Model should be revised to clarify whether a newly-seated BART Director may unilaterally remove his or her predecessor's BPCRB appointee and specify any time limits for doing so.	2-02(B)(vi)	This does not require any additional work by OIPA.	1