

APPENDIX

Warren Police Department

Settlement Agreement Compliance Chart – December 18, 2013

Section II. UOF Policies and Practices.

1. The City shall maintain UOF policies that:
 - a. define terms clearly;
 - b. define “force” as that term is defined in this Agreement;
 - c. incorporate a use-of-force model that relates the force options available to officers to the types of conduct by individuals that would justify the use of such force, and that teaches disengagement, area containment, surveillance, waiting out a subject, summoning reinforcements or calling in specialized units as appropriate responses to a situation, and that requires the use of a verbal warning before the use of force, when possible;
 - d. state that, whenever possible, individuals should be allowed to submit to arrest before force is used;
 - e. state that the use of excessive force shall subject officers to discipline, possible criminal prosecution, and/or civil liability;
 - f. ensure that sufficient less lethal alternatives are available to all patrol officers; and
 - g. explicitly prohibit the use of choke holds and similar carotid holds except where deadly force is authorized.

Status	Substantial compliance – ongoing obligation
Analysis	Upon Chief Merkel’s appointment, WPD and Department of Justice resolved all outstanding issues surrounding long-pending policies for use of force and force tools. <i>See</i> Policy 96-007, Use of Force; Policy 02-003, Taser; Policy 12-004, ASP Tactical Baton; Policy 12-003, Oleoresin Capsicum Spray. WPD reports that it has promulgated the policies to all sworn officer and trained all officers on the new policy. WPD provided us records indicating that all sworn officers had received the new force policies. Accordingly, WPD is in substantial compliance with the Settlement Agreement’s requirements to maintain a use of force policy that meets the above provisions.
Technical Assistance	Having a policy and consistently abiding by it are separate matters. Below, you will see that WPD still needs to improve its use-of-force reviews to ensure that all uses of force are consonant with the approved policy and constitutional standards.

2. For the duration of this Agreement, WPD shall ensure that its use-of-force policy meets the above criteria. If notified by DOJ that WPD’s policies do not meet the above criteria at any point during the term of this Agreement, WPD shall revise its policies consistent with the above criteria and submit the revised policy to DOJ for approval. DOJ will review and comment on WPD’s revised use-of-force policies. WPD shall further revise its use-of-force policies consistent with the DOJ comments, and WPD shall resubmit the revised policies to DOJ for its consideration for approval. WPD shall not implement any revisions to its use-of-force policies unless approved by DOJ. Once the DOJ has approved these policies, WPD shall immediately implement any revisions. Within thirty days of DOJ’s approval of WPD’s revised use-of-force policies, WPD shall retrain all WPD officers on the revised policies, and shall keep a written record of such training of all existing and new WPD employees as part of each employee’s personnel file.

Status	Substantial compliance – ongoing obligation
Analysis	WPD’s compliance with the immediately prior, force-policy provision brings WPD into compliance with this provision, too. This provision, however, operates to ensure that any changes to force policy, including changes to requirements for reporting uses of force, are subject to Department of Justice approval.
Technical Assistance	It is our understanding that WPD is considering changes in the reporting requirements for lethal-cover scenarios, where no discharge occurs. We encourage WPD to retain the reporting of all active targeting. To the extent that WPD would change any portion of the use-of-force policy to change the way in which its officers report active targeting, this change would be subject to review and approval by the Department of Justice before WPD implements any such change.

3. WPD represents that every uniformed WPD officer is provided an intermediate force weapon. WPD shall continue to provide every uniformed WPD officer with an intermediate force weapon, which all uniformed officers shall carry on their person at all times while on duty and may be used when appropriate under law and policy. WPD has previously selected the telescoping baton as WPD’s current assigned intermediate force device for all sworn officers. WPD may select a different intermediate force weapon, provided that WPD make the selection uniform across all sworn officers. WPD shall incorporate its selected intermediate force weapon into WPD’s force policy, and shall continue to train all its sworn officers on an annual basis on the proper use of the selected intermediate force weapon.

Status	Substantial compliance – ongoing obligation
Analysis	WPD represents that its patrol officers carry ASP batons. WPD has an approved policy for ASP batons, as well. WPD has not selected a different intermediate force tool since the entry of the Settlement Agreement. Accordingly, WPD is currently in substantial compliance with this Settlement Agreement provision.
Technical Assistance	In future compliance audits, the Department of Justice will continue to monitor the tools carried by uniformed officers. The Department of Justice has reviewed training curriculum and records of receipt of policies, as discussed below, but will attend training session in 2014 to ensure that officers are all trained on the use of the approved intermediate force weapon. WPD’s obligation to ensure that all officers are equipped with and trained on a standard intermediate force weapon is ongoing.

Section III. Evaluation, Documentation, and Review of UOF

1. WPD requires all uses of force to be documented in writing. Each WPD officer involved in a use-of-force incident shall separately complete a use-of-force report, or a separate addendum to the original use-of-force report. Each officer shall indicate on his or her respective report each and every type of force he or she used or was a party to. Each officer involved in a use-of-force incident shall include in his or her report a narrative description of the events preceding the use of force, a description of the force used, and a description of the care given after force was used. All use-of-force reports shall indicate whether or not the subject on whom force is used was restrained or not at the time force was used. WPD shall ensure that WPD officers complete and submit all use-of-force reports within twenty-four hours of the end of the shift on which a use of force occurs.

Status	Non-compliance - ongoing obligation
Analysis	<p>We reviewed all “response to resistance reports,” i.e., use of force reports, that WPD provided to us. We note a substantial improvement in WPD’s reporting of force as compared with older samples of WPD reports. Despite this improvement, WPD’s reports do not consistently meet this Settlement Agreement provision.</p> <p>Notably, not all officers on the scene of uses of force have completed use of force reports. In some cases officers involved in uses of force failed to complete use-of-force-reports, and supervisors did not correct this omission. For those that did provide narratives, not all explained the justification of uses of force.</p> <p>There were also un-reconciled inconsistencies in use of force reports, which supervisors should have noted and for which supervisors should have required</p>

	supplemental reports to address the inconsistencies.
Technical Assistance	<p>WPD’s new management appears willing to meet the requirements of this provision. Since our tour, WPD has endeavored to instruct all officers on the requirements of force reporting, specifically on the requirement that officers articulate the objectively reasonable basis for each separate application of force. As we continue to assess compliance with this provision, we will review newer use-of-force reports as WPD produces them. We are hopeful that the technical assistance already provided during our tour will yield reports that fully describe the legal basis for use of force, or will lead to an elimination of use of force when no legal basis exists for its use.</p> <p>Also, we note a technical hurdle WPD faces in meeting the requirements of this provision and the needs of a modern, efficient police force. WPD described to us a process for reporting force whereby officers must return to the station to complete a fillable pdf document on a computer for all of the officers’ reports. In other words, for any given report, officers spend time to travel back to the station to complete the report and then travel time back to their assignment, unless completed at the end of their shift. In any case, the time spent in transit is both a large expenditure of time and leaves fewer officers on the street to provide assistance to one another. Instead, it would be helpful if WPD could provide its officers with the ability to fill in forms on the mobile data terminals, i.e., laptop computers, already in their cruisers.</p>

2. Officers shall notify their immediate supervisors following all uses of force or upon the receipt of an allegation of excessive force. Upon such notification the immediate supervisor of the involved officer(s) shall promptly respond to the scene, examine the subject for injury, interview the subject, and ensure that the subject receives needed medical attention. When a Sergeant is involved in a use of force or an allegation of excessive force, the Lieutenant on duty shall be the immediate supervisor. The Chief of Police, or his or her designee, shall promptly respond to the scene of any use of deadly force.

Status	Substantial compliance – ongoing obligation
Analysis	<p>Since the implementation of the new force policy, WPD reports supervisors reporting to the scenes of uses of force. An analysis of the use-of-force reports provided to us largely reflects that supervisors have responded to the scenes of uses of force to conduct in-person force investigations. While the quality of those assessments varies (<i>see</i> paragraph 4 below) the conduct of force investigations is a significant step forward and provides senior-level WPD reviewers with more data for assessing the objective reasonableness of the uses of force.</p>

	WPD had a recent use of deadly force. The requirements of this provision also govern, in part, response to such an incident. As was evident in our review of mobile video recordings taken immediately after that incident, WPD meet those requirements in timely calling the Chief of Police and designees to the scene.
Technical Assistance	This provision also requires that supervisors ensure injured subjects receive necessary medical attention. WPD has advised us that a nurse is not on duty at the Trumbul County Jail outside of business hours. WPD relies upon the judgment of emergency medical technicians (“EMTs”) in the field or medical staff at an emergency room when a nurse is not available in the jail. Supervisors must remain vigilant to ensure that officers call EMTs to the scene or transport injured subjects to an emergency room whenever subjects complain of injury or request medical care, or when officers or supervisors should reasonably seek medical assistance.

3. The immediate supervisor shall review, evaluate, and document each use of force in the supervisor’s review section of the use-of-force report including his or her determination of whether or not the officer’s actions were within WPD policy, and whether or not the force used was objectively reasonable. Any officer or supervisor who used force during the incident, or whose conduct led to an injury, or who authorized conduct leading to the use of force or allegation of excessive force, will not be eligible to review the incident.

Status	Non-compliance - ongoing obligation
Analysis	<p>We analyzed all use of force reports that WPD provided to us. While we were on site, we systematically reviewed all of these reports with WPD executives and their counsel. As discussed during those reviews, a significant shortcoming is evident in the reviews of uses of force. Notably, the WPD Captain in charge of WPD’s Emergency Services Division, i.e., its uniformed patrol units, almost never applied correct legal or policy standards to the reviews of use of force. Nearly uniformly, he found that WPD officers used the “minimal” force and, with slight exception, did not assess the objective reasonableness of force used nor did he reconcile inconsistencies in officers’ statements about some uses of force. This executive’s lackadaisical approach to use-of-force reviews flowed downward to intermediate and direct supervisors who often likewise failed to assess force based on the objective-reasonableness and policy standards.</p> <p>We understand that after our review of force reports with WPD that Chief Merkel and WPD’s training staff implemented <i>ad hoc</i> training session for all WPD personnel on the appropriate standards for reviews of uses of force, i.e., objective reasonableness and within policy. We applaud this effort. We have requested that WPD provide us an audio recording of such a training, and we anticipate reviewing and opining of that training when WPD furnishes the recording to us. At this time,</p>

	<p>however, the corrective action is in its infancy. Accordingly, WPD must still demonstrate internalization of the appropriate standards for use-of-force review for a sustained period to come in to compliance. We will continue to review all use-of-force reports to ensure that WPD had internalized this skill.</p> <p>There were few samples of reports in which supervisors were involved in the use of force, itself. For one such incident, however, the Lieutenant involved in the hobble restraint of a subject also signed off approving his and other officers' use of force. Here, too, the WPD Captain in Emergency Services Division failed to correct the improper review.</p>
Technical Assistance	<p>WPD previously developed a checklist as a useful tool for review of uses of force. WPD may utilize that tool at all supervisory levels to ensure that its reviews apply the appropriate objective-reasonableness standard to each and every application of force.</p> <p>If supervisors find that officers' reports fail to demonstrate the objectively reasonable basis for the use of force, supervisors should require officers to submit supplemental reports to explain their actions. If officers cannot adequately explain their uses of force on an objectively reasonable analysis, the WPD supervisor should refer that use of force to internal affairs.</p>

- Supervisors shall conduct a review of all uses of force or an injury resulting from a use of force by any officer under their command. As part of this review, supervisors shall interview all witnesses to a use-of-force incident or an injury resulting from a use of force.

Status	Partial-compliance - ongoing obligation
Analysis	In the use-of-force reports WPD provided to us, supervisors often interviewed subjects who were subjected to uses of force. However, these interviews did not occur in all instances, nor did WPD supervisors interview all identified witnesses.
Technical Assistance	As part of WPD's effort toward improvement in the review of uses of force, WPD should also ensure that supervisors interview all identifiable witnesses and the subjects of uses of force. This is a necessary step to come into compliance with the Settlement Agreement.

- Consistent with the requirements of the collective bargaining agreement and/or other applicable authority, supervisors shall ensure that all officer witnesses provide a statement regarding use-of-force incidents. Officers shall not be permitted to see one

another's statements prior to submission of their own statement. Supervisors shall ensure that all use-of-force reports identify all officers who were involved in the incident or were on the scene when it occurred. Supervisors shall ensure that all reports indicate whether an injury occurred, whether medical care was provided, and whether the subject refused medical treatment. Supervisors shall ensure that all reports include contemporaneous photographs or videotapes taken of all injuries at the earliest practicable opportunity, both before and after any treatment. Supervisors shall document their review of the use-of-force report in the supervisor's review section of every use-of-force report. Supervisors shall record therein their evaluation of the basis for the use of force, a determination of whether the officer's actions were within WPD policy, and whether the force used was objectively reasonable.

Status	Partial-compliance - ongoing obligation
Analysis	<p>As noted, WPD's current use-of-force reports indicate a vast improvement over WPD's historical use-of-force reports. Whereas historical reports clearly indicated that officers shared their narratives, current reports appear to indicate that officers are now authoring their own narratives. Even though WPD significantly improved its force reporting, it has not yet come into compliance with this Settlement Agreement provision.</p> <p>Most reports reviewed did not include photographs of injuries. Also, WPD had many uses of electronic control weapons, e.g., Tasers. However, WPD did not photograph AFIDs, i.e., numbers confetti dispersed by Tasers when they are discharged in probe mode. Additionally, WPD had not included in their use-of-force reports data that is downloadable from any Taser regarding the time of discharge, number of discharges, and duration of each discharge. WPD informs us that they recently acquired the hardware necessary to begin the download process for Tasers, without having to utilize another police department's hardware.</p> <p>Many of the reports reviewed noted that the mobile video recording device in officers' cruisers were either inoperable or were not available in the cruiser used. Most often, the force review did not note whether the officers or supervisors had referred the affected units to WPD's motor pool for repair of the devices or installation of a new device. The recurrent absence of video recording makes more difficult WPD's reviews of uses of force. Video recording also serves to protect officers from allegations of misconduct by providing a contemporaneous record of police interactions.</p>
Technical Assistance	<p>Supervisors should ensure that all officers on the scene of a use of force provide a report or supplement. For all officers involved in a use of force, supervisors should ensure that their reports contain a narrative explaining why each application of force is objectively reasonable. To the extent that force reports fail to do so, officers must provide supplemental reports to provide a complete picture of the</p>

	<p>justification for applications of force. If officers are incapable of articulating such an objectively reasonable basis, then WPD should refer such uses of force for full internal affairs investigation.</p> <p>WPD should make sure to take photos of injuries to subjects, including the site of application of electronic control weapons. Additionally, WPD should photograph the distribution of AFIDs whenever WPD officers discharge a Taser in probe mode. And, WPD should download Taser data for every single discharge – drive stun or probe mode – and include a print out of that data in the associated use-of-force report.</p> <p>We also recommend that WPD assess all its cruisers to ensure that video recording equipment is in working order. We further encourage WPD to issue a directive to all officers that they note faulty or missing equipment for repair or replacement.</p>
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- The Parties agree that it is improper for WPD personnel conducting reviews of use-of-force incidents to ask officers or other witnesses leading questions that improperly suggest legal justifications for officers’ conduct when such questions are contrary to appropriate law enforcement techniques. In each use-of-force review, WPD shall consider all relevant evidence including circumstantial, direct and physical evidence, as appropriate, and make credibility determinations, if feasible. WPD will make all reasonable efforts to resolve material inconsistencies between witness statements.

Status	Partial-compliance - ongoing obligation
Analysis	<p>In each of WPD’s newer use-of-force reports, supervisors memorialize their reviews of uses of force. Supervisors’ assessments indicate that they do not necessarily ask leading questions, however, they also do not always identify the objectively reasonable basis, if any, for uses of force. Moreover, on the occasions when WPD officers have deployed an electronic control weapon, supervisors have not gathered physical evidence, i.e., photos of injuries, AFIDs, photos of AFID disbursement in probe mode, and data downloads for probe and contact mode. Accordingly, these supervisory assessments cannot be viewed as complete. Also, when material inconsistencies have arisen in certain use-of-force reports, supervisors did not identify those inconsistencies or seek to reconcile them.</p>
Technical Assistance	<p>Consistent with the prior technical assistance, herein, WPD must ensure that its supervisors interview all identifiable witnesses and collect all applicable physical evidence.</p>

7. For each use-of-force incident, a WPD Captain will timely evaluate each use of-force review supervisors conducted for such incident, identify any deficiencies in those reviews, and require supervisors to timely correct any deficiencies. WPD shall hold supervisors accountable for the quality of their reviews. WPD shall take appropriate non-disciplinary corrective action and/or disciplinary action whenever a supervisor fails to conduct a timely and thorough review of a use of force, or neglects to recommend appropriate corrective action, or neglects to properly implement appropriate corrective action.

Status	Non-compliance - ongoing obligation
Analysis	As noted in Section III.3, above, the WPD Captain failed to appropriately review uses of force. It is our understanding that Chief Merkel and WPD training officers have taken corrective action to train all sworn officers on the appropriate standards for uses of force.
Technical Assistance	There is simply no substitute for taking the required action under this provision of the Settlement Agreement. We are pleased that WPD is taking corrective action. The efficacy of that action will be borne out in future use-of-force report reviews. We will assess future use-of-force reports and their supervisors-level and command-level reviews to determine whether WPD comes into compliance.

IV. Citizen Complaint Process.

A. Public Information

1. WPD has developed and implemented a program to inform persons that they may file complaints regarding the performance of any officer. The complaint form is presently available at www.warren.org, the City’s website. The City also presently makes complaint forms and directions for submitting complaints publicly available at all governmental properties. The City has proceeded to make the public aware of the complaint form process. During the performance of this Agreement, WPD shall continue to make complaint forms, directions on submitting complaints, and informational materials publically available at government properties including, but not limited to: WPD headquarters, all City public libraries, the Office of the Director of Public Safety, the Internet, and, upon request, to community groups and community centers.

Status	Substantial compliance – ongoing obligation
Analysis	This provision is a statement regarding the availability of WPD’s complaint forms and directions at the time the parties entered into the Settlement Agreement. This

	<p>provision also requires that WPD maintain the availability of those forms and directions. We have periodically confirmed that WPD maintains the complaint form on its website and in accessible buildings. The complaint form includes instructions on the filing of a citizen complaint. WPD’s complaint policy also memorializes the requirement that WPD make complaint forms available at certain governmental offices and the offices of the Urban League. Policy 07-001, Sec. V.A.1.</p>
Technical Assistance	<p>We applaud WPD for continuing to make complaint forms widely available. This is a significant improvement over historical practices under prior WPD administrations.</p> <p>We suggest that WPD update its complaint form and website to include the name and telephone number of the WPD officers assigned to internal affairs. As noted herein, complainants did not always receive a response from WPD to their complaints. Including contact information for internal affairs on the complaint form should facilitate improved communication with complainants.</p>

2. Within 30 days of the effective date of this agreement, WPD shall permanently post in a public space at WPD headquarters a placard describing the complaint process and include the relevant phone numbers. WPD shall require all officers to carry informational brochures and complaint forms in their official vehicles at all times while on duty. If a citizen objects to an officer’s conduct, that officer will inform the citizen of his or her right to make a complaint. Officers shall not discourage any person from making a complaint.

Status	Substantial compliance – ongoing obligation
Analysis	<p>WPD has posted the complaint process in the publically accessible portion of the police records office in the WPD headquarters. WPD also has complaint brochures widely available in the police headquarters. Based on our interviews with officers, WPD also has complied with the requirement that officers carry complaint forms and accept complaints. Based on a review of the complaint forms submitted to internal affairs, WPD has accepted all manner of complaints. Previously, WPD removed from its complaint forms language that discouraged the filing of complaints. WPD has also memorialized in its policy the requirements that officers carry and make available complaint forms and the prohibition on discouraging complaints. Policy 07-001, Sec. V.A.2 - 4; Sec. V.B.1.</p>
Technical Assistance	<p>Consistent with the prior technical assistance, we suggest that WPD include in its complaint brochures the name and telephone number of the WPD officers assigned</p>

	to internal affairs.
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B. Means of Filing and Tracking of Complaints

1. WPD shall continue to maintain clear complaint acceptance and complaint resolution policies and procedures. WPD shall ensure that all officers are trained in acceptance of complaints. Training on the complaint acceptance policy and procedure will be a part of in-services to all officers at the implementation of this Agreement.

Status	Partial-compliance - ongoing obligation
Analysis	<p>WPD maintains a clear policy on the acceptance of complaints. Policy 07-001, Sec. V.B. Our review of the complaint forms and investigations revealed that in most cases the officers about whom complaints were submitted were subject to investigation. In some instances, however, the not all officers identified by complainants were subject to investigation. Complainants are entitled to a resolution of their complaint that provides them a finding for all officers they identify or whom WPD can identify based on the complaint. Also, officers who are the subject of a complaint are entitled to a final outcome so as not to proceed under the unresolved pallor of an unanswered allegation. Additionally, WPD’s resolution procedures lacked clarity in that WPD did not consistently inform complainants of outcome of their complaints. Accordingly, complaint acceptance policies meet compliance; however, complaint resolution procedures do not yet meet compliance.</p> <p>WPD has represented to us that all officers have been trained on the complaint acceptance policies and procedures. These training sessions occurred at a time we were not present in Warren. We intend to observe such training in the upcoming 2014 in-service training sessions.</p>
Technical Assistance	<p>WPD must be consistent in its processing of complaints to ensure that: (1) all officers identified in a complaint are subject to investigation and a finding; and (2) all complainants receive a written response informing them on the status of their investigation, progress if resolution is delayed, and final findings for all claim for all identifiable officers.</p>

2. The complaint-acceptance policy shall specify that WPD shall accept complaints in writing or verbally, in person or by mail, telephone (or TDD), facsimile, electronic mail, or drop box. The policy shall require that all WPD employees accept complaints and promptly deliver them to a supervisor. The policy shall state that an employee accepting a complaint may describe facts that bear upon a complainant’s demeanor and physical condition but may not express opinions regarding his/her

mental competency or veracity. The complaint-resolution policy shall require that WPD resolve each complaint in writing.

Status	Substantial compliance – ongoing obligation
Analysis	WPD’s policy meets the requirements of this provision for the methods by which complainants may submit their complaints. Policy 07-001, Sec. V.B. WPD’s policy also requires that WPD produce written reports for all complaints that are subject to a full internal affairs investigation. Policy 07-001, Sec. V.C.8. The policy lacks clarity, however, on what means WPD will use to memorialize the outcome of actions that do not rise to the level of internal affairs investigations. Policy 07-001, Sec. V.C.2. Nevertheless, in practice, WPD has assigned internal affairs numbers to all complaints and, thereby, tracked the outcome of complaints.
Technical Assistance	WPD should include in its policy a requirement that allegations which do not rise to the level of an internal affairs complaint pursuant to Policy 07-001, Sec. V.C.2, nevertheless require a written resolution for the officer(s) and complainant(s).

- WPD shall refer copies of allegations of misconduct against WPD to WPD’s Internal Affairs Unit (“IA”) within three business days of receipt of a complaint. Within 90 days of the effective date of this Agreement, WPD shall institute a centralized numbering and tracking system for all complaints. Immediately upon receipt of a complaint, WPD shall assign each complaint a unique identifier, which WPD shall provide to the complainant. WPD shall track in a database each complaint according to the basis for the complaint (e.g., excessive force, discourtesy, improper search, etc.).

Status	Substantial compliance – ongoing obligation
Analysis	<p>WPD’s policy includes requirements that WPD employees notify the Chief within 24 hours of the receipt of complaints involving allegations of excessive force and with 72 hours for all other allegations. In practice, complaint forms reveal that the assigned internal affairs investigator receives most complaints, without need for a referral to internal affairs. Accordingly, WPD is in compliance with the requirement that internal affairs receive all complaints within 72 hours.</p> <p>WPD’s assigned internal affairs investigator has instituted a tracking system that is a significant improvement over historical practices of prior WPD administrations. This system includes assignment of unique “IA” numbers to each complaint and a cross reference in the associated incident, arrest, or use-of-force report number stemming from the action that gave rise to the complaint. WPD’s records indicate that WPD has tracked all complaints received since the entry of the Settlement</p>

	Agreement. WPD’s policy requiring the tracking of complaints by case number, date, complainant, nature of complaint, assigned investigator, subject officer, disposition and notice also support WPD’s compliance with this provision of the Settlement Agreement. Policy 07-001, Sec. V.B.9.
Technical Assistance	WPD would benefit from making its policy clear that the WPD supervisor advised of a complaint must ensure that he or she provides all the complaint material to internal affairs as quickly as practicable, but in no even longer than 72 hours.

C. Investigation of Complaints

1. WPD shall investigate every complaint of employee misconduct.

Status	Partial-compliance - ongoing obligation
Analysis	WPD’s tracking system appears to indicate that each complaint WPD has received has resulted in a finding. Looking deeper into the complaints, however, raises two important issues. First, in certain complaints involving incidents with multiple officers, WPD did not investigate allegations raised against all officers. Instead, WPD investigated only some of the officers. This undercuts the fidelity of the internal affairs system. Even though apparently an oversight, the selection of only some officers as subjects of the investigation may lead to the appearance of favoritism or leave unresolved allegations that are capable of a final finding for the benefit of both the complainant and the accused officers. Second, when complainants do not characterize their complaints of misconduct, WPD must try to identify what violations of policy the complaint implicates, if true. WPD did not always investigate all potential violations of policy raised by the complainants, e.g., categorizing a force complaint as a discourtesy complaint. Accordingly, WPD failed to subject to investigation and resolution these portions of misconduct allegations.
Technical Assistance	WPD must act to ensure that it investigates all officers identified or capable of being identified in a complaint of officer misconduct. WPD must also act to ensure that the allegations raised in complaints match the alleged policy violations for which internal affairs produce a recommended finding. In part, WPD may achieve compliance by a more thorough effort within internal affairs. Ultimately, however, the onus falls upon the Captains and Chief who review the internal affairs reports to ensure the identification of officers and accuracy of charged policy violations.

2. WPD shall explicitly prohibit from investigating an incident any officer involved in that incident.

Status	Partial-compliance - ongoing obligation
Analysis	In practice, WPD has not assigned an officer to investigate an internal affairs complaint if that same officer was involved in the underlying incident. WPD’s citizen complaint policy, however, does not require this explicit prohibition. Accordingly, WPD effectively met the uninvolved-officer standard of the Settlement Agreement, but still must add the explicit prohibition to its policy to come into full compliance.
Technical Assistance	WPD should revise its policy consistent with this Settlement Agreement provision.

3. WPD shall complete all investigations of officer misconduct within 40 days of the earlier of WPD’s receipt of a complaint or WPD’s discovery of alleged officer misconduct, unless the Chief of Police extends that deadline in writing at the written request of the assigned investigator. The Chief of Police may permit only one extension at a time of no more than 30 days per extension, and shall not permit more than a maximum of two possible extensions. The Chief of Police shall record, as part of the investigative file for the incident, his or her basis for granting or denying the request for extension. WPD shall provide written notice to the complainant of any extensions.

Status	Substantial compliance – ongoing obligation
Analysis	WPD has completed internal affairs investigations within 40 days. There were two exceptions to this, neither of which bring WPD out of compliance with this provision. In both of these exceptional cases, WPD properly referred the incidents to Ohio’s Bureau of Criminal Investigation (“BCI”) for investigation. BCI’s investigations have or will span more than 40 days. In one instance, BCI’s investigation of alleged officer misconduct has delayed the outcome of WPD internal affairs investigation. WPD, however, acted responsibly in placing the subject officer on administrative leave during the pendency of the investigation.
Technical Assistance	WPD should ensure that internal affairs records include the required written extensions whenever internal affairs investigations take longer than 40 days. Also, WPD should work with BCI to ensure timely resolution of BCI’s investigations. Many police departments conduct concurrent internal affairs and criminal investigations. WPD should consider when it is appropriate to do so in consultation

	with prosecutors. If WPD conducts concurrent investigations, it must ensure both the protection of the accused’s rights against self incrimination in the criminal proceeding and protection of the prosecution’s case from contamination by statements compelled in the internal affairs proceeding .
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4. Within 90 days of the effective date of this agreement, WPD shall adopt a single policy concerning the investigation of misconduct complaints, regardless of whether the investigation is conducted by IA or a chain-of- command supervisor. WPD shall apply a preponderance of the evidence standard to the evaluation of all allegations contained in a complaint or collateral misconduct discovered during the course of investigating a complaint.

Status	Partial-compliance - ongoing obligation
Analysis	<p>WPD has adopted a single policy concerning the categorization and investigation of complaints. Policy 07-001. This includes the specific criteria WPD must consider in determining whether to subject complaints to full internal affairs investigations or chain-of-command investigations by the turn commander of division commander. Policy 07-001, C.2. In practice, WPD subjects even rudeness complaints to internal affairs investigation. This is a positive step. This should support the public faith in a system that fully investigates even minor complaints.</p> <p>The policy also properly requires that the Chief apply a preponderance of evidence standard to the findings of each allegation. Policy 07-001, C.10.</p> <p>In practice WPD has not always identified collateral misconduct that arises in the investigation of a complaint. Therefore, WPD cannot be said to have applied a preponderance of evidence standard to such potential misconduct.</p>
Technical Assistance	<p>WPD use of internal affairs, rather than chain of command investigations, for all complaints is helpful. To the extent that WPD finds it necessary to direct complaints to an officer’s chain of command for investigation, WPD should make clear in its policy that chain-of-command investigations are subject to the same tracking, findings, and notification requirements are internal affairs investigations. Like full internal affairs investigations, officers and complainants are entitled to an outcome of alleged policy violations, even if capable of being resolved merely through command counseling. Likewise, to have useful data for WPD’s risk management system, WPD should ensure that chain-of-command investigations reach a resolution that WPD can track in its database.</p>

5. The personnel participating in IA have presently been trained on the factors to consider when evaluating complainant or witness creditability, examination and interrogation of accused officers and other witnesses; identifying misconduct even if it is not specifically named in the complaint; and using the preponderance of the evidence standard as the appropriate burden of proof.

Status	Substantial-compliance - ongoing obligation
Analysis	WPD’s principle internal affairs investigator has taken training on the conduct of internal affairs investigations. He displays the certificate of training form the Ohio Peace Officer Training Academy in his office.
Technical Assistance	Like other skills, the investigation of internal affairs complaints can encompass perishable skills. Accordingly, WPD should provide on-going training to all personnel assigned to conduct internal affairs investigations. The Federal Law Enforcement Training Center (“FLETC”) offers some courses online as podcasts without a fee. <i>See, e.g.</i> , “Self Incrimination: Interrogating Government Employees,” available at http://www.fletc.gov/training/programs/legal-division/podcasts/fletc-legal-division-self-incrimination-roadmap-podcasts/self-incrimination-roadmap-podcasts-transcripts/self-incrimination-interrogating-government-employees-podcast-transcript.html/?searchterm=internal%20affairs . FLETC also offers for a fee a week-long advance internal affairs program, focusing on federal internal affairs programs, but teaching mostly transferable general internal affairs skills. <i>See</i> “Internal Affairs Investigations Training Program (IAITP)”, available at http://www.fletc.gov/training/programs/investigative-operations-division/general-investigative-skills-branch/internal-affairs-investigations-training-program-iaitp/?searchterm=internal%20affairs .

6. IA or chain-of-command investigators assigned to the investigation of complaints shall interview all witnesses to the incident who are capable of being identified through the exercise of reasonably diligent investigation. All interviews of WPD employees regarding the incident shall be recorded (audio or video). All interviews of non-WPD employees regarding the incident shall be recorded (audio or video), unless the interviewee specifically requests not to be recorded. If an interviewee requests not to be recorded, WPD shall secure a written declination of recording executed by the interviewee. An interviewee’s refusal to have an interview recorded will not relieve WPD of its obligation to interview all witnesses to an incident giving rise to a complaint. Consistent with the requirements of the collective bargaining agreement and/or other applicable authority, the assigned investigators shall ensure that all officer witnesses provide a statement regarding the incident. Officers shall not be permitted to see one another’s statements prior to submission of their own statement. For all allegations involving injury to a person, the assigned investigator

shall obtain contemporaneous photographs or videotapes of all injuries at the earliest practicable opportunity, both before and after any treatment, including cleansing of wounds.

Status	Non-compliance - ongoing obligation
Analysis	Most of the internal affairs investigations we reviewed did not include separate interviews of the complainants. Rather, WPD relied upon the complainants' statements in their submitted forms. This reliance on the initial forms, without the benefit of an interview, fails to permit WPD investigators to fully develop the underlying factual allegation, nor to permit clarification of unclear statements, nor subject to the allegations to critical questions. WPD also identified some witnesses in most internal affairs investigations, but did not consistently interview all witnesses. Additionally, WPD did not have photographs of all injuries in the documents provided to us. Accordingly, WPD is not in compliance with this critical Settlement Agreement provision.
Technical Assistance	We understand that WPD already has begun corrective action to interview complainants. WPD must fully operationalize this change. WPD should identify in its internal affairs reports all witnesses capable of being identified. For each such witness, WPD should record witness interviews. If WPD cannot record an interview, or cannot conduct an interview at all, WPD must memorialize in its internal affairs reports the efforts it took and clearly explain why compliance with this provision for any given internal affairs interview is impossible. WPD should also make sure to photograph all injuries. If a complainant alleges WPD caused an injury that is no longer visible, WPD should memorialize in its internal affairs reports its requests for photographs of the injury when it was perceptible from the complainant.

7. In each misconduct investigation, WPD shall consider all relevant evidence including circumstantial, direct and physical evidence, as appropriate, and make credibility determinations, if feasible. WPD specifically shall not give an automatic preference for an officer's statement over a non-officer's statement, nor will WPD disregard a witness' statement merely because the witness has some connection to the complainant. WPD will make efforts to resolve material inconsistencies between witness statements.

Status	Non-compliance - ongoing obligation
Analysis	As discussed above, WPD has not routinely interviewed complainants. In so doing, WPD effectively has given more weight to officers' rather than complainants'

	statements. And, WPD’s failure to interview complainants may have made impossible the resolution of inconsistencies given that WPD deprived itself of the interview process to address such inconsistencies with complainants.
Technical Assistance	To come into compliance, WPD must fully operationalize the practices of collecting and considering all data and interviewing all identifiable witnesses.

8. During a misconduct investigation, WPD will continue to investigate all relevant police activity, including each use of force (i.e., not just the type of force complained about). The investigation shall also evaluate any searches or seizures that occurred during the incident. WPD shall not close an investigation simply because the complaint is withdrawn or the alleged victim is unwilling or unable to provide medical records or proof of injury or the complainant will not provide additional statements or written statements; rather, WPD shall continue its investigation as necessary to determine whether the original allegation(s) can be resolved based on the information, evidence, and investigatory procedures and techniques available. In each investigation, the fact that a complainant pled guilty or was found guilty of an offense will not be considered as evidence of whether a WPD officer used or did not use a type of force, nor will it justify discontinuing the investigation.

Status	Partial-compliance - ongoing obligation
Analysis	As discussed, herein, WPD did not consistently identify collateral misconduct or allegations raised against all officers. For those allegations that WPD investigated, however, WPD completed investigations without regard to whether the complainant pled guilty to an underlying charge. There were no sample internal affairs investigations that gave rise to unaddressed search and seizure issues.
Technical Assistance	Like other provisions, WPD corrective action to address all allegations against all identifiable officers should help bring WPD into substantial compliance with this provision.

9. For each allegation, the assigned investigator shall make a written recommended determination to the Division Commander as to whether: (1) the police action was in compliance with policy, training and legal standards regardless of whether the complainant suffered harm; (2) the incident involved misconduct by any officer; (3) the use of different tactics should or could have been employed; (4) the incident indicates a need for additional training, counseling or other non-disciplinary corrective measures; and (5) the incident suggests that WPD should revise its

policies, training, or tactics. WPD shall ensure that assigned investigators' reports contain a written recommended determination on each of these elements.

Status	Partial-compliance - ongoing obligation
Analysis	WPD's internal affairs investigation reports largely achieve many of the requirements of this provision. In its internal affairs reports, WPD should have identified problematic tactics in the use of electronic control devices as contact stun weapons. Also, like other provisions of the Settlement Agreement, WPD needs to address allegations against all identifiable officers in order to come into compliance with this provision.
Technical Assistance	It is our understanding that WPD has already taken corrective action on the use of electronic control weapons in close proximity to the heart or head. Subsequent use-of-force reports indicate that WPD is addressing this issue. WPD corrective action to address all allegations against all identifiable officers should help bring WPD into substantial compliance with this provision.

10. The misconduct-investigation policy shall require that WPD reach a separate investigative finding for each allegation. WPD shall ensure that a separate recommended investigative finding is reached and recorded in the assigned investigator's report for each allegation of employee misconduct. Each allegation in an investigation shall be resolved by making one of the following investigative findings:

- a. "Unfounded," where the investigation determines, by a preponderance of the evidence, that no facts to support that the incident complained of actually occurred;
- b. "Sustained," where the investigation determines, by a preponderance of the evidence, that the person's allegation is supported by sufficient evidence to determine that the incident occurred and the actions of the officer were improper;
- c. "Inconclusive," where the investigation determines, by a preponderance of the evidence, that there are insufficient facts to decide whether the alleged misconduct occurred; and
- d. "Exonerated," where the investigation determines, by a preponderance of the evidence, that the alleged conduct did occur but did not violate WPD policies, procedures, or training.

Status	Partial-compliance - ongoing obligation
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Analysis	WPD’s internal affairs investigation reports and the WPD chief’s reviews of those reports do a good job of identifying a definitive finding for allegations that WPD investigates. WPD’s failure to investigate all allegations against all identifiable officers prevents a finding of substantial compliance with this provision, at this time.
Technical Assistance	WPD corrective action to address all allegations against all identifiable officers should help bring WPD into substantial compliance with this provision.

11. IA shall track and monitor chain-of-command investigations to ensure timely and thorough completion of investigations.

Status	Substantial-compliance - ongoing obligation
Analysis	As discussed in paragraph four, above, WPD has subjected even minor complaints to full internal affairs investigations. WPD has not had any chain-of-command investigations, therefore, that have been untimely or which internal affairs did not track.
Technical Assistance	To the extent that WPD finds it necessary to direct complaints to an officer’s chain of command for investigation, WPD should make sure that internal affairs continues to track and monitor the timeliness of the investigation, as internal affairs does now for formal investigations.

12. Within one week of completion of the IA’s review of the investigative file, the Captain in command of the personnel at issue shall, in writing, either accept or reject the recommended findings, or return the investigative report for further IA investigation, and shall set forth, in the investigative file, his or her basis for doing so unless referred to the Chief of Police for further action.

Status	Partial-compliance - ongoing obligation
Analysis	The Captain in charge of the Emergency Services Division, i.e., the same Captain that failed to properly analyze use-of-force reports discussed in III.3, above, also usually did not have a written acceptance or rejection of internal affairs findings contained in the internal affairs files provided to us. Rather, the internal affairs investigative report dutifully described the incident, investigation, and outcome, which the Chief could then either accept or change. The Captain’s response – necessary to effectively manage officers under his command – was usually absent.

Technical Assistance	WPD should ensure that the Captain in the chain of command for subject officers receives and timely reviews the internal affairs investigative report.
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13. WPD shall keep all non-anonymous complainants informed periodically regarding the status of the complaint investigation. Within one week of the completion of the investigation, WPD shall notify, in writing, all non-anonymous complainants of the investigation's outcome, including an appropriate statement regarding whether any non-disciplinary corrective action or disciplinary action was taken.

Status	Non-compliance - ongoing obligation
Analysis	WPD has not provided written responses to all of the private individuals who have filed complaints regarding WPD conduct. This omission undercut the public faith in the system and give the appearance of non-responsiveness, even when WPD has dedicated resources to the completion of an internal affairs investigation.
Technical Assistance	It is our understanding that WPD was responsive to the technical assistance provided while we were in Warren. It is also our understanding that for at least some of the internal affairs file provided to us, letters to complainants may have been missing, but were completed. WPD's current administration seems willing to inform all complainants of the outcome of their complaint. WPD should ensure that it documents its written attempts to contact complainants with the finding reached by WPD for each separate allegation raised in a complainant's complaint.

14. Subject to the protection against self incrimination in criminal proceedings for statements compelled consistent with *Garrity v. New Jersey*, 385 U.S. 493 (1967), but without withholding non-compelled statements or compelled statements that may be used in a criminal proceeding against a person other than the compelled witness, WPD shall make a written referral of all allegations of criminal misconduct by WPD employees to the City, County, or Federal Prosecuting Attorney or other appropriate agency for possible criminal prosecution, pursuant to that prosecutor's own prosecutorial discretion, as soon as allegations of criminal conduct are reported to IA or are uncovered by the assigned investigator. WPD shall ensure the referral of all allegations of criminal conduct by WPD employees to the appropriate criminal prosecutor within one day of WPD's discovery of those allegations of criminal conduct. The misconduct-investigation policy shall continue to require the completion of an administrative investigation irrespective of the initiation or outcome of criminal proceedings, with the appropriate coordination with the criminal matter.

Status	Substantial compliance – ongoing obligation
Analysis	<p>The internal affairs files provided to us demonstrate that WPD routinely provides written <i>Garrity</i> notices to subject officers. This is a sound practice.</p> <p>Significantly, we applaud WPD for its current practice of referring allegations of potentially criminal actions to outside law enforcement, i.e., BCI, and coordinating WPD’s internal investigation with that law enforcement agency. As described in our original technical assistance letter to WPD, a former administration had failed to refer allegations of potentially criminal conduct until after a statute of limitations had run. WPD’s current efforts are a dramatic and much-needed change.</p>
Technical Assistance	We encourage WPD to continue its coordination with outside law enforcement to ensure the competition of WPD’s internal affairs investigation and administrative procedure as quickly as possible.

V. Management and Supervision

A. Risk Management System

1. Within 150 days of the effective date of this Agreement, WPD shall develop and implement an early intervention system, i.e., a risk management system, to include either a computerized relational database or paper system for maintaining, integrating, and retrieving information necessary for supervision and management of WPD. WPD will regularly use this data to promote civil rights and best police practices; to manage risk and liability; and to evaluate the performance of WPD officers across all ranks, units, and shifts.

Status	Non-compliance - ongoing obligation
Analysis	<p>Unfortunately, prior to Chief Merkel’s installation, WPD began implementation of a risk management system – sometime called an early intervention system or early warning system – without tailoring the effort and expenditure to the requirements of the Settlement Agreement. This attempt, though an improvement in some data tracking, did not result in an effective risk management system.</p> <p>A risk management system should aim, as accurately as feasible, to identify problematic behavior before that behavior manifests into civil right violations or career-ending behavior. The need for such a system is evident in the findings we previously reached and in the anecdotal accounts, known to WPD, of officers whose behavior went unchecked and ultimately ended their careers.</p>

Technical Assistance	WPD must develop a workable risk management system to come into compliance with this provision
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2. The risk management system shall collect and record the following information for each officer:
 - a. all uses of force;
 - b. the number of canisters of chemical spray used by officers;
 - c. all discharges of conductive energy devices;
 - d. all injuries to prisoners;
 - e. all instances in which force is used and a subject is charged with "resisting arrest," "assault on a police officer," "disorderly conduct," or "obstruction of official business";
 - f. all firearm discharges, both on- and off-duty, including unintentional discharges, but excluding discharges in planned training exercises or hunting;
 - g. all complaints (and their dispositions);
 - h. all criminal proceedings initiated, as well as all civil or administrative claims filed with, and all civil lawsuits served upon, the City and its officers, or agents, resulting from WPD operations or the actions of WPD officers;
 - i. all incidents involving the pointing of a firearm at a person (if any such reporting is required);
 - j. all discipline and non-disciplinary corrective action taken against officers; and
 - k. all positive personnel reviews, commendations, awards, etc.;

Status	Non-compliance - ongoing obligation
Analysis	<p>WPD uses an off-the-shelf product, which neither WPD, nor its vendor, customized to meet the requirements of this Settlement Agreement. These above-listed data are a necessary minimal data set for an effective risk management system. Accordingly, WPD has not adequately recorded or analyzed data as required by the Settlement Agreement. Contrary to the assumption of the previous chief, the IA Pro system did not fulfill the risk management system requirements of the Settlement Agreement.</p> <p>Currently, the IA Pro system tracks: (1) administrative inquiries, which are</p>

	complaints generated internally within WPD; (2) citizen complaints; (3) firearm discharges, including those at animals and accidental discharges; (4) supervisory counseling; (5) vehicle accidents; (6) vehicle pursuits; and (7) every use of force. The tracking of only this data is insufficient to meet the requirements of the Settlement Agreement.
Technical Assistance	WPD must track all of the domains listed in this settlement agreement provision. WPD also identified absenteeism as a significant problem. Absenteeism can create logistical problems in ensuring sufficient officer coverage, officer safety issues, and overtime costs. Accordingly, we also encourage WPD to use the opportunity created by developing a risk management system to include domains relating to absenteeism, in addition to the domains listed in the Settlement Agreement.

3. The risk management system shall include, for the incidents included in the database, appropriate identifying information for each involved officer (e. g., name, badge number, shift and supervisor) and civilian (e.g., race, ethnicity or national origin, if available).

Status	Non-compliance - ongoing obligation
Analysis	For the data domains that WPD currently tracks through IA Pro, WPD has the identifying characteristics listed in this Settlement Agreement provision. The IA Pro entries relate to the underlying use of force reports and internal affairs reports. Those reports include the underlying data. However, because IA Pro and WPD's <i>ad hoc</i> use of a spread sheet do not yet meet the requirements of the Settlement Agreement for an effective risk management system covering all of the required domains, WPD is not yet in compliance with this provision.
Technical Assistance	WPD must develop a workable risk management system to come into compliance with this provision. WPD may continue to use cross reference from its arrest, incident, traffic, and internal affairs reports to record by such references the underlying identification data of the involved officers and civilians.

4. Within 210 days of the effective date of this Agreement, WPD shall prepare a protocol for using the risk management system.

Status	Partial-compliance - ongoing obligation
Analysis	WPD has recently proposed a formal policy for a risk management tool, an Early

	Intervention System (“EIS”). Heretofore, WPD did not have a protocol as required by the Settlement Agreement. The protocol is more than a mere ministerial effort. The protocol is intended to give useful effect to the risk assessment system and set clear expectations for all WPD sworn members. As discussed, below, the draft protocol, while a positive step, still requires revision to comply with the Settlement Agreement.
Technical Assistance	We have reviewed WPD’s proposed EIS policy. We have provided to WPD extensive revisions to the policy to conform to this Settlement Agreement. We anticipate that WPD may have some responses to our revisions. Ultimately, however, we anticipate that WPD’s proposed policy can be a workable solution to comply with this Settlement Agreement provisions and, importantly, to administer an effective system to mitigate risk.

5. At a minimum, the protocol for using the risk management system shall include the following provisions and elements:
 - a. The protocol is comprised of the following components: data storage, data retrieval, reporting, data analysis, pattern identification, supervisory assessment, supervisory intervention, documentation and audit.
 - b. The protocol will require the risk management system to analyze the data according to the following criteria: (i) number of incidents for each data category by individual officer and by all officers in a unit; (ii) average level of activity for each data category by individual officer and by all officers in a unit; and (iii) identification of patterns of activity for each data category by individual officer and by officers in a unit.
 - c. The protocol will require the system to generate reports on a monthly basis describing the data and data analysis and identifying individual and unit patterns.
 - d. The protocol will require that WPD Captains, Lieutenants, and supervisors review, on a regular basis but not less than quarterly, system reports, and evaluate individual officer, supervisor, and unit activity.
 - e. The protocol will require that WPD Captains, Lieutenants, and supervisors initiate intervention for individual officers, supervisors and for units based on appropriate activity and pattern assessment of the information contained in the risk management system.
 - f. The protocol will require that intervention options include discussion by Captains, Lieutenants, supervisors, and officers; counseling; training; and supervised, monitored, and documented action plans and strategies designed to correct inappropriate activity.

- g. The protocol will specify that actions taken as a result of information from the risk management system be based on all relevant and appropriate information, including the nature of the officer’s assignment, crime trends and crime problems, and not solely on the number or percentages of incidents in any category of information recorded in the risk management system.
- h. The protocol will require that WPD Captains, Lieutenants, and supervisors promptly review the risk management system records of all officers recently transferred to their sections and units.
- i. The protocol will require that WPD Captains, Lieutenants, and supervisors be evaluated on their ability to use the risk management system to enhance effectiveness and reduce risk.
- j. The protocol will require that the risk management system be managed and administered by IA. IA will conduct quarterly audits of the risk management system to ensure that analysis and intervention are taken according to the process described above.
- k. The protocol will require regular reviews, at no less than quarterly intervals, by appropriate managers of all relevant risk management system information to evaluate officer performance citywide, and to evaluate and make appropriate comparisons regarding the performance of all WPD units in order to identify any significant patterns or series of incidents.

Status	Partial-compliance - ongoing obligation
Analysis	<p>WPD has properly placed responsibility for its EIS within WPD’s internal affairs office. IA has begun the process of tracking data, but does not yet have a fully operational system that tracks all the domains required by this Settlement Agreement. In the absence of a full, working system, WPD is not able to comply with the requirements of this Settlement Agreement provision concerning managerial review and audits.</p> <p>Also, as mentioned above, WPD recently proposed a formal EIS policy. The proposed EIS policy omits many of the operative provisions of this Settlement Agreement provision.</p>
Technical Assistance	<p>We have specifically revised the proposed EIS policy with reference to the missing Settlement Agreement provisions. We anticipate that once we reach agreement with WPD regarding the revisions, the proposed policy will comply with this Settlement Agreement provision. To give effect to this Settlement Agreement provision, WPD still needs to make its EIS operational—covering all required domains—and then engage in the required use of EIS data and systemic auditing functions.</p>

6. WPD shall maintain all personally identifiable information about an officer included in the risk management system during the officer’s employment with WPD for at least five years. Information necessary for aggregate statistical analysis will be maintained indefinitely in the risk management system. WPD shall enter information into the risk management system in a timely, accurate, and complete manner, and maintain the data in a secure and confidential manner. WPD shall input new or changed information, if any new or changed information addressing the aforementioned risk management categories exists, at least on a monthly basis, if not sooner, subject to the confidentiality provisions of Section 149.43 of Ohio Revised Code and current collective bargaining agreements.

Status	Non-compliance - ongoing obligation
Analysis	Because WPD has not yet established a risk management system, WPD is not yet in compliance with this Settlement Agreement provision regarding data retention. WPD has timely input data used in IA Pro for the tracking of use-of-force reports and internal affairs systems.
Technical Assistance	With the development of a robust and effective risk management system, WPD must develop a data retention practice to meet this Settlement Agreement provision.

7. WPD shall either purchase the risk management system off-the-shelf (and customize the system, if necessary to meet the requirements of this agreement), or WPD may develop and implement its own risk management system. In either case, WPD shall adhere to the following schedule:
- a. Within 210 days of the effective date of this Agreement, WPD will submit a protocol for using a risk management system to DOJ for review and approval. WPD will share drafts of this document with DOJ to allow DOJ to become familiar with the document as it develops and to provide informal comments on it. WPD and DOJ will together seek to ensure that the protocol receives final approval within 30 days after it is presented for review and approval.
 - b. Within 270 days of the effective date of this Agreement, WPD shall prepare, for the review by and subject to the approval of DOJ, a plan for including appropriate fields and values of new and historical data into the risk management system (the "Data Input Plan"). The Data Input Plan will identify the data to be included and the means for inputting such data (direct entry or otherwise), the specific fields of information to be included, the past time periods for which information is to be included, the deadlines for inputting the data, and the responsibility for the input of the data. The Data Input Plan will

include historical data that is up to date and complete in the risk management system. WPD and DOJ will together seek to ensure that the protocol receives final review and approval within 30 days after it is presented for approval.

- c. Within 270 days of the effective date of this Agreement, subject to the review and approval of DOJ, WPD will issue a Request for Proposal (“RFP”) for the design and implementation of the risk management system consistent with this Agreement, or WPD will set forth parameters for its own development and implementation of a risk management system constructed by WPD.
- d. Within 360 days of the effective date of this Agreement, or later with the agreement of DOJ, WPD will select the contractor to design and implement the risk management system, or, if WPD has chosen to construct its own risk management system, WPD will contract for all the necessary components for such an in-house risk management system by this time.
- e. Within 450 days of the effective date of this Agreement, WPD will have ready for testing a beta version of the risk management system consisting of: (i) any necessary hardware and operating systems, configured and integrated with WPD’s existing automated systems; (ii) any necessary data base software installed and configured; (iii) data structures created, including interfaces to source data; and (iv) the use-of- force information system completed, including historic data. DOJ will have the opportunity to participate in testing the beta version using use-of-force data and test data created specifically for purposes of checking the risk management system.
- f. Within 540 days of the effective date of this Agreement, the risk management system will be operational and fully implemented.

Status	Non-compliance - ongoing obligation
Analysis	Given the unfortunate misstep, prior to Chief Merkel’s installation, WPD does not have an effective risk management system. Accordingly, WPD has not met the deadlines set forth in the Settlement Agreement.
Technical Assistance	We will discuss with WPD a new time frame based on WPD’s recent efforts to restart the process of creating a risk management system.

- 8. Prior to implementation of the new risk management system, WPD will continue to use existing databases and resources to the fullest extent possible, to identify patterns of conduct by WPD officers or groups of officers.

Status	Substantial compliance – ongoing obligation
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Analysis	Though WPD does not have a fully functional risk management system, WPD has utilized the software available to it and data collected in a spreadsheet to emulate a risk management system accessible to WPD’s senior administration. See, e.g., Section IV.B.3, above, regarding the tracking of internal affairs complaints.
Technical Assistance	Until WPD has a fully function risk management system, WPD should continue its current practice to identify patterns of conduct by WPD officers or groups of officers.

- Following the initial implementation of the risk management system, and as experience and the availability of new technology may warrant, WPD may propose to add, subtract, or modify data tables and fields, modify the list of documents scanned or electronically attached, and add, subtract, or modify standardized reports and queries. WPD shall submit all such proposals for review and approval by DOJ before implementation.

Status	Inapplicable at this time - ongoing obligation
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B. Oversight

- WPD shall develop a protocol for utilizing the risk management system to conduct audits of all WPD officers’ performance and management of risk. Each supervisor charged with conducting audits shall use the protocol. The protocol will establish a regular and fixed schedule to ensure that such audits occur with sufficient frequency, and cover all WPD shifts and units.

Status	Partial-compliance - ongoing obligation
Analysis	WPD has recently proposed a formal EIS policy. Heretofore, WPD did not have a protocol as required by the Settlement Agreement.
Technical Assistance	We have offered WPD revisions to the proposed EIS policy. These revisions include the required auditing and managerial review functions as described in paragraph 5, above. Once fully adopted and implemented, these functions should meet the requirements of this Settlement Agreement provision.

C. Discipline

1. The Chief of Police shall have just cause to dispense appropriate discipline when he/she determines, based on the outcome of an administrative investigation, that a preponderance of evidence demonstrates that a violation of WPD policy has occurred.

Status	Statement of a standard; not an obligation unless WPD deviates from standard - ongoing obligation
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2. WPD will continue to follow the disciplinary process in place in the collective bargaining agreements (“CBAs”). WPD shall ensure that its disciplinary procedures penalize uses of excessive force, improper searches and seizures, discrimination, or dishonesty, and reflect the seriousness of those infractions. WPD will impose appropriate punishment for violations when WPD believes the officer’s misconduct exhibits a lack of fitness for duty. WPD shall submit this revised process for the review and approval of DOJ.

Status	Substantial compliance – ongoing obligation
Analysis	<p>To WPD’s credit, since the implementation of the Settlement Agreement, WPD has actively pursued the imposition of discipline wherein WPD believes it is possessed of just cause for such discipline. At this time, we did not find any concerns regarding WPD’s decisions to impose discipline when WPD sustained findings of alleged misconduct and to defend that discipline in arbitration.</p> <p>WPD has memorialized the possible punishments for violations of WPD policy, as well as the progressive discipline process. Policy 07-001, Section V.C.17-18.</p>
Technical Assistance	There are pending investigations of allegations of officer misconduct. If proven true by a preponderance of evidence, WPD will be possessed of just cause to impose discipline. We will continue to assess the efficacy of WPD’s disciplinary process as the pending investigations are completed.

3. Absent exceptional circumstances, WPD will take disciplinary corrective action when an appropriate disciplinary matrix indicates that imposition of discipline should take place. In a case where discipline has been imposed on an officer, WPD must also consider whether non-disciplinary corrective action also is required. Whenever discipline is warranted, WPD shall impose discipline within the timeframe permitted by WPD’s CBAs and applicable statute.

Status	Substantial compliance – ongoing obligation
Analysis	WPD has actively pursued the imposition of discipline wherein WPD believes it is possessed of just cause for such discipline. WPD has acted timely to impose discipline without permitting the passage of a deadline that would have barred discipline. At this time we agree with the WPD’s determinations to impose discipline when WPD has sustained allegations of officer misconduct.
Technical Assistance	WPD should conduct full internal affairs investigations of all allegations of officer misconduct and continue to impose discipline whenever WPD is possessed of just cause to do so based on a preponderance of evidence. WPD’s imposition of discipline in such cases should not be hindered by the possibility of an arbitrator’s reaction.

VI. Training

A. Management Oversight

1. WPD shall continue to ensure that its use-of-force training complies with applicable laws and WPD policy. WPD may continue to seek technical assistance from DOJ on the content and conduct of WPD’s use-of-force training.

Status	Substantial compliance – ongoing obligation
Analysis	WPD has provided us with its use-of-force PowerPoint presentations that WPD uses to train its officers. This material usefully and accurately highlights key language from the Settlement Agreement and WPD’s revised use-of-force policies regarding when force is constitutionally justified and related issues.
Technical Assistance	We will observe WPD’s training in the 2014 training cycle to further assess compliance with this provision.

2. WPD’s director of training shall, consistent with applicable law and WPD policy:
 - a. ensure the effectiveness of all use-of-force training by implementation of competency-based written examinations covering the use-of-force policies and requiring a minimum passing score of 90% for all WPD officers;
 - b. develop and implement use-of-force training curricula;
 - c. select and train WPD officer trainers;

- d. develop, implement, approve, and oversee all in-service training;
- e. in conjunction with the Chief of Police, develop, implement, approve, and oversee a patrol division roll call protocol designed to effectively inform officers of relevant changes in policies and procedures;
- f. establish procedures for evaluating all training curricula and procedures; and
- g. conduct regular needs assessments to ensure that use-of-force training is responsive to the knowledge, skills, and abilities of the officers being trained.

Status	Partial-compliance - ongoing obligation
Analysis	<p>WPD has developed and implemented a use-of-force training curriculum that includes training on the use of force as well as lethal and less lethal weapons. WPD reports having trained all of its active, sworn officers on its revised use-of-force policies. In 2013, following the training WPD provided to its officers regarding use-of-force policies during the 40-hour training block, WPD required officers to take a 25-question test comprised of True/False and multiple choice questions covering the use-of-force policy, but not the electronic control weapon policy. Supervisors then reviewed the test with officers, who were allowed to correct their answers. Correcting of answers undercuts the 90%-threshold requirement of the Settlement Agreement.</p> <p>Supervisors currently are providing training and policy updates at various times during roll call. Following our visit to Warren, WPD began, but has not yet completed, further roll call training concerning the standard for justification of use of force.</p> <p>WPD has not provided us with evidence showing that it has developed a systemic methodology for assessing the efficacy of its training and addressing shortcomings. In fact, our assessment of use-of-force-report reviews indicated that WPD supervisors did not adequately understand legal and policy standards for uses of force. Accordingly, WPD should have been able to identify this deficiency to address it through training.</p>
Technical Assistance	<p>WPD should ensure that it is assessing officers' retention of all use-of-force information presented during training, including specific blocks of instruction concerning lethal and less lethal weapons. As required by the Settlement Agreement, WPD should ensure that officers pass training exams by answering at least 90% of the questions correctly before officers are allowed to correct their answers. WPD must also institute competency-based examination for WPD's electronic control weapon policy, too. WPD should ensure that it is tracking such training and documenting which officers receive training, the subjects covered during training, and when the training is received. WPD must also establish procedures for evaluating the effectiveness of training curricula and procedures. In</p>

	<p>addition, WPD must conduct needs assessments to ensure use-of-force training is responsive to the knowledge, skills, and abilities of the officers being trained. WPD should consider contacting other police departments regarding effective quality assurance mechanisms to help the department evaluate the effectiveness of training.</p>
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- WPD shall provide training consistent with WPD policy, law, and current best police practices, and will ensure that only mandated objectives and approved lesson plans are taught by instructors. WPD policy requires a minimum of 40 hours per calendar year of training for each sworn officer. WPD will continue to ensure that each officer receives training in use of force and other matters for a minimum of 40 hours per calendar year for each sworn officer. WPD will make best efforts to train each work shift as a team in their use-of- force training.

Status	Substantial compliance – ongoing obligation
Analysis	<p>In 2013, WPD provided its officers with the required 40 hours of instruction. Officers also spend two to three hours every six months qualifying with firearms. The previous year, WPD engaged in training regarding traffic stops with the Youngstown Police Department.</p> <p>WPD plans to continue providing its officers with 40-hour training blocks annually, pursuant to the Settlement Agreement.</p> <p>We will continue to assess compliance with this provision, including qualifications of training of officers and completed tests, in the 2014 training cycle.</p>
Technical Assistance	<p>WPD should be sure it offers tailored training that emphasizes areas of expertise in which officers generally seem to be less informed based on needs assessments.</p> <p>DOJ also recommends that WPD take advantage of alternative training opportunities, such as those provided online by the Federal Law Enforcement Training Center. FLETC offers a two-week Use of Force Instructor Training Program for a fee. See http://www.fletc.gov/training/programs/enforcement-operations-division/use-of-force-instructor-training-program-uofitp/?searchterm=use%20of%20force</p> <p>Also, WPD must ensure that its new officers and recently reinstated officers have complied with this requirement, as well. No officer should assume or reassume duties without first being trained on WPD’s policy and the constitutional requirements for the use of force and on force reporting requirements.</p>

4. WPD will continue to utilize written records of lesson plans and other training materials, and continue to maintain records of training each officer has received.

Status	Partial-compliance - ongoing obligation
Analysis	As noted previously, WPD has provided DOJ with UOF Power Point presentations it uses to train its officers. WPD has not provided DOJ with any additional lesson plans, printed curricula, training records, or other similar documents. DOJ requests that WPD do so.
Technical Assistance	WPD should ensure that it is tracking when, where, and how officers are trained, and it should record trainings when feasible.

B. Curriculum

1. The director of training shall review all use-of-force training and use-of-force policies on at least a semi-annual basis to ensure compliance with applicable laws and WPD policy. The director of training shall produce a written record of this review. The director of training will consult with the City’s Law Department on any additions, changes and/or modifications regarding use-of-force training or policies to ensure compliance with applicable law.

Status	Partial-compliance - ongoing obligation
Analysis	WPD has represented that it trained its officers on its use-of-force policy and provided an updated, roll-call training on revised policies. The failure of officers to adequately report the objectively reasonable basis for each separate use of force indicates that further training is necessary. It is our understanding that WPD is engaged in that process now.
Technical Assistance	We will observe WPD’s training in the 2014 training cycle to further assess compliance with this provision.

2. WPD shall provide all recruits, officers, supervisors, and managers with training on use of force at least annually. Such training shall include and address the following topics:
 - a. WPD’s use-of-force policy, as described in this Agreement;
 - b. proper use-of- force decision making;
 - c. WPD’s use-of-force reporting requirements;

- d. the Fourth Amendment and other constitutional requirements;
- e. examples of scenarios faced by WPD officers that illustrate proper use-of-force decision making;
- f. interactive exercises that emphasize proper use-of-force decision making;
- g. de-escalation techniques that encourage officers to make arrests without using force, and instruction that disengagement, area containment, surveillance, waiting out a subject, summoning reinforcements, calling in specialized units, or delaying arrest may be the appropriate response to a situation even when the use of force would be legally justified;
- h. threat assessment; and
- i. appropriate training on conflict management.

Status	Partial-compliance - ongoing obligation
Analysis	<p>As noted previously, in 2013, WPD provided its officers with the required 40 hours of instruction, of which two hours were devoted to newly revised use-of-force policies. WPD instructors spent additional hours on specific lethal and less lethal weapons (one hour per weapon).</p> <p>As of our September tour, WPD had trained all of its officers on its revised and newly-implemented use-of-force policies.</p> <p>During our September tour, we provided WPD with several recommendations regarding its use-of-force reporting. Subsequently, WPD developed a document memorializing changes and making clarifications to its use-of-force reporting and reviews. As of October 21, 2013, WPD had trained most of its officers on the revisions.</p> <p>WPD training in 2013 has also included instruction on crisis intervention and de-escalation techniques, and the use-of-force Power Point notes that verbal direction, advice, persuasion, and similar techniques may obviate the need for physical force.</p> <p>Some WPD training, such as that regarding the ASP baton, included practical, hands-on exercises. Based on the training materials WPD provided to us, however, WPD does not appear to incorporate into its training scenario-based training for alternatives to uses of force, e.g., crisis intervention and de-escalation.</p>
Technical Assistance	<p>While the Power Point use-of-force presentation WPD provided to us does mention that verbal direction, advice, persuasion or similar techniques may eliminate the need for force, we recommend that WPD make this area of training more robust</p>

and do more to emphasize such policing tactics.

WPD should also ensure that its instruction blocks include threat assessments and appropriate conflict management.

WPD should expand its practical, hands-on training to include scenario-based training and interactive exercises that emphasize proper use-of-force decision making, per the Settlement Agreement. To enhance its scenario-based and interactive training regarding proper use-of-force decision making, WPD should consider using or partnering with other police agencies that use police training simulator systems.

In addition, while WPD does well to train all officers on crisis intervention, we recommend that it assign certain volunteering officers to a Crisis Intervention Team that receives more extensive training in crisis management and may be called upon to respond when WPD officers are engaging with suspects with mental illness or perceived mental illness.