



CITY OF CHICAGO
OFFICE OF INSPECTOR GENERAL

20
22

FAIRNESS AND CONSISTENCY IN THE DISCIPLINARY PROCESS FOR CHICAGO POLICE DEPARTMENT MEMBERS

DEBORAH WITZBURG | INSPECTOR GENERAL FOR THE CITY OF CHICAGO
MEGAN CARLSON | ACTING DEPUTY INSPECTOR GENERAL FOR PUBLIC SAFETY

Table of Contents

| | |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------|
| I Executive Summary | 5 |
| II OIG Ordinance Obligation | 7 |
| III Background | 8 |
| A Agencies’ Jurisdictions and Roles..... | 10 |
| 1 Bureau of Internal Affairs (BIA) | 10 |
| 2 Civilian Office of Police Accountability (COPA) | 10 |
| 3 Police Board | 11 |
| 4 Police Oversight Comparisons..... | 12 |
| B CPD Member Classifications | 12 |
| 1 Sworn, Non-exempt | 13 |
| 2 Sworn, Exempt | 13 |
| 3 Non-sworn, Non-exempt | 13 |
| 4 Non-sworn, Exempt | 14 |
| C Disciplinary Process Stages | 14 |
| 1 Initiating Investigations | 14 |
| 2 Conducting Investigations | 15 |
| 3 Investigative Dispositions | 16 |
| 4 Disciplinary Recommendations and Review | 18 |
| 5 Challenging Issued Discipline | 20 |
| 6 Implementing Discipline and Disciplinary Record-Keeping | 21 |
| D Recent Efforts to Ensure Consistent and Fair Discipline..... | 22 |
| IV Objectives, Scope, And Methodology | 25 |
| A Objectives | 25 |
| B Scope | 25 |
| C Methodology | 25 |
| D Standards | 26 |
| E Authority and Role..... | 26 |
| V Finding and Recommendations | 27 |
| The policies and procedures used by BIA, COPA, and the Police Board for determining discipline are insufficient to ensure consistency and fairness | 27 |
| A BIA, COPA, and the Police Board: Current Policies for Recommending and Determining Discipline | 28 |
| 1 BIA’s Policies for Recommending Discipline | 28 |
| 2 COPA’s Policies for Recommending Discipline..... | 29 |
| 3 The Police Board’s Processes for Reviewing Discipline..... | 33 |
| B The CR Matrix: Current Legal Status and Potential Value in Ensuring Procedural Consistency and Fairness | 33 |
| VI Conclusion | 38 |
| Appendix A CPD Response to Recommendations | 39 |
| Appendix B COPA Response to Recommendations | 41 |
| Appendix C Police Board Response to Recommendations | 44 |
| Appendix D DOL Response To Recommendations | 46 |

Table of Figures

| | |
|----------------------------------------------------------------------------------------|----|
| Figure 1: Brief overview of the disciplinary process | 9 |
| Figure 2: Development of discipline for CPD members | 14 |
| Figure 3: Non-findings dispositions | 17 |
| Figure 4: Allegation findings | 17 |
| Figure 5: Types of discipline | 18 |
| Figure 6: Comparison of BIA and COPA mitigating and aggravating factors | 32 |
| Figure 7: Examples of penalty ranges in Chicago's complaint register (CR) matrix | 34 |

Acronyms

| | |
|------|-------------------------------------------------------------|
| BIA | Bureau of Internal Affairs |
| CBA | Collective Bargaining Agreement |
| CCR | Command Channel Review |
| CPD | Chicago Police Department |
| COPA | Civilian Office of Police Accountability |
| CR | Complaint Register |
| FOP | Fraternal Order of Police, Lodge 7 |
| IMT | Independent Monitoring Team |
| MCC | Municipal Code of Chicago |
| OIG | Office of Inspector General |
| PATF | Police Accountability Task Force |
| PBPA | Policemen's Benevolent and Protective Association, Unit 156 |
| SOP | Standard Operating Procedure |



FAIRNESS AND CONSISTENCY IN THE DISCIPLINARY PROCESS FOR CHICAGO POLICE DEPARTMENT MEMBERS

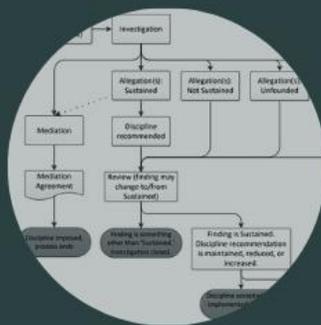
CITY OF CHICAGO OFFICE OF INSPECTOR GENERAL

This report is the first in a planned series of periodic evaluative reports responsive to the Office of Inspector General's (OIG) ordinance obligation under section 2-56-230(f) of the Municipal Code of Chicago

This report assesses the procedural dimensions of fairness and consistency in the disciplinary process for Chicago Police Department (CPD) members and finds that investigating and reviewing agencies' policies and procedures do not offer sufficient guidance to ensure fairness and consistency.



OIG's report makes recommendations to CPD, the Civilian Office of Police Accountability, the Police Board, and the Department of Law.



To help readers navigate the complicated disciplinary process, OIG mapped the process for all CPD members at all levels of discipline in a series of flowcharts, found [online](#).

I | Executive Summary

The Municipal Code of Chicago (MCC) Chapter 2-56 enables the Office of Inspector General (OIG) and sets out its powers and duties. Section 2-56-230(f) of this ordinance provides OIG's Public Safety section with the power to:

[R]eview and audit all sustained findings, disciplinary recommendations, and decisions made by the Police Department, [Civilian Office of Police Accountability], and the Police Board, and any subsequent arbitration decisions, for the purpose of assessing trends and determining whether discipline is consistently and fairly applied, and determining whether final disciplinary decisions are being carried out.¹

Pursuant to this obligation, OIG reports on its evaluation of procedural consistency and fairness in the Chicago Police Department (CPD) disciplinary process; specifically, this report is devoted to the evaluation of the procedures that agencies follow in recommending and reviewing discipline.

The process by which CPD members are investigated and disciplined for allegations of misconduct is complex and directed by numerous, decentralized sources of authority, including: CPD and other agency policies, directives, and manuals; the MCC; the consent decree entered in *Illinois v. Chicago*;² and multiple collective bargaining agreements between the City of Chicago and CPD members. The investigative and disciplinary process also involves multiple City and non-City institutional actors.³ CPD's Bureau of Internal Affairs (BIA) and the Civilian Office of Police Accountability (COPA), a civilian investigating agency, are primarily responsible for investigating allegations of misconduct against CPD members; if they sustain one or more allegations, they recommend a disciplinary penalty.⁴ This recommended discipline then proceeds through a review process, after which CPD issues any discipline to the accused Department member. Depending on several factors—including the rank or position of the accused member and the level of discipline recommended—the member may challenge this discipline through a disciplinary grievance procedure. In certain other cases—either as an elective challenge or as an automatic, non-waivable review—the Chicago Police Board adjudicates cases in which the issued discipline is above a specified level of severity. CPD is responsible for implementing the final discipline following any appeal of adjudicatory processes.

OIG found that existing BIA, COPA, and Police Board policies do not provide clear and actionable guidance to agency personnel sufficient to ensure procedural consistency and fairness in the determination of discipline across misconduct investigations. The outcome of each disciplinary case is necessarily case-specific and is appropriately dependent upon a unique set of facts and circumstances. In the absence of sufficiently robust policy guidance, however, the disciplinary process is unpredictable for involved members and risks arbitrary outcomes. While the investigating and reviewing agencies must consider different facts in each disciplinary case, they ought to follow consistent and fair procedures to guide that consideration.

¹ Municipal Code of Chicago §2-56-230(f), accessed April 19, 2021, https://codelibrary.amlegal.com/codes/chicago/latest/chicago_il/0-0-0-2443507.

² Consent Decree, *State of Ill. v. City of Chi.*, No. 17-cv-6260, 2019 WL 398703 (N.D. Ill. Jan 31, 2019).

³ These "non-City institutional actors" include the police unions that represent CPD members and the arbitrators who hear and rule on grievance procedure cases.

⁴ Under certain circumstances, OIG also conducts misconduct investigations of CPD members.

BIA and COPA's policies do not provide sufficient guidance on how, when, and in what measure those agencies should consider aggravating and mitigating factors in reaching disciplinary recommendations, risking approaches that vary widely across investigations and may therefore be inconsistent and unfair. COPA's policies, specifically, contain internally contradictory and outdated language. The Police Board does not have any formal policies in place at all to ensure that its determinations of final discipline are made consistently and fairly across all cases it considers.

To better ensure procedural consistency and fairness in the determination of discipline resulting from misconduct investigations, OIG made recommendations to CPD, COPA, the Police Board, and the Department of Law (DOL). OIG's recommendations related to (1) policies and practices that CPD, COPA, and the Police Board can implement to guide and document the process by which disciplinary recommendations are reached; and (2) agencies' efforts to secure, through collective bargaining agreements, the option to rely on advisory, non-binding guidelines for disciplinary penalty ranges when making disciplinary recommendations.

Each of the four agencies receiving recommendations responded independently. Recommendation 1 was directed to COPA alone, and COPA agreed. Recommendation 2 was directed to COPA and CPD; COPA agreed and CPD provided a narrative response but did not directly state agreement or disagreement. Recommendation 3 was directed to COPA, CPD, and the Police Board. COPA and the Police Board both disagreed, and CPD provided a narrative response but did not directly state agreement or disagreement. Recommendation 4 was directed to DOL alone, and DOL agreed.

OIG's recommendation 3 engendered the most agency disagreement. This recommendation was for CPD, COPA, and the Police Board to work in coordination to develop a single, standardized list of aggravating and mitigating factors that may be consulted on an advisory basis for the purposes of formulating disciplinary recommendations and subsequent review of discipline; and in developing this list, as appropriate and required by law, to consult with the unions representing CPD members. In their responses, the three separate agencies adopted different perspectives on how extensively the agencies can or should coordinate their policies in the service of procedural fairness and consistency in the disciplinary process. CPD stated that it would prioritize reaching an agreement with the Fraternal Order of Police in ongoing contract negotiations, "whereby the Department will compile a Matrix to use internally to ensure consistent treatment" and would "solicit feedback from the sworn unions regarding [a single, standardized list of aggravating and mitigating factors]" *if* the entities "mentioned in this recommendation" (CPD's BIA, COPA, and the Police Board) first develop such a list. COPA responded in part to OIG's recommendation 3 that a "more realistic" goal than the creation of a single, standardized list would be "further city alignment" on the thorough documentation of factors considered in disciplinary recommendations. The Police Board responded, "we respectfully disagree with the recommendation that the Police Board be involved in the development of [...] a list [of aggravating and mitigating factors]," arguing that "it would undermine the Board's impartiality" to do so. See Appendices A through D for the full agencies' responses to all recommendations.

II | OIG Ordinance Obligation

Section 2-56-230(f) of the Municipal Code of Chicago empowers the Public Safety section of the Office of Inspector General (OIG) to:

[R]eview and audit all sustained findings, disciplinary recommendations, and decisions made by the Police Department, [COPA], and the Police Board, and any subsequent arbitration decisions, for the purpose of assessing trends and determining whether discipline is consistently and fairly applied, and determining whether final disciplinary decisions are being carried out.⁵

Fulfilling this ordinance obligation requires ongoing inquiry into the disciplinary process for Chicago Police Department (CPD or the Department) members and the final outcomes from disciplinary investigations.

OIG's first publication responsive to this ordinance obligation was a comprehensive descriptive account of the disciplinary process in a series of flowcharts, which depict all avenues of review, appeal, and implementation of discipline for CPD members. These flowcharts demonstrate how the disciplinary process and members' procedural rights vary depending on the discipline recommended by the investigating agency, the member's status as sworn or non-sworn, and the member's rank or position. The descriptive flowcharts are available on OIG's website and are updated with changes to collective bargaining agreements, the Municipal Code of Chicago, CPD directives, and the other legal authorities that collectively govern the disciplinary process.⁶

In this report, OIG has evaluated the *procedural* dimensions of consistency and fairness in the CPD disciplinary process. Consistency and fairness of the substantive outcomes (i.e., disciplinary actions) of the process will be the subject of future OIG inquiry.

⁵ Municipal Code of Chicago §2-56-230(f), accessed April 19, 2021, https://codelibrary.amlegal.com/codes/chicago/latest/chicago_il/0-0-0-2443507.

⁶ City of Chicago Office of Inspector General, "A Guide to the Disciplinary Process for Chicago Police Department Members," accessed May 20, 2021, <https://igchicago.org/about-the-office/our-office/public-safety-section/cpd-disciplinary-process-overview/>.

III | Background

All CPD members are required to comply with Department Rules and Regulations, directives, and orders, and failure to comply “will be considered just cause for disciplinary action.”⁷ If a member is alleged to have committed misconduct, a complex process is initiated with distinct steps that—depending on numerous factors—may include an investigation and a multi-phase process to determine appropriate discipline, where applicable. In the report on its 2017 investigation of CPD, the U.S. Department of Justice described the disciplinary process for CPD members as “convoluted, lengthy” and “illegitimate in the eyes of officers and the public alike” due to a lack of guidance, the many opportunities to second guess and undermine a disciplinary penalty, and the length of time the process takes.⁸

This process is governed by numerous, decentralized sources of authority, including CPD’s operational policies and directives, the investigating agencies’ internal policies and manuals, the MCC, state law,⁹ obligations imposed by the consent decree entered in *Illinois v. Chicago*, and multiple collective bargaining agreements (CBAs). The process involves multiple City and non-City institutional actors. Depending on several factors—including the agencies involved in the investigation and adjudication of the case, the rank or position of the accused member, and the level of discipline recommended—a single disciplinary case can go through many distinct stages and may take years to resolve.

This report reflects an evaluation of the consistency and fairness of the processes by which investigating and reviewing agencies determine disciplinary sanctions. That is, this report evaluates whether there are policies in place within investigating and reviewing agencies to ensure that consistent standards and criteria are applied in those agencies’ determinations of disciplinary sanctions.¹⁰

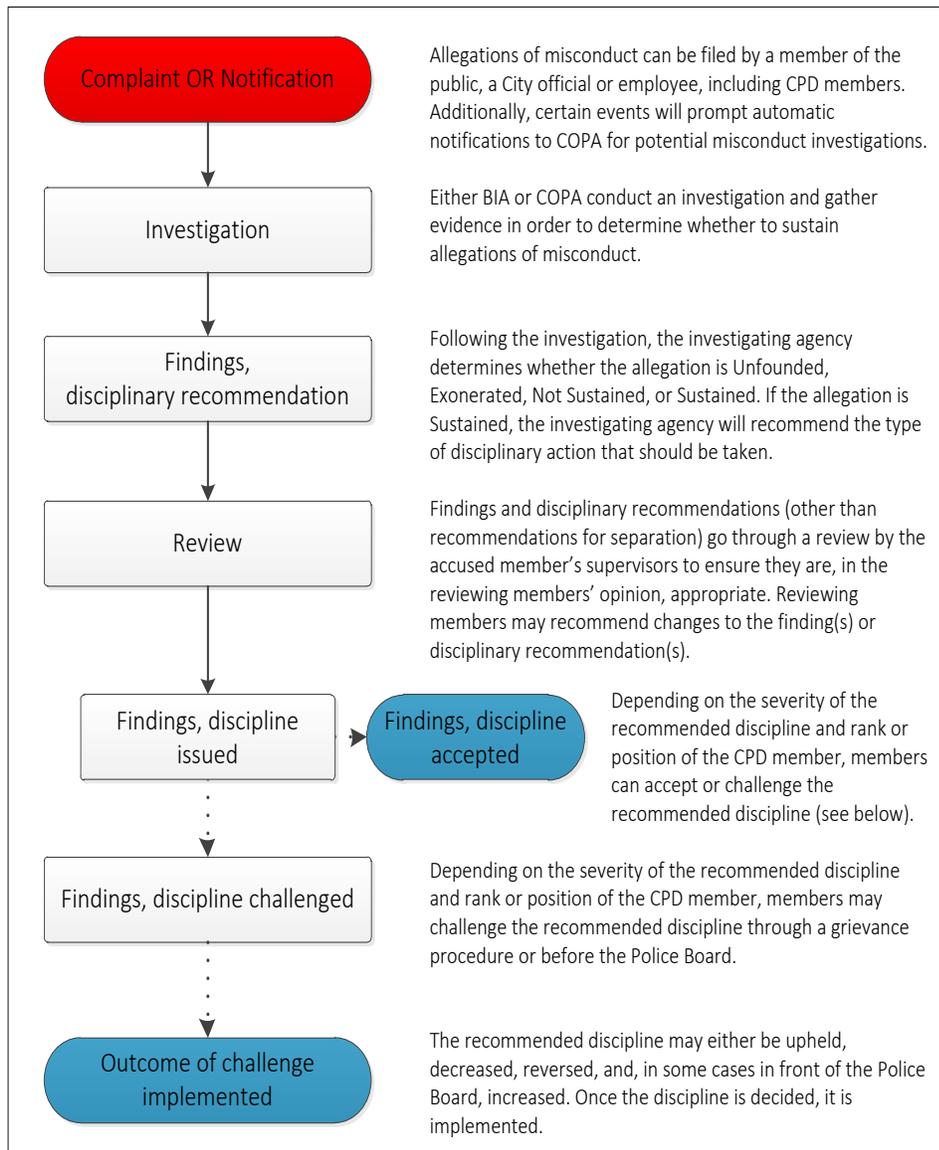
⁷ “General Order G08-01 Complaint and Disciplinary Procedures,” May 4, 2018, accessed October 15, 2021, <http://directives.chicagopolice.org/#directive/public/6362>. CBAs for sworn members include a “just cause standard” stating that these members cannot “be suspended, relieved from duty, or disciplined in any manner without just cause.” City of Chicago, “Agreements Between the City of Chicago and the Policemen’s Benevolent & Protective Association of Illinois, Unit 156-Captains, Lieutenants, and Sergeants,” October 15, 2021, http://directives.chicagopolice.org/contracts/PBPA_SgtContract.pdf. The CBA for CPD members below the rank of Sergeant includes the same standard. City of Chicago, “Agreement Between the City of Chicago Department of Police and the Fraternal Order of Police Chicago Lodge No. 7,” accessed October 15, 2021, http://directives.chicagopolice.org/contracts/FOP_Contract.pdf. In its CBA, the Public Safety Employees Union, which represents some non-sworn CPD members, states, “[n]o non-probationary employee covered by this Agreement shall be discharged or disciplined without just cause.” City of Chicago, “City of Chicago Agreement with Public Safety Employees Union Unit II,” accessed October 15, 2021, http://directives.chicagopolice.org/contracts/UnitII_Contract.pdf. The CBA with the American Federation of State, County, and Municipal Employees does not explicitly include a just cause standard, but it does state that included among the “rights, powers, and responsibilities [of management is] the right to suspend, discipline, or discharge for just cause.” City of Chicago, “American Federation of State, County, and Municipal Employees Council 31,” accessed October 15, 2021, http://directives.chicagopolice.org/contracts/AFSCME_Contract.pdf.

⁸ U.S. Department of Justice, Civil Rights Division and U.S. Attorney’s Office Northern District of Illinois, “Investigation of the Chicago Police Department,” 2017, p. 80.

⁹ See 65 ILCS 5/10-1-18.1, accessed May 20, 2021, <https://www.ilga.gov/legislation/ilcs/documents/006500050K10-1-18.1.htm>.

¹⁰ Other recent publications from OIG’s Public Safety section have addressed specific aspects of the investigative and disciplinary process. These reports include an evaluation of the use of the affidavit override in disciplinary investigations, an evaluation of the grievance procedure for sworn members, and an advisory on the Civilian Office of Police Accountability’s use of “Administrative Terminations” to conclude investigations without findings. Additionally, as noted above, OIG has published a comprehensive descriptive account of the disciplinary process in a series of flowcharts. City of Chicago Office of Inspector General, “Evaluation of the Use of the Affidavit Override in Disciplinary Investigations of

Figure 1: Brief overview of the disciplinary process



Source: OIG "A Guide to the CPD Disciplinary Process."¹¹

Chicago Police Department Members," December 2020, accessed April 2, 2021, <https://igchicago.org/wp-content/uploads/2020/12/OIG-Evaluation-of-the-Use-of-the-Affidavit-Override-in-Disciplinary-Investigations-of-CPD-Members.pdf>. City of Chicago Office of Inspector General, "Review of the Disciplinary Grievance Procedure for Chicago Police Department Members," May 20, 2021, <https://igchicago.org/wp-content/uploads/2021/05/OIG-Review-of-the-Disciplinary-Grievance-Procedure-for-Chicago-Police-Department-Members.pdf>, accessed May 20, 2021. City of Chicago Office of Inspector General, "Advisory Concerning the Civilian Office of Police Accountability's Practice of Administratively Terminating Disciplinary Investigations," September 2020, accessed April 2, 2021, <https://igchicago.org/wp-content/uploads/2020/09/OIG-Advisory-Concerning-COPAs-Practice-of-Administratively-Terminating-Disciplinary-Investigations.pdf>. City of Chicago Office of Inspector General, "A Guide to the Disciplinary Process for Chicago Police Department Members," accessed May 20, 2021, <https://igchicago.org/about-the-office/our-office/public-safety-section/cpd-disciplinary-process-overview/>.

¹¹ City of Chicago Office of Inspector General, "A Guide to the Disciplinary Process for Chicago Police Department Members," accessed May 20, 2021, <https://igchicago.org/about-the-office/our-office/public-safety-section/cpd-disciplinary-process-overview/>.

A | Agencies' Jurisdictions and Roles

Depending on the nature of the alleged misconduct, allegations against CPD members are generally investigated by CPD's Bureau of Internal Affairs or the Civilian Office of Police Accountability.¹² If the investigating agency sustains one or more allegations, depending upon the severity of the recommended discipline, the case may go before the Police Board for review and/or adjudication.

1 | Bureau of Internal Affairs (BIA)

BIA is an internal CPD unit devoted to investigating allegations of misconduct by sworn and non-sworn CPD members. BIA is led by a Chief who reports directly to the Superintendent of Police, and BIA is responsible for "coordinat[ing] and exercis[ing] supervision over disciplinary matters involving alleged or suspected violations of statutes, ordinances, and Department rules and directives."¹³ BIA conducts both administrative and criminal investigations.¹⁴

2 | Civilian Office of Police Accountability (COPA)

COPA is a civilian-led City agency that is independent of the Police Department. COPA acts as a clearinghouse for all allegations of misconduct against CPD members; COPA personnel review all complaints and determine, based on the subject matter of the complaint, whether a complaint falls into its own investigative jurisdiction, and should therefore be retained for investigation, or should be referred to BIA.¹⁵ Pursuant to its enabling ordinance, MCC § 2-78-120, COPA has jurisdiction to conduct investigations arising out of:

- Complaints alleging:
 - Domestic violence
 - Excessive force
 - Coercion
 - Verbal abuse
 - Improper search or seizure of either individuals or property
 - Unlawful denial of access to counsel

¹² In this inquiry, OIG assesses CPD, COPA, and the Police Board. OIG's own policies and procedures in recommending discipline are *not* evaluated here notwithstanding that, in certain limited circumstances, allegations against CPD members may be investigated by OIG. OIG continuously examines and seeks to improve its own internal practices. However, it would compromise the independence required by the Association of Inspectors General's *Principles and Standards for Offices of Inspector General* ("The Green Book") for OIG to report on its own policies and procedures in a review conducted according to Green Book standards. When OIG sustains findings of misconduct against a City employee, OIG will recommend a range of possible disciplinary actions to the relevant agency, rather than recommending a specific disciplinary penalty. As of this writing, OIG's procedures for determining its own disciplinary recommendations are under review.

¹³ "General Order G01-02-01 Organization and Functions of the Office of the Superintendent," May 10, 2018, accessed October 15, 2021, <http://directives.chicagopolice.org/#directive/public/6611>.

¹⁴ Administrative investigations generally involve alleged violations of rules, department policies or procedures, or City ordinances, whereas criminal investigations may involve violations of state or federal criminal law. In cases of less severe alleged misconduct, BIA may assign the investigation to an Accountability Sergeant from the accused member's assigned unit. BIA staff will investigate cases of more severe alleged misconduct. City of Chicago Office of Inspector General, "Evaluation of the Use of the Affidavit Override in Disciplinary Investigations of Chicago Police Department Members," December 2020, accessed April 2, 2021, <https://igchicago.org/wp-content/uploads/2020/12/OIG-Evaluation-of-the-Use-of-the-Affidavit-Override-in-Disciplinary-Investigations-of-CPD-Members.pdf>.

¹⁵ COPA can also refer complaints to the Office of Inspector General; for more information, see Section 3 below.

- Notifications resulting from the following incidents, whether or not an allegation of misconduct has been made:
 - A CPD member discharges a firearm in a manner that could strike another individual
 - A CPD member discharges a stun gun or taser AND it results in death or serious bodily injury
 - A person dies or sustains serious bodily injury while detained, in CPD custody, or as a result of police actions
 - An officer-involved death

Additionally, at the discretion of COPA's Chief Administrator, COPA may investigate other incidents involving weapon discharges and uses of CPD equipment as weapons which result in death or seriously bodily injury. The Chief Administrator may also, in their discretion, review lawsuits or claims against CPD or its members and, subsequently, reopen a prior investigation or initiate a new investigation.¹⁶ Finally, COPA has the authority to "investigate patterns and practices of misconduct in any form."¹⁷

COPA conducts administrative investigations and may refer potentially criminal matters to the appropriate investigating or prosecuting authority.

3 | Police Board

The Police Board is civilian body independent of both CPD and COPA, composed of nine mayoral appointees. Although the Police Board's enabling ordinance is embedded within the section of the MCC that outlines the organization and functions of the Police Department (MCC 2-84-010 et seq.), Police Board members are appointed by and report to the Mayor, not the Superintendent of Police.¹⁸ Unlike BIA, COPA, and OIG, the Board has no jurisdiction to conduct misconduct investigations. Instead, it has three distinct roles in police disciplinary processes. First, the Police Board exercises *automatic, non-waivable review* in certain cases in which severe discipline is issued to a sworn CPD member.¹⁹ Second, Police Officers represented by the Fraternal Order of Police, Lodge 7, may *elect* to have the Police Board review certain cases in which less severe discipline has been issued (suspensions between 11-365 days).²⁰ Finally, when a COPA investigation results in Sustained allegation findings or discipline with which the Superintendent disagrees and where COPA and the Superintendent cannot come to an agreement, a single member of the Police Board will determine whether the Superintendent has met the burden to overcome COPA's recommended findings and/or discipline.

¹⁶ Municipal Code of Chicago §2-78-120(h), accessed April 19, 2021, https://codelibrary.amlegal.com/codes/chicago/latest/chicago_il/0-0-0-2443853.

¹⁷ City of Chicago, "Civilian Office of Police Accountability Rules and Regulations," accessed April 7, 2021, <http://www.chicagocopa.org/wp-content/uploads/2018/04/Final-COPA-Rules-and-Regulations-April-2018.pdf>; MCC §2-78, accessed April 19, 2021, https://codelibrary.amlegal.com/codes/chicago/latest/chicago_il/0-0-0-2443800.

¹⁸ Municipal Code of Chicago §2-84-010, accessed June 30, 2021, https://codelibrary.amlegal.com/codes/chicago/latest/chicago_il/0-0-0-2444013.

¹⁹ For all sworn members, the Police Board automatically reviews all recommendations for separation. For sworn, non-exempt members (i.e., members covered by a CBA), suspensions greater than 365 days are also automatically reviewed. For sworn, exempt members, suspensions greater than 30 days are automatically reviewed.

²⁰ The Fraternal Order of Police (FOP) contract includes provisions allowing Police Officers to (1) request a Police Board review of suspensions between 11-30 days *if* the FOP declines to advance the Officer's case to arbitration; (2) request a Police Board review of suspensions between 31-365 days; and (3) request a Police Board review of suspensions between 31-365 days *if* the FOP declines to advance the Officer's case to arbitration.

4 | Police Oversight Comparisons

While this system of multiple oversight entities is complex, Chicago is not unique in having multiple agencies involved in the investigative and disciplinary process for members of its police department. Many other large municipalities also have complex and layered police disciplinary systems involving multiple agencies. OIG analyzed records, including ordinances, agency websites, and budget documents from 35 other municipalities operating police departments with 1,000 or more full-time sworn members.²¹ Through this analysis, OIG found that Chicago is not an outlier in terms of having a multi-agency, layered oversight system. In 100% of the peer municipalities examined, the police department has an internal investigative unit, similar to BIA. Many municipalities additionally have a civilian-led agency independent of the police department that investigates police misconduct, similar to COPA.²² Other peer jurisdictions have oversight entities that play a comparable role to the disciplinary function of Chicago's Police Board—namely, hearing appeals of disciplinary cases investigated either by the police agency or by a separate civilian investigating agency.²³ The number of police oversight agencies nationwide continues to grow. In recent years, many municipalities across the United States have introduced new police oversight agencies, including Chicago. In 2021, the Chicago City Council passed an ordinance creating a Community Commission for Public Safety and Accountability.²⁴

While it is fairly common for a municipality to have more than one external oversight agency, Chicago's oversight apparatus is more complex than most other large city and metropolitan police agencies, as measured by the number of external oversight agencies involved in discipline and accountability processes.

B | CPD Member Classifications

CPD employs sworn members (e.g., Police Officers, Sergeants, etc.) and non-sworn (i.e., civilian) members. Within those groups, most members are represented by unions and therefore covered by CBAs. These employees are considered “non-exempt” from CBA provisions. Employees in certain leadership positions and other non-union positions are not covered by a CBA and are thus considered “exempt” from CBAs. As of May 20, 2022, CPD had 12,751 employees.²⁵ Of these, 12,451 were sworn and non-exempt members (94.4%), 554 were non-sworn, non-exempt

²¹ Municipalities selected for comparison include all U.S. city and metropolitan area police agencies with sworn forces of 1,000 full-time sworn officers or more, as identified in the most recent available Bureau of Justice Statistics survey. County police departments and sheriffs' offices were excluded from the analysis. These criteria resulted in a comparison group of 35 municipalities. Hyland, Shelley S., Davis, Elizabeth, "Local Police Departments, 2016: Personnel," U.S. Department of Justice, Bureau of Justice Statistics, October 2019, accessed April 9, 2021, <https://www.bjs.gov/content/pub/pdf/lpd16p.pdf>.

²² Examples of independent, civilian-led agencies conducting police misconduct investigations include the New York City Civilian Complaint Review Board and the Atlanta Citizen Review Board. New York City Civilian Complaint Review Board, "About CCRB," accessed June 30, 2021, <https://www1.nyc.gov/site/ccrb/about/about.page>; Atlanta Citizen Review Board, "Policies and Procedures Manual and Bylaws," accessed June 30, 2021, <https://acrbgov.org/wp-content/uploads/2016/08/ACRB-Bylaw-and-Policy-approved-7-14-16-5.pdf>.

²³ Examples of disciplinary appeals boards include the Phoenix Civil Service Board and the San Francisco Police Commission. City and County of San Francisco, "San Francisco Police Commission," accessed June 30, 2021, <https://sfgov.org/policecommission/>. City of Phoenix, "Civil Service Board," accessed June 30, 2021, <https://boards.phoenix.gov/Home/BoardsDetail/13>.

²⁴ Municipal Code of Chicago §2-80, accessed May 20, 2022, https://codelibrary.amlegal.com/codes/chicago/latest/chicago_il/0-0-0-2600394.

²⁵ Data from Chicago Integrated Personnel and Payroll Systems (ChIPPS). Excludes employees whose status in ChIPPS is reflected as "Suspend Assignment" and "Terminate Assignment."

members (4.2%), and 144 were exempt members (1.1%), some sworn and some non-sworn. The remaining 37 CPD employees had “no data available” on their bargaining unit status; all 37 of these employees were recorded in the City’s payroll system as on a leave of absence.

Therefore, while the term “CPD members” covers all employees at CPD, sworn and non-sworn, exempt and non-exempt, there are important differences that are relevant during the course of the disciplinary process. The CBAs that cover non-exempt, union members (sworn and non-sworn) include provisions providing the covered members additional mechanisms through which to grieve (i.e., challenge) issued discipline. As a result, non-exempt, union members may have multiple avenues for challenging discipline in some cases, whereas exempt members will only have an adjudicatory review of the discipline issued to them in cases where the MCC provides for an automatic, non-waivable review by the Police Board (namely, sworn exempt members facing suspension over 30 days or separation).²⁶

Below is a brief description of each group and the types of CPD members included therein.

1 | Sworn, Non-exempt

Sworn, non-exempt CPD members include Police Officers, Sergeants, Lieutenants, and Captains, all of whom are sworn peace officers covered by a CBA.²⁷ Police Officers and other sworn CPD members below the rank of Sergeant are represented by the Fraternal Order of Police, Lodge 7 (FOP).²⁸ Sergeants, Lieutenants, and Captains are supervisors and are represented by the Policemen’s Benevolent and Protective Association, Unit 156 (PBPA). Each of these three supervisory ranks have their own CBA, bargained individually by PBPA, but the provisions to challenge discipline are the same across the three distinct CBAs for the supervisory ranks. There are, however, important differences between the provisions governing discipline in the Police Officer contract (FOP) and in the supervisor contracts (PBPA).

2 | Sworn, Exempt

Sworn, exempt CPD members include Commanders, Deputy Chiefs, Chiefs, Deputy Superintendents, and the Superintendent of Police. None of these positions are covered by a CBA, and typically they are held by sworn peace officers.²⁹

3 | Non-sworn, Non-exempt

Non-sworn, non-exempt members include civilian members covered by a CBA. This group includes members such as detention aides, criminal intelligence analysts, clinical therapists, and others.

²⁶ City of Chicago Office of Inspector General, “Disciplinary Process: Sworn Exempt Members, Suspension,” April 2021, accessed May 20, 2021, https://igchicago.org/wp-content/uploads/2021/05/5114-Final_Sworn-Exempt-Member-Suspension.pdf, and City of Chicago Office of Inspector General, “Disciplinary Process: Sworn Exempt Members, Separation,” April 2021, accessed May 20, 2021, https://igchicago.org/wp-content/uploads/2021/05/5115-Final_Sworn-Exempt-Member-Separation.pdf.

²⁷ Illinois Compiled Statute 720 ILCS 5/2-13 defines “peace officer” as “(i) any person who by virtue of his office or public employment is vested by law with a duty to maintain public order or to make arrests for offenses, whether that duty extends to all offenses or is limited to specific offenses, or (ii) any person who, by statute, is granted and authorized to exercise powers similar to those conferred upon any peace officer employed by a law enforcement agency of this State.”

²⁸ Sworn members below the rank of Sergeant include Police Officers and CPD members at the rank of Police Officer who are detailed into a role with a specialized title, such as Detectives.

²⁹ Civilians may also hold some of these titles at CPD.

There are multiple unions representing non-sworn, non-exempt members, but the disciplinary process is nearly identical for all non-sworn, non-exempt members.³⁰

4 | Non-sworn, Exempt

Non-sworn, exempt members include civilian members not covered by a CBA, generally at the supervisory level. Non-sworn, exempt members are at-will employees.³¹ The Superintendent may also be in this group if they are not sworn.³²

C | Disciplinary Process Stages

The following section detail the steps of the disciplinary process for CPD members. During this process, discipline recommended as sanction for Sustained allegations of misconduct may change through various stages of the process before implementation, as depicted below in Figure 2.

Figure 2: Development of discipline for CPD members

- **Recommended:** Discipline is recommended by the investigating agency and subsequently proceeds to a CPD-internal review
- **Issued:** Following review, discipline is issued to the member (i.e., member is notified) and may then challenge it, where applicable
- **Implemented:** Following all reviews and challenges, discipline is implemented (i.e., imposed)

Source: OIG analysis.

This process is dependent on the sworn status, rank or position, and exempt status of the CPD member(s) under investigation. Differences associated with sworn status, rank or position, and exempt status are specified herein where applicable. Unless otherwise noted, “CPD member” includes all CPD members, sworn and non-sworn, and all ranks and positions, regardless of exempt status.³³

1 | Initiating Investigations

The disciplinary process begins with the initiation of an investigation into possible misconduct. Primarily, investigations begin following a *complaint* alleging misconduct or a required *notification* of certain incidents involving a CPD member. Complaints are allegations of misconduct filed against

³⁰ The non-sworn member unions are the American Federation of State, County and Municipal Employees (AFSCME), the Service Employees International Union (SEIU), the International Brotherhood of Electrical Workers (IBEW), and the Illinois Nurses Association (INA). The City of Chicago has a single contract with both the Public Service Employees Union (SEIU) and the Local Union 21 (IBEW). These two unions function as a single bargaining unit known as the Public Safety Employees Bargaining Unit.

³¹ Chicago Personnel Rules (Rule XIA).

³² Superintendents do not have to be sworn peace officers. For example, Interim Superintendent Charlie Beck (2019 to 20) was not a sworn peace officer in Illinois and would have fallen under the non-sworn, exempt category. Former Superintendent Jody Weis (2008 to 2011) was also non-sworn.

³³ This process is depicted in full and with complete sourcing information in “A Guide to the Disciplinary Process for Chicago Police Department Members.” City of Chicago Office of Inspector General, “A Guide to the Disciplinary Process for Chicago Police Department Members,” accessed May 20, 2021, <https://igchicago.org/about-the-office/our-office/public-safety-section/cpd-disciplinary-process-overview/>.

CPD members, which may include violations of CPD's Rules and Regulations, Department directives, and orders given by a superior.³⁴ Complaints can be made by members of the public and CPD members, and they can be made to COPA, CPD, or OIG. As stated above, certain incidents may result in automatic notification to COPA, and COPA retains limited discretion to initiate investigations in connection to incidents subject to civil suits.³⁵

Notice of all complaints, regardless of the source or receiving agency, is sent to COPA, which in its clearinghouse capacity will generate a unique identifier (i.e., "log" number) and determine whether the subject matter of the complaint falls within COPA's own jurisdiction or whether to send it to BIA for investigation.³⁶ Following that jurisdictional determination and assignment, the appropriate agency will then initiate an investigation.

2 | Conducting Investigations

The consent decree entered in *Illinois v. Chicago* requires that the investigating agency first conducts a *preliminary investigation* to determine whether the complaint has alleged potential misconduct of any violation of CPD policy or law by a Department member. During the preliminary investigation, the investigating agency must take steps to discover all objective, verifiable evidence related to the complaint or notification (e.g., time-sensitive evidence, audio and video evidence). The agency must also take steps to preserve relevant evidence identified during the preliminary investigation.³⁷

If the subject is a CPD member and the allegation is a violation of Department rules, the agency will proceed to conduct a *full investigation*. For CPD members covered by CBAs negotiated by the unions representing Sergeants, Lieutenants, and Captains, a full investigation also requires either a sworn affidavit from the complainant or an "affidavit override."³⁸ The same was true for CPD

³⁴ "General Order G08-01 Complaint and Disciplinary Procedures," May 4, 2018, accessed October 15, 2021, <http://directives.chicagopolice.org/#directive/public/6362>.

³⁵ Pursuant to its enabling ordinance, COPA has discretion to review lawsuits or claims against CPD, its members, or against the City alleging police misconduct that falls within COPA's jurisdiction, when that lawsuit or claim has been settled or when a judgment has been entered against CPD, its member, or the City. COPA may review these lawsuits or claims for the purpose of reopening a prior investigation or opening a new investigation into alleged police misconduct. Municipal Code of Chicago §2-78-120(h), accessed June 30, 2021, https://codelibrary.amlegal.com/codes/chicago/latest/chicago_il/0-0-0-2443853.

³⁶ A log number is "a tracking number assigned to any incident brought to the attention of the Department, by a reporting party, involving a Department member that may be investigated." Chicago Police Department, "General Order G08-01 Complaint and Disciplinary Procedures," May 4, 2018, accessed October 15, 2021, <http://directives.chicagopolice.org/#directive/public/6362>.

³⁷ *Illinois v. City of Chicago*, No. 17-cv-6260, 2019 WL 398703, ¶¶459–460 (N.D. Ill. Jan. 31, 2019). In its fourth Independent Monitoring Report, filed October 8, 2021, the Independent Monitoring Team (IMT) reported that COPA was in preliminary compliance with ¶¶459–460, having finalized two separate policies responsive to the requirements of the two paragraphs. a policy "after receiving feedback from the COPA Community Policy Review Working Group, no-objection notices from the IMT and the OAG, and posting for public comment." IMT reported that CPD had drafted policies responsive to both paragraphs but had not yet finalized either policy and so was not in preliminary compliance with ¶¶459 or ¶460. Independent Monitoring Report 4, filed in *Illinois v. City of Chicago*, No. 17-cv-6260, 2019 WL 398703, accessed October 22, 2021, https://cpdmonitoringteam.com/wp-content/uploads/2021/10/2021_10_08-Independent-Monitoring-Report-4-filed.pdf.

³⁸ An "affidavit override" is a mechanism by which, if the investigating agency is unable to secure an affidavit in support of the allegations, the agency provides evidence supporting the allegations to the head of the counterpart investigative agency (BIA to COPA, COPA to BIA). If the counterpart agency head agrees there is objective, verifiable evidence to support the allegations, that agency head signs an "affidavit override," on this basis of which the investigation may proceed. For further information, see City of Chicago Office of Inspector General, "Evaluation of the Use of the Affidavit Override in Disciplinary Investigations of Chicago Police Department Members," December 17, 2020, accessed April 2,

members subjected to the CBA negotiated by the FOP until September 2021, when a new CBA took effect. The FOP CBA, ratified in September 2021, has eliminated the affidavit requirement but includes a new “certification” requirement applicable in certain situations. These changes appear in Appendix L of the old and new FOP CBAs.³⁹ The new FOP CBA strikes the prior language on affidavits, but retains the following provision: “[i]n cases where the complainant is anonymous or does not wish to disclose his or her identity, no Officer will be required to answer any allegation of misconduct unless it is supported by an appropriate certification, except as specified in paragraphs one through four above. In the event that no certification is received within a reasonable time, the investigation will be terminated and no record of the complaint or investigation will appear on the Officer’s Disciplinary History.”⁴⁰ As of this writing, as reported to OIG, the Department of Law did not have a position on permissible forms or necessary characteristics of such a certification. Regardless of the investigating agency (BIA, COPA, or OIG), investigators will gather evidence to determine whether the allegation(s) of misconduct are supported by a preponderance of the evidence.⁴¹ This may include interviewing the complainant and CPD personnel, examining body-worn camera footage, and reviewing documentary and other types of evidence.

3 | Investigative Dispositions

Investigations are concluded when they reach a final disposition, which may or may not include a finding by the investigating agency as to whether there is sufficient evidence to support the allegation(s). Depending on the circumstances, BIA or COPA may close certain investigations without reaching a finding on allegations, as seen in Figure 3.⁴²

2021, <https://igchicago.org/wp-content/uploads/2020/12/OIG-Evaluation-of-the-Use-of-the-Affidavit-Override-in-Disciplinary-Investigations-of-CPD-Members.pdf>.

³⁹ The City of Chicago. *Agreement Between the City of Chicago Department of Police and the Fraternal Order of Police Chicago Lodge No. 7*. Art. 9, § 9.1. Chicago: Chicago Police Department, 2014.

⁴⁰ City of Chicago, “Ordinance O2021-3449,” accessed October 22, 2021, <https://chicago.legistar.com/LegislationDetail.aspx?ID=5115680&GUID=F7F87AD4-A3CA-416B-859B-16B3A0B3FECD&Options=Advanced&Search=>. The new FOP CBA limits the circumstances under which a complaint initiated by a Department member does not require a certification to those in which the complaining member does not have personal knowledge of the alleged misconduct.

⁴¹ The consent decree entered into in *Illinois v. City of Chicago*, ¶1467 requires that COPA or BIA will recommend “Sustained,” where it is determined the allegation is supported by a preponderance of the evidence.” *Illinois v. City of Chicago*, No. 17-cv-6260, 2019 WL 398703, ¶1467 (N.D. Ill. Jan. 31, 2019). The CPD directive “Conduct of Complaint Investigations” (S08-01-01) names a different burden of proof standard for Sustained investigations by BIA or COPA, as follows: “Sustained—when the allegation is supported by substantial evidence.” “Special Order S08-01-01 Conduct of Complaint Investigations,” November 30, 2017, accessed October 15, 2021, <http://directives.chicagopolice.org/#directive/public/6775>.

⁴² Under CBAs between the City of Chicago and the unionized ranks of CPD members, investigating agencies may only investigate allegations of misconduct concerning an incident or event which occurred five years prior to the date of the complaint or allegation if the Superintendent authorizes the investigation in writing. See City of Chicago, “Agreement Between the City of Chicago Department of Police and the Fraternal Order of Police Chicago Lodge No. 7,” Art. 6, § 6.1(D), accessed October 15, 2021, http://directives.chicagopolice.org/contracts/FOP_Contract.pdf; City of Chicago, “Agreements Between the City of Chicago and the Policemen’s Benevolent & Protective Association of Illinois, Unit 156-Captains, Lieutenants, and Sergeants,” Art. 6, § 6.1(D), accessed October 15, 2021, http://directives.chicagopolice.org/contracts/PBPA_SgtContract.pdf.

Figure 3: Non-findings dispositions⁴³

- **Administratively Closed:** Preliminary investigation concludes complaint does not reveal misconduct and/or involve a CPD member, or alleged misconduct occurred five or more years ago and does not have sufficient evidence to support a request to the superintendent to proceed with an investigation;
- **Closed-No Affidavit:** Investigating agency is unable to acquire a sworn affidavit and preliminary investigative efforts do not support an affidavit override; and
- **Closed-Mediation/ADR:** Case resolved through mediation or another alternative dispute resolution (ADR) process.

Source: OIG summary based on COPA's "Investigator Manual."

Where a case is investigated to a substantive finding, BIA or COPA will make a determination that each allegation of misconduct is one of the following:

Figure 4: Allegation findings

- **Unfounded:** When the allegation is false or not factual;
- **Exonerated:** When the incident occurred, but the actions of the accused were lawful and proper;
- **Not sustained:** When there is insufficient evidence to either prove or disprove the allegation; or
- **Sustained:** When the allegation is supported by a preponderance of the evidence.

Source: OIG analysis of CPD Department Directive S08-01-01 "Conduct of Complaint Investigations."⁴⁴

Where OIG is the investigating agency and a case is investigated to a finding, OIG will reach a finding of "Sustained" or "Not sustained," with the latter finding including those incidents in which BIA and COPA might exonerate allegations or find them unfounded.⁴⁵ If any allegations are Sustained, the investigating agency will also recommend discipline.

⁴³ COPA also uses a fourth non-finding disposition, "Administrative Termination." Investigators are to use this disposition in limited circumstances when they cannot exonerate or sustain the allegations and when other factors, such as lack of firearm discharge and bodily injury, are met. In September 2020, OIG reported that COPA does not provide "affirmative guidance on or criteria for circumstances under which [Administrative termination] might be appropriate." City of Chicago Office of Inspector General, "Advisory Concerning the Civilian Office of Police Accountability's Practice of Administratively Terminating Disciplinary Investigations," September 10, 2020, accessed April 20, 2021, <https://igchicago.org/wp-content/uploads/2020/09/OIG-Advisory-Concerning-COPAs-Practice-of-Administratively-Terminating-Disciplinary-Investigations.pdf>. In September 2021, COPA produced all policy updates to OIG that had been introduced since the publication of OIG's advisory on Administrative Terminations. Nothing in COPA's updated policies provided for any alteration in its use of the Administrative Termination non-finding disposition.

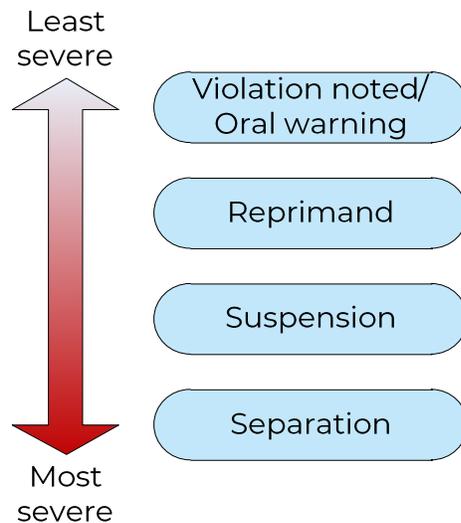
⁴⁴ Special Order S08-01-01 Conduct of Complaint Investigations," November 30, 2017, accessed October 15, 2021, <http://directives.chicagopolice.org/#directive/public/6775>.

⁴⁵ Office of Inspector General, "Rules of the Office of Inspector General," March 12, 2018, <https://igchicago.org/wp-content/uploads/2014/03/OIG-Rules-and-Regulations.pdf>.

4 | Disciplinary Recommendations and Review

For BIA and COPA cases, following a Sustained allegation of misconduct, the investigating agency will recommend one of the following types of discipline:⁴⁶

Figure 5: Types of discipline



*Note: Non-sworn members receive Oral warnings instead of Violations noted.

Source: OIG analysis of CPD directives and union contracts.

BIA and COPA both have internal policies and guidance that direct them to recommend discipline based on the severity of the misconduct, the context of the misconduct, and factors such as rank, length of service, and resultant injuries, among other factors. Violations noted (and oral warnings) and reprimands are the least severe discipline and are simply entered into the member's disciplinary history; suspensions require a specified number of unpaid days off;⁴⁷ and separations require discharge from CPD.

With a few exceptions, BIA and COPA investigations that reach an investigative finding of Sustained, Not sustained, Exonerated, or Unfounded are reviewed through a process called Command Channel Review (CCR).⁴⁸ CCR occurs once an investigating agency concludes its investigation and entails a review of the investigating agency's findings and recommendations by exempt-level supervisors in the accused member's chain of command. Reviewing supervisors indicate whether or not they concur with the findings and, for Sustained allegations, the severity of the recommended discipline. If they do not concur, they can note this in the case and detail their

⁴⁶ "Special Order S08-01-01 Conduct of Complaint Investigations."

⁴⁷ The Superintendent can grant "options" to CPD members which allow alternatives to the suspension without pay, such as forfeiture of vacation time. Chicago Police Department, "Sustained Complaint Options," May 4, 2018, accessed October 15, 2021, <http://directives.chicagopolice.org/#directive/public/6855>.

⁴⁸ Certain investigations are not subject to CCR, including cases that conclude with a mediation agreement, investigations that result in an allegation finding other than Sustained and that are sensitive in nature (e.g., confidential investigations), and cases in which the investigating agency recommends separation. "Special Order S08-01-03 Command Channel Review," March 20, 2020, accessed October 15, 2021, <http://directives.chicagopolice.org/#directive/public/6856>.

rationale. Investigations with a recommended discipline of separation are reviewed by the Superintendent and CPD's Office of Legal Affairs and do not proceed through CCR.⁴⁹

The course of review following CCR is dependent on the investigating agency. For BIA cases, the BIA Chief will review the case and, upon reviewing the notes made by exempt members during CCR, may recommend additional investigation or recommend the findings or recommendation be changed. The Superintendent retains the discretion to review investigations with Sustained allegations of misconduct and the recommended discipline. If the Superintendent agrees that the allegations should be Sustained and the proposed disciplinary action is appropriate, CPD will then issue that discipline to the accused member. If the Superintendent disagrees with the recommended discipline, they may send the case back to BIA for further action.

For COPA cases, the Superintendent will review the case following the exempt member's CCR review, as applicable.⁵⁰ The Superintendent will then either concur or not concur with COPA's recommendation. If the Superintendent does not concur with COPA, the two agencies meet to discuss the case and attempt to jointly determine the appropriate outcome (i.e., the allegation finding and disciplinary recommendation). If they do not come to an agreement, the case proceeds to a review by a Police Board member chosen at random, who will determine whether COPA or CPD's recommendations for allegation findings and discipline should be issued to the accused CPD member. The Police Board member reviews the investigation, the reasons for CPD's non-concurrence, and COPA's response to CPD's non-concurrence to make a final determination as to whether the Superintendent meets their burden to overcome the COPA Chief Administrator's recommendation. If the Police Board member determines the Superintendent has met their burden, the Superintendent's recommendation for allegation findings and disciplinary action will advance and be issued to the accused CPD member; otherwise, COPA's recommendation will advance.

If OIG investigates and sustains allegations of misconduct against a CPD member, OIG will recommend one of the following three categories of discipline:

- Discipline commensurate with the gravity of the member's violations, past disciplinary record, and any other relevant considerations;
- Discipline up to and including discharge [separation], commensurate with the gravity of the member's violations, past disciplinary record, and any other relevant considerations; or
- Separation.

Following OIG's recommendation, OIG will send a report of the Sustained allegation finding(s) and recommended discipline to the Superintendent. Pursuant to MCC §2-56-065, the Superintendent must respond in writing to OIG's recommendation for discipline within 30 days or request a 30-day extension. If the Superintendent chooses not to take disciplinary action or to take an action different

⁴⁹ Per Special Order S08-01-03 Command Channel Review, CCR may be bypassed under certain circumstances, including: the recommended discipline of "Separation," a case that has gone through mediation, investigations with a finding other than "Sustained" that are confidential or sensitive in nature where the identity of the subject(s) would be compromised/scrutinized, and in "cases of an emergency as determined by the Chief, BIA." "Special Order S08-01-03 Command Channel Review."

⁵⁰ Municipal Code of Chicago §2-78-130, accessed May 24, 2021, https://codelibrary.amlegal.com/codes/chicago/latest/chicago_il/0-0-0-2443893.

from OIG's recommendation, the Superintendent must explain why in their written response to OIG.⁵¹

Whereas BIA and COPA recommend a specific disciplinary penalty in every instance of Sustained misconduct, OIG *may* recommend discharge as a specific penalty in cases of severe misconduct but does not make specific recommendations for any lower level of discipline. When OIG recommends discipline "commensurate with the gravity of the member's violations, past disciplinary record, and any other relevant considerations," the burden to determine a specific disciplinary penalty falls on the Superintendent.

5 | Challenging Issued Discipline

Depending on the sworn status, rank or position, and exempt status of the CPD member, certain disciplinary recommendations can be challenged, and there are different procedures for challenging different types of disciplines. If an accused member is covered by a CBA, then the provisions of their CBA will allow them to challenge certain types of issued discipline through a grievance procedure.⁵² Most grieved disciplinary cases will be heard by an arbitrator, although there are different rules of procedure for the different types of arbitration hearings delineated in the different CPD member CBAs. Arbitrators are not City employees and are selected to hear a particular case by mutual agreement of the parties. For certain types of discipline, the FOP CBA also allows FOP members to appeal certain issued discipline to the Police Board instead of having an arbitrator hear the appeal. If the CPD member being disciplined is not covered by a CBA, then they cannot challenge discipline by any grievance procedure. As noted above, sworn, exempt members will receive an automatic, non-waivable Police Board review of discipline issued to them if the discipline is a suspension greater than 30 days or a separation. Non-sworn, exempt members must accept whatever discipline is issued to them and have no recourse of appeal or review within the City's disciplinary process.⁵³

The Police Board has a dual role in adjudicating disciplinary decisions challenged by CPD members. The FOP CBA allows FOP members to appeal issued discipline to the Police Board under the grievance procedure. Additionally, for the most severe discipline, such as lengthy suspensions or separations, members may receive an automatic, non-waivable Police Board

⁵¹ OIG's process is guided by the MCC, which empowers OIG to conduct investigations into any employee of the City of Chicago, regardless of their agency. As noted above, OIG's authority to conduct misconduct investigations of CPD members covered by PBPA CBAs was confirmed in the arbitration decision in *City of Chicago Police Department v. Policeman's Benevolent & Protective Association of Illinois, Unit 156A – Sergeants and Unit 156B – Lieutenants*, Gr. No. SGTS 14-023 and No. LTS 14-004. The MCC does not prescribe how agencies are to manage their internal reviews of OIG's disciplinary recommendations, other than to require that agencies must respond to OIG recommendations within 30 days. Municipal Code of Chicago §2-56-065, accessed May 24, 2021, https://codelibrary.amlegal.com/codes/chicago/latest/chicago_il/0-0-0-2443425. More information on OIG's investigative process can be found in OIG's "A Guide to the Disciplinary Process for Chicago Police Department Members," accessed May 20, 2021, <https://igchicago.org/about-the-office/our-office/public-safety-section/cpd-disciplinary-process-overview/>.

⁵² A grievance is a dispute or difference between the employer (CPD) and the union or employees (CPD members) whom the union represents, concerning the interpretation and/or application of the CBA.

⁵³ See City of Chicago Office of Inspector General, "Disciplinary Process: Civilian Exempt Members, Suspension," April 2021, accessed May 20, 2021, https://igchicago.org/wp-content/uploads/2021/05/5122-Final_Civilian-Exempt-Member-Suspension.pdf; City of Chicago Office of Inspector General, "Disciplinary Process: Civilian Exempt Members, Separation," April 2021, accessed May 20, 2021, https://igchicago.org/wp-content/uploads/2021/05/5123-Final_Civilian-Exempt-Member-Separation-1.pdf.

review. The exact types of issued discipline that will trigger automatic, non-waivable Police Board review depend on the rank or position of the member.⁵⁴

Once a disciplinary decision has been reached through a grievance procedure or through Police Board automatic and non-waivable review, a CPD member's only option to continue to contest the discipline is to file an appeal in the Circuit Court of Cook County. The Circuit Court has jurisdiction to review both Police Board decisions and arbitrators' decisions on limited grounds.⁵⁵

6 | Implementing Discipline and Disciplinary Record-Keeping

The implementation process for discipline depends upon the level of discipline issued. The City's current contracts with the FOP and PBPA provide that, "[a]ll disciplinary investigation files, disciplinary history card entries, OIG's, COPA's and BIA's disciplinary records, and any other disciplinary record or summary of such record [are to be] retained indefinitely by the Employer."⁵⁶ The contracts also provide that "a finding of 'Sustained—Violation Noted, No Disciplinary Action' entered upon a member's disciplinary record or any record of Summary Punishment may be used for a period of time not to exceed one (1) year and shall thereafter be removed from the Officer's disciplinary record and not used to support or as evidence of adverse employment action." The provision for indefinite retention of disciplinary records is a new addition to both the FOP contract executed in 2021 and the PBPA contracts executed in 2020. Prior to these contract negotiations, each of the sworn member CBAs provided for disciplinary records other than records related to Police Board cases to be destroyed after a defined period. The new sworn member contracts do not prohibit investigating agencies from relying on past disciplinary records to inform disciplinary recommendations, except as described above. Exempt members are not covered by any CBAs, and therefore, there are no time limits on when prior discipline can be used to inform discipline or promotional processes for exempt members either.

Beyond basic record-keeping, full implementation of more severe types of discipline—namely, suspensions and separations—require adjustments to CPD members' pay and employment status. When CPD members are separated or suspended for more than 30 days, they are made inactive in the Chicago Integrated Personnel and Payroll Systems (ChiPPS), the City's payroll system. In addition, the Superintendent may allow CPD members to use accrued paid time off or furlough days to reduce the length of time they are barred from working during a suspension, a process known as

⁵⁴ Full details for all ranks/positions and discipline levels can be found in the flowcharts at City of Chicago Office of Inspector General, "A Guide to the Disciplinary Process for Chicago Police Department Members," accessed May 20, 2021, <https://igchicago.org/about-the-office/our-office/public-safety-section/cpd-disciplinary-process-overview/>.

⁵⁵ For a detailed review of grievance procedure for non-exempt, sworn CPD members, see City of Chicago Office of Inspector General, "Review of the Disciplinary Grievance Procedure for Chicago Police Department Members," May 20, 2021, <https://igchicago.org/wp-content/uploads/2021/05/OIG-Review-of-the-Disciplinary-Grievance-Procedure-for-Chicago-Police-Department-Members.pdf>.

⁵⁶ The quoted language is from the FOP contract approved by the Chicago City Council on September 14, 2021. The three PBPA contracts contain identical language, with the exception that they read, "[...] the Employer's investigative agencies' disciplinary records [...]" in place of "[...] OIG's, COPA's and BIA's disciplinary records [...]." City of Chicago, "Ordinance O2021-3449," accessed September 14, 2021, <https://chicago.legistar.com/LegislationDetail.aspx?ID=5115680&GUID=F7F87AD4-A3CA-416B-859B-16B3A0B3FEC&Options=Advanced&Search=>; City of Chicago, "Agreement Between the City of Chicago and the Policemen's Benevolent & Protective Association of Illinois, Unit 156-Captains," section 8.4, Chicago: City of Chicago, 2020, accessed October 15, 2021, http://directives.chicagopolice.org/contracts/PBPA_CaptContract.pdf. This language essentially codifies a 2020 decision by the Illinois Supreme Court, which held that a provision in the prior FOP collective bargaining agreement that required the destruction of disciplinary files after five years violated public policy and was unenforceable. See *City of Chi. v. Fraternal Order of Police, Chi. Lodge No. 7*, 2020 IL 124831 ¶¶ 8, 37, 50.

exercising “options.” If the Superintendent grants a CPD member options and the member elects to exercise options to serve a suspension, their benefits need to be adjusted. Finally, implementation of a separation requires the termination of the member’s employment with CPD.

D | Recent Efforts to Ensure Consistent and Fair Discipline

As described above, the disciplinary process for CPD members winds through multiple agencies and various review and appeals processes. In its 2017 pattern and practice investigation of CPD, the U.S. Department of Justice pointed to “the many opportunities for second-guessing and undermining the penalty” and “the amount of time this process takes” as contributing to the loss of legitimacy of the disciplinary system “in the eyes of officers and the public alike.”⁵⁷ Similar concerns prompted then-Mayor Rahm Emanuel’s Police Accountability Task Force (PATF), in its 2016 report, to recommend that the OIG Deputy Inspector General for Public Safety be charged with assessing the consistency and fairness of disciplinary recommendations and final decisions, and whether discipline is finally implemented.⁵⁸

In February 2017, following the release of the PATF and Department of Justice reports, CPD introduced the Complaint Register (CR) Matrix, a tool designed to improve the consistency of disciplinary recommendations across similarly situated cases. For each category of misconduct and rule violation, the CR Matrix provided a range of discipline, to be adjusted depending on severity and circumstances of the conduct at issue. According to the CPD’s “Complaint Register Matrix Guidelines,” the goal of the Matrix was to aid “all Department Supervisors in imposing consistent penalties in cases involving similar misconduct.”⁵⁹

The FOP challenged CPD’s use of the CR Matrix as a violation of the Illinois Public Labor Relations Act. Specifically, the FOP maintained that the introduction of an advisory (i.e., non-binding) CR Matrix outside the context of CBA negotiations was impermissible.⁶⁰ The FOP claimed that the City “violated the [Illinois Public Labor Relations] Act when it implemented the CR Matrix because it thereby unilaterally changed employees’ terms and conditions of employment without bargaining with the Union [as] the CR Matrix is a mandatory subject of bargaining because it concerns disciplinary standards.”⁶¹ An administrative law judge noted, “[T]he Department received complaints and feedback from arbitrators, the court, and the Union that there were no clear guidelines for the penalties the Department recommended. Specifically, the Union complained that officers in different units were not treated consistently with respect to the disciplinary penalties they received.”⁶²

⁵⁷ U.S. Department of Justice, Civil Rights Division and U.S. Attorney’s Office Northern District of Illinois, “Investigation of the Chicago Police Department,” 2017, p. 80, accessed July 8, 2021, <https://www.justice.gov/opa/file/925846/download>.

⁵⁸ Police Accountability Task Force. 2016. “Recommendations for Reform: Restoring Trust between the Chicago Police and the Communities they Serve.” 88, accessed March 17, 2021, https://chicagopatf.org/wp-content/uploads/2016/04/PATF_Final_Report_4_13_16-1.pdf.

⁵⁹ Chicago Police Department, “Chicago Police Department Complaint Register Matrix Guidelines,” January 20, 2017.

⁶⁰ The CR Matrix is advisory (i.e., non-binding) in that an investigating agency could recommend a penalty “outside of any of the ranges established in the CR Matrix, [provided] a written justification/explanation in the form of a To/From or electronic comments [is] included in the investigative file articulating those factors justifying the penalty.” Chicago Police Department, “Chicago Police Department Complaint Register Matrix Guidelines,” January 20, 2017.

⁶¹ State of Illinois Labor Relations Board Local Panel. 2017. “Case No. L-CA-17-034,” accessed April 7, 2021, <https://www2.illinois.gov/ilrb/decisions/boarddecisions/Documents/L-CA-17-034bd.pdf>.

⁶² State of Illinois Labor Relations Board Local Panel, “Case No. L-CA-17-034.”

The administrative law judge ruled in favor of the FOP in November 2017, after which the City voluntarily discontinued use of the CR Matrix until further bargaining between the parties occurred.⁶³ The City's discontinuation of use of the Matrix after this ruling was voluntary because the administrative law judge's ruling is not technically binding on the City, and the Illinois Labor Relations Board (whose ruling would have binding effect) has not yet issued an opinion on the matter. In a Decision and Order issued June 5, 2018, the Illinois Labor Relations Board stated that it would "hold[] the case in abeyance so that the parties can explore avenues for agreement to resolve this case and directing the parties to report on the status of their negotiations."⁶⁴ On March 14, 2022, the Board issued an order extending the abeyance through September 9, 2022.⁶⁵

The contract negotiations that were underway in June 2018 have only recently reached a conclusion. On July 26, 2021, the FOP's executive board approved a new contract, and on August 13, 2021, FOP membership ratified the contract by vote.⁶⁶ On September 14, 2021, City Council approved the new contract, which became effective September 16, 2021, and which is set to run through July 30, 2025.⁶⁷ A representative of the City Department of Law stated that the City planned to commence "Phase II" negotiations on additional contractual items in fall 2021. The FOP has publicly stated that those negotiations will include disciplinary and accountability provisions.⁶⁸ The FOP reports to OIG that the possibility of a disciplinary matrix has been a topic of discussion during ongoing contract negotiations.

CBA's for CPD's sworn supervisors (Sergeants, Lieutenants, and Captains) were renegotiated in July 2020 and are effective through June 30, 2022. The latest renegotiation of the sworn supervisors' CBA's brought about a significant change in accountability provisions, in that the PBPA agreed to a Memorandum of Understanding that allowed for the use of the CR Matrix.⁶⁹ These contracts are effective through June 30, 2022, and provide that any discipline recommended using the CR Matrix must still be supported by just cause and that, during a grievance procedure, an

⁶³ State of Illinois Labor Relations Board Local Panel, "Case No. L-CA-17-034."

⁶⁴ State of Illinois Labor Relations Board Local Panel, "Case No. L-CA-17-034."

⁶⁵ State of Illinois Labor Relations Board Local Panel, 2022, "Case No. L-CA-17-034," accessed May 23, 2022, https://www2.illinois.gov/ilrb/decisions/boarddecisions/Documents/L-CA-17-034-07_board.pdf#search=L%2DCA%2D17%2D034.

⁶⁶ *Chicago Sun-Times*. July 26, 2021, "FOP board approves eight-year contract, setting stage for rank-and-file vote," July 26, 2021, accessed September 7, 2021, <https://chicago.suntimes.com/city-hall/2021/7/26/22594580/chicago-police-union-fop-board-approves-contract-rank-file-vote-retro-pay-lightfoot-catanzara>; *Chicago Sun-Times*, "Chicago police officers put aside their anger at Lightfoot to ratify eight-year contract," August 13, 2021, accessed September 7, 2021, <https://chicago.suntimes.com/city-hall/2021/8/13/22623955/chicago-police-officers-ratify-new-contract-fraternal-order-police-fop>.

⁶⁷ City of Chicago, "Ordinance O2021-3449," September 14, 2021, accessed September 17, 2021, <https://chicago.legistar.com/LegislationDetail.aspx?ID=5115680&GUID=F7F87AD4-A3CA-416B-859B-16B3A0B3FECD&Options=Advanced&Search=>.

⁶⁸ Mot. to Intervene and for Leave to Advise the Court of Recent Developments Involving FOP Lodge No. 7 and the City of Chi. on Collective Bargaining Issues at 5-6, *State of Ill. v. City of Chi.*, No. 17-cv-6260 (N.D. Ill. Aug. 19, 2021) (ECF No. 969).

⁶⁹ Specifically, the Memorandum of Understanding included in the contract states, "The Unions acknowledge that the employer has developed a Complaint Register Matrix ("Matrix") and accompanying Complaint Register Matrix Guidelines ("Guidelines"). The Employer has advised the Unions that the purpose of the Matrix and the Guidelines is to ensure that disciplinary penalties are fairly administered through consistent application and enforcement, reflect the gravity of the alleged misconduct, and promote a culture of public accountability, individual responsibility and professionalism while protecting the rights of employees." City of Chicago, "Agreement Between the City of Chicago and the Policemen's Benevolent & Protective Association of Illinois, Unit 156-Captains," p. 85. Chicago: City of Chicago, 2020, accessed October 15, 2021, http://directives.chicagopolice.org/contracts/PBPA_CaptContract.pdf.

arbitrator must be able to implement a discipline outside of the Matrix's provided ranges.⁷⁰ These changes are only applicable to the sworn member ranks represented by the PBPA, and investigating agencies are still unable to use the Matrix to guide the determination of disciplinary recommendations for FOP members

⁷⁰ City of Chicago, "Agreement Between the City of Chicago and the Policemen's Benevolent & Protective Association of Illinois, Unit 156-Captains," p. 85. Chicago: City of Chicago, 2020, accessed October 15, 2021, http://directives.chicagopolice.org/contracts/PBPA_CaptContract.pdf.

IV | Objectives, Scope, And Methodology

A | Objectives

The objectives of the evaluation were to:

1. study and describe how the disciplinary process for CPD members is structured; and
2. assess how the structure of the disciplinary process for CPD members impacts procedural consistency and fairness in recommendations for and reviews of disciplinary sanctions.

B | Scope

OIG examined CPD's current disciplinary process, from the initiation of an investigation by BIA or COPA through the implementation of discipline, as delineated by the numerous sources of authority (e.g., collective bargaining agreements, municipal codes, agencies' policies) that collectively govern the process. To accurately and comprehensively describe the structure of the process, OIG considered all policies and procedures described in these sources. To assess how the structure of the process impacts procedural consistency and fairness, OIG analyzed agencies' policies and practices for recommending and reviewing discipline.

OIG is mandated by ordinance to assess the fairness and consistency of the disciplinary process for CPD members. At the same time, OIG is the investigating agency in some disciplinary cases for CPD members. In keeping with the objectivity and independence standards governing OIG's work, OIG describes but does not evaluate its own role in investigating misconduct allegations and recommending discipline in Sustained cases.

OIG did not evaluate agencies' investigative practices or grievance procedure in this report. Additionally, in this report OIG solely focused on policies and practices and did not analyze the substantive consistency and fairness of disciplinary outcomes for CPD members (i.e., implemented discipline). Analysis of fairness and consistency of disciplinary outcomes will be the subject of a future inquiry.

C | Methodology

OIG analyzed all relevant sources of policy and legal authority. OIG also conducted interviews with personnel at CPD, COPA, and the Police Board.

To assess how the process for determining discipline impacts consistency and fairness, OIG reviewed the following policies and procedures from CPD, COPA, and the Police Board:

- Draft BIA Standard Operating Procedure IA-09 Closing a Log Number Investigation
- Draft BIA Standard Operating Procedure IA-02 Personnel
- CPD Directive Special Order S08-01-01 Conduct of Complaint Investigations
- COPA Employee Policy Handbook
- COPA Investigator Manual
- COPA Rules and Regulations
- COPA Investigative Operations and Quality Management Manual
- Police Board Rules of Procedure

Additionally, OIG interviewed CPD BIA command staff personnel, COPA management personnel, and Police Board members. OIG then conducted a comparative analysis of documents and interviews to determine the extent to which agencies' processes and procedures ensure consistency and fairness in agencies' discipline determinations across cases and agencies.

D | Standards

OIG conducted this review in accordance with the Quality Standards for Inspections, Evaluations, and Reviews by Offices of Inspector General found in the Association of Inspectors General's *Principles and Standards for Offices of Inspector General* (i.e., "The Green Book").

E | Authority and Role

The authority to perform this audit is established in the City of Chicago Municipal Code §§ 2-56-030 and -230, which confer on OIG the power and duty to review the programs of City government in order to identify any inefficiencies, waste, and potential for misconduct, and to promote economy, efficiency, effectiveness, and integrity in the administration of City programs and operations, and, specifically, to review and audit CPD's policies, practices, programs, and training. The role of OIG is to review City operations and make recommendations for improvement. City management is responsible for establishing and maintaining processes to ensure that City programs operate economically, efficiently, effectively, and with integrity. Further, Municipal Code of Chicago section 2-56-230(f) requires OIG "to review and audit all sustained findings, disciplinary recommendations, and decisions made by the Police Department, [COPA], and the Police Board, and any subsequent arbitration decisions, for the purpose of assessing trends and determining whether discipline is consistently and fairly applied, and determining whether final disciplinary decisions are being carried out."

V | Finding and Recommendations

The policies and procedures used by BIA, COPA, and the Police Board for determining discipline are insufficient to ensure consistency and fairness

BIA, COPA, and the Police Board risk recommending or imposing inconsistent and unfair discipline to CPD members due to insufficient policies and procedures.⁷¹ Superintendent David Brown highlighted this risk in November 2020 when he disagreed with a disciplinary recommendation from COPA, citing “wide-ranging, inconsistent discipline” for verbal abuse cases in which different members have received recommended discipline ranging from a 10-day suspension to a 270-day suspension to separation.⁷² Superintendent Brown posited that “a court would likely find that CPD *arbitrarily* disciplines verbal abuse” (emphasis added).⁷³

In reviewing BIA and COPA policies and Police Board practices, OIG determined that all three agencies could better ensure that the disciplinary process for CPD members is consistent and fair by clarifying and aligning their policies for determining discipline with one another. Although BIA and COPA’s policies include references to consistency and fairness for recommended discipline, neither agency gives their relevant personnel clear and actionable guidance on how to reach this desired result. Specifically, BIA and COPA’s policies do not contain clear and actionable guidance on how investigators should weigh aggravating and mitigating factors in reaching disciplinary recommendations. Updates to these policies may still be inadequate to ensure consistency and fairness across cases without an advisory tool, such as a CR Matrix, to align the process by which disciplinary recommendations are reached. Finally, the Police Board does not have any formal policies to consistently and fairly determine discipline for the cases it considers.

Section A below describes in more detail the current policies in place at BIA, COPA, and the Police Board for reaching disciplinary recommendations. Section B describes the current legal status of

⁷¹ The three agencies evaluated in this finding play different roles in the disciplinary process. COPA and BIA recommend discipline after sustaining allegations of misconduct; their recommendations are then subject to review and change before CPD issues discipline to the member. By contrast, the Police Board, in certain cases, reviews discipline that has already been issued to the CPD member. In disciplinary cases where the Police Board is involved, its decisions are subject to review only on appeal by the member to the Circuit Court of Cook County. No agency or individual within City government is empowered to review discipline imposed following Police Board review.

⁷² Chicago Police Department, “Superintendent’s Non-Concurrence with COPA’s Findings and Proposed Penalty,” November 23, 2020.

⁷³ Chicago Police Department, “Superintendent’s Non-Concurrence with COPA’s Findings and Proposed Penalty.”

the CR Matrix and its potential utility as a tool for helping to ensure consistency and fairness across disciplinary recommendations.

A | BIA, COPA, and the Police Board: Current Policies for Recommending and Determining Discipline

Within the respective agencies, BIA, COPA, and the Police Board do not have rules, standards, or process mechanisms to guide their decision-making for determining disciplinary recommendations, risking inconsistency and unfairness in the various processes by which they do so. BIA and COPA policies both speak to “consistency” and “fairness” as objectives when determining specific disciplinary recommendations, but both agencies’ policies lack clear and actionable guidance on how relevant personnel should ensure consistency and fairness in the type and level of discipline recommended or imposed.

1 | BIA’s Policies for Recommending Discipline

BIA’s policies for unit operations, including those setting out how to conduct misconduct investigations and how to reach disciplinary recommendations, are located in a series of draft Standard Operating Procedures (SOPs).⁷⁴ These SOPs for recommending discipline explicitly articulate goals of consistency and fairness by requiring personnel to:

1. “Ensure that the recommended level of discipline for findings is consistently applied in a fair, thorough, and timely fashion, based on the nature of the misconduct.”⁷⁵
2. “Use best efforts to ensure that the level of discipline recommended for sustained findings is consistently applied across units and without regard for the race of the complainant or the race of the involved Department member.”⁷⁶
3. “Ensure that mitigating and aggravating factors are identified, consistently applied, and documented.”⁷⁷
4. BIA Lieutenants, upon reviewing and approving misconduct investigations, are to ensure recommended discipline is “fair and consistent.”⁷⁸

⁷⁴ BIA and CPD Office of Legal Affairs personnel explained to OIG that the BIA draft SOPs are being submitted piecemeal to the IMT for review and approval. The various sections of BIA’s SOPs are in different stages in the process of review and approval by the IMT, and therefore it is possible that the substance of some of the SOPs are being used in BIA operations but not others. CPD personnel did not provide a definitive answer as to whether the section of the SOPs giving guidance on how to reach disciplinary recommendations (BIA SOP IA-09 sec. I.D–E) was, at that time, relied upon in BIA operations or not. Additionally, BIA stated they were in the process of transferring some of their SOPs into unit directive form; however, context was not given on when the transferal would be completed and if they would be made public as part of CPD’s online directive system. CPD personnel initially provided this explanation to OIG in a conversation in February 2021. In review of a draft of this report in February 2022, CPD Office of Legal Affairs personnel reconfirmed this status of their SOPs.

⁷⁵ Chicago Police Department Bureau of Internal Affairs, “[Draft] Standard Operating Procedures IA-09 Closing a Log Number Investigation,” April 24, 2019.

⁷⁶ Chicago Police Department Bureau of Internal Affairs, “[Draft] Standard Operating Procedures IA-09 Closing a Log Number Investigation.”

⁷⁷ Chicago Police Department Bureau of Internal Affairs, “[Draft] Standard Operating Procedures IA-09 Closing a Log Number Investigation.”

⁷⁸ Chicago Police Department Bureau of Internal Affairs, “[Draft] Standard Operating Procedures IA-02 Personnel,” April 24, 2019. The City of Chicago’s annual appropriation ordinance for 2021 budgeted for five Lieutenants to be staffed within BIA. City of Chicago, “Annual Appropriation Ordinance for the Year 2021,” p. 152, accessed May 21, 2021, https://chicityclerk.s3.amazonaws.com/s3fspublic/document_uploads/budget/2021/2021_Annual%20Appropriation.pdf.

BIA SOP IA-09 “Closing a Log Number Investigation” states that recommended discipline must be “reasonably related” to the Sustained allegation(s) and reflect five “factors for consideration in aggravation or mitigation:”

1. The nature of the offense and its consequences
2. Property involved (e.g. personal vs. City property)
3. Accused member’s position
4. Accused member’s complimentary history
5. Accused member’s disciplinary history⁷⁹

BIA SOP IA-09 further instructs investigators to “indicate” in their summary report of investigation that they reviewed the “Complimentary History, Disciplinary History, and the evidence gathered in the investigation.”⁸⁰ Upon completion of the investigation, a supervisor is to review the accused member’s complimentary and disciplinary histories, and provide a written report in the following format:

Sergeant _____ has reviewed the Accused members Complimentary History, Disciplinary History, and the evidence gathered in the investigation. Upon taking all the information into consideration, Sergeant _____ recommends that the Accused be suspended for _____. (Attachment ___)⁸¹

The process outlined in BIA’s draft SOP presents two risks to ensuring consistency and fairness in the process by which BIA reaches disciplinary recommendations:

1. BIA supervisors are not obligated to identify *which* aggravating or mitigating factors are present and relevant to a misconduct investigation and resulting disciplinary recommendation—only that a member’s complimentary and disciplinary histories were reviewed.
2. BIA supervisors are not obligated to provide any analysis or accounting of *how* aggravating or mitigating factors impact recommended discipline, including the extent to which their consideration increased or decreased the severity of the recommendation.

This lack of documentation makes it difficult for BIA to ensure that recommendations are consistent and fair across cases, and limits effective review and oversight of BIA’s recommendations.

2 | COPA’s Policies for Recommending Discipline

COPA has three primary sets of policies that provide guidance related to disciplinary recommendations: the Employee Policy Handbook and two Investigation Manuals, one for the agency’s Investigations Section and one for the Investigative Operations/Quality Management (IO/QM) Unit.

⁷⁹ Disciplinary history includes all Sustained allegations of misconduct. However, depending on provisions in the member’s CBA (if applicable), the nature of an allegation, and the date of the allegation, certain allegations resulting in something other than a Sustained finding may be used to inform future disciplinary recommendations.

⁸⁰ Chicago Police Department Bureau of Internal Affairs, “[Draft] Standard Operating Procedures IA-09 Closing a Log Number Investigation.”

⁸¹ Chicago Police Department Bureau of Internal Affairs, “[Draft] Standard Operating Procedures IA-09 Closing a Log Number Investigation.”

1. The Employee Policy Handbook states that “all [disciplinary] recommendations are consistently applied in a fair, thorough, and timely fashion based on the nature of the conduct.”⁸² Additionally, the Handbook instructs COPA to conduct annual reviews of Sustained findings to “evaluate whether the level of discipline is:
 - a. applied without regard for the race of the complainant or the race of the involved Department member(s);
 - b. applied consistently in a fair, thorough, and timely fashion based on the nature of the misconduct;
 - c. applied consistently across Department districts; [and]
 - d. subject to data availability... additional classifications, including but not limited to, religion, age, physical or mental disability, gender, gender identity, or sexual orientation.”⁸³
2. COPA’s Investigations Manual for its Investigations Section states that COPA “has a duty and responsibility to make disciplinary recommendations to the Department that are fair, grounded in the facts of the case, appropriately reflect the seriousness of the conduct, and are consistent with the Department’s policies and code of conduct.” The Manual also outlines how COPA is to use the CR Matrix, noting that “administration of discipline must be based upon the fair, consistent application of disciplinary principles and guidelines and the exercise of reasonable and prudent judgment.”⁸⁴
3. COPA’s Investigations Manual for its IO/QM Unit delineates the Unit responsibilities, including reviewing and evaluating a 5% sample of cases, with that review to include a determination of whether the recommended discipline “was consistent with the CR Matrix.”⁸⁵

Following the discontinuation of the use of the CR Matrix in 2018, COPA’s Chief Administrator issued an internal memorandum outlining updates to its procedures for recommending discipline. The memo states that the Chief Administrator, First Deputy, and Deputy Chiefs would ensure recommended discipline “remains consistent across investigatory teams and throughout the office” and that discipline “will continue to be based on a fair and accurate assessment of the nature and scope of the misconduct.”⁸⁶ COPA later codified the processes outlined in their memorandum in a 2021 policy mandating that the Chief Administrator or their designee “will determine the appropriate disciplinary recommendation based on the facts of the investigation and the narrative description in the Final Summary Report of Investigation,” including mitigating and aggravating factors outline the Report.⁸⁷

⁸² Civilian Office of Police Accountability, “Disciplinary and Remedial Recommendations,” accessed June 24, 2021, http://www.chicagocopa.org/wp-content/uploads/2021/05/2021-05-20-Revised-COPA-Policy_Disciplinary-and-Remedial_CLEAN.pdf.

⁸³ Civilian Office of Police Accountability, “Disciplinary and Remedial Recommendations.”

⁸⁴ Civilian Office of Police Accountability, “Investigations Manual,” 2018. As of September 2021, COPA has not updated this manual.

⁸⁵ The Manual specifies the sample should not include investigations designated as Major Cases (e.g. officer involved shooting). Civilian Office of Police Accountability, “Investigations Manual [Investigative Operations/Quality Management],” November 2017. As of September 2021, COPA has not updated this manual.

⁸⁶ Civilian Office of Police Accountability, Internal memo, August 1, 2018.

⁸⁷ Civilian Office of Police Accountability, “Disciplinary and Remedial Recommendations,” accessed June 24, 2021, http://www.chicagocopa.org/wp-content/uploads/2021/05/2021-05-20-Revised-COPA-Policy_Disciplinary-and-Remedial_CLEAN.pdf.

COPA's policies and processes present three risks to procedural consistency and fairness, specifically:

1. Neither the Chief Administrator's memorandum nor COPA's updated policy explain or specify *how* COPA is to ensure that its processes for recommending discipline are consistent and fair across cases involving similar Sustained allegations of misconduct, or across COPA personnel, although this is an explicitly stated objective of the agency. COPA's recently introduced annual review process described above may help COPA to spot issues of inconsistency or unfairness in retrospect, but it does not provide practical guidance to COPA personnel as they make disciplinary recommendations case by case.
2. COPA's Investigations Manuals contain outdated languages and references. The Investigations Manual for COPA's Investigations Section describes an outdated process for recommending discipline, where instead of using a summary report to outline justification for recommended discipline, investigators are instructed to use either a "Disciplinary Recommendation Form" or a "Disciplinary Recommendation Memorandum," depending on the level of discipline.⁸⁸ Neither the Form nor the Memorandum are currently in use. Additionally, both Investigations Manuals describe how recommended discipline should be consistent with the CR Matrix and thus do not properly reflect the status and posture of agencies' use of the CR Matrix.
3. COPA's updating of its Employee Policy Handbook is done in piecemeal fashion. Rather than updating the Handbook in its entirety, COPA revises individual policies within the Handbook and disseminates those policies as separate documents to its employees. Within the Handbook, COPA indicates rescissions by applying a "RESCINDED" watermark to each page of its rescinded policies. Between June 1, 2020 and September 8, 2021, COPA issued eight revised policies, replacing nine policies that had been rescinded from its Handbook.⁸⁹ In the same period, COPA issued two new policies that did not rescind any previously existing policies. The Handbook itself does not include any indicia that there are updated versions of the rescinded policies that COPA has issued outside of the Handbook. COPA's Handbook is still dated "2018," notwithstanding revisions that have taken place after 2018.⁹⁰ COPA reported to OIG that it is considering placing all of its policies into a single source, such as an online portal, in the future. As it currently stands, however, COPA's piecemeal approach creates a risk that governing policies are not uniformly understood or followed by COPA personnel.

While COPA does have policies that provide guidance for recommending discipline in individual investigations, its policies and procedures lack guidance for ensuring consistency and fairness across investigations and across personnel.

⁸⁸ Specifically, if a COPA investigator recommends discipline of 30 days or greater, including separation, the investigator is to complete the Disciplinary Recommendation Form and a Disciplinary Recommendation Memorandum. For recommended discipline under a 30-day suspension, the investigator completes only the Disciplinary Recommendation Form. Civilian Office of Police Accountability, "Investigations Manual," 2018.

⁸⁹ One revised policy rescinds two policies from the "Handbook."

⁹⁰ COPA produced a copy of its Handbook to OIG most recently in September 2021. In review of a draft of this report in February 2022, COPA personnel were asked to provide any updates pertaining to statements in the report about their policies and procedures. They did not indicate that there had been any relevant updates.

COPA’s Employee Policy Handbook lists the same five “factors for consideration in aggravation or mitigation” that appear in BIA SOP IA-09.⁹¹ However, COPA’s presentation of aggravating and mitigating factors in its Handbook then goes into more detail than BIA’s SOPs, by elaborating a list of 9 mitigating factors and 14 aggravating factors in a table. These factors are reproduced in Figure 6 below.

Figure 6: Comparison of BIA and COPA mitigating and aggravating factors

| Factors Listed for Consideration by Both BIA and COPA | |
|-----------------------------------------------------------|---------------------------------------------------|
| The nature of the offense and its consequences | |
| Property involved (e.g. personal vs. City property) | |
| Accused member’s position | |
| Accused member’s complimentary history | |
| Accused member’s disciplinary history | |
| Factors Listed for Consideration Only by COPA | |
| <i>Mitigating Factors</i> | <i>Aggravating Factors</i> |
| Timely self-reporting | Position/rank/supervisory status |
| Efforts to remedy the misconduct | Length of service/experience |
| Acknowledgement of wrongdoing | Failure to accept responsibility |
| Acceptance of responsibility | Efforts to conceal misconduct |
| Complimentary history | Efforts to influence witnesses |
| Unintentional or inadvertent misconduct | Retributive or retaliatory conduct |
| Limited length of service/experience | Victim is a member of public |
| Prior disciplinary history (absent or materially limited) | Whether misconduct caused injury |
| Conduct aligning with training expectations | Whether misconduct exposed CPD to civil liability |
| | Prior disciplinary history, as permitted by CBA |
| | Prior warnings |
| | Vulnerability of the victim |
| | Evidence of unlawful bias |
| | Disregard for training expectations |

Source: OIG analysis of BIA SOP IA-09 and COPA’s Employee Policy Handbook.⁹²

As Figure 6 illustrates, COPA provides more detail than BIA for the different factors investigators and supervisors should consider when recommending discipline. However, BIA’s factors could reasonably encompass multiple factors COPA considers. For example, BIA’s factor, “The nature of the offense and its consequences,” could include COPA’s factors, “Whether misconduct caused injury” and “Victim is a member of public,” among others.

⁹¹ “The Investigations Section will take into account the following factors when considering an appropriate disciplinary recommendation: 1) the nature of the offense and its consequences; 2) the nature of any property involved; and 3) the Department member’s position, complimentary history, and disciplinary history.” Civilian Office of Police Accountability, “Disciplinary and Remedial Recommendations,” accessed July 8, 2021, http://www.chicagocopa.org/wp-content/uploads/2021/05/2021-05-20-Revised-COPA-Policy_Disciplinary-and-Remedial_CLEAN.pdf.

⁹² Chicago Police Department Bureau of Internal Affairs, “[Draft] Standard Operating Procedures IA-09 Closing a Log Number Investigation,” April 24, 2019; Civilian Office of Police Accountability, “Employee Policy Handbook,” 2018.

COPA investigators are required to list aggravating and mitigating factors in a summary report at the conclusion of a misconduct investigation; however, COPA does not appear to have a standardized field in its various summary report templates for investigators to indicate that and identify which factors have been considered. COPA does not, therefore, create a consistent record of investigators having reviewed all aggravating and mitigating factors for relevance. For example, if a COPA investigator lists a member's relevant disciplinary history, it is not necessarily discernible whether other relevant factors, such as length of service or the member's rank or position, were also considered.

After a COPA investigator lists aggravating and mitigating factors for a given case, COPA's Chief Administrator (or designee) should, according to the relevant COPA policy, consult this list to determine the recommended discipline. However, similar to BIA, COPA's policies do not require the agency to provide an accounting of how these factors ultimately impact the recommended discipline. As with BIA, this lack of required documentation risks a lack of transparency to the accused member and the investigating review chain and an inability of personnel in those positions to fully assess whether the requirements of fairness and consistency have been met, and further inhibits effective external oversight of COPA's disciplinary recommendations.

3 | The Police Board's Processes for Reviewing Discipline

The Police Board does not have policies to guide its assessment of recommended discipline. In an interview with OIG, Police Board members reported that they rely on personal recollections of past cases and ad hoc consultation of past Police Board decisions. While the Police Board does regularly consider aggravating and mitigating factors such as length of service and disciplinary and complimentary history, the lack of any formal policy to guide disciplinary determinations risks inconsistent consideration of such factors in its discipline determinations, both from one Police Board case to the next as well as inconsistency between the Board's disciplinary determinations and the disciplinary recommendations made by COPA or BIA.

B | The CR Matrix: Current Legal Status and Potential Value in Ensuring Procedural Consistency and Fairness

As recounted above, CPD introduced the CR Matrix in February 2017. Figure 7 below shows selected rows from the Matrix as examples of its organization and content. The FOP agreed in principle with the City and CPD that consistent and fair discipline could be effectively served by a CR Matrix. However, the FOP challenged the introduction of an advisory CR Matrix outside the context of contract negotiations, leading to the City's discontinuation of Matrix, pending the outcomes of CBA negotiations. As a result, BIA and COPA no longer use a CR Matrix to guide their determinations of disciplinary recommendations. In July 2020, PBPA agreed to include a Memorandum of Understanding in their CBAs that allowed for the use of the previously-existing version of the CR Matrix as an advisory tool for determining disciplinary recommendations. The FOP contract that City Council approved on September 14, 2021, does not make any provision for the use of the existing CR Matrix or any other similar set of guidelines for determining disciplinary recommendations.

Figure 7: Examples of penalty ranges in Chicago’s complaint register (CR) matrix⁹³

| Complaint Register Matrix | | | |
|---------------------------|---------------|-----------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| GROUP 01. VERBAL ABUSE | | | |
| Misconduct | Category Code | Rules Violation | Penalty Range |
| Use of Profanity | 01A | 2,3,8,9 | Member uses profanity directed towards another Department member or a member of the public. Mitigated: N/A Presumptive: VN-5 Aggravated: 6-15 |
| Racial/Ethnic, etc.* | 01B | 1,2,3,8,9 | Member uses language that includes racial, ethnic or other demeaning verbiage that is directed towards another Department member or a member of the public. Mitigated: 1-5 Presumptive: 6-20 Aggravated: 21-Sep |
| Sexual Orientation* | 01C | 1,2,3,8,9 | Member uses offensive language that conveys offensive sexual orientation that is directed towards another Department member or a member of the public. Mitigated: 1-5 Presumptive: 6-20 Aggravated: 21-Sep |

| Complaint Register Matrix | | | |
|----------------------------------------------------|---------------|-----------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| GROUP 10. OPERATION/PERSONNEL VIOLATIONS (ON DUTY) | | | |
| Misconduct | Category Code | Rules Violation | Penalty Range |
| Conduct Unbecoming | 10BB | 2,3,16, 31,32 | Any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the department. Mitigated: 1-10 Presumptive: 11-30 Aggravated: 31-Sep |

⁹³ Verbal Abuse includes two more types of misconduct; Operation/Personal Violations (On Duty) includes 22 more types of misconduct; Excessive Force includes eight additional types of misconduct.

| Complaint Register Matrix | | | |
|-------------------------------------------------|---------------|-------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| GROUP 05. EXCESSIVE FORCE | | | |
| Misconduct | Category Code | Rules Violation | Penalty Range |
| Injury (on or off duty)* | 05A, 05C | 1,2,3,6,8,9,10 | Member uses excessive force on a member of the public and physical injury is sustained. Mitigated: 5-10 Presumptive: 11-20 Aggravated: 21-Sep |
| No Injury (on or off duty)* | 05B, 05D | 1,2,3,6,8,9,10 | Member uses excessive force on a member of the public and no physical injury is sustained. Mitigated: 2-4 Presumptive: 5-15 Aggravated: 16-60 |
| Discharge of Firearm – Injury (on or off duty)* | 05E, 05G | 1,2,3,6,8,9,10,38 | Member unlawfully, unnecessarily or in violation of Department policies discharges a firearm in a manner that results in physical injury or death to another. Mitigated: 30- 60 Presumptive: Sep Aggravated: N/A |

Source: Chicago Police Department's 2017 Complaint Register Matrix.

The CR Matrix now available to the investigating agencies when recommending discipline for PBPA members provides specific, clear, and actionable guidance to agency personnel in the development of disciplinary recommendations while allowing recommendations to fall outside of the recommended ranges should case-specific circumstances demand. It incorporates the concept of aggravating and mitigating factors in misconduct by defining advisory “aggravated” ranges of discipline and advisory “mitigated” ranges of discipline along with “presumptive” ranges, providing for a straightforward analysis and decision-making process by agency personnel (see again Figure 7). As a written set of guidelines, the CR Matrix also guards against the possibility of drift over time in the severity of disciplinary recommendations that could occur when agencies rely on institutional memory to ensure consistency in recommendations over time. At present, however, the investigating agencies are only able to use this tool when recommending discipline for a small minority of CPD members, given that a majority of CPD members are sworn officers represented by the FOP. COPA reported to OIG that the agency has not used the CR Matrix since August 2018, even after its use as an advisory tool was permitted by new PBPA CBAs.

OIG does not take a position on whether the CR Matrix as currently constituted is well-suited to serve as the single, universally applicable set of advisory guidelines for all recommendations of discipline against CPD members; it is OIG's view, however, that the use of a single set of advisory guidelines might best serve the interests of consistency, fairness, and public transparency.

| Recommendations

1. COPA should revise its policies to ensure consistency and accuracy across the agency's Employee Policy Handbook, two Investigations Manuals, and any additional policies that the agency issues.
2. BIA and COPA should revise their respective policies to require that personnel developing disciplinary recommendations must document that they have considered whether any mitigating and aggravating factors are relevant to the determination of recommended

discipline, and if so, they must document what mitigating or aggravating factors were considered and how they influenced the disciplinary recommendation.

3. Appropriate representatives of BIA, COPA, and the Police Board should solicit feedback from one another and the unions representing CPD members, as appropriate and required by law, to develop a single, standardized list of aggravating and mitigating factors which may be consulted on an advisory basis for the purposes of formulating disciplinary recommendations and subsequent review of discipline. Any resulting list of factors should be made publicly available.
4. The Department of Law should provide legal guidance to BIA and COPA to support the development of a single, standardized list of aggravating and mitigating factors that could serve as guidelines to be used in misconduct investigations when determining appropriate discipline for CPD members of any rank or position.

| CPD Management Response

2. *The Chicago Police Department is in the process of revising a number of its orders which apply to BIA. This specific issue is addressed in the revisions to S08-01-01, Conducting Log Number Investigations (IMR6) which states, "In sustained cases, for purposes of making discipline recommendations, BIA investigators and accountability sergeants must obtain and consider the accused member's complimentary and disciplinary history, and this must be documented in the file. Any aggravating or mitigating circumstances pertinent to the sustained violation, or reflected in the history, must be identified and articulated as a basis of the disciplinary recommendation". Additionally as BIA continues to train its investigators it will include how to appropriately document this information in the case file.*
3. *The interest arbitration award for sworn supervisory members of the Department resulted in a Memorandum of Understanding between the Department and PBPA that allows for the use of a CR Matrix, provided the recommended discipline is supported by just cause standards. Additionally, it gives the arbitrator authority to implement discipline outside the CR Matrix's provided ranges. As part of Phase 2 of the negotiations with the FOP, the Department will seek an agreement with FOP (similar to the MOU with the PBPA) whereby the Department will compile a Matrix to use internally to ensure consistent treatment.*

If the entities (BIA, COPA, and the Police Board) mentioned in this recommendation develop advisory guidelines (specifically a single, standardized list of aggravating and mitigating factors which may be consulted on an advisory basis), the Labor Relations Division of the Chicago Police Department will solicit feedback from the sworn unions regarding these proposed guidelines.

| COPA Management Response

1. *Agree. COPA appreciates OIG's feedback. As part of improvements to its investigative process, as well as compliance under Consent Decree entered in Illinois v. City of Chicago, No. 17-cv-6260, COPA is undergoing a comprehensive effort across leadership to revise its investigative policies. As most of its investigative policies implicate Consent Decree*

requirements, they must be submitted for review and approval to the Independent Monitoring Team (IMT) and the Office of the Illinois Attorney General (OAG), following a review by COPA's Community Policy Review Working Group. Accordingly, based on the time and work required in the review and approval process, as well as in the roll-out and training to staff, this process inherently must be implemented progressively at the agency level.

Further, as we built out and revise out suite of investigative policies under the Consent Decree, COPA is also standardizing and systematizing all its policies and guidance materials to be more accessible for the benefit of staff and the public.

2. *Agree. COPA appreciates OIG's feedback. Consistent with, and prior to, the feedback, COPA has begun revising its Final Summary Report (FSR) template to include additional guidance on use of mitigating and aggravating factors in COPA's FSR's. COPA has also begun implementing corrective review measures to ensure these factors are appropriately factored and documented.*
3. *Disagree. COPA appreciates OIG's feedback. COPA would first note that its "Disciplinary and Remedial Measures" policy was posted for public comment before finalization and is now publicly available on COPA's website. This policy evolved from specific and tailored feedback from the IMT and OAG, as well as COPA's Community Policy Review Working Group, which COPA endeavored to accept and incorporate into its policy.*

The city's labor negotiators are best positioned to engage with the city's police unions. Nevertheless, COPA looks forward to working with those negotiators and the Department of Law (DOL) in playing a more meaningful role in Union contract negotiation on terms which implicate COPA's investigative practice and disciplinary recommendations, which may include a standard 'matrix.' COPA also welcomes examples or input from OIG/PSIG as part of citywide alignment on standardizing aggravating or mitigating factors.

Finally, acknowledging the many challenges in developing such a standardized and accepted city-wide list of aggravating and mitigating factors, we believe a more realistic goal is further city alignment and consensus related to fulsome documentation of relevant factors, including the degree those factors may influence a recommendation.

| Police Board Management Response

3. *Disagree. See Appendix C for full response letter.*

| DOL Management Response

4. *Agree. The Law Department will continue its current practice of providing legal guidance to the client departments that it serves. When appropriate, the law department will provide guidance and historical background on similar disciplinary actions for CPD members and will encourage uniformity in disciplinary action.*

VI | Conclusion

The current system for investigating allegations of misconduct by CPD members, recommending discipline, challenging that discipline, and finally implementing discipline is a complex one governed by numerous policies and procedures, involving multiple agencies and actors. The system is not adequately transparent to those involved or to the public. Without clearer policies and standards to govern decision making and inter-agency coordination, the system as it currently functions risks procedural inconsistency and unfairness in the formulation of disciplinary recommendations and in Police Board reviews of issued discipline; absent adequate procedural controls or guidelines for developing disciplinary recommendations, sanctions imposed on CPD members might be arbitrary and unconstrained, fundamentally undermining the legitimacy of and public confidence in the disciplinary system. There are important changes that the agencies can make both unilaterally and coordinately to materially improve the consistency and fairness of the process by which CPD members are disciplined.

Appendix A | CPD Response to Recommendations



William Marback
Interim Inspector General

OFFICE OF INSPECTOR GENERAL
City of Chicago

4601

740 N. Sedgwick Street, Suite 200
Chicago, Illinois 60654
Telephone: (773) 478-7799
Fax: (773) 478-3949

Management Response Form

Project Title: Discipline Procedural Consistency and Fairness Project Number: 19-0972
 Department Name: Chicago Police Department Date: January 5, 2022
 Department Head: David Brown, Superintendent

| OIG Recommendation | Agree/ Disagree | Department's Proposed Action | Implementation Target Date | Party Responsible |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------|----------------------|
| 2. BIA and COPA should revise their respective policies to require that personnel developing disciplinary recommendations must document that they have considered whether any mitigating and aggravating factors are relevant to the determination of recommended discipline, and if so, they must document what mitigating or aggravating factors were considered and how they influenced the disciplinary recommendation. | | The Chicago Police Department is in the process of revising a number of its orders which apply to BIA. This specific issue is addressed in the revisions to S08-01-01, Conducting Log Number Investigations (IMR6) which states, "In sustained cases, for purposes of making discipline recommendations, BIA investigators and accountability sergeants must obtain and consider the accused member's complimentary and disciplinary history, and this must be documented in the file. Any aggravating or mitigating circumstances pertinent to the sustained violation, or reflected in the history, must be identified and articulated as a basis of the disciplinary recommendation". Additionally as BIA continues to train its investigators it will include | | |

| OIG Recommendation | Agree/Disagree | Department's Proposed Action | Implementation Target Date | Party Responsible |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------|-------------------|
| | | how to appropriately document this information in the case file. | | |
| 3. Appropriate representatives of BIA, COPA, and the Police Board should solicit feedback from one another and the unions representing CPD members, as appropriate and required by law, to develop a single, standardized list of aggravating and mitigating factors which may be consulted on an advisory basis for the purposes of formulating disciplinary recommendations and subsequent review of discipline. Any resulting list of factors should be made publicly available. | | The interest arbitration award for sworn supervisory members of the Department resulted in a Memorandum of Understanding between the Department and PBPA that allows for the use of a CR Matrix, provided the recommended discipline is supported by just cause standards. Additionally, it gives the arbitrator authority to implement discipline outside the CR Matrix's provided ranges. As part of Phase 2 of the negotiations with the FOP, the Department will seek an agreement with FOP (similar to the MOU with the PBPA) whereby the Department will compile a Matrix to use internally to ensure consistent treatment. If the entities (BIA, COPA, and the Police Board) mentioned in this recommendation develop advisory guidelines (specifically a single, standardized list of aggravating and mitigating factors which may be consulted on an advisory basis), the Labor Relations Division of the Chicago Police Department will solicit feedback from the sworn unions regarding these proposed guidelines. | | |

Appendix B | COPA Response to Recommendations



William Marback
Interim Inspector General

OFFICE OF INSPECTOR GENERAL
City of Chicago

4602

740 N. Sedgwick Street, Suite 200
Chicago, Illinois 60654
Telephone: (773) 478-7799
Fax: (773) 478-3949

Management Response Form

Project Title: Discipline Procedural Consistency and Fairness Project Number: 19-0972
 Department Name: Civilian Office of Police Accountability Date: March 10, 2022
 Department Head: Andrea Kersten, Chief Administrator

| OIG Recommendation | Agree/ Disagree | Department's Proposed Action | Implement- ation Target Date | Party Responsible |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------|-------------------------------------------------------|
| 1. COPA should revise its policies to ensure consistency and accuracy across the agency's Employee Policy Handbook, two Investigations Manuals, and any additional policies that the agency issues. | Agree | COPA appreciates OIG's feedback. As part of improvements to its investigative process, as well as compliance under Consent Decree entered in <i>Illinois v. City of Chicago</i> , No. 17-cv-6260, COPA is undergoing a comprehensive effort across leadership to revise its investigative policies. As most of its investigative policies implicate Consent Decree requirements, they must be submitted for review and approval to the Independent Monitoring Team (IMT) and the Office of the Illinois Attorney General (OAG), following a review by COPA's Community Policy Review Working Group. Accordingly, based on the | 8/1/22 | COPA's Policy, Research, and Analysis Division (PRAD) |

| OIG Recommendation | Agree/ Disagree | Department's Proposed Action | Implement-ation Target Date | Party Responsible |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------|-------------------------------------------------------|
| | | <p>time and work required in the review and approval process, as well as in the roll-out and training to staff, this process inherently must be implemented progressively at the agency level.</p> <p>Further, as we build out and revise our suite of investigative policies under the Consent Decree, COPA is also standardizing and systemizing all its policies and guidance materials to be more accessible for the benefit of staff and the public.</p> | | |
| 2. BIA and COPA should revise their respective policies to require that personnel developing disciplinary recommendations must document that they have considered whether any mitigating and aggravating factors are relevant to the determination of recommended discipline, and if so, they must document what mitigating or aggravating factors were considered and how they influenced the disciplinary recommendation. | Agree | <p>COPA appreciates OIG's feedback. Consistent with, and prior to, the feedback, COPA has begun revising its Final Summary Report (FSR) template to include additional guidance on use of mitigating and aggravating factors in COPA's FSR's. COPA has also begun implementing corrective review measures to ensure these factors are appropriately factored and documented.</p> | 6/1/22 | COPA's Policy, Research, and Analysis Division (PRAD) |

| OIG Recommendation | Agree/ Disagree | Department's Proposed Action | Implement-ation Target Date | Party Responsible |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------|-------------------|
| 3. Appropriate representatives of BIA, COPA, and the Police Board should solicit feedback from one another and the unions representing CPD members, as appropriate and required by law, to develop a single, standardized list of aggravating and mitigating factors which may be consulted on an advisory basis for the purposes of formulating disciplinary recommendations and subsequent review of discipline. Any resulting list of factors should be made publicly available. | Disagree | <p>COPA appreciates OIG's feedback. COPA would first note that its "Disciplinary and Remedial Measures" policy was posted for public comment before finalization and is now publicly available on COPA's website. This policy evolved from specific and tailored feedback from the IMT and OAG, as well as COPA's Community Policy Review Working Group, which COPA endeavored to accept and incorporate into its policy.</p> <p>The city's labor negotiators are best positioned to engage with the city's police unions. Nevertheless, COPA looks forward to working with those negotiators and the Department of Law (DOL) in playing a more meaningful role in Union contract negotiation on terms which implicate COPA's investigative practice and disciplinary recommendations, which may include a standard 'matrix.' COPA also welcomes examples or input from OIG/ PSIG as part of citywide alignment on standardizing aggravating or mitigating factors.</p> <p>Finally, acknowledging the many challenges in developing such a standardized and accepted city-wide list of aggravating and mitigating factors, we believe a more realistic goal is further city alignment and consensus related</p> | | |

| OIG Recommendation | Agree/ Disagree | Department's Proposed Action | Implement- ation Target Date | Party Responsible |
|--------------------|--------------------|------------------------------------------------------------------------------------------------------------------|------------------------------------|-------------------|
| | | to fulsome documentation of relevant factors, including the degree those factors may influence a recommendation. | | |

Appendix C | Police Board Response to Recommendations



CITY OF CHICAGO

CHICAGO POLICE BOARD

March 10, 2022

VIA E-MAIL

William Marback, Interim Inspector General
Nathanial Wackman, Deputy Inspector General for Public Safety
City of Chicago
740 North Sedgwick, Suite 200
Chicago, IL 60654
wmarback@igchicago.org
nwackman@igchicago.org

Re: Report on Fairness and Consistency in the Disciplinary Process for Chicago Police Department Members

Dear Messrs. Marback and Wackman:

We write on behalf of the Police Board in response to the OIG's recommendation in the above-referenced report that the Police Board take part in the development of "a single, standardized list of aggravating and mitigating factors which may be consulted on an advisory basis for the purposes of formulating disciplinary recommendations and subsequent review of discipline."

We appreciate OIG's review of the disciplinary process and recommendation, and we stand ready to thoroughly consider aggravating and mitigating factors if a list of such factors is developed consistent with current law and collective bargaining agreements and made part of the record in any disciplinary case before the Board. However, we respectfully disagree with the recommendation that the Police Board be involved in the development of such a list.

The role of the Police Board is to be an impartial decision-maker in cases of alleged police misconduct. If the Board were to engage in communications with BIA and COPA regarding the appropriate punishment for officers in those same cases, as OIG recommends, it would undermine the Board's impartiality. BIA's and COPA's disciplinary recommendations result in charges being filed with the Board—these two agencies are, in effect, part of the prosecution of these cases. It would thus be inappropriate for the Board to consult with BIA and COPA on the development of a list of factors that will then guide the outcome of cases in which BIA's and COPA's recommendations are at issue.

2 NORTH LASALLE STREET, SUITE M800, CHICAGO, ILLINOIS 60602
312.742.4194 • WWW.CHICAGO.GOV/POLICEBOARD

March 10, 2022
 Marback & Wackman
 Page 2 of 2

The OIG also recommends that the Board communicate with the unions that represent CPD officers. Given the unions' position that such matters be the subject of collective bargaining, if such conversations were to be held, they would more appropriately be undertaken by the City's labor negotiators.

Given the clear need for impartiality outlined above, the Police Board is not the appropriate party to develop a list of aggravating and mitigating factors. Instead, any such guidelines should be developed by a neutral body which is not the ultimate decision-maker in the case. Indeed, sentencing guidelines applicable to cases in both federal and state courts are set by parties outside the judiciary: the sentencing guidelines used by federal courts are created by the Sentencing Guidelines Commission, and the sentencing parameters required to be used by Illinois courts are created by statute. It seems to us that this delineation of duties is for good reason – it is important for the Police Board to remain neutral, adjudicate each case based on the facts before it, and not prejudice the severity of any one factor over another. To do otherwise could give the impression that the Board is attempting to steer the outcome of cases before they are even presented to the Board. We continue to place a high value on impartiality, as it is essential for maintaining the public's and police officers' confidence in the Board's handling of police disciplinary cases.

Thank you for your work in this important area and for your consideration of our response.

Sincerely,



Ghian Foreman
 President



Paula Wolff
 Vice President



William Marback
 Interim Inspector General

OFFICE OF INSPECTOR GENERAL
 City of Chicago

4603

740 N. Sedgwick Street, Suite 200
 Chicago, Illinois 60654
 Telephone: (773) 478-7799
 Fax: (773) 478-3949

Management Response Form

Project Title: Discipline Procedural Consistency and Fairness Project Number: 19-0972
 Department Name: Police Board Date: March 10, 2022
 Department Head: Ghian Foreman, President

| OIG Recommendation | Agree/Disagree | Department's Proposed Action | Implementation Target Date | Party Responsible |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------|------------------------------|----------------------------|-------------------|
| 3. Appropriate representatives of BIA, COPA, and the Police Board should solicit feedback from one another and the unions representing CPD members, as appropriate and required by law, to develop a single, standardized list of aggravating and mitigating factors which may be consulted on an advisory basis for the purposes of formulating disciplinary recommendations and subsequent review of discipline. Any resulting list of factors should be made publicly available. | Disagree | Please see attached letter. | N/A | N/A |

Appendix D | DOL Response To Recommendations



William Marback
Interim Inspector General

OFFICE OF INSPECTOR GENERAL
City of Chicago

740 N. Sedgwick Street, Suite 200
Chicago, Illinois 60654
Telephone: (773) 478-7799
Fax: (773) 478-3949

4605

Management Response Form

Project Title: Discipline Procedural Consistency and Fairness Project Number: 19-0972
 Department Name: Chicago Department of Law Date: February 24, 2022
 Department Head: Celia Meza, Corporation Counsel

| OIG Recommendation | Agree/ Disagree | Department's Proposed Action | Implementation Target Date | Party Responsible |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------|----------------------|
| 4. The Department of Law should provide legal guidance to BIA and COPA to support the development of a single, standardized list of aggravating and mitigating factors that could serve as guidelines to be used in misconduct investigations when determining appropriate discipline for CPD members of any rank or position. | Agree | The Law Department will continue its current practice of providing legal guidance to the client departments that it serves. When appropriate, the law department will provide guidance and historical background on similar disciplinary actions for CPD members and will encourage uniformity in disciplinary action. | Ongoing | Law |



Daniel Lopez
Senior Performance Analyst

LaDonna Candia-Flanagan
Investigative Analyst

Stephanie Snow
Chief Assistant Inspector General

Robert Owens
Chief Performance Analyst

The City of Chicago Office of Inspector General is an independent, nonpartisan oversight agency whose mission is to promote economy, efficiency, effectiveness, and integrity in the administration of programs and operations of city government.

OIG's authority to produce reports of its findings and recommendations is established in the City of Chicago Municipal Code §§ 2-56-030(d), -035(c), -110, -230, and -240. For further information about this report, please contact the City of Chicago Office of Inspector General, 740 N. Sedgwick Ave., Suite 200, Chicago, IL 60654, or visit our website at igchicago.org.

Suggest Ways to Improve City Government:
igchicago.org/contact-us/help-improve-city-government

Report Fraud, Waste, and Abuse in City Programs:
Call OIG's complaint hotline at (866) 448-4754 / TTY: (773) 478-2066
igchicago.org/contact-us/report-fraud-waste-abuse/

Cover photo courtesy of the Department of Assets, Information and Services.
Alternate formats available upon request.

