



**CITY OF ALBANY
COMMUNITY POLICE REVIEW BOARD
CPRB STANDING COMMITTEE
ON DISCIPLINARY MATRIX
MEETING MINUTES**

*May 17, 2023, at 6:15 p.m.
Albany Law School, Room W212*

I. CALL TO ORDER AND ROLL CALL (N. Vives)

Chair Nairobi Vives called the meeting to order at 6:15 p.m.

COMMITTEE MEMBERS PRESENT: CPRB Chair Nairobi Vives, CPRB Vice Chair Veneilya Harden, Board Member Antoinette Santos, Board Member Victor Person, Board Member Paul Collins-Hackett, Board Member Kevin Cannizzaro

OTHERS PRESENT: CPRB Program Manager Michele Andre, Mark Mishler, APD Lieutenant Thomas Mahar, APD Sergeant Stephen Sayre Chief City Auditor Dorcey L. Applyrs

II. AGENDA (N. Vives)

Chair Vives called the meeting to order and thanked the Albany Police Department for providing a sample discipline matrix including suggested categories for violations and degrees of severity. Chair Vives proposed reviewing the categories and severity classifications as a group.

Discussion of Materials Provided by APD (T. Mahar)

Lieutenant Thomas Mahar reported that the suggested categories were the result of conversations with APD command staff and OPS staff. Lt. Mahar shared that the categories are associated with violations outlined in the APD General Orders. The APD-proposed matrix outlines different degrees of severity for misconduct: minor, moderate, major, and severe misconduct.

Chair Vives read the list of proposed categories out loud for members of the public. These included: Obedience to laws, regulations and orders (including policy violations); Conduct towards others; Unsatisfactory Performance; Insubordination; Truthfulness; Use of Force; Arrest/Search and Seizure; Civil Rights/Harassment/Bias; Code of Ethics; and Criminal Conduct.

Board Member Antoinette Santos asked if Lt. Mahar could explain what the category of “truthfulness” means. Lt. Mahar explained that a violation of “truthfulness” could be failure to take a report, not taking a report seriously, or another criminal or administrative violation such as lying under oath. Ms. Santos asked whether the proposed category could instead be listed as “truthfulness/lying under oath.” Lt. Mahar expressed that he personally does not see an issue with adding this level of specificity, but references the level of detail already present in APD’s General Orders.

Board Member Santos inquired about whether improper firearms discharge could have its own category, or if it might be included under “use of force” violations. Lt. Mahar responded that firearms discharge could be a violation of “use of force” or “unsatisfactory performance.”

Board Member Santos asked Lt. Mahar to explain the probationary period for new recruits, asking how long new recruits are under probation, when they become recognized as a police officer who can ride alone, and how often they receive performance evaluations. Lt. Mahar responded that a recruit’s police career begins on their hire date, and each calendar year employed adds one year of seniority. New York State recognizes a recruit as a police officer seven months after graduation from the Albany Police Academy. Recruits must also complete 45 days of field training to be released on “solo patrol,” i.e. operating as a police officer on their own. Recruits’ probationary status ends one calendar year after their hire date. Ms. Santos inquired further, asking when a recruit can be disciplined for an offense designated as “minor” in severity. Lt. Mahar responded that recruits can be fired at any time during their first year.

Board Member Kevin Cannizzaro noted that the APD-proposed matrix outlined three potential disciplinary categories: “punitive,” “non-punitive,” and “education-based discipline (in lieu of loss of leave credits or suspension when authorized).” Mr. Cannizzaro asked Lt. Mahar to clarify what a non-punitive discipline option would be and how this would be distinguished from an education-based discipline option. Lt. Mahar responded that this language was derived from the contractual agreements between APD and the police unions, Albany Police Supervisors Association (APSA) and Albany Police Benevolent Association (Albany PBA). Lt. Mahar explained that non-punitive disciplinary action could include training, counseling, or otherwise formally putting the recruit “on notice.” Lt. Mahar provided an example: If an officer is not wearing a seatbelt and they get in an accident in which there are no injuries or fatalities, discipline could be further training on safe driving. Lt. Mahar also clarified that APD proposed implementing education-based training, but the police unions have opposed it. If the option were available, an officer could commit to further training in lieu of a 10-day suspension or loss of leave credits. Mr.

Cannizzaro asked for further clarification regarding the optional nature of education-based discipline, also inquiring about who makes the decision about whether an officer receives education-based discipline for misconduct. Lt. Mahar reported that the proposal to implement education-based discipline was based on disciplinary practices in the Los Angeles County Sheriff's Department. Lt. Mahar further explained that education-based discipline would be voluntary, i.e. the officer would have to agree to it, and it would be available for offenses designated as "minor" and "moderate."

Community member Mark Mishler requested that Lt. Mahar provide clarity regarding the statement, "Conduct will be assigned based on the following categories...", from the APD-proposed matrix. In particular, Mr. Mishler asked how conduct is assigned a severity classification, who is responsible for assigning severity classifications, and whether there are any violations that, by default, would be considered severe, or if any violations within the outlined categories could be considered severe. Lt. Mahar confirmed that the APD-provided matrix does not identify specific violations that would be automatically classified as severe, and that any violations could range in severity from "minor" to "severe." Lt. Mahar stated that the APD Office of Professional Standards (OPS) would make this determination.

Mr. Mishler pointed out that the APD-proposed matrix does not align with the committee's expectations for a disciplinary matrix because specific violations do not correlate with specific disciplinary actions, and that determinations would be made at the discretion of OPS. Mr. Mishler explained that the intent of a discipline matrix is to provide the public and officers understanding, accountability, and expectations with regards to specific violations resulting in specific outcomes. Mr. Mishler expressed appreciation for the list of factors and classifications provided, but does not view the APD-proposed matrix as a sufficient discipline matrix that fulfills the mandate of the committee due to the lack of specificity and lack of accountability in how decisions would be made.

Lt. Mahar referred to the APD General Orders, reporting that the orders are not written in a way that explains what an appropriate penalty is for any given violation, but instead focuses on the many factors to consider when evaluating officer interactions. Lt. Mahar stated that the severity classification in the APD-proposed matrix was intended to address that. Mr. Mishler highlighted the conflict between APD's view of a discipline matrix, the examples of discipline matrices from other cities, and the committee's expectations for a discipline matrix. Lt. Mahar highlighted that this conflict may be due to different understandings of day-to-day operations and that some factors require flexibility.

Mr. Mishler added that the aggravating and mitigating factors listed in the APD-proposed matrix are helpful and relevant, and that an additional factor to consider would be the principle of accountability, referencing the community's desire to know that action is taken when an officer is found to have committed misconduct that harms the public in some way. Mr. Mishler noted that this assurance is not provided in the APD-proposed matrix as written.

CPRB Program Manager Michele Andre clarified that APD asked the committee to review the aggravating and mitigating factors. She also clarified that the Baltimore disciplinary matrix was initially selected as a model because it provided flexibility to have varying levels of severity and to consider aggravating/mitigating factors. She explained that it is possible to move forward with that kind of flexible model and to specify penalties for specific violations like use of force, racial bias in policing, etc. She reported that Assistant Corporation Counsel Matthew Toporowski previously suggested adding a category of “conduct unbecoming of an officer,” which could allow flexibility to address conduct not otherwise specified in APD General Orders. Ms. Andre reported that, in her review of other police departments’ general orders, she has not seen general orders that outline specific penalties. She concluded that this implies that police departments’ general orders generally do not specify penalties, but that their discipline matrices do specify penalties for specific violations.

Chair Nairobi Vives expressed agreement that more specificity is needed in the discipline matrix. Chair Vives asked Lt. Mahar to share his perspective about which General Orders relate to which categories outlined in the APD-proposed matrix. She also reported that the consultants at Moel Lah Fakhoury inquired about what “obedience to laws, orders, and regulations” means and if that includes illegal conduct. Lt. Mahar clarified that illegal conduct could be included under “obedience to laws ...” and that it also could be included under “criminal conduct.” Chair Vives expressed that there was some confusion because it appears that some categories could be included under the category of “obedience to laws, orders, and regulations,” such as a code of ethics violation or criminal conduct. Lt. Mahar responded that having distinct categories is useful because an officer’s off-duty conduct might be considered criminal, but the same conduct may not be criminal when on-duty.

Chair Vives inquired about whether APD placed certain violations into categories based on the General Orders. Lt. Mahar confirmed that there is a Code of Conduct General Order in which these categories are identified, but that APD wanted to avoid referencing specific General Orders that would outline specific penalties.

Chair Vives also added agreement to Board Member Santos’ earlier suggestion to add “lying under oath” to the category of “truthfulness.” She reported that the consultants suggested adding “violation of civil rights” to the category of “civil rights/harassment/bias.” Chair Vives suggested additional possible categories: “abuse of authority and procedure,” “harassment,” “bias-based policing,” “conduct unbecoming of an officer,” “evidence and property handling,” “failure to intervene,” “failure to properly utilize body-camera equipment,” and/or “failure to cooperate with misconduct investigation.”

Chair Vives asked the committee and members of the public if there were questions about the proposed categories. Ms. Andre reported on a previous discussion with the consulting team in which it was suggested harassment should not be combined with civil rights violations/bias because they are distinct acts. She also noted that “bias-based policing”

should be a distinct category and not included in “civil rights violations/bias” because the intent behind bias-based policing is more difficult to prove in an investigation.

Board Member Cannizzaro highlighted the contrasting approaches to severity classifications in the APD-proposed matrix and the draft matrix template created by CPRB Interns. In the APD-proposed matrix, specific offenses do not, by default, result in a specific penalty, and that for violations deemed to be “severe” by OPS, the penalty could be discharge “unless mitigating factors warrant suspension.” In the matrix template created by the CPRB Interns, the highest degree of severity is classified as “level 6,” and it does list specific offenses that result in a specific penalty (e.g. being proven to falsify evidence in an arrest, tampering with evidence, and deliberate weapons discharge outside of use-of-force policy would result in discharge). Board Member Cannizzaro suggested that APD’s matrix should have some specificity—specific kinds of violations, regardless of mitigating factors, should result in a specific penalty.

In response, Chair Vives inquired about whether there are specific violations that APD views as sufficiently unacceptable that it would be considered severe enough for discharge? Lt. Mahar referred to the text of the APD-proposed matrix: “[...] some misconduct is either not correctable through discipline or immediately renders the individual unsuitable for continued employment. In these cases, other options, including discharge, must be considered.” Lt. Mahar explained that if a violation is egregious, there are no mitigating circumstances to consider and that APD does consider discharge to be the only remedy. Lt. Mahar referred to a recent “sustained” determination in an OPS investigation in which an officer committed an egregious offense and was discharged. Board Member Cannizzaro encouraged APD to more clearly acknowledge this in the disciplinary matrix.

Board Member Cannizzaro echoed agreement of the need for flexibility to consider the totality of very circumstance and suggested the addition of a category in which the only penalty is discharge. He stated that the discipline matrix will live beyond the current CPRB members and APD staff. He explained that the lack of specificity leaves room for varying and uncertain outcomes, stating that the public wants to see certainty and that the unions may want to see certainty as well. Lt. Mahar suggested that specificity might result in issues, in terms of newer officers and long-standing officers receiving the same disciplinary action for the same violation, stating that work history and other factors should be considered. In response, Board Member Cannizzaro offered an analogy between how criminal penalties in New York law and federal law outline specific acts that correlate with specific crimes and what penalties are assigned in those situations, and how the CPRB and APD could identify what acts of misconduct fit into categories that can be tied to a specific penalty. He noted that the draft matrix template attempts to account for this, and encouraged APD to do the same in their proposed matrix.

Chair Vives highlighted that the APD-proposed matrix denotes different consequences for one offense versus three offenses under each severity classification. She asked Lt. Mahar for examples about what might constitute a minor offense under the APD-proposed matrix and how many “minor” offenses for which an officer would have to be deemed responsible

before escalating discipline. Lt. Mahar provided examples of minor offenses: wearing a uniform incorrectly, not having necessary paperwork, or showing up late to work. Lt. Mahar further clarified that if an officer drives too fast and their supervisor sees it, it is considered minor. If the officer makes the same mistake again after discipline in the form of training, it would not be considered minor. Further, if an officer does something that is biased in nature, the officer does not have to commit three offenses before it becomes classified as major or severe. Lt. Mahar added that past disciplinary history does factor in to the severity classification. Chair Vives emphasized that this was helpful information when reading the APD-proposed matrix. She also suggested that certain violations should be considered severe enough to make an officer unfit for their position, and that this should be reflected in the matrix (e.g. not being truthful under oath, forging documents, bias-based policing, and making offensive slurs.) Chair Vives stated that these examples are on the extreme end of the spectrum, and that there may be other offenses in the middle of the spectrum that could be considered on a case-by-case level. She also indicated her preference for the Baltimore model, which has more clarity.

Community member Mark Mishler requested clarification about the source of the draft matrix template that had been circulated. Ms. Andre clarified that it was a proposed template prepared by CPRB Interns based on the committee's discussions, review of existing disciplinary matrices, and feedback from community members. She added that this draft was circulated early in the process. She also noted that the template specifically mentions uniform violations in which officers cover badges or add white supremacist symbols to uniforms, "discourteous conduct with the public" (e.g. publicly making negative comments about community members), and failure to properly utilize body-camera equipment. Ms. Andre emphasized that this template was not agreed upon as the CPRB's draft matrix but was created to solicit feedback to develop a template for the matrix.

Mr. Mishler requested further clarification about the documents, decision-making, and the next steps in the process. Chair Vives reported that this meeting would be the last meeting dedicated to information-gathering, and that next steps would be developing drafts for the CPRB/APD matrix. She suggested that people work on separate drafts (the APD-proposed matrix, Mr. Mishler's proposed matrix, and the template created by the CPRB Interns), and bring those to the group for review and drafting a cohesive document. Ms. Andre added clarification that the CPRB Intern-created template was drafted before APD sent its proposed violation categories.

Chair Vives asked the committee and members of the public if they had further questions. Vice Chair Dr. Veneilya Harden inquired about how long "sustained" offenses are included in an officer's file, and at what point an officer's disciplinary history is "wiped clean." Lt. Mahar responded that sustained offenses are included in an officer's personnel file for their entire career and that counseling and training can be removed from the personnel file after six months or after the officer's next performance evaluation. He added that he could not answer to what happens to the information in OPS' disciplinary records.

Board Member Santos requested clarity about whether APD has a specific education-based discipline and whether there was an agreement with the police unions. Lt. Mahar reported that APD does not have an agreement with the unions on education-based discipline, so it does not currently exist. Ms. Andre inquired about why education-based discipline would be considered distinct from non-punitive discipline in the APD-proposed matrix. Lt. Mahar reported that this distinction is based on contractual agreements with the police unions and that it would be identified this way in the General Orders. He added that education-based discipline would be an option after a misconduct allegation is sustained and if the misconduct is not so egregious that it would warrant discharge.

Board Member Santos requested that Lt. Mahar explain the process for who chooses what sanction is imposed as a result of a sustained allegation. Lt. Mahar responded that OPS recommends discipline to the Chief of Police, who then determines the sanction.

Chair Vives inquired as to how violations related to truthfulness are currently handled by the department. Lt. Mahar responded that the process is outlined in a section of the Code of Conduct (in the General Orders) and that the department views it as a serious breach of what is expected of officers. Chair Vives requested examples, and inquired about whether APD or OPS keeps a list of officers who have a history of sustained allegations related to truthfulness. Lt. Mahar stated that he is not aware of such lists.

Chair Vives reminded the committee that this would be the last meeting for information gathering. She added that the next steps would be revising drafts and updating the draft that the committee decides to use. She opened the floor for further questions and comments.

Board Member Santos inquired about whether an officer currently under investigation for misconduct would be promotable to Sergeant. Lt. Mahar reported that he is not involved in decision-making but that this is possible. Board Member Cannizzaro referenced a case recently discussed at a CPRB public monthly meeting in which an officer was promoted to Sergeant while his conduct was under investigation. Board Member Cannizzaro emphasized that, while officers are entitled to due process during an investigation, an officer who is under active investigation can be promoted raises concerns. He noted that when an officer who had been promoted is found to have committed misconduct, it looks bad for the department. He suggested that promotion could be contingent upon the outcome of the investigation, and recommends negotiating with the union on this matter.

Board Member Victor Person inquired about a hypothetical example: If an officer is found to be guilty of misconduct and subsequently retires from the department, does that officer's disciplinary history follow them if they try to work in another police department? Lt. Mahar responded that it is the responsibility of the other police department to contact APD for references.

Chair Vives inquired about where failing to take complaints would fall within the General Orders or the proposed violation categories. She also requested examples of acts that would be considered "unsatisfactory performance." Lt. Mahar responded that failing to take complaints would fall within the first violation category: violation of law, orders, and

regulations. Lt. Mahar reported that the category “unsatisfactory performance” covers a wide range of possible offenses, like conduct unbecoming of an officer, and could range from minor offenses (e.g. not taking a call appropriately or taking a lunch that is too long) to more severe offenses (e.g. criminal conduct on the job).

Chair Vives inquired about whether failure to cooperate with a misconduct investigation is included in the General orders. Lt. Mahar reported that he did not have an answer to this question. Chair Vives referred to the earlier discussion about specificity, suggesting that failing to cooperate with a misconduct investigation could be taken seriously and is similar to, but not the same as, “truthfulness” in the violation category list.

Program Manager Michele Andre raised a question about a statement included in the APD-proposed matrix: “Many times a single act of misconduct will violate several sections of the General Orders. If the additional violations only amount to lesser included offenses they should not be used in the final disposition.” Ms. Andre expressed concern about whether this could be interpreted as minimizing the seriousness of some allegations. She reported that a lot of complaints received include multiple kinds of allegations and it would be concerning to have some allegations not included in the final disposition because they are considered a lesser offense (e.g. if there is a use-of-force allegation and a call-handling allegation, the call-handling might not be included). Lt. Mahar clarified that this is not the intended interpretation. He further explained that if an officer uses ‘bad language’ and another incident happens in which there is additional ‘bad language,’ they would not have 2 counts of ‘bad language.’ Rather, he explained, it would be collapsed into 1 count of ‘bad language.’ Lt. Mahar referred to the next part of the APD-proposed matrix: “However, there are cases in which multiple offenses, that are separate and distinct violations, occur within a single incident. For example, the use of unreasonable force and the failure to report the use of force are multiple violations stemming from a single incident. In this case both General Order violations should be addressed in determining the level of discipline.” Ms. Andre expressed appreciation for this explanation.

Ms. Andre inquired about the next steps in the process, namely how the committee would handle the sharing of drafts. Chair Vives suggested revising the current examples in circulation (APD-proposed matrix, Mr. Mishler’s proposed matrix, and the CPRB Intern-created template). She noted that Board Member Cannizzaro agreed to compile ideas and suggestions raised and would be in contact with committee members/stakeholders to develop a cohesive draft; Lt. Mahar indicated that he would be the primary contact at APD for this task.

Mr. Mishler suggested that there be a discussion and formal vote on a general outline before agreeing on specific suggestions, pointing out that there are two types of models in circulation (Baltimore Model, used by Mr. Mishler and the CPRB Interns, and the New Paltz Model, used by APD). Chair Vives noted that the Baltimore Model appeared to be the preferred model and suggested incorporating recommendations from APD into the Baltimore Model that Mr. Mishler and the CPRB Interns had been using. Chair Vives proposed discussing model preferences and taking a formal vote at the next meeting,

clarified that Mr. Cannizzaro was not expected to prepare a cohesive document for that meeting. Mr. Mishler emphasized that the committee ought to take a formal vote for accountability and transparency.

Chair Vives clarified that the committee had taken a preliminary vote to select the Baltimore Model. Chair Vives motioned to vote on the model to be used moving forward. The committee members voted unanimous in favor of the Baltimore Model.

Chair Vives invited committee members and members of the public to submit comments and suggestions for the CPRB/APD discipline matrix to CPRB Program Manager Michele Andre before the next committee meeting. Chair Vives proposed changing the date of the next meeting and stated that she would circulate proposed dates to the committee.

ADJOURNMENT

There being no further business, the meeting was adjourned at 7:35 p.m.

Respectfully Submitted,

Michele Andre
Program Manager