

	<b>POLICY</b>
	<b>Unit:</b> Investigations
<b>Number:</b>	<b>Title:</b> Disciplinary and Remedial Recommendations
<b>Effective Date:</b>	<b>Supersedes:</b> 3.2.1 (3/1/19)

## Disciplinary and Remedial Recommendations

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### PUBLIC POLICY STATEMENT

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Effective policies ensure compliance with the law, promote the use of best practices, foster integrity and independence in the performance of COPA activities, and provide transparency regarding the procedures and standards for the conduct of those activities.

In accordance with our core values of integrity, independence, timeliness and transparency, the application of recommendations must be based upon a fair and accurate assessment of the nature and scope of the conduct under investigation and must be free of influence by any personal bias or any external factors or concerns. COPA has a duty and responsibility to make recommendations to the Chicago Police Department regarding appropriate disciplinary or remedial action grounded in a fair and accurate reflection of the facts.

Disciplinary recommendations are aimed at enhancing accountability both upon the Department member and the Department as a whole. Remedial action, such as recommendations related to training and officer wellness are aimed at improving future performance.

Although all disciplinary and remedial recommendations made by COPA are subject to review by the Department, such recommendations are not undertaken lightly and will only be made in accordance with this policy.

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### PURPOSE

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This policy is intended to outline the procedure by which COPA will arrive at disciplinary and remedial recommendations arising from COPA investigations, and to ensure that, consistent with Department directives and applicable collective bargaining agreements, all recommendations are consistently applied in a fair, thorough, and timely fashion based on the nature of the conduct.

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**DEFINITIONS**

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<b>Term</b>	<b>Meaning</b>
Disciplinary History	A listing of disciplinary investigations resulting in sustained findings and subsequent disciplinary or employment actions taken by the Department.
Complimentary History	A record of complimentary communications from the public received by COPA and the Department expressing appreciation for professionalism, distinguished conduct, or other acts bringing credit to a Department member and the Department, as well as awards and commendations issued to the member by the Department.
Findings	<p>At the conclusion of an investigation, COPA will make an assessment as to whether there is sufficient evidence to prove or disprove the alleged misconduct. COPA categorizes its findings as follows:</p> <ul style="list-style-type: none"><li>• Sustained – where it is determined the allegation is supported by a preponderance of the evidence;</li><li>• Not Sustained – where it is determined there is insufficient evidence to prove the allegations by a preponderance of the evidence;</li><li>• Unfounded – where it is determined by clear and convincing evidence that an allegation is false or not factual; or</li><li>• Exonerated – where it is determined by clear and convincing evidence that the conduct described in the allegation occurred, but it is lawful and proper.</li></ul> <p>For the purposes of COPA’s investigations:</p> <ul style="list-style-type: none"><li>• A ‘preponderance of evidence’ is evidence indicating that it is more likely than not that the alleged misconduct occurred. If the evidence establishes that it is more likely that the misconduct occurred, even by a narrow margin, then the preponderance of the evidence standard is met.</li><li>• ‘Clear and convincing evidence’ is a higher standard than a preponderance of the evidence but lower than the ‘beyond a reasonable doubt’ standard required to convict a person of a criminal offense. ‘Clear and convincing evidence’ is a degree of proof, which, considering all the evidence in the case, produces the firm and abiding belief that it is highly probable that the allegation is true.</li></ul>
Non-Disciplinary Intervention	<p>Including, but not limited to, the following Department provided personnel support services:</p> <ul style="list-style-type: none"><li>• <i>Professional Counseling Division/Employee Assistance Program</i> – Confidential counseling services provided to Department members or their families for personal difficulties which may impact their personal and professional lives.</li><li>• <i>Training</i> – Intended to develop policing skills, enhance leadership abilities, and promote a solid ethical foundation to all Department members.</li><li>• <i>Behavioral Intervention System</i> – Intended to serve as an early identification system, based on review of Department records, including prior disciplinary investigation outcomes, to correct troublesome behavioral characteristics or conduct contrary to the goals of the Department. Placement in the</li></ul>

	<p>Behavioral Intervention System may also include enrollment in other non-disciplinary intervention actions.</p> <ul style="list-style-type: none"> <li>• <i>Personnel Concerns Program</i> – A structured program of supervision designed for an employee that has been identified as having difficulties affecting the member’s competency. The Department attempts to intervene in an employee’s problems, behavior, or performance issues that, without assistance, may lead to severe disciplinary measures or separation from the Department.</li> <li>• <i>Physical and/or Psychological Fitness for Duty Evaluation</i> – Examinations intended to determine whether a Department member exhibits required physical stamina and psychological stability to properly perform all required duties.</li> </ul>
Victim Impact Statement	<p>A written or oral statement that describes the emotional, physical, and financial impact a complainant, victim, witness or others have suffered as a result of interactions with the Department and its members, or experience with the police accountability system, and may include information regarding desired investigative outcomes.</p>

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## POLICIES

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### I. RECOMMENDING DISCIPLINARY AND REMEDIAL ACTION

- A. Pursuant to Section 2-78-120(l) of the Municipal Code of Chicago, the Chief Administrator of COPA has the duty and responsibility to recommend to the Superintendent of the Department, with respect to incidents within COPA’s jurisdiction, appropriate disciplinary or other remedial action against members of the Department found to be in violation of any applicable Department rules, including rules related to the duty to provide truthful information regarding the officer’s own conduct and the conduct of others, and the duty to report the misconduct of others.
  1. Recommended disciplinary action may include reprimand, suspension, or separation.
  2. Recommended non-disciplinary remedial action, or Non-Disciplinary Intervention, may include, but is limited not to, reassignment, additional training, or counseling.
    - a. Non-disciplinary remedial action may be recommended during the pendency of an investigation.
    - b. Non-disciplinary remedial action may be recommended in lieu of, or in addition to, discipline. Recommendations for non-disciplinary remedial action may be accompanied by a finding that a violation has occurred, though considering the nature of the violation, a recommendation of discipline is not merited (*see* III(C) below regarding Sustained – Violation Noted, No Disciplinary Action).
- B. When an allegation of misconduct contains multiple separate potential policy violations, all applicable violations will be identified and investigated. Exoneration for the most serious allegations of misconduct will not preclude the recommendation of discipline, training, or

other corrective measures for less serious misconduct stemming from the same set of allegations.

## **II. FACTORS TO BE CONSIDERED WHEN DETERMINING AN APPROPRIATE DISCIPLINARY OR REMEDIAL ACTION**

A. 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.

B. The Investigations Section will also take into account mitigating and aggravating factors when considering an appropriate disciplinary recommendation, including but not limited to:

<b>Mitigating Factors</b>	<b>Aggravating Factors</b>
<ul style="list-style-type: none"><li>• Timely self-reporting</li><li>• Efforts to remedy the misconduct</li><li>• Acknowledgement of wrongdoing</li><li>• Acceptance of responsibility</li><li>• Complimentary history (including training history)</li><li>• Unintentional or inadvertent misconduct</li><li>• Limited length of service/experience</li><li>• Prior disciplinary history (absent or materially limited)</li><li>• Conduct aligning with training expectations conveyed to the member by the Department</li></ul>	<ul style="list-style-type: none"><li>• Position/rank/supervisory status</li><li>• Length of service/experience</li><li>• Failure to accept responsibility</li><li>• Efforts to conceal misconduct and/or conduct that suggests a lack of candor and serves to erode public trust</li><li>• Efforts to influence witnesses</li><li>• Retributive or retaliatory conduct</li><li>• Victim is a member of the public</li><li>• Whether misconduct caused injury</li><li>• Whether misconduct exposed Department to civil liability</li><li>• Prior disciplinary history (substantial or material)</li><li>• Prior warnings</li><li>• Vulnerability of the victim</li><li>• Evidence of unlawful bias, including but not limited to, discriminatory actions on the basis of race, color, ethnicity, religion, homeless status, national origin, immigration status, gender identity or expression, sexual orientation, socio-economic class, age, disability, incarceration status, or criminal history</li><li>• Disregard for training expectations conveyed to the member by the Department</li></ul>

1. A Department member's disciplinary history may only be used as permitted by applicable collective bargaining agreements.
  - a. As applicable, COPA will consider a Department member's behavior based on available training records and disciplinary history, including complaints in which allegations were not sustained, as permitted by law and any applicable collective bargaining agreements. Prior not-sustained allegations, when considered in the aggregate, may identify a pattern and can provide insight on investigations.
- C. In fashioning a recommendation, COPA may consider a victim impact statement or information provided by a complainant or any other person impacted by the misconduct.
  1. COPA will accept, and include in the investigative file, statements or information provided in writing by the impacted individual or made orally and memorialized by COPA through transcripts or audio recordings.
- D. Each sustained finding contained within a Department member's disciplinary history will be considered by COPA for the purposes of recommending discipline for a subsequent sustained finding for a period of up to five years after the date of the incident or the date on which the violation is discovered, whichever is later.

### **III. APPROVAL OF RECOMMENDATIONS FOR DISCIPLINARY OR REMEDIAL ACTION**

- A. Upon submission of an investigation for closure, the Investigations Section will include a narrative in the draft Final Summary Report of Investigation addressing the factors outlined in II above fairly, thoroughly, and without personal bias.
- B. Upon review of the draft Final Summary Report of Investigation, the Chief Administrator (or 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.
  1. The Chief Administrator (or designee) may also convene a meeting with the assigned investigative team, Investigations Section leadership, and other COPA staff, such as members of COPA's Legal Unit, as appropriate, to obtain additional feedback and relevant background information to ensure a fair and accurate assessment of the nature and scope of the misconduct.
- C. Findings of Sustained – Violation Noted, No Disciplinary Action:
  1. COPA may only reach a finding and recommendation of Sustained – Violation Noted, No Disciplinary Action where the misconduct was the result of an unintentional, but not reckless, violation of policy or law.
  2. COPA will not reach a finding and recommendation of Sustained – Violation Noted, No Disciplinary Action in an investigation in which the conduct resulted in injury to any person.

#### IV. EQUITY AND CONSISTENCY

- A. COPA will conduct annual reviews of sustained findings – including but not limited to the mitigating and aggravating factors considered – to evaluate whether the level of discipline recommended is:
1. applied without regard for the race of the complainant or the race of the involved Department member(s);
  2. applied consistently in a fair, thorough, and timely fashion based on the nature of the misconduct; and
  3. applied consistently across Department districts.
- B. Subject to data availability, COPA may conduct annual reviews of sustained findings based on the criteria in IV(A)(1-3) relative to additional classifications, including but not limited to, religion, age, physical or mental disability, gender, gender identity, or sexual orientation.
- C. COPA's Policy, Research and Analysis Division will make recommendations for improvement and corrective action to the Chief Administrator if disciplinary and remedial recommendations appear inconsistent based on the criteria in IV(A)(1-3) and IV(B).
- D. To guide the deliberative process in developing recommendations for disciplinary and remedial action, COPA will consider outcomes from comparable cases and previously issued recommendations to inform subsequent recommendations in the interest of equity and consistency.
- E. COPA will, to the extent available, collect and retain the following data in a searchable and sortable format: the race, ethnicity/national origin, religion, age, disability, gender, and sexual orientation of the complainant, victim, and involved Department members; the mitigating and aggravating factors considered; the disciplinary recommendations made by the Investigations Section; and the final disciplinary and/or remedial recommendation adopted by COPA.

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#### EXCEPTIONS

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N/A

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#### RELATED INFORMATION

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<u>Title</u>	<u>Type</u>
Final Summary Report	<a href="#">COPA Policy</a>
Mediation	<a href="#">COPA Policy</a>
Superintendent Non-Concurrence	<a href="#">COPA Policy</a>
Training and Disciplinary Records	<a href="#">COPA Policy</a>
Modified Summary Report of Investigation	<a href="#">COPA Template</a>
Summary Report of Investigation	<a href="#">COPA Template</a>

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**ADDITIONAL SEARCH OPTIONS**

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Proceed to [Next Section Description]	<a href="#">[LINK]</a>
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