

**SUMMARY REPORT OF INVESTIGATION**

Date/Time/Location of Incident:	October 29, 2018 / 11:00 am / 8505 S. Ingleside Ave., Chicago, IL 60619 (Arthur R. Ashe Jr. Elementary School).
Date/Time of COPA Notification:	October 29, 2018 / 3:50 pm.
Involved Member #1:	Field Training Officer Mark Johnson / Employee ID# [REDACTED] / DOA: September 24, 2007 / Unit: 006/376 / Male / Black. <sup>1</sup>
Involved Individual #1:	[REDACTED] / Male / Black. <sup>2</sup>
Case Type:	05C – Excessive Force

**I. ALLEGATIONS**

Member	Allegation	Finding / Recommendation
FTO Mark Johnson	1. Pressing your thumbs against the temples of [REDACTED] head, without justification. 2. Poking [REDACTED] in the chest, without justification. 3. Pushing [REDACTED] into a chair, without justification. 4. Directing profanity at [REDACTED] using words to the effect of “I will use pressure points to make you shit on yourself.”	Sustained / 366-day suspension. Sustained / 366-day suspension. Sustained / 366-day suspension. Sustained / 366-day suspension.

**II. SUMMARY OF EVIDENCE**

Mr. [REDACTED] an eight-year-old third grade student, was finishing his lunch in the cafeteria of Arthur R. Ashe Jr. Elementary School (AES) when he engaged in a quasi-confrontational interaction with another student.<sup>3</sup> The interaction drew FTO Johnson’s attention causing him to approach and interact with [REDACTED]. During this interaction FTO Johnson instructed [REDACTED] to return to his seat and [REDACTED] complied. Once [REDACTED] was seated, FTO Johnson

<sup>1</sup> During this incident FTO Johnson was working secondary employment position as a Chicago Public Schools Security officer and was not on-duty with the Department.

<sup>2</sup> [REDACTED] was an 8-year-old juvenile, at the time of the incident. Ms. [REDACTED] participated in [REDACTED] statement to COPA and signed the affidavit on his behalf.

<sup>3</sup> It is unclear what exactly this interaction was. [REDACTED] described it as another student invading his personal space. FTO Johnson described it as [REDACTED] bullying another student. However, surveillance footage depicts [REDACTED] and others student moving seats while at the lunch table. Att. 51 at 11:21:26

approached ██████ bent down, and extended his arms towards ██████ head.<sup>4</sup> As FTO Johnson stood up, ██████ grasped his own head and doubled over.<sup>5</sup> FTO Johnson then stepped away from ██████ but remained in the general vicinity. ██████ then began to slide down the table bench away from FTO Johnson.<sup>6</sup> As the remaining students prepared to leave the cafeteria ██████ joined them; however, FTO Johnson directed ██████ to return to his seat. ██████ again complied but again slid away from FTO Johnson on the bench. FTO Johnson again approached ██████ bent down, and extended his arms towards ██████ head.<sup>7</sup> As FTO Johnson moved away from ██████ again grasped his own head and doubled over.<sup>8</sup> After approximately 15-seconds, FTO Johnson grabbed ██████ by his right arm and returned him to a seated position. Once ██████ is in a seated position, FTO Johnson sat on the bench across from ██████ and engaged him in conversation. After approximately 2-minutes of conversing, ██████ stood and FTO Johnson responded by pushing and/or poking ██████ on the chest to direct him back into a seated position.<sup>9</sup> FTO Johnson returned to a seated position across from ██████ and conversed with him more. FTO Johnson then escorted ██████ from the cafeteria.<sup>10</sup>

During statements to COPA,<sup>11</sup> the Department,<sup>12</sup> and the Illinois Department of Children and Family Services (DCFS)<sup>13</sup> ██████ relayed that after finishing he lunch,<sup>14</sup> he disposed of his food waste. Upon returning to his table, he discovered there was additional waste that needed to be discarded. ██████ disposed of the additional waste and returned to his table. Upon return to the table, another student began to encroach on ██████ personal space. ██████ attempted to move his chair away from the student when FTO Johnson observed ██████ actions and instructed him to remain in his seat. ██████ did not comply with FTO Johnson's instructions and continued to move from his seat. FTO Johnson and ██████ then engaged in a verbal argument during which ██████ and FTO Johnson debated ██████ action, FTO Johnson directed profanities at ██████ "poked" him in the chest, applied pressure to both of his temples and threatened to use pressure point to cause ██████ to defecate on himself.<sup>15</sup> After the encounter ██████ reported the incident with FTO Johnson to school administration who dismissed his complaint and sent him to class. ██████ was clear his interaction with FTO Johnson occurred after all the other students in the cafeteria had left and that it was just ██████ and FTO Johnson in the room. ██████ explained that after FTO Johnson pressed on his temples he was in pain and sad.<sup>16</sup>

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<sup>4</sup> *Id.*, at 11:20:24. As the interaction between FTO Johnson and ██████ occurred, multiple students are behaving in the same manner as ██████ all of which is consistent with the conduct of 8-year-olds; however, FTO Johnson only directs his attention to ██████

<sup>5</sup> *Id.* at 11:20:24.

<sup>6</sup> *Id.* at 11:20:55.

<sup>7</sup> *Id.* at 11:27:15.

<sup>8</sup> *Id.* at 11:27:24.

<sup>9</sup> *Id.* at 11:29:03

<sup>10</sup> *Id.* at 11:30:39.

<sup>11</sup> Atts 13 and 54.

<sup>12</sup> Att. 11, pg. 6. The Department closed their investigation after determining no criminal acts occurred. *Id.* at 7.

<sup>13</sup> Att. 22, pg. 18. DCFS closed their investigation as unfounded after determining there "was no credible evidence found to substantiate the allegation" and noted that ██████ reported she would be home schooling ██████ but at the conclusion of the investigation he remained enrolled at AES. *Id.*, pgs. 11 and 13.

<sup>14</sup> Lunch was in the cafeteria of AES.

<sup>15</sup> ██████ specifically alleged that FTO Johnson stated words to the effect of "I know pressure points that will make you shit on yourself." Att. 54, pg. 17.

<sup>16</sup> Medical Records detail that ██████ presented to Jackson Park Hospital with complaints of headache and sternal pain. Additionally, the records detail that ██████ refused treatment by the hospital. Att. 25, pg. 11.

During statements to COPA,<sup>17</sup> the Department<sup>18</sup> and DCFS,<sup>19</sup> FTO Johnson denied making physical contact with ████████ temples<sup>20</sup> but did acknowledge that he pushed ████████ back to his seat.<sup>21</sup> FTO Johnson admitted to discussing pressure points with ████████ but denied threatening to use the techniques on him.<sup>22</sup> FTO Johnson also described ████████ as a known discipline issue that he has had to address before.<sup>23</sup>

### III. LEGAL STANDARD

For each Allegation COPA must make one of the following findings:

1. Sustained - where it is determined, by a **preponderance of the evidence**, that the allegation in fact occurred;<sup>24</sup>
2. Unfounded - where it is determined, by **clear and convincing evidence**, that an allegation is not supported by the facts;<sup>25</sup>
3. Exonerated - where it is determined, by clear and convincing evidence, that the conduct described in the allegation occurred, but it is lawful and proper; or
4. Not Sustained - where there is insufficient evidence to sustain, unfound or exonerate the allegations.

### IV. ANALYSIS AND CONCLUSION

COPA finds all the Allegations, that FTO Johnson applied pressure to ████████ temples, poked ████████ in the chest, pushed ████████ into his seat, and directed profane threats at him, are **sustained**. Department members are permitted to use force to overcome resistance.<sup>26</sup> However, the member must have justification for applying the force. Additionally, members are prohibited from displaying or engaging in “disrespect to or maltreatment of any person, while on or off duty”,<sup>27</sup> and “engaging in any unjustified verbal or physical altercation with any person, while on

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<sup>17</sup> Atts. 42, 45, 52 and 53.

<sup>18</sup> Att. 11, pgs. 6 and 7.

<sup>19</sup> Att. 22, pg. 23.

<sup>20</sup> Att. 52, pgs. 32 and 39; Att. 53, pg. 29.

<sup>21</sup> Att. 52, pgs. 18, 20, 34 and 35; Att. 53, pgs. 24 to 25 and 29.

<sup>22</sup> Att. 52, pgs. 22 and 30; Att. 53, pgs. 28 and 30.

<sup>23</sup> FTO Johnson was not able to provide any specific instances of ████████ being a disciplinary problem. Att. 52, pg. 34; Att. 53, pgs. 7 and 12.

<sup>24</sup> **Preponderance of evidence** is described as evidence indicating that it is more likely than not that the conduct occurred and violated Department policy. If the evidence gathered in an investigation establishes that it is more likely that the misconduct occurred, even if by a narrow margin, then the preponderance of the evidence standard is met. *See Avery v. State Farm Mutual Automobile Insurance Co.*, 216 Ill. 2d 100, 191 (2005).

<sup>25</sup> **Clear and convincing evidence** is described a more that preponderance of the evidence but lower than beyond-a-reasonable doubt required to convict a person of a criminal offense. Clear and Convincing is described as a “degree of proof, which, considering all the evidence in the case, produces the firm and abiding belief that it is highly probable” there was no misconduct. *See People v. Coan*, 2016 IL App (2d) 151036 (2016).

<sup>26</sup> *See* G03-02-01 generally.

<sup>27</sup> Article V, Rule 8 of Rules and Regulations of the Chicago Police Department.

or off duty”<sup>28</sup> Additionally, Department members are required to “treat all persons with courtesy and dignity which is inherently due every person as a human being” and do so while “speak[ing] ... in a professional manner and maintain[ing] a courteous attitude in all contacts with the public.”<sup>29</sup>

Here, FTO Johnson denied ever placing his hands near or on ████████ temples. However, the surveillance footage of the incident shows, FTO Johnson, on two separate occasions, approach ████████ bend down, extend his arms towards ████████ head, and then retreat. After this occurs ████████ immediately grasps his own head and doubles over. The footage directly corroborates ████████ account of the events, which leads to COPA find his account highly credible. Further, the footage directly refutes FTO Johnson’s assertion that he did not have contact with ████████ head or temple, which leads to COPA find his account less credible. Additionally, since FTO Johnson denied placing his hands near or on ████████ temples, he did not provide any explanation as to why this action would have been reasonable or permissible by policy.

Additionally, FTO Johnson admitted, to COPA, that he “may” have pushed ████████ back in a chair but was not certain and could not provide any explanation that would make his push reasonable or permissible by policy. Again, the surveillance footage of the incident clearly shows, ████████ stands and FTO Johnson push ████████ back to a seated position. The footage, again, directly corroborates ████████ account of the events while confirming that FTO Johnson did in fact push ████████

Further, while COPA was not able to locate audio of the interaction, COPA finds, as discussed above, that ████████ overall account is supported by the evidence while FTO Johnson’s account seems to minimize the interaction. This determination combined with FTO Johnson’s admission that he did discuss the use of pressure points with ████████ causes COPA to find that FTO Johnson more likely than not hurled verbal threats to ████████ while he subjected ████████ to force.

It is for these reasons, COPA finds that FTO Johnson’s actions violated Department policy and Rules 2, 3, 6, 8 and 9.

## **V. RECOMMENDED DISCIPLINE FOR SUSTAINED ALLEGATIONS**

### **a. FTO Mark Johnson**

#### **i. Complimentary and Disciplinary History**

FTO Johnson has received 57 various awards and has no disciplinary history for the last 5-years.

#### **ii. Recommended Penalty**

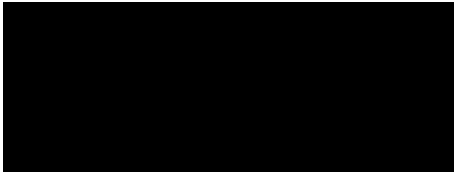
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<sup>28</sup> Article V, Rule 9 of Rules and Regulations of the Chicago Police Department.

<sup>29</sup> G02-01 III (B), Human Rights and Resources (effective October 15, 2017 to current); G02-04 II (C), Prohibition Regarding Racial Profiling and Other Bias Based Policing (effective December 1, 2017 to current).

FTO Johnson is an adult while [REDACTED] was only 8 years old at the time of the incident. This age difference coupled with a significant size difference created a a power dynamic that favored FTO Johnson. Despite this dynamic, FTO Johnson quickly resorted to a physical form of discipline by applying pressure to [REDACTED] temples and forcefully return [REDACTED] to a seated position all while making profane threats. Finally, FTO Johnson did not acknowledge his misconduct and in fact attempted to obfuscate his actions while claiming [REDACTED] was a known disciplinary issue. It is for these reasons, combined with FTO Johnson’s history that COPA recommends he receive a minimum suspension of **366 days**.

Approved:



7/6/2022

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Matthew Haynam  
*Deputy Chief Administrator – Chief Investigator*

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Date