

**BEFORE A MEMBER OF THE POLICE BOARD
OF THE CITY OF CHICAGO**

IN THE MATTER OF THE)	
RECOMMENDATION FOR DISCIPLINE OF)	No. 22 RR 25
FIELD TRAINING OFFICER MARK JOHNSON,)	
STAR No. 8781, DEPARTMENT OF POLICE,)	(CR No. 1091556)
CITY OF CHICAGO.)	

REQUEST FOR REVIEW

On December 12, 2022, the Executive Director of the Police Board of the City of Chicago received from the Chief Administrator of the Civilian Office of Police Accountability a request for review of the Chief Administrator’s recommendation for discipline of Field Training Officer Mark Johnson, Star No. 8781, arising out of the investigation of Complaint Register No. 1091556 (“Request for Review”).

The investigation stems from an incident on October 29, 2018, involving an elementary school student and Officer Johnson that took place at the school while Officer Johnson was off duty and working a second job as a Chicago Public Schools security officer. Following the conclusion of the investigation, the Chief Administrator issued a recommendation for discipline of Officer Johnson. The Superintendent of Police did not agree with the Chief Administrator’s recommendation and proposed less discipline for Officer Johnson.

The Chief Administrator recommended that the following allegations against Officer Johnson be *Sustained*:

On or about October 29, 2018, at approximately 11:00 a.m., at Arthur R. Ashe Jr. Elementary School, 8505 South Ingleside Avenue, in Chicago, Officer Johnson:

1. Pressed his thumbs against the temples of [the student’s] head without justification;
2. Poked [the student] in the chest without justification;

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3. Pushed [the student] into a chair without justification; and
4. Directed profanity at [the student], using words to the effect of “I will use pressure points to make you shit on yourself.”

The Chief Administrator recommended that Officer Johnson be suspended from the Chicago Police Department for a period of three hundred and sixty-six (366) days.

The Superintendent disagreed with the Chief Administrator’s recommendation for discipline of Officer Johnson. The Superintendent proposed that Officer Johnson be suspended for a period of three hundred and sixty-five (365) days (the Superintendent agreed that Allegation Nos. 1 – 4 be *Sustained*).

According to the Certificate submitted by the Chief Administrator: (1) the Chief Administrator issued the recommendation for discipline on July 6, 2022; (2) the Chief Administrator received the Superintendent’s written response on October 4, 2022; (3) the Chief Administrator’s designees met with the Superintendent’s designees and concluded their discussion of this matter on December 2, 2022; and (4) the Request for Review was sent via email to the Executive Director of the Police Board on December 12, 2022.

The Executive Director of the Police Board prepared and forwarded the Request for Review file to Paula Wolff, the member of the Police Board who was selected on a random basis, pursuant to Article VI of the Police Board’s Rules of Procedure (“Reviewing Member”). The Reviewing Member reviewed the Request for Review pursuant to Section 2-78-130(a)(iii) of the Municipal Code of Chicago and Article VI of the Police Board’s Rules of Procedure. Following her initial review of this matter on December 24, 2022, the Reviewing Member requested, received, and reviewed a surveillance video recording of the incident.

OPINION

What a difference a day makes.

This is a case in which the Superintendent and the Civilian Office of Police Accountability (COPA) agree about the sustained allegations against Field Training Officer (FTO) Mark Johnson, which are described by COPA as “egregious” and include applying force without justification, using profanity, and treating an eight-year-old child in a manner which was neither professional nor courteous, in violation of Chicago Police Department rules. Johnson is an adult who, despite his age difference, his size, and position of authority, still resorted to physical force and intimidation, including using profanity against the child. He then did not acknowledge his misconduct but attempted to blame the child for the interaction.

COPA recommends a 366-day suspension, while the Superintendent did not concur with this recommended sanction and recommends a 365-day suspension.

According to the Chicago Municipal Code, when the Superintendent and COPA disagree on a case of this magnitude, one member of the Police Board, whose name is selected from a randomly-generated list, is asked to review the evidence and the recommendations. The Board member then must decide whether the Superintendent has provided sufficient proof or argument to overcome the COPA recommendation. If, in the member’s judgment, the Superintendent has not done so, the full Board will have the opportunity to hear evidence provided by a full administrative hearing and then render a decision.

In this instance, the disagreement between the Superintendent and COPA is whether FTO Johnson’s suspension is a year or a year and a day. The Superintendent appears to argue that COPA is wrong in its recommendation by relying on a recent case (Officer Levon London, CR No. 2022-2202) in which the officer was sanctioned with a 180-day suspension for hitting an

individual several times with a baton and punching him in the face. The Superintendent contrasts this with the Johnson case, with the argument that this officer used his hands but there was the aggravating factor that this happened in a school where the child “should feel safe.” He then concludes that more than doubling the London penalty to 365 days is an appropriate “substantial suspension.” In my opinion, the Superintendent has not met the burden of overcoming the recommendation of COPA with this argument. The Board should hear the case, weigh the full evidence, have the benefit of legal representation on both sides of the case, the guidance of a talented hearing officer, and exercise the collective judgment of its members to determine the appropriate punishment.

While the one-day difference may seem minimal to some, it is important for several reasons, the most important of which is that Officer Johnson will be removed from duty for an extra day. The impact of Board decisions on each individual police officer is important. The decisions also provide guidance to all police officers about the standards of conduct expected from them by the members of the Board—reflecting what the public should expect as appropriate police conduct-- which are described in the written decisions the Board issues.

In this instance, both the Superintendent and COPA include in their materials arguments that go beyond the impact that this sanction will have on one officer. The Superintendent argues that his recommended penalty is a “substantial suspension” and that COPA’s recommendation is “problematic” and “an attempt to circumvent FTO Johnson’s contractual rights” because the case would go to the Police Board, “as opposed to the 365-day suspension, which would be subject to arbitration.” This, he says “radically alter[s] the trajectory this disciplinary matter would take.”

In response, COPA argues that the Superintendent’s disagreement with COPA is about “merely” one day and points out that the Superintendent has provided no evidence that the

trajectory of the case will be altered because it would be heard by the Board. COPA further argues that the Board process includes protections of the officer's due process rights and that the open hearings of the Board provide accountability in the disciplinary process and is intended to increase public trust by permitting public access to the hearing and by posting findings on the Board's website. The transparency of the process, according to COPA, is "of fundamental importance to building police-community relations" in Chicago and that the Superintendent's suggestion of "unfairness" does not satisfy his burden of overcoming COPA's recommendation.

I am ruling that this case come to the full Board because the Superintendent has not met the burden to overcome COPA's recommendation by justifying the one-day difference. The comparison to the London case is not persuasive because the London and Johnson cases are so different, especially the fact that Johnson was not in danger at any time and the object of his unprofessional conduct was an eight-year-old. He also did not take responsibility and tried to blame the child. In addition, the Superintendent has failed to show how COPA's recommendation violates any contractual rights. Nothing in the Municipal Code or the union contract prohibits COPA from recommending a 366-day suspension.

What is troubling about this disagreement is that two entities responsible for creating and sustaining a strong accountability system in Chicago, guided by the Consent Decree, seem to be radically at odds about how the system should function. When they both agree on the substance of the case and the need for a substantial punishment, but are arguing not about the import of the punishment, but about the venue in which the case should be heard, that suggests that the process is more about creating adversarial positions than about having the accountability system make sense to the public and create confidence that all the players in the system recognize its importance in creating a police department which protects its officers' rights at the same time it

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assures the public that police conduct conforms with the rules of the department and the principles and conditions of the Consent Decree—designed to establish an impartial and effective accountability system. The negotiation between CPD and COPA about this case began on July 6, 2022. There were several procedural steps, intended to permit the two entities to come to agreement about how to dispose of this case in a fair and equitable manner consistent with appropriate accountability norms, yet they end up disagreeing, seemingly because of where the case should be heard. It is disappointing that the agencies can agree completely on the substance of the case and disagree by one day about the punishment because they disagree so strongly on the process by which serious allegations of police misconduct should be decided.

For the reasons set forth above, and pursuant to Section 2-78-130(a)(iii) of the Municipal Code of Chicago, the Chief Administrator’s recommendation for discipline of Field Training Officer Mark Johnson, Star No. 8781, shall be deemed accepted by the Superintendent.

DATED AT CHICAGO, COUNTY OF COOK, STATE OF ILLINOIS, THIS 29th DAY OF DECEMBER, 2022.

/s/ PAULA WOLFF
Vice President

Attested by:

/s/ MAX A. CAPRONI
Executive Director