



CITY OF CHICAGO

CHICAGO POLICE BOARD

ALLEGATIONS OF POLICE MISCONDUCT: A GUIDE TO THE COMPLAINT AND DISCIPLINARY PROCESS 1 April 2021

The process for addressing allegations of misconduct by sworn officers of the Chicago Police Department (CPD) is carried out by several independent City agencies, each of which has a different role. This guide summarizes how complaints of misconduct are received and investigated, and then describes the role of the Police Board.

The Civilian Office of Police Accountability (COPA), CPD, and the Police Board have different powers and duties. The responsibility to receive complaints of alleged misconduct by sworn officers rests with COPA (any member of the public who has a complaint about the conduct of a Chicago police officer should file it with COPA—go to ChicagoCOPA.org for more information). Depending on the nature of the allegations, either COPA or CPD investigates the complaint; in certain instances, the complaint is referred for investigation to the City's Office of Inspector General (OIG).

At the conclusion of an investigation, and once the Superintendent files charges, the Police Board's role is to decide those disciplinary matters that are filed with the Board. The Board cannot on its own reach out and investigate or hold a disciplinary hearing against a police officer suspected of misconduct; rather, the Board can take action only after the Superintendent of Police files charges against an officer. The Board understands the concerns and frustrations that people may have about police misconduct, but is legally obligated to remain neutral and fair, just as is expected of a judge in court.

A Complaint is Received and Investigated

As noted above, COPA is responsible for receiving all complaints of alleged misconduct made against an officer. In addition to a member of the public filing a complaint, CPD personnel, including supervisors, may file a complaint against an officer.

Investigation of Complaints

Once a complaint is received, an investigation is initiated. COPA is responsible for conducting investigations into allegations of the following types of misconduct:

- excessive force;
- domestic violence;
- coercion;
- bias-based verbal abuse;
- improper search or seizure; and
- unlawful denial of access to counsel.

COPA also investigates certain incidents even if no allegation of misconduct has been made, including all incidents where: (1) a CPD member discharges a firearm in a manner that could potentially strike someone, or discharges a stun gun or taser in a manner that results in death or serious bodily injury; and (2) a person dies or sustains a serious bodily injury while detained or in police custody, or as a result of police actions.

Complaints concerning types of alleged misconduct other than those within COPA's jurisdiction are referred to CPD's Bureau of Internal Affairs (BIA) for investigation. Allegations investigated by BIA include but are not limited to criminal misconduct, operational violations, theft of money or property, planting of drugs, substance abuse, residency violations, and medical-roll abuse.

Results of the Investigation

Once the investigation is completed, each allegation against the officer is classified as one of the following:

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

If the head of COPA or BIA (depending on which agency conducted the investigation) recommends that one or more allegations be *sustained*, a recommendation for discipline is submitted to the Superintendent of Police.

The Superintendent must respond to a disciplinary recommendation from COPA within 60 days (this deadline may be extended by an additional 30 days). If the Superintendent proposes no discipline or less discipline than COPA, the Superintendent and the Chief Administrator of COPA must meet to discuss the matter. If the Chief Administrator does not concur with the Superintendent's reasons for the differing disciplinary action, the Chief Administrator shall refer the matter to one member of the Police Board.

The reviewing Police Board member shall then rule on the disagreement between the Chief Administrator and the Superintendent. If, in the opinion of the reviewing member, the Superintendent's response does not meet its burden of overcoming the Chief Administrator's recommendation for discipline, the recommendation shall be deemed to be accepted by the Superintendent. The reviewing member must recuse her/himself from any future involvement with such case by the full Police Board.

The Police Board's Role

Think of the Police Board like a court. The Police Board's role in the disciplinary process is to decide whether the charges brought against an officer are proved by a preponderance of the evidence, and if so, to determine the severity of the discipline that will be imposed against an officer. Whether a case comes to the Police Board depends on the seriousness of the potential discipline recommended.

Discharge Cases

In order to have a sworn officer discharged from the Chicago Police Department, the Superintendent of Police must file with the Board charges against the officer. When charges are filed, the officer is ordinarily suspended without pay pending the outcome of the case. The case is assigned to one of the Board's hearing officers and is placed on the calendar for an initial status hearing. By this first status hearing, the officer (sometimes referred to as the respondent) will usually have obtained legal representation. The officer's attorney and an attorney from the City's Corporation Counsel's office, who represents the Superintendent, engage in discovery and other pre-hearing matters. An evidentiary hearing is then scheduled.

The evidentiary hearing resembles a trial in court, although not as formal. The typical case begins with opening statements. The Superintendent's case against the officer is presented first, followed by the officer's defense. Each party may call and examine witnesses (the Board has its own subpoena power to ensure the presence of witnesses). The opposing party may cross-examine the witnesses. Hearsay is not admissible. Following the officer's case, the Superintendent's attorney has an opportunity to offer rebuttal evidence. The hearing concludes with closing arguments.

The hearing officer presides over the hearing, ruling on objections, receiving evidence, and deciding other legal issues. The proceedings are transcribed by a court reporter and video recorded. The hearings are open to the public.

Once the hearing is completed, the Board members receive a written report from the hearing officer along with the entire transcript of the hearing and the video-recordings. In preparation for their monthly meeting, the Board members thoroughly read and view this material. Meeting in executive session (closed to all except the Board and its staff), the Board receives an oral report from the hearing officer, discusses the case in detail, and directs the hearing officer to prepare a draft of the Board's findings and decision.

By law, the Board must base its findings and decision only on the record of the hearing—that is, sworn testimony and other evidence admitted in the case. The Board uses a two-step process when deciding a case. First, the Board decides whether the officer is guilty of one or more of the charges filed. The officer is considered innocent until proven guilty, and the Superintendent has the burden to prove the charges by a preponderance of the evidence (a less rigorous standard than the beyond-a-reasonable-doubt standard used in criminal cases). Second, if the Board finds the officer guilty of one or more charges, it determines the penalty after considering any evidence presented in mitigation or aggravation, as well as the officer's complimentary and disciplinary histories. The penalty

may be discharge or suspension without pay (in certain types of cases the Board may attach conditions to a suspension, such as treatment for alcohol abuse). If the Board finds the officer not guilty of all charges, the officer is restored to duty and awarded back-pay for the time served under suspension.

In a month after the executive session at which the Board considered the case, the Board takes final action on the case at its public meeting. The Board makes decisions by majority vote—that is, the votes of at least five of the Board’s nine members are required for the Board to take final action. The Board then issues its written findings and decision, which are sent to the Superintendent, the officer, and their attorneys. The findings and decision are posted on the Board’s website within ten business days, as required by the Municipal Code.

Suspension Cases

Under the union contracts currently in effect, the Superintendent has the authority to suspend an officer for up to one year without pay. A police officer who is suspended for a period from thirty-one days through one year may request a Police Board review of the suspension. If the officer makes such a request, the Superintendent is to then file with the Board charges against the officer. The matter will then proceed according to the same rules governing discharge cases (see above).

A police officer who is suspended for 30 days or fewer may request Police Board review of the suspension only if the union decides to not advance a police officer’s grievance to arbitration.

Appeals of Police Board Decisions

A Police Board decision may be reversed only by a court. That is, the Board’s decision is not subject to the Superintendent’s approval, nor may the officer challenge the decision by filing a grievance.

Under Illinois law, the parties to a Police Board case (the Superintendent and the officer) have the right to appeal the Board’s decision by filing a petition for administrative review in the Circuit Court of Cook County. A party dissatisfied with the Circuit Court’s review of a Police Board case may appeal to the Appellate Court of Illinois. Following an adverse ruling at this level, a party may attempt a further appeal to the Supreme Court of Illinois.

More information is available at www.ChicagoPoliceBoard.org