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*Albany Community Police Review Board
c/o Government Law Center*

April 12, 2024

Chief of Police Eric Hawkins
Albany Police Department
165 Henry Johnson Boulevard
Albany, New York 12210

RE: CPRB Response to Chief Hawkins Regarding APD Discipline Matrix

Dear Chief Hawkins:

I am writing on behalf of the Albany Community Police Review Board (CPRB) regarding the Albany Police Department's (APD) proposed changes to the Discipline Matrix. As you are aware, § 42-343 of the City Code requires that we collaborate with you and your Department (along with other stakeholders) to develop a disciplinary matrix that helps create consistency, fairness, accountability, and transparency for imposing discipline for sustained allegations of misconduct. We deeply appreciate your engagement in this collaborative process involving multiple stakeholders and extensive public input, including your most recent suggestions to the Matrix.

We have consulted with our community stakeholders and experts in civilian police oversight. As part of this collaborative process, we are bringing our concerns regarding the proposed changes to your attention in the hopes that we can resolve any potential differences of opinion:

1. Use of "May" in the Discipline Matrix

Throughout the Matrix, the APD suggests using the word "may" instead of "shall," presumably to indicate that the Chief has the sole responsibility and discretion to impose disciplinary action against APD officers. The CPRB recognizes that only the APD Chief can do so, but these changes arguably relieve the Chief from having to specifically consider and analyze the specific steps in the Matrix, including identifying the precise allegations and severity and then recommending or imposing discipline. This suggestion also raised concerns for our community stakeholders, particularly the New York Civil Liberties Union (NYCLU) Capital Region office, as it largely eliminates the clarity, transparency, and strength of the Matrix.

We believe that the following language should be added to address these concerns:

“Discipline shall be imposed in accordance with the Matrix in response to an APD member’s violation of APD policies and/or relevant laws and to convey clear expectations about the consequences of misconduct absent a specific and detailed analysis and reason for departure as outlined by the APD Chief.”

2. Removal of Oral Reprimand

We concur with the removal of oral reprimand from the Matrix, as it is no longer a utilized form of discipline.

3. Consolidation of Multiple Violations from the Same Incident

The last sentence of the “Violation Levels” section, as revised by APD, provides that “[m]ultiple violations from the same incident will be considered separately for disciplinary purposes and may ~~not~~ be consolidated into one violation for purposes of assigning discipline from that incident.” The removal of the word “not” would allow consolidation of multiple violations arising from the same incident, which is the exact opposite of what the working group intended. Allowing for the consolidation of multiple violations can cloud the outcomes of misconduct cases and skew data collection and data reporting processes. By removing this keyword, the department could potentially issue discipline related to minor violations, such as rudeness or discourtesy, rather than in connection with more serious violations, including excessive force. We do not believe this is APD’s intention, so the word “not” should be restored.

4. Departures from the Board’s Recommendations

According to the suggested change and in accordance with § 42-345 of the City Code, the CPRB may request an explanation of APD’s final discipline determination. The CPRB further recommends additional guidelines as to the parameters of this written explanation to ensure transparency and understanding between the CPRB and APD. These guidelines are meant to formalize the written explanation process and set expectations with regard to the level of detail and analysis that must be included in the explanation. Currently, the APD Chief’s Quarterly Report of Disciplinary Investigations and Action generally lacks individualized information about specific cases and aggregate information relating to the department’s decision.

As such, the Board recommends that the following sentence be added to the section titled “Implementation”:

“The written explanations are to include (1) a complete analysis of the misconduct and the steps under the Matrix, and (2) the specific reasons why the Matrix is not being followed in this instance. Written explanations will be delivered no later than 30 days after transmission of the written CPRB request.”

5. Education-Based Discipline (EBD):

The CPRB recommends that the inclusion of Education Based Discipline (EBD) in the Discipline Matrix be tabled at this time. This decision is due, in part, to concerns about the Chief’s insistence that EBD is considered informal discipline. This could skew the determination of violation levels under the Matrix.

We believe the EBD is potentially problematic for multiple reasons. First, it is unclear when EBD can be specifically used since the Matrix only says it can be offered “in some cases.” This appears to be highly discretionary but without specific guidelines, which could lead to overuse.

Second, APD’s proposal eliminates the original statement that “Education-based discipline is a formal disciplinary measure.” Instead, APD’s proposed suggestion says the following: *“If the member consents to the alternative, they would complete training courses as part of the education-based discipline that would remain in the member’s disciplinary record, including the hours spent in training and the topics covered by the training.”*

We believe that this could also allow APD overly broad latitude in the application of discipline, which is antithetical to the principles of clarity, consistency, and transparency for progressive discipline. This language could potentially be inappropriately overused in connection with a variety of violations that reasonably justify stronger discipline for repeated violations.

Third, the current suggestion allows for coursework in lieu of formal discipline even after a third or fourth sustained allegation. For example, if an officer were to commit a second Level II offense, but the first was resolved via EBD, the second offense would be considered a first violation under the Chief’s version of the APD Discipline Matrix since EBD is not a formal discipline. By resolving any violation subject to Loss of Leave Credit/Suspension with EBD, officers who should be on their second or third violation but are only being disciplined for a first violation due to informal discipline are avoiding more serious and appropriate consequences. Under this structure, EBD could be used to become the default way of addressing potentially serious sustained misconduct, which generally undermines the intent of a matrix and the purpose of a disciplinary structure.

The CPRB is guided in this recommendation by similar issues faced by the Los Angeles Sheriff’s Department (LASD). According to the 2013 Special Counsel’s Semiannual Report, the practice was “overbroad and overused,” noting that EBD “does not always draw a bright line between conduct for which there should be zero tolerance and conduct that is amenable to education or retraining.”¹ The report also included statistics on recidivism and the effectiveness of EBD and concluded that “[s]ending members of the Department through multiple rounds of EBD courses will not likely alter behavior as effectively as unpaid suspensions.”²

Due to the potential consequences resulting from the overuse of EBD and allowing officers to potentially skirt progressive discipline, the CPRB recommends that educational opportunities and training are offered to subject officers as part of a more structured model,

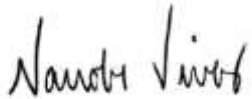
¹ Merrick Bobb et al., 33RD SEMIANNUAL REPORT OF SPECIAL COUNSEL, LOS ANGELES COUNTY SHERIFF’S DEPARTMENT 38 (2013), <https://assets-us-01.kc-usercontent.com/0234f496-d2b7-00b6-17a4-b43e949b70a2/3f477bd5-f619-4b0b-b575-10af8c4fe460/33rd%20Semiannual%20Report.pdf> [hereinafter 2013 Report].

² *Id.* at 49.

wholly separate from the disciplinary structure. Therefore, we are recommending that any discussion regarding EBD be tabled until after our annual review of the Discipline Matrix.

We look forward to discussing these issues with you and working to finalize a Discipline Matrix that will provide clearer guidelines for APD officers. Our collective goal is to promote accuracy, accountability, transparency, and trust within the Albany community. Please contact me at your earliest convenience.

Respectfully yours,

A handwritten signature in black ink that reads "Nairobi Vives". The signature is written in a cursive, slightly slanted style.

Nairobi Vives, Chair
Albany Community Police Review Board

CC: Mayor Kathy Sheehan
Albany Common Council
CPRB Standing Committee on Discipline Matrix



Albany Police Department Discipline Matrix

Updated: July 14, 2023

Effective Date: _____, 2023

Purpose: The Albany Police Department (APD) Discipline Matrix provides a framework for applying discipline in a fair and consistent manner. The APD Discipline Matrix outlines multiple levels of violations and a range of disciplinary actions that may be taken based on the severity of the violation and history of sustained¹ misconduct following a completed investigation by the Office of Professional Standards (OPS) and/or the Community Police Review Board (CPRB). **Discipline is to be imposed in accordance with the below Matrix both in response to an APD member's misconduct in violation of APD policies and relevant laws and to ensure clear expectations about the consequences of misconduct.**

Violation Levels: The Discipline Matrix identifies four levels of violations (Levels I to IV), which range from minor to severe. Each level contains a description and example violations. Disciplinary action is not limited to the list of example violations provided. Any violation that meets the level of the descriptions included below is subject to the corresponding discipline. Multiple violations from the same incident will be considered separately for disciplinary purposes and may **not** be consolidated into one violation for purposes of assigning discipline from that incident.

Determining the Number of Previous Incidents: Any incident for which there was prior sustained misconduct at the same violation level as the incident for which discipline is being imposed counts as a prior violation for purposes of determining whether the incident for which discipline is being imposed is a 1st, 2nd, or 3rd violation. The prior incident shall count as one incident regardless of whether there were multiple counts of sustained misconduct from that incident.

Discipline: Each violation level corresponds with discipline categories (Minor, Moderate, Major, or Severe). The discipline categories follow a progressive trajectory based on the number of incidents and the severity of the misconduct on a scale from minor to severe. In the matrix below, discipline can take the form of punitive, non-punitive, or education-based discipline. Punitive options include written reprimand, loss of leave credit,² suspension,³ demotion, or discharge. Non-punitive options include counseling or training to correct the underlying problem.

The discipline category and subsequent disciplinary **and/or non-disciplinary** action shall be assigned based on several factors, including:

- Intent, including whether the act was committed willfully, for personal gain, or for a retaliatory purpose;
- Past performance, including the member's length of service to APD or complimentary work history;
- Degree of culpability or responsibility, including whether a superior issued a command to perform the act;
- Disciplinary history, including prior violations and non-disciplinary corrective action;
- Truthfulness/untruthfulness;

- Severity of conduct/action;
- Acceptance of responsibility and willingness to be accountable for the conduct; Liability or the effect on APD's operations;
- Jeopardy to public safety;
- Degree to which the act caused or could have caused harm or risk to persons or property;
- Impact on the relationship between APD and the community; and/or
- Multiple violations of the General Orders.

Three or more sustained violations within one category from the incident for which the discipline is to be imposed result in discipline corresponding to the higher category noted in the Discipline Matrix. For example, three or more sustained violations in the Level I category from the same incident result in discipline which corresponds to the Level II category. Some violations can fall under different levels depending on the severity of the member's conduct (e.g. insubordination, harassment, or theft) which may carry more or less severe penalties depending on which category most accurately describes the conduct. Multiple acts of misconduct may result in discharge even though the corresponding category may not recommend discharge. Multiple acts may take place during a single event or multiple events. Prior incidents of misconduct be considered. The APD Chief of Police determine which violation level is appropriate for incidents that occurred prior **and subsequent** to the adoption of this matrix.

Implementation: The CPRB and/or OPS will recommend disciplinary measures from the matrix based on their investigative findings and the factors listed above. The OPS and CPRB may recommend training, transfer, and/or demotion in addition to discipline listed below. The APD Chief of Police is responsible for imposing the discipline. Discipline is intended to be corrective in nature and to impress upon APD members the necessity of proper conduct and performance. In cases where misconduct cannot be corrected by discipline or immediately makes the individual unsuitable for continued employment, discharge must be considered. The APD Chief of Police will make final decisions about discipline. ~~and communicate such decisions, including a description of factors which were considered in the decision-making process, in writing.~~ In the event **that the Department's final determination** departures from the CPRB-recommended discipline in the Discipline Matrix, **the CPRB may request that the APD Chief of Police provide a written explanation of the Department's final determination.**

Albany Police Department Discipline Matrix

Levels of Violations	Number of Incidents	Minor	Moderate	Major
<p>Level I: Minor policy violation, or a violation that has minimal impact on the operations of the department or on the professional image of the APD.</p> <p>Example violations:</p> <ul style="list-style-type: none"> • Clothing or uniform violations⁴ • Improper call handling⁵ • Discourteous conduct with the public⁶ • Dereliction of duty⁷ • Insubordination⁸ • Unsatisfactory performance⁹ • Failure to handle complaints properly¹⁰ 	1st Violation	Oral Reprimand/ Warning	Written Reprimand/ Warning	Loss of Leave Credit (up to 1 work day)
	2nd Violation	Written Reprimand/ Warning	Loss of Leave Credit (up to 1 work day)	Suspension <u>or</u> Loss of Leave Credit (up to 3 work days)
	3rd Violation	Loss of Leave Credit (3 work days)	Suspension <u>or</u> Loss of Leave Credit (3 to 5 work days)	Suspension <u>or</u> Loss of Leave Credit (5 work days)

Levels of Violations	Number of Incidents	Minor	Moderate	Major
<p>Level II: Moderate policy violation or conduct involving a risk to public safety. Conduct with a more than minimal negative impact on the APD's image or operations, affecting relationships with the community.</p> <p>Example violations:</p> <ul style="list-style-type: none"> • Repeated violations from Level I • Violation of Conduct Standards¹¹ • Untruthful statement¹² • Failure to properly utilize body camera and/or dashboard camera equipment (unintentional) • Improper use of less lethal weapons (e.g., taser, sprays, batons)¹³ • Failure to identify (e.g., badge)¹⁴ • Violation of Code of Ethics¹⁵ 	1st Violation	Suspension <u>or</u> Loss of Leave Credit (3 to 5 work days)	Suspension <u>or</u> Loss of Leave Credit (5 to 10 work days)	Suspension <u>or</u> Loss of Leave Credit (up to 10 work days) <u>and</u> Training
	2nd Violation	Suspension <u>or</u> Loss of Leave Credit (5 to 10 work days)	Suspension <u>or</u> Loss of Leave Credit (up to 10 work days)	Suspension <u>or</u> Loss of Leave Credit (up to 15 work days)
	3rd Violation	Suspension <u>or</u> Loss of Leave Credit (up to 10 work days)	Suspension <u>or</u> Loss of Leave Credit (up to 15 work days)	Suspension <u>or</u> Loss of Leave Credit (up to 30 work days)

Levels of Violations	Number of Incidents	Minor	Moderate	Major
<p>Level III Major policy violation or conduct involving a risk to public safety. Conduct that may have a pronounced negative effect on the professional image of the APD and/or on the relationships with the community.</p> <p>Example violations:</p> <ul style="list-style-type: none"> • Repeated violations from Level II • Abuse of position¹⁶ • Abuse of authority and procedure • Lying under oath or perjury • Immoral conduct¹⁷ • Improper excessive force¹⁸ • Failure to intervene¹⁹ • Failure to properly utilize body camera and/or dashboard camera equipment (intentional) • Improper evidence & property handling²⁰ • Failure to cooperate with misconduct investigation 	1st Violation	Suspension <u>or</u> Loss of Leave Credit (up to 30 work days)	Suspension <u>or</u> Loss of Leave Credit (up to 60 work days)	Demotion <u>or</u> Discharge
	2nd Violation	Suspension <u>or</u> Loss of Leave Credit (up to 60 work days)	Demotion <u>or</u> Discharge	Discharge

<p>Level IV: Severe policy violation or conduct involving a risk to public safety. Conduct that has a pronounced negative effect on the professional image of the APD and/or on the relationships with the community.</p> <p>Example violations:</p> <ul style="list-style-type: none"> • Repeated violations from Level III • Violation of civil rights²¹ (unfair treatments, hate crimes²²) • Improper use of lethal weapon²³ • Criminal conduct²⁴ • Harassment of or discrimination against a protected class member²⁵ • Use of racial or ethnic slurs while on duty²⁶ • Bias-based policing²⁷ • Improper excessive force²⁸ 	Severe	
	1st Violation	Discharge/Termination, unless other factors are present which may warrant Suspension

Notes

1. "Sustained" misconduct means that either OPS or the CPRB has found that there was sufficient facts and evidence to prove that misconduct occurred.
2. Leave credit includes paid vacation leave and other applicable time off work.
3. Suspension is unpaid for the first thirty days. Per union contract, the APD member must be included on the payroll after thirty days.
4. Rules of Conduct, City of Albany Police Department General Order (hereafter GO) 2.2.00 (I)(A)(30). The General Orders are publicly available at <https://www.albanyny.gov/869/General-Orders>.
5. Agency Property, GO 3.1.10; Communications: Telephone Procedures, GO 6.1.15.
6. Rules of Conduct, GO 2.2.00 (I)(A)(24).
7. Office of Professional Standards: Duties and Responsibilities, GO 2.4.00 (I)(B)(6).
8. Rules of Conduct, GO 2.2.00 (I)(A)(17).
9. Rules of Conduct, GO 2.2.00 (I)(A)(11).
10. Rules of Conduct, GO 2.2.00 (I)(A)(23).

11. Rules of Conduct, GO 2.2.00.
12. Rules of Conduct, GO, 2.2.00 (I)(A)(46).
13. Use of Force – Less Lethal Weapons, GO 1.3.00.
14. Rules of Conduct, GO 2.2.00 (I)(A)(22).
15. Code of Ethics, GO, 1.1.10.
16. Rules of Conduct, GO 2.2.00 (I)(A)(20).
17. “Immoral conduct” can include harassment and, specifically, sexual harassment. Harassment in the Workplace, GO 2.2.15; City of Albany Policy & Procedure Manual, § 12.1 (2019).
18. Rules of Conduct, GO 2.200 (I)(A)(51)(a).
19. Rules of Conduct, GO 2.2.00 (11)(c)(iv).
20. Asset Seizure and Forfeiture Procedures, GO 2.6.15.
21. Bias-Free Policing, GO 5.1.20 (I)(A)(1); Harassment in the Workplace, GO 2.2.15; City of Albany Policy & Procedure Manual, § 12.1 (2019).
22. Bias Motivated Incidents, GO 3.1.60; Bias-Free Policing, GO 5.1.20 (I)(A)(1).
23. Use of Force – Less Lethal Weapons, GO 1.3.05.
24. “Criminal Conduct” means that the officer has been convicted of a felony or misdemeanor. It does not matter whether the criminal conduct was committed off-duty or on-duty.
25. Bias Motivated Incidents, GO 3.1.60; Bias-Free Policing, GO 5.1.20; City of Albany Policy & Procedure Manual, § 12.1 (2019).
26. Bias Motivated Incidents, GO 3.1.60; Bias-Free Policing GO 5.1.20; City of Albany Policy & Procedure Manual, § 12.1 (2019).
27. Bias Motivated Incidents, GO 3.1.60; Bias-Free Policing, GO 5.1.20; City of Albany Policy & Procedure Manual, § 12.1 (2019).
28. Rules of Conduct, GO 2.200 (I)(A)(51)(a).