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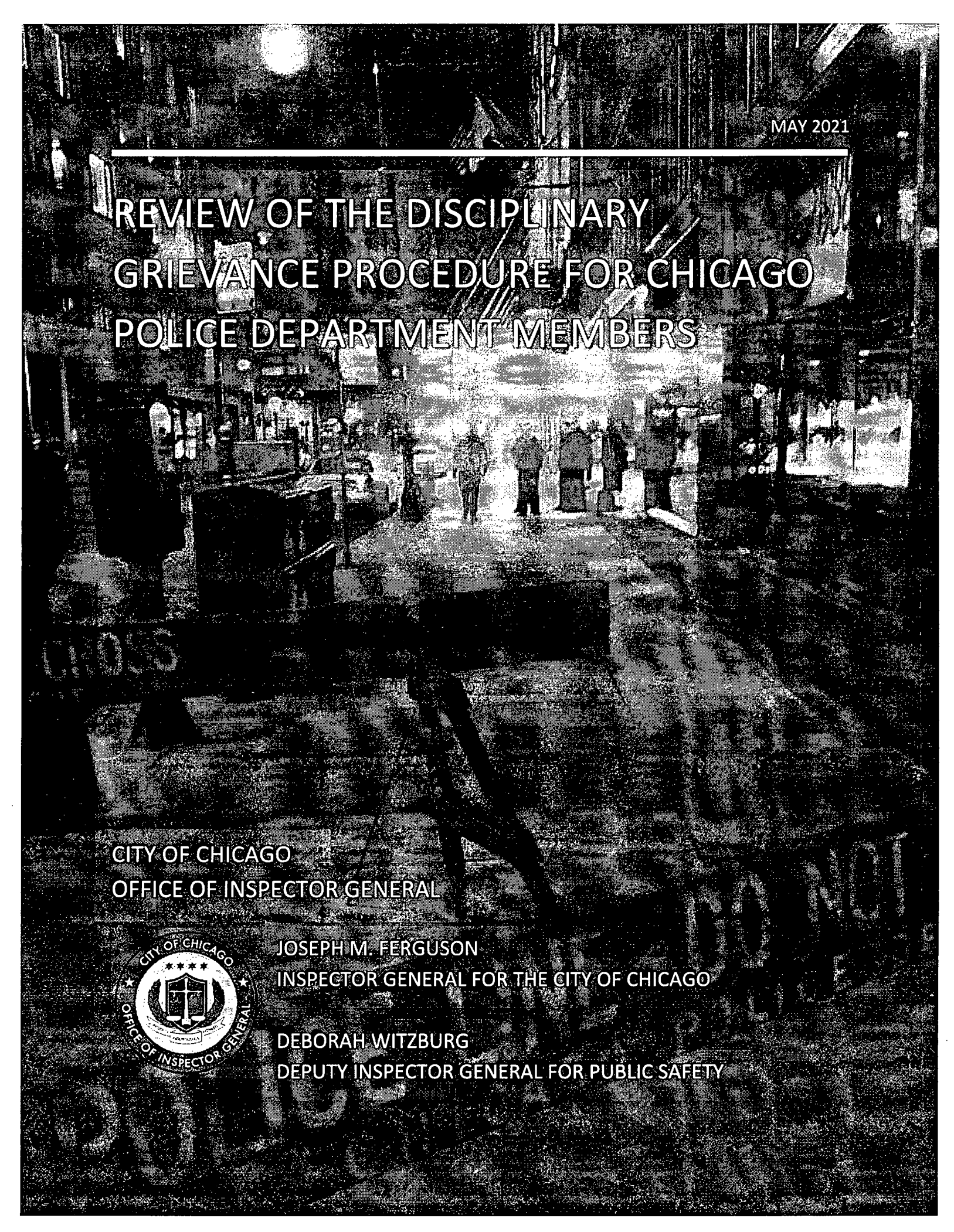

MAY 2021

REVIEW OF THE DISCIPLINARY GRIEVANCE PROCEDURE FOR CHICAGO POLICE DEPARTMENT MEMBERS

CITY OF CHICAGO
OFFICE OF INSPECTOR GENERAL

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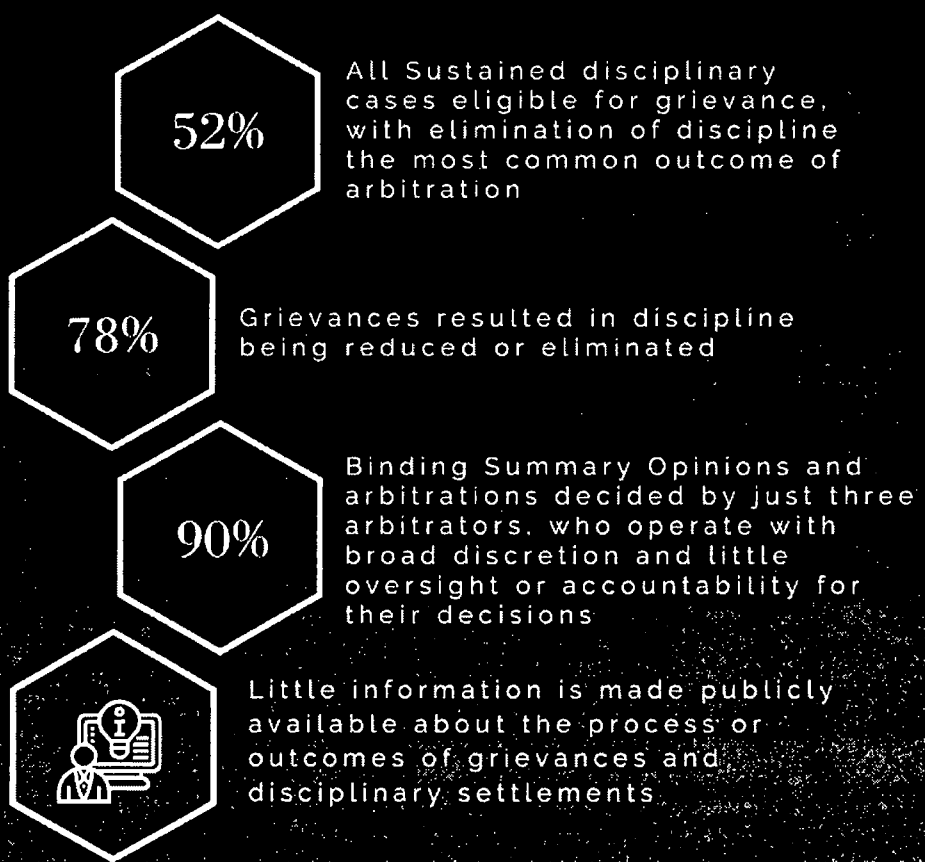
ACRONYMS

BIA	Bureau of Internal Affairs of the Chicago Police Department
BSO	Binding Summary Opinion
CBA	Collective Bargaining Agreement
CCR	Command Channel Review
COPA	Civilian Office of Police Accountability
CPD	Chicago Police Department
DOL	Department of Law
FOIA	Freedom of Information Act
FOP	Fraternal Order of Police
IPRA	Independent Police Review Authority
MCC	Municipal Code of Chicago
MLAS	Management and Labor Affairs Section
OIG	Office of Inspector General
OLA	Office of Legal Affairs
PBPA	Policemen's Benevolent & Protective Association

REVIEW OF THE DISCIPLINARY GRIEVANCE PROCEDURE FOR CHICAGO POLICE DEPARTMENT MEMBERS

CITY OF CHICAGO OFFICE OF INSPECTOR GENERAL

Chicago Police Department (CPD) members facing discipline for allegations of misconduct may have the right to pursue a disciplinary grievance. There are three grievance procedure pathways, depending on the specific discipline and the member's rank. CPD and the relevant union may also settle a grieved case before the formal process is complete, and these settlements can result in reduced or eliminated discipline.



I. EXECUTIVE SUMMARY

The Office of Inspector General (OIG) conducted a review of the Chicago Police Department's (CPD or the Department) disciplinary grievance procedure. When allegations of misconduct are made against a CPD member, the assigned investigating agency determines whether the allegations should be Sustained and, if so, recommend appropriate discipline for the accused member. CPD will then review the investigating agency's disciplinary recommendation.[1] If the Department goes on to issue discipline after this review process, the member facing discipline may have a right to grieve. Sworn members who are covered by union contracts have rights to pursue a disciplinary grievance for some but not all types of discipline issued to them.

The disciplinary grievance procedure is governed by the collective bargaining agreements (CBAs) negotiated between the City of Chicago and each of the unions representing the sworn member ranks of police officer, sergeant, lieutenant, and captain. There are three grievance procedure pathways for CPD sworn members who wish to challenge issued discipline: (1) binding summary opinions (BSO), (2) arbitrations, and (3) Police Board review. The pathways open to a member depend on both the specific discipline issued and the member's rank. CPD and the relevant union may also settle a grieved disciplinary case before the formal process is complete; these settlements can result in reduced or eliminated discipline.

To understand the impact of the grievance procedure and its outcomes, OIG reviewed the results of all disciplinary grievances resolved between November 18, 2014, and December 31, 2017. During the period of analysis, 370 disciplinary grievances were resolved or settled. These 370 cases account for approximately 52% of all Sustained disciplinary cases that were eligible for at least one grievance pathway, based on the level of discipline issued and the contractual rights of the member's union. Because not all Sustained disciplinary cases are eligible for grievance, the 370 cases account for a lower percentage—approximately 39%—of all Sustained disciplinary cases. Discipline was eliminated or reduced in 78% of the 370 cases that were resolved through disciplinary grievances.

In addition to understanding the impact of the grievance procedure on disciplinary outcomes, OIG reached several findings that bear on the transparency and consistency of the disciplinary and accountability process:

- Arbitrators exercise broad, unbounded discretion in their reviews of grievance cases, and as a result they often cite factors in their decisions that extend beyond the specific alleged misconduct including, but not limited to, management and operational considerations such as an officer's history (as mitigating or aggravating) and the deterrent effect of the discipline.
- The processes for BSOs and grievance arbitrations lack transparency, as compared to the publicly available information on complaints.

[1] If CPD's superintendent does not agree with the specific recommended discipline, or does not agree that discipline should be applied at all, the procedural course of the case depends on which agency conducted the investigation

- The settlement process lacks transparency, as compared to the publicly available information on complaints.
- Written settlement agreements do not follow a consistent format, and settlement agreements do not consistently record all basic descriptive information about cases.
- Settlements are regularly used to resolve discipline after Sustained findings of misconduct, and these settlements regularly result in the removal of rule violations from sworn members' records.
- Ninety percent of completed grievance arbitrations between November 2014 and December 2017 have been assigned to just three independent arbitrators operating with vast discretion, little public transparency, and negligible substantive post-decision review.

OIG recommends that CPD take several measures to improve the consistency and transparency of the disciplinary grievance procedure. OIG further recommends that CPD, in collaboration with the agencies conducting police misconduct investigations, review BSOs and arbitration decisions on an annual basis to track how different factors influence arbitrators' decisions. Finally, OIG recommends that the Department of Law (DOL), in collaboration with CPD member unions, consider expanding the pool of eligible arbitrators called upon to adjudicate BSOs and arbitrations, and consider formal procedures for assessing and evaluating arbitrators and arbitration outcomes in concluded matters.

CPD and DOL responded independently to each of OIG's recommendations. CPD agreed with six of the eight recommendations. DOL agreed to a partial implementation of one recommendation and committed to considering whether one other should be raised in collective bargaining with CPD member unions. With respect to OIG's remaining recommendations, DOL took the position that it is already in compliance with some elements, that it does not have the data available to implement others, and that implementation of others would violate attorney-client or attorney work product privilege protections or would undermine DOL litigation strategy. The responses from CPD and DOL represent some commitments to improving the disciplinary grievance process; in declining to create an accessible resource of arbitration awards and to expand upon already-mandated data reporting, however, the agencies are failing to meet opportunities for meaningful transparency and accountability. The agencies' letters of response are included in Appendices D and E.[2]

[2] In May of 2021, OIG invited CPD and DOL to provide any further updates on their initial responses. Neither department provided any updates.

II. BACKGROUND

Collective bargaining agreements (CBAs) govern employee-employer relations between CPD and its unionized members. CBAs are binding, written contracts negotiated between the City of Chicago as the employer, and the various unions that represent CPD members. The CBAs for CPD's sworn ranks contain agreed-upon terms and conditions of employment, including working conditions and disciplinary procedures. Sworn members at the ranks of police officer, sergeant, lieutenant, and captain are represented by four distinct unions,[3] with distinct and separate CBAs, each of which grant sworn members the right to file grievances against Department actions.

FIGURE 1: Union representation

Union	Sworn Officer Rank Represented
Fraternal Order of Police, Chicago Lodge No. 7 (FOP)	Police officers
Policemen's Benevolent & Protective Association (PBPA), Unit 156	Sergeants
PBPA, Unit 156	Lieutenants
PBPA, Unit 156	Captains

Source: CPD union contracts.

The CBAs define a grievance as a "dispute or difference between the parties... concerning the interpretation and/or application of" the CBAs.[4] Each CBA sets forth a "grievance procedure" to adjudicate these disputes. For disciplinary grievances—as distinct from psychological, medical, or other contract grievances—the grievance procedure outlined in the CBAs provides for appeals in three distinct venues with different rules of procedure: (1) binding summary opinions (BSO), (2) arbitrations, and (3) Police Board review. The grievance procedure detailed in the CBAs does not apply to separations from service (i.e., termination of employment) or long term suspensions, which are only cognizable before the Police Board.[5] The CBAs also carve summary punishment

[3] Unionized civilian employees of CPD, who are outside the scope of this project, are represented by American Federation of State, County, and Municipal Employees, the Service Employees' International Union, and the Illinois Nurses Association. Sworn officers above the rank of captain, who are also outside of the scope of this project, are non-unionized and are known as "exempt ranks."

[4] The City of Chicago. 2014. *Agreement Between the City of Chicago Department of Police and the Fraternal Order of Police Chicago Lodge No. 7* Art. 9, § 9.1. Chicago: Chicago Police Department, accessed January 23, 2021, http://directives.chicagopolice.org/contracts/FOP_Contract.pdf. The lieutenants, sergeants, and captains' contracts contain identical language.

[5] Suspensions in excess of 365 days, for police officers, are subject to automatic, non-waivable Police Board review and fall outside of the scope of the grievance procedure outlined in the FOP contract. The Municipal Code provides that the authority to impose suspensions of 30 days for fewer on Department members is "expressly reserved" to the superintendent. The FOP contract (§ 8.8) increases the number of days the superintendent can suspend a police officer from the MCC limit of 30 days to 365 days. The Police Board remains the forum for automatic, non-waivable review of suspensions of police officers greater than 365 days. Under the PBPA supervisor contracts in effect at the time of this review, sergeants', lieutenants', and captains' suspensions in excess of 30 days were subject to automatic, non-waivable Police Board review and fell outside the scope of the CBA-covered grievance procedure. In the recently renegotiated PBPA supervisor contracts, approved by the Chicago City Council in July 2020, suspensions of 31 to 365 days are subject to the same grievance procedure rules as suspensions of 11 to 30 days. The supervisors' contracts in effect at the time of this review did not alter the provisions of MCC §2-84-030. The

out of the grievance procedure, except in specific, limited circumstances.[6] Figure 3 (see Section A below) gives a visual depiction of the disciplinary review pathways available to CBA-covered sworn members at the time of this review. Appendix C shows how the situation has changed under the supervisors' contracts renegotiated and approved by the City Council in 2020.

This review covers CPD sworn members' contractually bargained rights to appeal discipline. Accordingly, this review excludes consideration of discipline subject to automatic, non-waivable reviews by the Police Board under the Municipal Code of Chicago (MCC)—namely, reviews of recommended separations from service and reviews of long term suspensions (greater than 365 days for police officers and, under the supervisors' contracts in effect at the time of this review, greater than 30 days for sergeants, lieutenants, and captains).

With respect to disciplinary grievances, the four CBAs each set forth a "just cause" standard for discipline issued by the Department.[7] The "just cause" standard requires that CPD demonstrate a legitimate, job-related reason for discipline. Alleged violations by the Department of a CBA's "just cause" provision serve as the basis for all disciplinary grievances.

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supervisors' contracts approved by the City Council in July 2020 introduced the same language that existed in the FOP contract to increase the number of days the superintendent can suspend a sergeant, lieutenant, or captain from the MCC limit of 30 days to 365 days. Thus, as of July 2020, the Police Board conducts automatic, non-waivable reviews of issued discipline for CBA-covered supervisors and police officers under the same set of circumstances (separations from service and discipline in excess of 30 days). Municipal Code of Chicago §2–84–030, accessed January 19, 2021; The City of Chicago. 2014. *Agreement Between the City of Chicago Department of Police and the Fraternal Order of Police Chicago Lodge No. 7.* Art. 8, § 8.8. Chicago: Chicago Police Department, accessed January 19, 2021, http://directives.chicagopolice.org/contracts/FOP_Contract.pdf; and The City of Chicago. 2020. *Agreements Between the City of Chicago and the Policemen's Benevolent & Protective Association of Illinois, Unit 156-Captains, Lieutenants, and Sergeants.* Art. 9, § 9.1. Chicago: Chicago Police Department.

[6] "Summary punishment" is either a reprimand or excusing a member without pay for one to three days. Under the FOP CBA, if an officer receives four or more summary punishments within a 12-month period, the officer may grieve the fourth and/or succeeding summary punishments.

[7] The City of Chicago. 2014. *Agreement Between the City of Chicago Department of Police and the Fraternal Order of Police Chicago Lodge No. 7.* Art. 8, § 8.1. Chicago: Chicago Police Department, accessed January 19, 2021, http://directives.chicagopolice.org/contracts/FOP_Contract.pdf.
The City of Chicago. 2020. *Agreements Between the City of Chicago and the Policemen's Benevolent and Protective Association of Illinois Unit 156 – Captains, Lieutenants, and Sergeants.* Art. 8, § 8.1. Chicago: Chicago Police Department, accessed January 19, 2021, http://directives.chicagopolice.org/contracts/PBPA_CaptContract.pdf, http://directives.chicagopolice.org/contracts/PBPA_LtContract.pdf, and http://directives.chicagopolice.org/contracts/PBPA_SgtContract.pdf
The FOP contract states, "[n]o Officer covered by this Agreement shall be suspended, relieved from duty or otherwise disciplined in any manner without just cause." The three PBPA CBAs negotiated in 2014 contain the same just cause standard for their members. The PBPA contracts renegotiated in 2020 include very similar just cause provisions with slightly modified language.

A. OVERVIEW OF THE DISCIPLINE PROCESS FOR SWORN MEMBERS

The narrative summary below provides context on elements of the discipline process that specifically relate to the grievance procedure for sworn, unionized CPD members.[8]

1. INVESTIGATION

The Civilian Office of Police Accountability (COPA), CPD's Bureau of Internal Affairs (BIA), and OIG investigate allegations of misconduct against CPD sworn members. These agencies have jurisdiction over different types of cases. COPA is charged with making jurisdictional determinations, and if a single complaint includes some allegations that fall within COPA's jurisdiction and some allegations that fall within BIA or OIG's jurisdiction, COPA has the authority to conduct an investigation of the entire incident.[9] Upon the conclusion of an investigation into an allegation of misconduct, BIA or COPA can find an allegation to be "Sustained," "Not Sustained," "Exonerated," or "Unfounded."[10] OIG will "Sustain" or "Not Sustain" an allegation. When investigating agencies sustain an allegation, they may recommend discipline for the accused CPD member, which may include a "violation noted," "reprimand," "suspension", or "separation" from CPD employment.[11] Once an investigation has concluded, except for those

[8] OIG has published a series of comprehensive flowcharts describing all stages of the discipline process for all CPD members, including grievance procedure and other types of review and appeal. Those flowcharts can be accessed on OIG's website. City of Chicago Office of Inspector General, "A Guide to the Disciplinary Process for CPD Members," accessed May 5, 2021, https://igchicago.org/about-the-office/our-office/public-safety-section/cpd-disciplinary-process-overview/.

[9] COPA investigates allegations of bias-based verbal abuse, coercion, death or serious bodily injury in custody, domestic violence, excessive force, improper search and seizure, firearm discharge, Taser discharges resulting in death or serious bodily injury, patterns or practices of misconduct, and unlawful denial or access to counsel COPA's jurisdiction also includes incidents which may be investigated pursuant to an automatic notification rather than a complaint, including firearm discharges, or death or serious bodily injury to an individual. BIA's jurisdiction includes, but is not limited to, criminal misconduct, operational violations, theft of money or property, planting of drugs, substance abuse, residency violations, and medical roll abuse. OIG has jurisdiction to investigate any allegation of misconduct against a CPD member.

[10] The relevant CPD directive, "Conduct of Complaint Investigations" (S08-01-01) defines the outcomes of disciplinary investigations as follows:
"Unfounded—when the allegation is false or not factual;"
"Exonerated—when the incident occurred but the actions of the accused were lawful and proper;"
"Not Sustained—when there is insufficient evidence to either prove or disprove the allegation;" and
"Sustained—when the allegation is supported by substantial evidence." City of Chicago, Chicago Police Department, November 2017, "Conduct of Complaint Investigations," accessed January 19, 2021. http://directives.chicagopolice.org/directives/data/a7a57be2-12ce5918-9f612-ce5e-33a7953b833b1c1e.pdf?hl=true.
The consent decree entered into in *Illinois v. City of Chicago*, ¶467, names a different burden of proof standard for Sustained investigations by BIA or COPA. For each allegation associated with a misconduct investigation, the consent decree requires that COPA or BIA will recommend "'Sustained,' where it is determined the allegation is supported by a preponderance of the evidence " *Illinois v City of Chicago*, No. 17-cv-6260, 2019 WL 398703, ¶467 (N.D. Ill. Jan. 31, 2019).

[11] OIG does not make specific disciplinary recommendations, but instead makes a recommendation to the Department that discipline should fall into one of three broad categories: "discipline commensurate with the gravity of the violations, past disciplinary record, and any other relevant considerations," "discipline up to and including termination;" and "termination "

resulting in a recommendation for separation, it goes through a CPD internal review process known as Command Channel Review.

2. COMMAND CHANNEL REVIEW (CCR)

During CCR, exempt-rank supervisors in an accused member's chain of command review the investigative file to determine the adequacy of the disciplinary investigation and the appropriateness of the disciplinary recommendation, if one has been made.[12] In CCR, reviewing supervisors can agree or disagree with the findings and/or the recommended discipline. Reviewing supervisors' opinions are advisory in nature and do not bind the Department. Recommendations of separation from the Department are not reviewed via CCR; instead, recommendations of separation go directly to the superintendent and Department of Law (DOL). If the superintendent agrees with the recommendation, they will then file charges for separation with the Police Board. If the superintendent disagrees with COPA on a separation recommendation, COPA's chief administrator and the superintendent engage in the non-concurrence process detailed in COPA's ordinance and described in Section II(A)(3) below.[13]

3. DISCIPLINE ACCEPTED OR GRIEVED

After CCR, the superintendent reviews the investigative file and the discipline recommended by the investigating agency. The superintendent may either approve or propose to modify the recommended discipline.

If BIA conducted the investigation, the superintendent's modifications will simply override the initial recommendation for discipline from BIA. If COPA conducted the investigation, any disagreement from the superintendent, with COPA's recommendation, will trigger a non-concurrence process, which is described in COPA's ordinance.[14] The superintendent must provide COPA's chief administrator with a written statement of their proposed course of action and the reasons for it. COPA's chief administrator and the superintendent must then meet to discuss the recommended discipline. If they do not agree to the chief administrator's recommendation, the case will be referred to the Police Board for resolution. To resolve a non-concurrence, the Police Board selects a single representative from among its membership to make a final determination as to whether the superintendent has met their burden to overcome the chief administrator's recommendation.

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[12] The purpose and scope of review in CCR is outlined in CPD's Special Order S08-01-03, "Command Channel Review " CCR review is give the exempt-level members of the disciplined officer's command chain "an opportunity to advise the Superintendent or the Chief, Bureau of Internal Affairs (BIA), on the final disciplinary decision." The review is advisory and not binding As part of their review, exempt-level supervisors are expected to: "[A]scertain the adequacy and timeliness of the complaint register investigation"; "[D]etermine that any finding or recommendation for disciplinary action is appropriate"; and "[J]udge the soundness of the investigation, conclusion, and the findings " http://directives.chicagopolice.org/directives/data/a9fe0202-12ce5c17-7e612-ce5e-c9c4fbeffbc626e7.html?ownapi=1, accessed January 19, 2021.

[13] Municipal Code of Chicago §2-78-130(a), accessed January 19, 2021

[14] Municipal Code of Chicago §2-78-130(a), accessed January 23, 2021.

CPD then issues discipline in its role as employer. When a CPD member receives a suspension, CPD's Finance Division electronically forwards a Suspension Notification form to the member's unit or detail.

Then the member is provided with a Request for Review of Discipline form, also known as an "Accept or Reject" form or "A&R" form.[15] The A&R form notes the rule violation and the issued discipline. After the accused member makes a selection indicating either acceptance of or the intent to grieve the issued discipline, their supervisor signs the A&R form and returns it to BIA or COPA. If the member opts to challenge the discipline, they must also complete an additional Grievance Form and submit it to their supervisor, who will in turn send it to CPD's Management and Labor Affairs Section (MLAS).[16]

The member has ten working days to accept the penalty or file a grievance. In most cases, if the member does not make an election, the member is deemed to have accepted the issued discipline. The FOP contract provides one carve-out to this ten-day return requirement. If an FOP member does not make an election within ten working days for a suspension of 31 to 365 days, the suspension recommendation will be reviewed by the Police Board.[17]

4. POST-GRIEVANCE IMPLEMENTATION

After the conclusion of a disciplinary grievance, MLAS drafts an "implementation." Implementations are summaries of the decision made by an arbitrator or reached through a settlement, including any actions that must be taken by relevant units based on the arbitration award or negotiated settlement. Once the MLAS director approves a draft implementation, the assigned MLAS staff member submits the implementation to the appropriate CPD unit(s) for execution.

B. DISCIPLINARY GRIEVANCE PARTICIPANTS AND PATHWAYS

1. GRIEVANCE PARTICIPANTS

The disciplinary grievance procedure involves the police unions and several City of Chicago agencies.

[15] There are multiple versions of this form, depending on the level of discipline recommended. All versions of the A&R form are linked through CPD's directive G08-01, "Complaint and Disciplinary Procedures."
[16] MLAS provided OIG a process workflow which shows that the grievant completes a Grievance Form and then submits it to their supervisor to begin the grievance process. However, according to CPD directive E01-06, "Grievance Procedures," a sworn member must begin the grievance process by informing their supervisor or, in the case of sergeants, lieutenants, and captains, the first exempt member in their chain of command, of their intent to grieve. The Grievance Form is not a publicly available document.
[17] The City of Chicago. 2014 *Agreement Between the City of Chicago Department of Police and the Fraternal Order of Police Chicago Lodge No. 7.* Art. 9, § 9.6(C). Chicago: Chicago Police Department, accessed January 23, 2021, http://directives.chicagopolice.org/contracts/FOP_Contract.pdf.

FIGURE 2: Disciplinary grievance procedure roles

Participating Entity	Role in Disciplinary Grievance Procedure
CPD's Management and Labor Affairs Section (MLAS)	MLAS is responsible for administering grievance procedure cases. MLAS staff receive grievances, do initial workups, obtain documentation from the investigating agency, send relevant information to the unions, and schedule BSOs. MLAS staff also represent CPD in BSO hearings and assist in preparation for arbitrations.
City of Chicago Department of Law (DOL)	DOL is involved in grievances scheduled for arbitration. DOL attorneys serve as CPD's counsel, provide CPD with advice prior to a grievance reaching arbitration, and represent CPD during arbitrations and Police Board hearings. DOL is not involved in the BSO process.
Fraternal Order of Police (FOP)	FOP represents police officers who are below the rank of sergeant.[18] In arbitrations, elected FOP members with expertise in CPD policy and grievances represent FOP members before the arbitrator. FOP has discretion over which of its members' grievances to advance to arbitration in cases where the member seeks an arbitration for issued discipline of 11 to 365 days. However, despite the union's role in deciding what grievances to advance to arbitration, there is no situation in which the union's failure to advance a grievance to arbitration will leave an FOP member with no opportunity for review of their issued discipline.[19]
Policemen's Benevolent & Protective Association (PBPA)	PBPA's three unions represent CPD supervisors at the ranks of sergeant, lieutenant, and captain, respectively. The unions retain counsel to advise members on their rights and options, attempt to settle grievances before arbitration, and represent members during the adjudication process. In cases where the member seeks an arbitration for issued discipline of 11 to 30 days, each PBPA union retains discretion over which

[18] OIG received conflicting information with respect to which union represents a member who is promoted during the pendency of a disciplinary grievance. An MLAS representative stated that the controlling rank determining which union will represent an accused member, is the rank at the time the grievance is filed. Counsel for PBPA stated that an accused member's rank when discipline is issued determines which union will represent them, and DOL representatives stated that the rank that the accused member holds when a disciplinary investigation concludes determines which union will represent them. FOP representatives stated that, if the accused member is an FOP member when the alleged misconduct occurred, then the FOP will represent the member during the grievance process.

[19] FOP members may elect BSO hearings without seeking union support for reprimands or suspensions from 1–30 days. See § 9.6(A–B). FOP members may elect a Police Board review without seeking union support for suspensions of 31 to 365 days See § 9.6(C). Finally, in cases where an FOP member has elected an arbitration for a suspension between 11 and 365 days and the union failed to advance their grievance, the member has the option to elect a Police Board review. See § 9 6(B–C). The City of Chicago 2014. *Agreement Between the City of Chicago Department of Police and the Fraternal Order of Police Chicago Lodge No. 7* Art. 9, § 9.6(B–C). Chicago: Chicago Police Department, accessed January 23, 2021, http://directives chicagopolice org/contracts/FOP_Contract pdf

	grievances to advance on behalf of its membership, with internal boards deciding which grievances to advance to arbitration.[20]

Source: CPD union contracts and OIG interviews.

2. GRIEVANCE PROCEDURE PATHWAYS

Three disciplinary grievance procedure pathways are available to CPD sworn members, depending on the member's rank and the amount of discipline issued after Departmental review and, if applicable, the non-concurrence process. These three pathways are BSO, arbitration, and Police Board review. The table below shows which pathways are open based on the member's rank and the issued discipline. When a member elects to grieve, they will not serve any discipline until the grievance procedure has concluded.[21]

[20] PBPA members may elect BSO hearings without seeking union support for reprimands or suspensions from 1–10 days. § 9.3A of each contract. If PBPA decides not to advance a grievance for discipline of 11 to 30 days, a member cannot unilaterally advance their own grievance, nor can they file for review by the Police Board, as a member represented by FOP can. The only option available to the member would be to file an Unfair Labor Practice suit against PBPA. See § 9.3A of each contract. Under PBPA contracts in effect during OIG's period of analysis, suspensions of more than 30 days were cognizable only before the Police Board and the member could not elect to proceed to arbitration. This interpretation of the prior PBPA contracts and the Municipal Code was confirmed in Policemen's Benevolent and Protective Association of Illinois, Unit 156A – Sergeants v. City of Chicago, 2018 IL App(1st) 171089-U. Under the current PBPA contracts, suspensions of 11 to 365 days can be grieved via arbitration only, with the union having the authority to decide whether or not to advance a grievance. The City of Chicago 2014 *Agreements Between the City of Chicago and the Policemen's Benevolent and Protective Association of Illinois Unit 156 – Captains, Lieutenants, and Sergeants* Art. 8, § 8.1, Chicago. Chicago Police Department, accessed January 23, 2021, http://directives.chicagopolice.org/contracts/PBPA_CaptContract.pdf, http://directives.chicagopolice.org/contracts/PBPA_LtContract.pdf, and http://directives.chicagopolice.org/contracts/PBPA_SgtContract.pdf.

[21] Under previous CBAs, sworn members would serve the discipline they were issued prior to resolution.

FIGURE 3: Grievance procedure and disciplinary review pathways based on rank and issued discipline, for the period of analysis (2014–2017)[22]

	Discipline Type	Discipline Issued	BSO	Arbitration	Police Board review
Officers	*Violation Noted*	Must accept	Not Eligible	Not Eligible	Not Eligible
	Reprimand	May accept	Eligible	Not Eligible	Not Eligible
	Suspension (1-10 days)	May accept	Eligible	Not Eligible	Not Eligible
	Suspension (11-30 days)	May accept	Eligible	Eligible	Eligible[23]
	Suspension (31-365 days)	May accept	Not Eligible	Eligible	Eligible[24]
	Suspension (>365 days)	Must go to Police Board review	Not Eligible	Not Eligible	Automatic, Non-waivable
	Separation	Must go to Police Board review	Not Eligible	Not Eligible	Automatic, Non-waivable
CBA-covered Sworn Supervisors	*Violation Noted*	Must accept	Not Eligible	Not Eligible	Not Eligible
	Reprimand	Must accept	Not Eligible	Not Eligible	Not Eligible
	Suspension (1-10 days)	May accept	Eligible	Not Eligible	Not Eligible
	Suspension (11-30 days)	May accept	Not Eligible	Eligible	Not Eligible
	Suspension (31-365 days)	Must go to Police Board review	Not Eligible	Not Eligible	Automatic, Non-waivable
	Suspension (>365 days)	Must go to Police Board review	Not Eligible	Not Eligible	Automatic, Non-waivable
	Separation	Must go to Police Board review	Not Eligible	Not Eligible	Automatic, Non-waivable

Sources: CPD union contracts, MCC, Police Board Rules of Procedure, OIG interviews.

(a) Binding Summary Opinion (BSO)

BSOs are evidentiary hearings in which an arbitrator performs a paper review of the investigative file prior to the BSO hearing date. BSOs are called "binding" because grievants do not have the option to pursue another grievance pathway in the event that they are unsatisfied with the result of the BSO. Prior to the CBAs negotiated in 2014, sworn members could pursue multiple grievance procedure pathways in sequence if they received an unfavorable decision at first. The current contracts only permit grievants to choose one contractual resolution option. Grievants

[22] Figure 3 reflects the appeal options available to police officers and CBA-covered supervisors during the period of analysis for this review. Negotiation and adoption of new contracts covering the supervisory ranks has changed the appeal options for supervisors facing issued discipline of 31–365 days. See Appendix C for these changes.

[23] Review of a police officer's suspension of 11 to 30 days is eligible for Police Board review in the event that the union declines to advance the member's hearing to an arbitration. The FOP contract provides, "[i]n the event the Lodge decides not to advance the grievance to arbitration, the Officer will have ten (10) working days to elect review of the recommendation for suspension by the Police Board as set forth in the Police Board's Rules of Procedure." §9 6(B).

[24] Police officers facing an issued discipline of 31–365 days have two pathways to a Police Board review. They can elect Police Board review directly (§ 9.6(C)), or, in the event that they elect an arbitration and the union fails to advance their grievance, they can elect a Police Board review within 10 days of the union's decision not to advance the grievance. § 9 6(B–C)

who receive an unfavorable BSO decision may appeal that decision to the Circuit Court of Cook County on limited grounds.

The arbitrators who adjudicate BSOs are practitioners of labor law and are selected for each case by mutual agreement of the parties. According to DOL, there is a pool of five arbitrators to hear BSOs for FOP members, and an overlapping pool of three or four arbitrators to hear BSOs for PBPA members. DOL representatives stated that when selecting an arbitrator to hear a case, the parties refer to a "working list" of arbitrators, but there is no "official list" of eligible arbitrators that constrains the parties' choice of an arbitrator. DOL did not specify any criteria, standards or process for the selection of the pool, nor any standards or policies respecting periodic review and renewal of a "pool."

Appendix Q of the FOP CBA stipulates that "the Lodge and the Employer have agreed to a panel of five (5) Arbitrators who shall comprise the exclusive list of Arbitrators to preside over the suspension grievances" and then goes on to lay out criteria for striking arbitrators from the list and adding new ones. According to Appendix Q, each December, the FOP and the City "shall each be permitted to strike one (1) Arbitrator from the panel for any reason." If an arbitrator were to be removed from the list by this process and the FOP and City were unable to agree on a replacement, the parties would select a new arbitrator from a list of members of the National Academy of Arbitrators provided by the American Arbitration Association. Based on interviews with DOL and CPD, it is OIG's understanding that the parties to the FOP CBA have not formally agreed to an exclusive list of arbitrators and therefore do not follow the procedures laid out in Appendix Q.

For sworn members represented by the FOP, the officer—or the union, on the officer's behalf—submits a statement, no longer than three pages, to the BSO arbitrator at least ten days before the hearing date, advancing the officer's position. MLAS may submit a rebuttal stating the Department's position. For sworn members represented by PBPA, the union submits a one-page report to the arbitrator "making any appropriate argument addressing the findings and/or the recommendation for discipline."[25] The Department may only submit an argument or respond to PBPA's arguments if asked to do so by the arbitrator.

At a BSO hearing for an FOP member, staff from MLAS represent CPD, while the accused member may make a 15-minute oral presentation on their own behalf. BSO proceedings for sergeants, lieutenants, and captains do not require representation. In these proceedings, arbitrators tend to make decisions based solely on the evidence sent to them for review.

Regardless of which union represents the member, the BSO arbitrator is required to provide a written, binding decision in the case within 30 days after the hearing.

[25] The City of Chicago. 2020 *Agreement Between the City of Chicago and the Policemen's Benevolent & Protective Association of Illinois, Unit 156-Lieutenants,* Art. §9.3A (1). Chicago. Chicago Police Department The other two PBPA contracts contain the same language, and this language is unchanged in the revised contracts approved in 2020

(b) Arbitration

Arbitrations are formal evidentiary proceedings involving oral arguments and witness testimony in front of an arbitrator. While arbitrations resemble trials insofar as they involve oral argument, witness testimony, and presentation of evidence, they typically do not require adherence to state or federal rules of evidence or procedure. As with BSOs, the arbitrators who adjudicate arbitrations are practitioners of labor law and are selected to hear a particular case by mutual agreement of the parties. As with BSOs, there is no official list of arbitrators from which the parties must make their selection; there is a "working list" that includes five arbitrators for FOP arbitrations and three or four arbitrators for PBPA arbitrations.

DOL attorneys represent CPD's position before the arbitrator. MLAS aids DOL by gathering relevant information and assisting with witness preparation. The unions provide accused members with representation during the proceeding.

Arbitration decisions are highly fact-specific, but according to counsel for PBPA, prior decisions have some precedential value in that they "hold weight" for arbitrators deciding similar cases. By contract, the arbitrator is required to submit a decision to the parties within 30 days; however, the parties may agree to an extension. Like a BSO, the arbitrator's decision in an arbitration is binding on the parties. The losing party pays the arbitrator's fee. When the arbitrator does not decide fully for one party or the other, the arbitrator determines how the parties should split the fee.[26]

(c) Police Board Review

The Police Board can review suspensions of 11 days or more for CPD members below the rank of sergeant at the member's request. CPD members below the rank of sergeant may request a Police Board review of suspensions of 11 to 30 days only in the event that FOP has declined to advance their grievance to arbitration. For suspensions of 31 to 365 days, members can elect Police Board review directly; or, in the event that they elect an arbitration and FOP fails to advance their grievance, they can elect a Police Board review within 10 days of FOP's decision not to advance the grievance.

The Police Board Rules of Procedure outline distinct actions for reviews of discipline between 11 and 30 days and reviews of discipline between 31 and 365 days. For suspensions of 11–30 days, Police Board reviews are typically "paper reviews" conducted by a hearing officer, although the Police Board "may in its discretion order a hearing before a member of the Board or a hearing officer prior to making a determination."[27] For suspensions of 30–365 days, the Police Board will conduct a hearing. This is the

[26] OIG's review of arbitration decisions found that there is inconsistency in how arbitral decisions about split fees are handled in arbitration awards. In some cases, arbitrators explicitly stated that fees should be divided evenly, given a split decision. In other cases, arbitrators state that fees should be split but do not explicitly state the relative proportions to be paid by the two parties. In none of these cases do the arbitration awards include a discussion of what the split should be between parties (i.e., if fees should be split evenly or otherwise).

[27] Police Board. "Rules of Procedure." 2015. Section IV A–B, accessed January 19, 2021 https://www.chicago.gov/content/dam/city/depts/cpb/PoliceDiscipline/RulesandRegulationsCPD20150416.pdf This citation refers to the version of the Police Board Rules of Procedure operative at the time of this review. The Police Board updated its Rules of Procedure in 2019. Those changes do not affect the distinction between review procedures for 11–30-day suspensions and 31–365-day suspensions described in the main text. See Chicago Police Board, "Rules of

procedural course followed regardless of whether the CPD member elected a Police Board hearing in the first instance or elected a Police Board hearing only after having the union decline to advance their grievance to an arbitration.[28]

Whether the review takes place as a paper review or an in-person hearing, the hearing officer will compile a written report that outlines the allegations against the grievant, the evidence contained within the file, and any additional memoranda or documentary evidence submitted by the grievant, the superintendent, and the investigating agency. Within this report the hearing officer will indicate evidence in support of and not in support of the allegation. The report is then submitted to each member of the Police Board. In 2019, revisions to the Rules of Procedure provided that the Police Board may, at its discretion, ask the hearing officer to prepare a disciplinary recommendation as part of the submitted.[29] The panel of nine Police Board members—all of whom are Mayoral appointees—then review the hearing officer's report and vote to maintain, reduce, or eliminate the issued discipline.

Under PBPA contracts for sergeants, lieutenants, and captains in effect during OIG's period of analysis, the Police Board conducted automatic, non-waivable review of suspensions of more than 30 days.[30] The Police Board also conducts automatic, non-waivable reviews of separation cases for all sworn, unionized members (FOP members and PBPA members, under both the old and new PBPA contracts). The Police Board's authority to conduct these automatic, non-waivable separation reviews is conferred by the MCC and is not part of the grievance procedure negotiated in CPD members' CBAs.[31]

(d) Settlements

In some cases, the parties to a grievance—the union, representing the interests of the grievant, and CPD—will agree to settle a grievance before it reaches a final disposition through one of the

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Procedure." 2019, accessed January 19, 2021, https://www.chicago.gov/content/dam/city/depts/cpb/PoliceDiscipline/RulesofProcedure20190718.pdf.

[28] Police Board. "Rules of Procedure." 2015. Sections I.–III, accessed January 19, 2021. https://www.chicago.gov/content/dam/city/depts/cpb/PoliceDiscipline/RulesandRegulationsCPD20150416.pdf.

[29] "The Police Board may, at its discretion, direct the hearing officer to additionally prepare a written report and recommendation that set forth findings of fact and conclusions of law, including any findings related to witness credibility." Police Board. "Rules of Procedure." 2019. Section III.G, accessed 19 January 2021. https://www.chicago.gov/content/dam/city/depts/cpb/PoliceDiscipline/RulesofProcedure20190718.pdf. The above-cited language does not appear in the 2015 version of the Police Board rules.

[30] Under the current PBPA contracts, suspensions of 11 to 365 days may be grieved through the arbitration process but do not have a pathway to review by the Police Board.

[31] Municipal Code of Chicago §2–84–030, accessed January 19, 2021; City of Chicago. 2014. *Agreement Between the City of Chicago Department of Police and the Fraternal Order of Police Chicago Lodge No. 7,* Art 9, § 9.1 Chicago Chicago Police Department, accessed January19, 2021, http //directives chicagopolice org/contracts/FOP_Contract pdf.

The City of Chicago. *Agreements Between the City of Chicago and the Policemen's Benevolent and Protective Association of Illinois Unit 156 – Captains, Lieutenants, and Sergeants.* Art 8, § 8 1 Chicago: Chicago Police Department, 2020, accessed January 19, 2021, http://directives chicagopolice org/contracts/PBPA_CaptContract pdf, http://directives.chicagopolice org/contracts/PBPA_LtContract pdf, and http //directives chicagopolice.org/contracts/PBPA_SgtContract pdf.

pathways described above. Settlements may be initiated at any point during a grievance procedure. A settlement offer can be proposed by either side, and there is no formal process dictating how a grievance may be settled. CPD has discretion over whether to enter into a settlement agreement with the grievant. That decision is typically made within MLAS, which may solicit input from DOL. For issued discipline that is cognizable only before the Police Board, any settlement agreement must be approved by the Police Board before it can be finalized. This limitation applies to suspensions over 365 days and separations for both police officers and CBA-covered supervisors. During the period of analysis for this inquiry, the requirement of Police Board approval of settlements also applied to suspensions from 31 to 365 days for CBA-covered supervisors.

The Department itself handles settlements that occur prior to being scheduled for BSO, which tend to be more minor cases. DOL may suggest and negotiate settlements for a grievance that has been scheduled for arbitration.

The Department generally waits for the union to offer to resolve a disciplinary grievance via settlement, rather than initiating the settlement process itself. However, the MLAS director may initiate settlement negotiations at the Department's discretion. The terms of a settlement are memorialized in a settlement agreement, which may be drafted by either side. There is no set format for these documents, but they must contain the agreed-upon settlement terms.

C. ARBITRATION HEARING STANDARD OF REVIEW

CBAs set forth the broad authority of the arbitrator adjudicating a disciplinary grievance. Arbitration decisions must be based upon the arbitrators' interpretation of the meaning or application of the terms of the CBA to the facts of the grievance. Within the scope of that broad guiding principle, arbitrators have the option to factor in all available evidence, without an obligation to give deference to the conclusions reached by the original investigating agency. For example, arbitrators may factor into their decision the grievant's prior disciplinary history, the duration of the disciplinary investigation, or their perception of the deterrent effect of a harsh penalty. Arbitrators are not restricted to examining the reasonableness of the initial disciplinary recommendation.

The arbitrator's role is to determine whether the employer—CPD—had "just cause" to discipline the employee. While the CBAs do not define or provide guidance as to what constitutes "just cause," it is a common labor law concept meaning that the employer had a legally sufficient reason for the discipline. One industry standard for determining whether an employer had "just cause" to discipline an employee is the seven-part test developed by arbitrator Carroll Daugherty in 1966. The Daugherty test asks:

1. Was the employer's rule or managerial order reasonably related to the orderly, efficient and safe operation of the business?
2. Did the employer give any warning as to any possible discipline or consequence that could result from that employee's action or behavior?

3. Prior to administering discipline, did the employer conduct an investigation to determine whether the employee did in fact violate or disobey a rule or order?
4. Was this investigation fair and objective?
5. Did this investigation uncover any substantial proof or evidence that the employee was guilty of violating or disobeying a direct rule or order?
6. Did the employer apply all rules, orders and penalties evenhandedly and without discrimination to all employees?
7. Was the degree of discipline administered reasonably related to either the seriousness of the employee's offense or to the record of past service?[32]

The Daugherty test is widely—although not universally—accepted, and it is one example of how an articulated test for the identification of just cause can help to provide clarity and consistency across arbitration decisions.

The CPD CBAs do not contain reference to any test or standard for arbitrators to use in reaching a "just cause" determination. Arbitrators are supposed to interpret the "meaning or application of the terms of the" CBA and apply that interpretation to "the facts of the grievance presented."[33] In practice, many arbitrators engage in new fact finding, without providing deference to the conclusions of BIA or COPA investigations or CPD's organizational objectives inherent in its discipline determinations. By the positions they routinely advance, arbitrators' reviews in CPD disciplinary grievance procedure cases in essence begin from a clean slate. Arbitrators are not required to give any deference to the superintendent's action, nor are they required to give deference to the investigating agency's recommendation. In an arbitration hearing, moreover, where there can be witness testimony, arbitrators are able to conduct new factual inquiries, conferring on the arbitrator untrammeled discretion to examine anew the investigative and administrative record that serves as the basis for the superintendent's action. BSO hearings are reviews of the existing investigative file, without the opportunity for witness testimony. Therefore, in the context of BSOs, arbitrators are unable to engage in new fact-finding, although they still operate without any requirement to give deference to the superintendent or the investigating agency. PBPA agreements also vest arbitrators with the authority to consider whether non-criminal misconduct investigations have been completed in a timely manner and, if not, whether the member was harmed by the delay. The FOP contract does not contain a similar provision.

Arbitrators' decisions are considered to be "binding" on all parties, in that the parties cannot seek another arbitrator's ruling through a different grievance pathway. The only option available to a party wishing to challenge an arbitration award is to ask the Circuit Court of Cook County to vacate the award. Because the unions and City bargained to have arbitrators construe CBAs, courts give arbitrators great deference and the judicial review of an arbitration award is

[32] In re Enterprise Wire Company and Enterprise Independent Union, (March 28, 1966) (Daughtery, Arb.).
[33] City of Chicago. *Agreement Between the City of Chicago Department of Police and the Fraternal Order of Police Chicago Lodge No. 7*, Art. 9, § 9.7

"extremely limited."[34] That is, the authority of a Circuit Court judge to review an arbitration award is much narrower than the authority of an arbitrator to review the initial disciplinary recommendation from the investigating agency; the entity with the most direct access to information about the member and the allegations—the investigating agency—is afforded the least deference.[35]

[34] Forest Preserve v. Police Labor Council, 2017 IL App(1st) 161499, ¶19 (internal citations omitted)

[35] Police Board decisions, like arbitrators' decisions, are appealable to the Circuit Court of Cook County and from there may be appealed within the Illinois State court system. But the Police Board is granted less deference for its decisions than the arbitrators. In *Lessner v Police Board*, 2016 IL App (1st) 150545, the Illinois Appellate Court stated that for its own review of the Police Board decision, "[T]he Police Board's factual findings are considered *prima facie* correct and may not be set aside unless contrary to the manifest weight of the evidence. As to the Police Board's conclusions of law, however, no deference applies; we review these conclusions de novo." (Internal citations omitted)." In other words, in *Lessner*, the Illinois Appellate Court gave less deference to the Police Board's interpretation of the law than it would to an arbitrator's interpretation of the CBA (which is given broad deference, as noted just above)

III. OBJECTIVES, SCOPE, AND METHODOLOGY

A. OBJECTIVES

The objectives of the review were: (1) to describe the disciplinary grievance procedure provided for in the CBAs; (2) to determine the extent to which discipline issued to sworn CPD members changed as a result of binding summary opinions, arbitrations, settlements, and Police Board reviews during the period of analysis; and (3) to determine what factors arbitrators in binding summary opinions and arbitrations identify as reasons for their decisions to modify issued discipline for sworn personnel. Police Board reviews provided for under the grievance procedure in CBAs were included in this review; however, this review excluded consideration of the automatic, non-waivable reviews by the Police Board for which the MCC provides.

B. SCOPE

This review describes the disciplinary grievance procedure for CPD police officers, sergeants, lieutenants, and captains, and analyzes the outcomes of this process. It is responsive to paragraph 558(e) of the consent decree entered in *Illinois v. Chicago*.

OIG reviewed disciplinary grievances that were resolved from the beginning of the effective period of police contracts negotiated from November 18, 2014 through December 31, 2017.[36] Prior to the adoption of new contracts for the supervisory ranks on July 22, 2020, OIG selected this period of analysis to align with the period of the most recent effective contracts. As of January 2021, CPD and the FOP—the union representing its sworn members below the rank of sergeant—have not reached new contract agreements to supersede those negotiated for 2012–2017. The prior FOP contract therefore continues to govern the grievance procedure, in accordance with the "continuing effect" provision (Article 28.2).

The focus of this review was to determine how different processes for challenge and adjudication change the discipline issued to sworn CPD members. This review neither includes assessment of non-disciplinary grievances, nor does it include assessment of the efficacy or procedural fairness of the grievance procedure (for example, assessment of how officers are informed of their contractual rights or how long the process takes).

[36] CBAs were executed for sworn members of CPD in 2014. The CPD directive page that links to the contracts was issued on November 13, 2014, and the FOP contract was signed on November 18, 2014. After they were negotiated in 2014, the CBAs were retroactively applied back to 2012: the contract period was defined as July 2012–June 2017 for the FOP contract and July 2012–June 2016 for all ranks covered by PBPA. OIG determined the timeframe for this analysis by the dates on which CBAs were ratified, rather than the dates from which they were retroactively effective. Arbitration awards from July 2012–November 2014 would not have been argued and decided with reference to the contracts that were later retroactively applied to that period, and therefore OIG treated them as out of scope for this analysis. New contracts were negotiated and executed for all ranks covered by PBPA in July 2020.

C. METHODOLOGY

OIG reviewed Department directives, CBAs for sworn CPD members, news releases, and academic literature on discipline-related appeals.
OIG conducted interviews with the following:

- Leadership in CPD's Office of Legal Affairs
- Leadership in MLAS
- MLAS staff members
- DOL's chief labor negotiator
- Leadership in FOP
- Counsel for PBPA

To understand the extent to which issued discipline changes and for what reasons, OIG developed a coding framework that was used to systematically analyze BSOs, arbitrations, Police Board reviews, and settlements reached to resolve disciplinary grievances.

OIG developed its coding framework by identifying justifications offered by arbitrators for why they made their decisions to reduce, eliminate, or maintain issued discipline for the grievant. OIG designated codes that covered the arbitrators' justifications for their decisions, assessments of the fairness of the issued discipline, and measures of which parties' arguments were most convincing. Appendix A contains further detail about the coding method and the complete codebook, including explanatory notes on the application of each code.

D. STANDARDS

OIG conducted this review in accordance with the Quality Standards for Inspections, Evaluations, and Reviews by Offices of Inspector General found in the Association of Inspectors General's *Principles and Standards for Offices of Inspector General* (i.e., "The Green Book").

E. AUTHORITY AND ROLE

The authority to perform this inquiry is established in the City of Chicago Municipal Code § § 2-56-030 and -230, which confer on OIG the power and duty to review the programs of City government in order to identify any inefficiencies, waste, and potential for misconduct, to promote economy, efficiency, effectiveness, and integrity in the administration of City programs and operations, and, specifically, to review the operations of CPD and Chicago's police accountability agencies. The role of OIG is to review City operations and make recommendations for improvement. City management is responsible for establishing and maintaining processes to ensure that City programs operate economically, efficiently, effectively, and with integrity.

IV. FINDINGS AND RECOMMENDATIONS

FINDING 1: MORE THAN HALF OF ALL ELIGIBLE CASES WERE GRIEVED, AND OF THOSE, 78% RESULTED IN DISCIPLINE EITHER BEING REDUCED OR ELIMINATED

In the period of analysis, there were 941 cases in which an investigating agency sustained allegations and issued discipline against a sworn CPD member at the rank of police officer, sergeant, lieutenant, or captain.[37] Of these 941 cases, 706 were eligible for at least one grievance procedure pathway (i.e., a BSO, arbitration, and/or Police Board review other than the automatic reviews for which the MCC provides), based on the issued discipline and the sworn member's rank.[38]

Over the same period, 370 grievances were resolved through a grievance procedure pathway or settlement; that is, approximately 52% of all grievance- or settlement-eligible cases over the period of analysis (370/706), and approximately 39% of all Sustained disciplinary cases (370/941), were resolved through a grievance procedure pathway or through a settlement.[39] Figure 4 below shows the ratios of cases resolved via grievance or settlement to eligible cases broken down by grievant rank and pathway.

FIGURE 4: Sustained cases and grievance procedure eligibility

Rank	All Sustained Disciplinary Cases Eligible for:			Sustained Disciplinary Cases Eligible for One or More Grievance Pathway(s)[40]
	BSO	Arbitration	Police Board Non-Automatic Review	
Police officer	623	119	119	655
Supervisor	46	5	N/A[41]	51
Total	669	124	119	706

Source: OIG analysis.

[37] In this context, OIG is defining "cases" as unique combinations of officers and investigative cases. For example, if Officer A and Officer B were investigated together, both were issued discipline and both grieved, that would count as two of the 941 "cases" identified above.

[38] To determine how many unique disciplinary grievances could have been filed in the period of analysis, OIG accounted for all Sustained disciplinary cases that included recommendations for grievance-eligible discipline. OIG accounted for each Department member that had grievance-eligible discipline recommended.

[39] The 370 cases resolved by grievance or settlement during this period include some cases for which the discipline was issued *prior* to the start of the period of analysis. Similarly, the 706 closed and Sustained cases during this period likely include some that were resolved by grievance *after* the end of the period of analysis.

[40] Some cases are eligible for multiple grievance pathways.

[41] In the period of analysis, there were no pathways to Police Board review of discipline for supervisors other than the automatic, non-waivable Police Board reviews conducted under the authority of the Municipal Code of Chicago

FIGURE 5: Rates of sustained cases resolved through grievance procedure

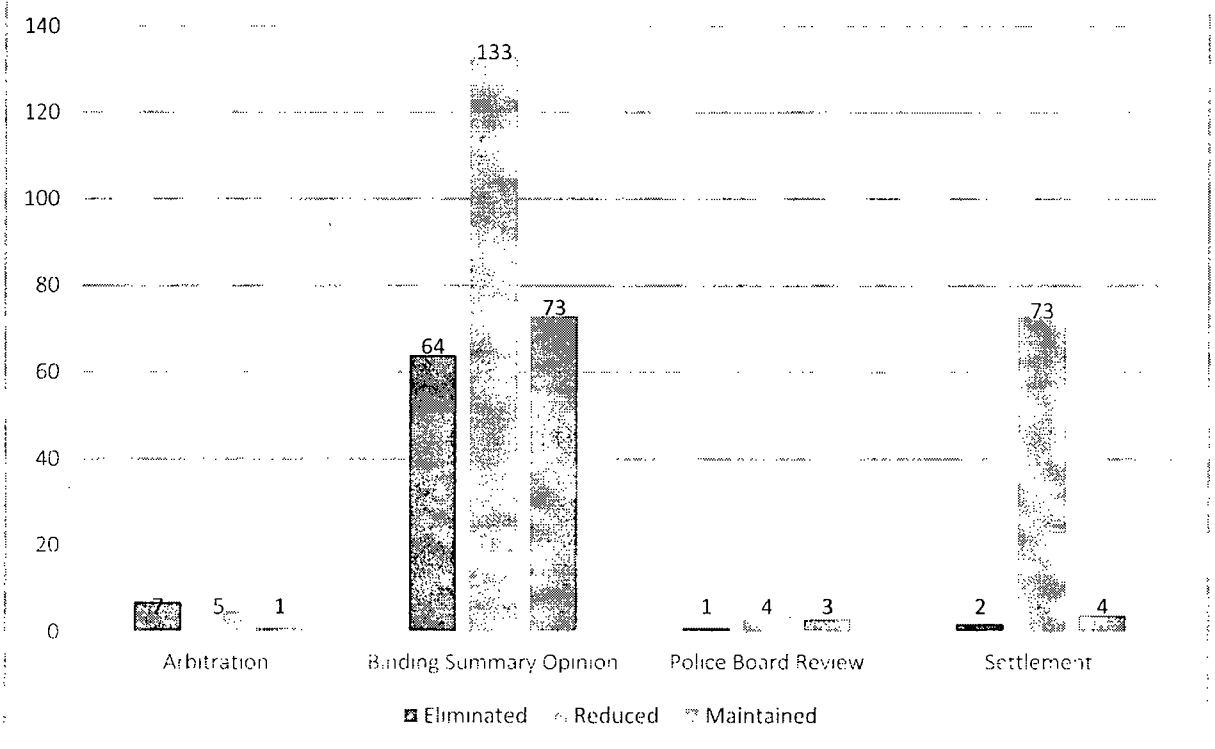
	BSO	Arbitration	Police Board Non-Automatic Review	Settlement	Any Grievance Pathway[42]
Police officer	42%	10%	6%	18%	53%
Supervisor	15%	20%	N/A[43]	26%	39%
All	40%	11%	6%	19%	52%

Source: OIG analysis.

1. GRIEVANCE OUTCOMES

Regardless of the pathway selected, once the relevant union decides to advance a grievance, discipline issued to the sworn member is usually reduced or eliminated. The reduction of issued discipline is the most frequent outcome for all grievance pathways, except arbitration. The most frequent outcome of arbitrations is the complete elimination of discipline. Figure 6 further shows that, across all grievances, only 22% (81/370) resulted in the maintenance of the original discipline: 1 arbitration, 73 BSOs, 3 Police Board reviews, and 4 settlements. In the remaining 78% of cases, issued discipline was either reduced or eliminated.

FIGURE 6: Grievance outcomes by resolution type



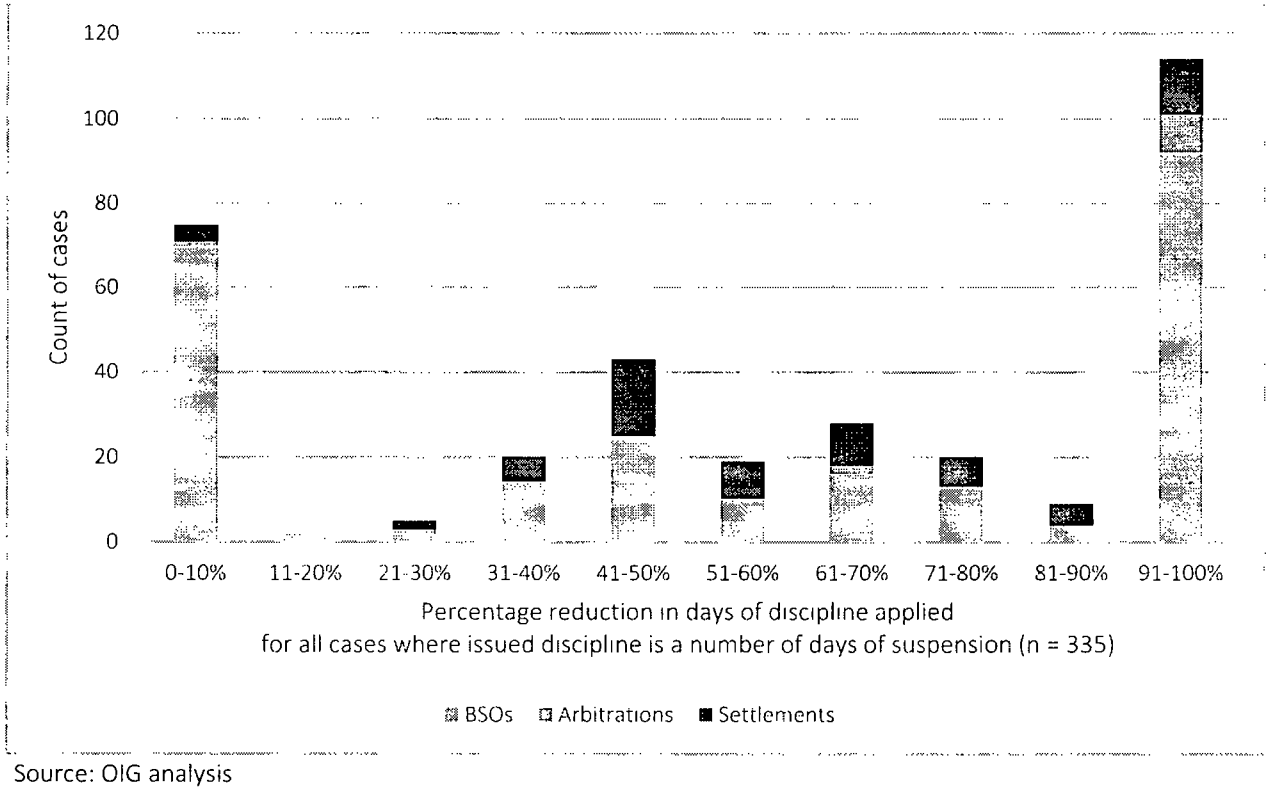
Source: OIG analysis.

[42] Percentages in this column reflect the total number of cases resolved by any grievance pathway or by settlement, divided by the total number of cases eligible for at least one grievance pathway

[43] In the period of analysis, there were no pathways to Police Board review of discipline for supervisors other than the automatic, non-waivable Police Board reviews conducted under the authority of the Municipal Code of Chicago

Figure 7 below shows the percentage of the reduction or elimination of suspension days for cases in which the issued discipline was suspension.[44] When considering suspensions, arbitrators use the full range of dispositions at their disposal, from 0% to 100% reduction in suspensions. However, Figure 7 also shows that during the period of analysis, arbitrators' decisions tended to cluster at the two extremes: minimal or no reduction of suspension and elimination or near-elimination of suspension.

FIGURE 7: Percentage reduction in days of suspension



Source: OIG analysis

2. FACTORS IN ARBITRATION AWARDS

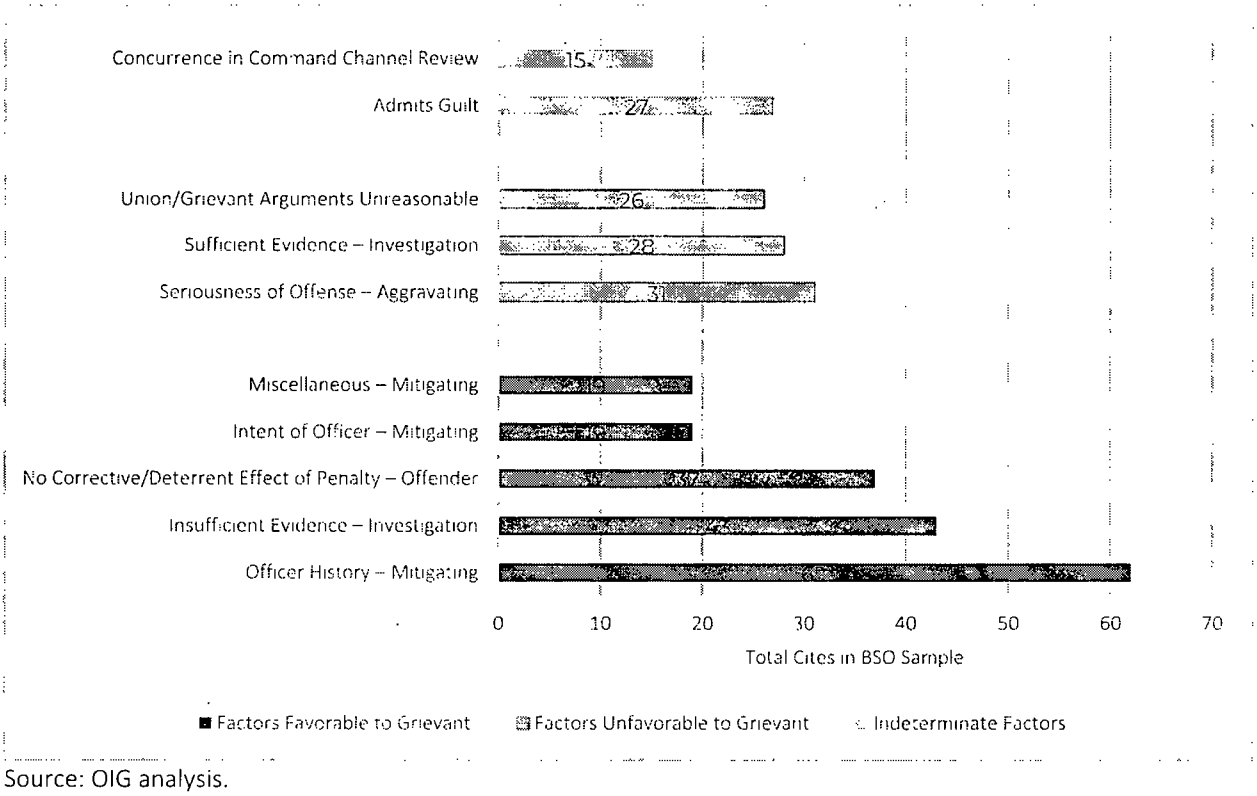
To understand what factors impacted arbitrators' decisions in BSOs and arbitrations, OIG conducted a qualitative analysis of their decisions. This involved applying an inductive coding framework to a sample of BSOs and to all disciplinary arbitration awards to identify the factors cited by arbitrators in support of their decisions. For this analysis, OIG reviewed a random sample of 129 of the 270 BSOs concluded during the period of analysis. Appendix A contains the full coding framework, including explanations of what each code means.

Ten factors in OIG's coding framework accounted for the majority (52%) of rationales put forth by arbitrators in support of their decisions in BSOs. The remaining 48% of rationales were distributed across 61 additional factors. Figure 8 below shows the ten most common factors and the number of BSO opinions in OIG's random sample in which each of these factors was cited.

[44] Of the 370 grievances reviewed by OIG, 335 of them involved issued discipline that included suspension days.

Arbitrators often cite multiple factors in support of a decision in a single case. The sum total of cites to factors favorable to the grievant (dark blue bars) outnumber the sum total of cites to factors unfavorable to the grievant (grey bars). Factors that could either be favorable or unfavorable to the grievant, depending on the broader context, are represented by light blue bars. Appendix B contains the full list of 71 factors from OIG's coding scheme cited at least once in a BSO within OIG's coding sample.

FIGURE 8: Most common factors cited in BSOs, from a sample of 129 BSOs resolved in the period of analysis[45]



Source: OIG analysis.

The most commonly cited factors reflect two aspects of a disciplinary case that arbitrators evaluate in their opinions: (1) whether there was justification for disciplining the grievant; and (2) whether the discipline issued to the grievant was commensurate with the alleged misconduct. While the first aspect focuses on the strength of the evidence and the adequacy of the investigation, the second aspect reflects arbitrators' judgments about the fairness and appropriateness of the issued discipline. Factors such as "Insufficient Evidence – Investigation," "Sufficient Evidence – Investigation," and "Admits Guilt" typically reflect an arbitrator's assessment of whether the Department was justified in disciplining the grievant. Factors such as "Officer History – Mitigating," "No Corrective/Deterrent Effect of Penalty – Offender," "Seriousness of Offense – Aggravating," and "Intent of Officer – Mitigating" reflect an arbitrator's

[45] In OIG's coding of decisional factors in BSOs and arbitrations, the term "officer" is used to mean "sworn member of any rank." See Appendix A

assessment of whether the discipline was appropriate relative to the misconduct and the broader context of the accused member's history and evidenced intentions. As Figure 8 detailed above, two of the three most frequently cited factors—"Officer History – Mitigating" and "No Corrective/Deterrent Effect of Penalty"—entail arbitrators making broad, non-deferential assessments of the issued discipline by looking at contextual issues beyond the specific alleged misconduct.

The most commonly cited factors vary across direction of outcome—that is, depending upon whether the arbitrator decided to reduce, maintain, or eliminate the issued discipline. The most common factors in cases that result in reduced discipline reflect that in such cases arbitrators believe there was cause for discipline but that the issued discipline was too severe. The prevalence of the "Officer History – Mitigating" and "No Corrective/Deterrent Effect of Penalty – Offender" factors reflects arbitrators' assessment of the issued discipline as unduly harsh and warranting reduction. At the same time, arbitrators commonly cited "Sufficient Evidence – Investigation" and "Admits Guilt" factors to affirm the grievant's culpability in such cases. Within the sample of 129 cases, there were 67 BSOs that resulted in a reduction of discipline.

FIGURE 9: Most common factors cited when discipline was reduced in BSOs

Factor	Number of BSOs (% with Reduced Discipline)
Officer History – Mitigating	45 (67%)
No Corrective/Deterrent Effect of Penalty – Offender	32 (48%)
Insufficient Evidence – Investigation	22 (33%)
Seriousness of Offense – Aggravating	15 (22%)
Sufficient Evidence – Investigation	15 (22%)
Admits Guilt	15 (22%)

Source: OIG analysis.

When arbitrators eliminated discipline, "Insufficient Evidence – Investigation" was by far the most frequently cited factor, appearing in 21 (81%) of the 26 coded BSOs in which discipline was eliminated. The other commonly cited factors in such cases similarly suggested arbitrators' belief that the issued discipline was unwarranted.

FIGURE 10: Most common factors cited when discipline was eliminated in BSOs

Factor	Number of BSOs (% with Eliminated Discipline)
Insufficient Evidence – Investigation	21 (81%)
Excessive Length	6 (23%)
Officer History – Mitigating	5 (19%)
Miscellaneous – Mitigating	5 (19%)
No Corrective/Deterrent Effect of Penalty – Offender	5 (19%)

Source: OIG analysis.

In contrast, when arbitrators maintained issued discipline, they most commonly cited factors that supported the basis for discipline (for example, "Sufficient Evidence – Investigation," "Admits Guilt") and rejected arguments advanced for reducing discipline ("Union/Grievant Arguments Unreasonable," "Seriousness of Offense – Aggravating"). The frequency of "Officer History – Mitigating," even in BSO decisions when discipline is maintained, indicates that officers' professional records were of high importance to arbitrators, even when they did not prove to be the decisive factor in their analyses. There were 36 BSOs in which the arbitrator maintained the issued discipline.

FIGURE 11: Most common factors cited when discipline was maintained in BSOs

Factor	Number of BSOs (% with maintained discipline)
Union/Grievant Arguments Unreasonable	17 (47%)
Seriousness of Offense – Aggravating	16 (44%)
Sufficient Evidence – Investigation	13 (36%)
Officer History – Mitigating	12 (33%)
Admits Guilt	11 (31%)

Source: OIG analysis.

When arbitrators make decisions about the discipline issued to grievants, they base them on their interpretation of the information in the record and supplemental information presented in writing or oral argument. The factors cited by arbitrators provide CPD, DOL, and the investigating agencies with important data about the ultimate disposition of a large proportion of all disciplinary cases, and may point to weaknesses in the investigative process. CPD, DOL, and the investigating agencies have a vested interest in the quality of disciplinary investigations and the fairness and appropriateness of issued discipline standing up to scrutiny by arbitrators. A systematic understanding of where arbitrators find weaknesses in investigative quality and disagree with issued discipline may enable CPD and the investigating agencies to strengthen their processes to meet those challenges before they arise in future disciplinary cases.

RECOMMENDATION

1. Given the potential benefits of understanding patterns in arbitrator decisions within and across BSO and arbitration awards, CPD and DOL should coordinate to review BSO and arbitration decisions on an annual basis. This review should focus on identifying, from individual arbitration awards and from aggregate patterns, how different factors influence arbitrators' decisions. As appropriate, CPD and DOL should provide counsel to the relevant City agencies (BIA and COPA) on any adjustments in investigative practices which might be appropriate in light of those factors.

CPD MANAGEMENT RESPONSE

1. *The Department's Management and Labor Affairs Section (MLAS) already provides a documented analysis of all Department grievances filed during the previous year as*

required by Department Directive E01-06(V)(F). MLAS also provides counsel to both the Bureau of Internal Affairs (BIA) and the Civilian Office of Police Accountability (COPA) following the issuance of each Binding Summary Opinion (BSO). This individualized and real-time feedback on BSOs allows BIA and COPA to immediately consider MLAS's counsel rather than receiving this counsel only once per year.

DOL MANAGEMENT RESPONSE

1. *The Department of Law (DOL) responds by stating that for all arbitrations handled by DOL, the DOL Labor attorneys review the decision following each arbitration and provide the client department with legal counsel and recommendations where appropriate. This action is completed following the issuance of every award. Accordingly, DOL has already implemented the recommendation on a more frequent basis than recommended by the OIG. DOL will continue its current practice. DOL directs OIG to CPD for its responses to the recommendation.*

FINDING 2: THE DISCIPLINARY GRIEVANCE PROCEDURE LACKS TRANSPARENCY

A transparent disciplinary process is of foundational importance to the operation of the police accountability system—and where approximately 39% of all Sustained disciplinary cases for unionized sworn members are resolved by grievance or settlement—transparency of the disciplinary grievance procedure is paramount and overdue. Such transparency in the disciplinary process is an entitlement of CPD's members as well as a broader public good.

When a sworn member grieves the issued discipline, there is typically no public information about any of the facts of the case. Arbitration awards are not published by the City as a matter of course. The Illinois Freedom of Information Act (FOIA) makes the "final outcome" of arbitrations in which discipline is imposed accessible to the public. But Illinois' FOIA law permits public bodies to withhold all records related to adjudications where no discipline is imposed. Even where discipline is imposed, records other than the "final outcome" of arbitrations could be withheld in response to a FOIA request.[46]

Facts which are not readily available for public scrutiny include: the investigative finding and the discipline that the member elected to grieve; the union's decision on whether or not to advance the grievance; the grievance option selected (BSO, arbitration, or Police Board review); how the grievance was resolved; how the final discipline changed from the issued discipline; and the arbitrator's rationale for any changes from the issued discipline.[47] The relatively small number of disciplinary grievances handled by the Police Board are an important exception to this general pattern, as the Police Board publishes the outcomes of the cases it hears on its website. At the time of this writing, neither CPD nor DOL publicly report on the outcomes of BSOs, arbitrations, or grievances that reached a settlement between the parties.

The lack of transparency in the disciplinary grievance procedure stands in contrast to the publicly available information about complaints and notifications filed against CPD sworn members, which may initiate investigations that lead to discipline. OIG publishes dashboards that show the distribution of complaint/notification types, the geographic distribution of complaints and notifications by CPD district, ward, and Community Area, and the trend over time in the volume of complaints and notifications.[48] OIG's dashboards also include information about the current status of complaints/notifications filed by year—that is, whether they remain pending, have reached an investigative finding, or were closed on other grounds without reaching an investigative finding. COPA publishes on its website data on the breakdown of cases concluded

[46] 5 ILCS 140/7(n)

[47] COPA publishes redacted Summary Reports of its investigations on its website. But these Summary Reports only follow cases through to the discipline recommended by COPA. They provide no insight into cases that are later grieved, or the discipline issued to CPD members following the grievance procedure https //www.chicagocopa.org/news-publications/publications/summary-reports/, accessed January 23, 2021.

[48] City of Chicago Office of Inspector General, "Complaints/Notifications," https://informationportal.igchicago.org/dashboards/public-safety/complaints-notifications/, accessed January 23, 2021.

with findings in the past 12 months by finding type (i.e., what proportion were Sustained, Not Sustained, Unfounded, and Exonerated).[49] However, because such a substantial proportion of Sustained cases go through a grievance procedure before the discipline is finalized, and because a substantial proportion of those result in the complete elimination of discipline (see Finding 1 above), data on the volume of Sustained cases is not a good indicator of how many sworn officers are actually being disciplined for misconduct. Grievance procedure data is critical to a full public understanding of CPD's disciplinary system, and it is not currently available.

The consent decree entered into in *Illinois v. City of Chicago* requires CPD to publish "aggregate data on grievance proceedings arising from misconduct investigations, including: the number of cases grieved; the number of cases that proceeded before the Police Board; the number of cases that proceeded to arbitration; and the number of cases that were settled prior to a full evidentiary hearing, whether before the Police Board or in arbitration."[50] OIG's recommendation below identifies further information relating to grievance outcome reporting that would be in the public interest.

RECOMMENDATION

2. CPD and DOL should make information about disciplinary grievance procedure cases and the outcomes of BSOs, arbitrations, and settlements publicly available in a manner that protects the privacy of grievants, complainants, victims, and witnesses. Given that arbitrations have some precedential value and can "hold weight" in future cases, anonymized arbitration awards should be published, indexed by topic, and searchable. In addition to the data reporting required by the consent decree, public reports should also include aggregate statistics on:

    a) the number of cases annually that are advanced through each grievance pathway;
    b) the rates at which discipline is reduced, eliminated, and maintained through each grievance pathway; and
    c) the number of grievance cases heard by each arbitrator.

CPD MANAGEMENT RESPONSE

2. *The Department disagrees with the recommendation that it publish a searchable index of arbitration awards. At present, the Department does not have resources available to create and make such an index available to the public. With respect to the data reporting recommendation, the Department also disagrees and notes that it is already subject to substantial reporting obligations concerning grievances pursuant to Consent Decree paragraph 550(f). The Department further notes that Consent Decree paragraph 558(e) already imposes an obligation on the Public Safety Inspector General (PSIG) to regularly, and at least annually, conduct reviews and audits that analyze disciplinary grievance*

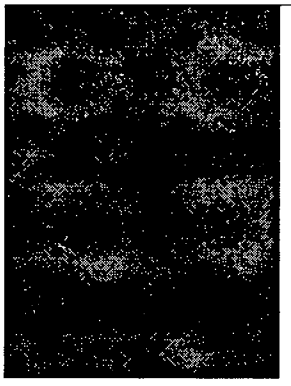
[49] Civilian Office of Police Accountability, "Concluded Investigations," accessed January 23, 2021, https://www.chicagocopa.org/data-cases/data-dashboard/closed-investigations/.
[50] Illinois v. City of Chicago, No. 17-cv-6260, 2019 WL 398703, ¶550(f) (N.D. Ill. Jan. 31, 2019).

procedures and outcomes. The PSIG could certainly publish the additional data sought in this recommendation as part of its own review or audit.[51]

DOL MANAGEMENT RESPONSE

2. *DOL does not have the data necessary to provide the information and public reports set forth in this recommendation. Further, since DOL is involved in such a small subset of discipline grievances, providing decisions, settlements or aggregate data would not capture the majority of discipline grievances.*

[51] OIG notes that CPD misstates the Public Safety section's reporting obligation here, paragraph 558 requires that the Public Safety section develop a policy for the performance of annual projects, and that one topic to be covered is the analysis of disciplinary grievance procedures and outcomes. This report constitutes that required project, which is not a recurring obligation



FINDING 3: THE SETTLEMENT PROCESS, WHICH REGULARLY RESULTS IN SIGNIFICANT REDUCTIONS IN DISCIPLINE AND THE REMOVAL OF RULE VIOLATIONS FROM SWORN MEMBERS' RECORDS, LACKS TRANSPARENCY AND FAILS TO PRODUCE CONSISTENT SETTLEMENT AGREEMENTS THAT FOLLOW A CONSISTENT FORMAT.

Settlements depend upon the Department and the grievant agreeing to terms to resolve a disciplinary grievance, and they represent a significant proportion of resolved grievances. During the period of analysis, settlements represented 21.4% of cases resolved through any grievance procedure (79/370).

There is a clear pattern in the substantive outcomes of settlements. In the period of analysis, the settlement process produced significant reductions in discipline and numerous instances of alleged rule violations being removed entirely from sworn members' records.[52]

1. REDUCTIONS IN DISCIPLINE AND REMOVAL OF RULE VIOLATIONS FROM CPD MEMBERS' RECORDS

In the period of analysis, there were 79 cases resolved by settlement. Of those 79 cases, 73 (92%) resulted in reduced discipline for the grievant. Two cases resulted in discipline being completely eliminated, and the remaining four resulted in issued discipline being maintained.

The terms of some settlement agreements also include the removal of rule violations from the grievant's disciplinary records. The rates of removal for violations of particular rules vary significantly, as the table below shows. In total, 27 of the 79 settlement cases reviewed (34%) involved the removal of one or more rule violations. Among rule violations that appeared most frequently in OIG's sample of settlements, Rule 2 was removed least often—only once in the 31 settlements where the violation was sustained—whereas Rule 14 was removed 21 times in 21 settlements after a Sustained finding of the violation.

[52] Within settlement agreements, the terms "rescind," "remove," and "expunge" are all used interchangeably to discuss the removal of a rule violation from the grievant's record

FIGURE 12: Rule violation outcomes in case settlements

Rule Violation	Number of Cases Settled in OIG Sample	Number (%) of Cases Settled Where Rule Violation was Removed
Rule 2: Any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department	31	1 (3%)
Rule 6: Disobedience of an order or directive, whether written or oral	32	4 (13%)
Rule 10: Inattention to duty	25	4 (16%)
Rule 14: Making a false report, written or oral	21	21 (100%)

Source: OIG analysis.

According to the FOP CBA, in order for a Rule 14 violation to be Sustained, the investigating agency must prove that the CPD member intentionally made a false report and that the statement was made about a fact that was material to the incident under investigation.[53] Rule 14 is widely recognized to be of fundamental importance among CPD's rules, not least because members frequently testify in court, where a disciplinary record indicating that they previously made a false report could permanently undermine their credibility. An MLAS representative stated to OIG that Sustained Rule 14 violations can lead to separation from the Department and that the Department has an organizational incentive to avoid Sustained Rule 14 violations on members' records, given that the finding weakens their credibility in court.

The removal of Rule 14 violations from every settlement case in which they were initially Sustained by the investigating agency and the variability in rates of removal across frequently cited rules without explanation are markers of how substantially the settlement process alters disciplinary outcomes for CPD members.

2. LACK OF TRANSPARENCY

Currently, neither the Municipal Code of Chicago nor the CBAs outline requirements or procedures for the settlement process. One of the involved parties described the settlement process as "informal." Other involved parties gave different accounts of the point at which a settlement may be initiated. CPD stated that settlements can be attempted when a hearing to resolve a grievance is being scheduled. DOL stated that settlements can occur at any point during the disciplinary grievance procedure, while counsel for PBPA stated that grievances could

[53] The City of Chicago 2014. *Agreement Between the City of Chicago Department of Police and the Fraternal Order of Police Chicago Lodge No. 7*, Art. 6, § 6 1.M. Chicago: Chicago Police Department, accessed January 23, 2021, http://directives.chicagopolice.org/contracts/FOP_Contract.pdf

be settled after scheduling for adjudication, during regular calls with DOL, or "earlier in the grievance process." CPD, DOL, and counsel for PBPA all stated that either CPD or the grievant's union representative could reach out to the other party to request a settlement. However, an individual grievant cannot request to settle their case.

The process for initiating and entering a settlement agreement is not outlined within any CBA, CPD directive, or policy. In interviews, CPD and counsel for PBPA offered some insights into the timing of and parties' responsibilities during settlement negotiations. DOL representatives, however, asserted privilege and declined to fully describe specific aspects of the settlement process, such as factors DOL may consider when trying to come to terms on a settlement and the process for arriving at mutually acceptable discipline. DOL further emphasized that what happens during each settlement is very case-specific, depending on the facts presented at each individual settlement. The City's unwillingness to publicly discuss the general process, combined with the fact that individual final outcomes are not made public, effectively shields disciplinary settlements from public view. This is a significant transparency gap in the accountability system, which deprives both CPD members and the broader public of valuable information.

3. LACK OF CONSISTENT FORMAT FOR SETTLEMENT AGREEMENTS

According to CPD, a settlement agreement must contain, at minimum, the following: (1) the name of the grievant; (2) the Complaint Register number;[54] (3) the grievance number; (4) the issued discipline; and (5) language that states that the grievant will not subsequently sue the union.[55] However, OIG found that these basic facts were not always included in final settlement agreements. Additionally, the documents are not consistent in their presentation of the information that is included, posing challenges to scrutiny.

Primary responsibility for drafting settlement documents can belong to one of several parties. If a case is headed for arbitration, the document may be drafted by either DOL or the grievant's legal representative, who is typically provided through their union. If the case was scheduled to be resolved through the BSO process, then MLAS may draft the settlement document. According to CPD, there is no standard format for settlement agreements; each settlement is different and the level of detail included depends upon the drafter. OIG also identified disparities in the amount of information included in its review of settlement agreements. While these documents represent individual agreements between parties and should be expected to be highly fact-specific, the lack of standardization has important consequences: some critical information for reporting aggregate statistics on settlement outcomes is not captured and it is impossible for an independent observer to review the settlement agreements to determine if outcomes are

[54] A Complaint Register number is a tracking number assigned to any incident involving potential misconduct by a CPD member that is the subject of a full disciplinary investigation. CPD General Order G08-01, "Complaint and Disciplinary Procedures."

[55] The phrasing of item (5) in the list above is not identical in all of the settlement agreements reviewed as part of OIG's analysis, a typical example reads as follows. "[The Grievant] hereby releases the Union, its officers, employees, agents and assigns from any and all claims including but not limited to, suits of law which the [Grievant] now has or may have against the Union with respect to representation by the Union of the [Grievant] in connection with the Grievance, up to and including the date of execution of this Agreement."

consonant with fair and consistent discipline overall.

RECOMMENDATIONS

In order to make the settlement process more transparent and consistent, CPD and DOL should:

3. create a public-facing resource describing the settlement process, including a clear explanation of what kinds of disciplinary cases could lead to a settlement being attempted by CPD or DOL, and when, if ever, the circumstances of a case preclude CPD or DOL from attempting to reach a settlement agreement;
4. produce an annual accounting of the number of grievances that were resolved through the settlement process—as opposed to through an arbitration award—and the outcomes of these settlements in terms of discipline being eliminated, maintained, or reduced;
5. create a template to be used by all parties when drafting settlement documents and ensure that all crucial information is included in every agreement; and
6. ensure that settlement agreements document the rationale when Sustained rule violations are removed from members' records as part of an agreement.

CPD MANAGEMENT RESPONSE

3. *The Department agrees with this recommendation, which the Department could address with a directive.*
4. *The Department's MLAS already produces an annual report as part of the Department's CALEA certification. This report details the number of grievances filed for a broad range of reasons and provides a breakdown of grievances that were resolved, including whether resolution was through settlement, being withdrawn, going to hearing, or other reasons.*
5. *The Department normally enters into settlement agreements only with the involvement of DOL, and therefore relies upon DOL to advise concerning the proper content of such agreements. If DOL is not involved in settling a case, the Department would use template documents already developed in conjunction with DOL.*
6. *The Department recognizes that the PSIG considers this recommendation to be a transparency issue but disagrees that this is the appropriate manner to achieve greater transparency. As noted above, the Department normally enters into settlement agreements only with the involvement of DOL, and therefore relies upon DOL to advise concerning the content of such agreements. Implementing this recommendation risks the Department's ability to maintain privileged communications with DOL, the disclosure of overall strategy, and may impugn employer confidentiality requirements. The Department remains open to further suggestions concerning how to create appropriate transparency surrounding this issue.*

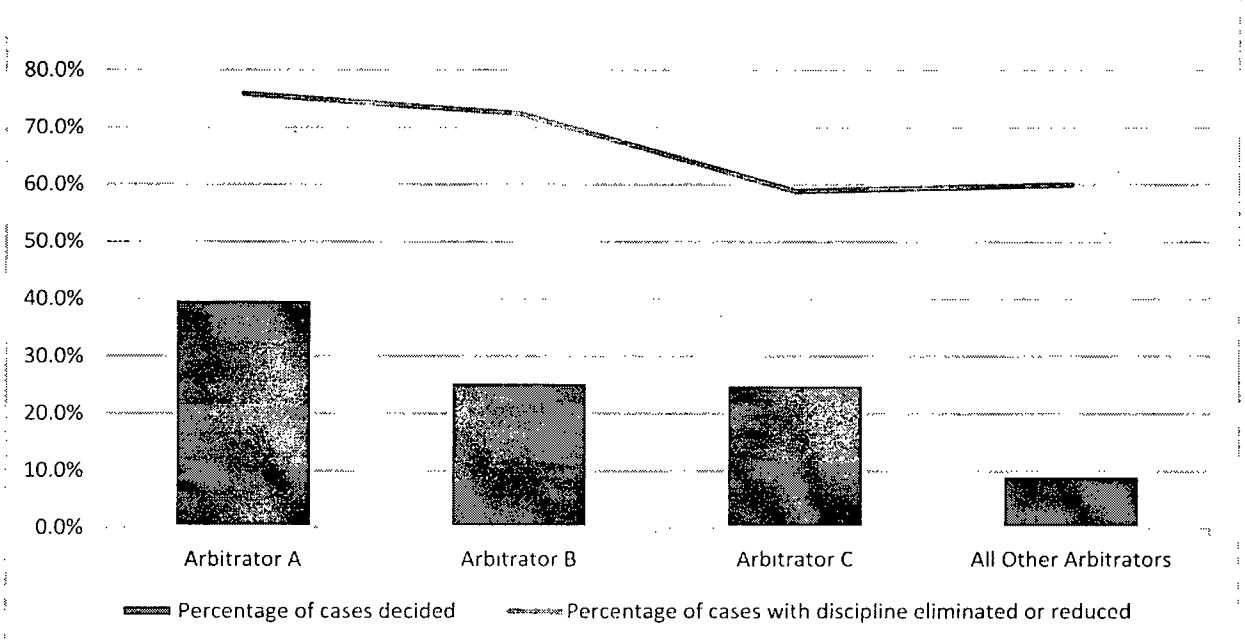
DOL MANAGEMENT RESPONSE

3. *DOL will commit to creating a public-facing process sheet which will set forth the process that takes place in a settlement for discipline cases that are handled by DOL. The process sheet will not include specifics on the type of disciplinary cases that may lead to settlement being attempted or precluded because that information would infringe on privilege, work product, and litigation strategy.*
4. *DOL is unable to produce an annual accounting of the number of grievances that were resolved through the settlement process because the DOL does not have access to all of the data that would be necessary to implement this recommendation. DOL is involved in a small subset of discipline grievances and therefore would be unable to report on the total number of discipline grievances resolved through the settlement process or the outcomes of those settlements.*
5. *DOL is performing this recommended action. For arbitrations handled by DOL that are settled, the DOL attorneys use samples/templates with standard language. Standard language is modified as necessary to comport with the specifics of a case or changes within the law.*
6. *DOL includes all necessary terms for the disciplinary grievance settlement agreements that it prepares. DOL does not include the rationale behind the settling of a specific case, as inclusion of this type of information would violate privilege, work product, and/or litigation strategy.*

FINDING 4: GRIEVANCE OUTCOMES ARE SIGNIFICANTLY SHAPED BY A VERY LIMITED NUMBER OF DECISION MAKERS.

The 270 BSOs adjudicated in the period of analysis were decided by nine arbitrators. However, 245 (90.7%) BSOs were decided by just 3 arbitrators, with Arbitrator A (see Figure 13 below) issuing 108 (40.0%) of all opinions. Arbitrators A and B, who together account for 65.6% of all BSOs in the period of analysis, issued decisions reducing or eliminating discipline for grievants at substantially higher rates than other arbitrators. Arbitrator C, the third most-frequent adjudicator of BSOs, was more likely to eliminate discipline and less likely to reduce discipline compared to Arbitrators A and B (see Figure 14).

FIGURE 13: BSO cases and dispositions decided by arbitrators



Source: OIG analysis.

Arbitrators are selected by mutual agreement between the union (representing the grievant) and DOL (on behalf of CPD). If the union and the City cannot agree on an arbitrator, they revert to a process described in the CBAs, by which each side takes turns striking an arbitrator from a list until there is one name remaining. Data from 2014–2017 shows that three arbitrators resolved grievances for both FOP and PBPA. Another two arbitrators resolved grievances only for FOP, and two others resolved grievances only for PBPA

The thirteen arbitration decisions issued in the period of analysis are even more concentrated than BSOs, with Arbitrator A again being the most favored choice of the parties. (Figure 15).

FIGURE 14: BSO discipline outcomes adjudicated by arbitrators

Arbitrator	Number of BSOs Issued	Maintained Discipline	Reduced Discipline	Eliminated Discipline
Arbitrator A	108	26 (24.1%)	58 (53.7%)	24 (22.2%)
Arbitrator B	69	19 (27.5%)	35 (50.7%)	15 (21.7%)
Arbitrator C	68	28 (41.2%)	18 (26.5%)	22 (32.4%)
All Other Arbitrators	25	10 (40.0%)	12 (48.0%)	3 (12.0%)

Source: OIG analysis.

FIGURE 15: Arbitrations adjudicated

Arbitrator	Number of arbitrations resolved	Percent of total
Arbitrator A	9	69.2%
Arbitrator B	1	7.7%
Arbitrator C	1	7.7%
All others	2	15.4%
Total	**13**	**100%**

Source: OIG analysis.

The requirement that the parties mutually agree to an arbitrator may explain the high re-occurrence of arbitrators selected to resolve BSOs and arbitrations. However, this ultimately has led to three individuals—who are neither members of the Department nor of any investigating agency—having the final say in an overwhelming majority of cases that are resolved through BSOs and arbitrations.

These arbitrators have wide latitude in their decision-making, and they apply their own contractual interpretation to decide whether the Department has just cause to discipline a member. Furthermore, judicial review of arbitrators' decisions is extremely limited. These three individual arbitrators, therefore, have a great deal of power concerning actual discipline served by CPD members, and their decisions are highly unlikely to be disturbed on subsequent review, which is highly deferential in nature.

RECOMMENDATION

7. DOL and CPD should work with the unions representing CPD's sworn members to expand the pool of eligible arbitrators and should review whether having so few arbitrators responsible for a large majority of grievance resolutions is consistent with a fair disciplinary process.

8. DOL and CPD should work with the unions to implement formalized criteria for the selection, retention, and removal of eligible arbitrators from the pool, such as are contemplated in Appendix Q of the FOP CBA.

CPD MANAGEMENT RESPONSE

7. *The Department agrees with this recommendation but notes that implementation will require changes to the respective collective bargaining agreements. The Department will take this recommendation into consideration in its negotiations.*
8. *The Department agrees with this recommendation but notes that implementation will require changes to the respective collective bargaining agreements. The Department will take this recommendation into consideration in its negotiations. However, the Department cautions that providing formal criteria for removing an arbitrator could prove less favorable than the current authority to remove an arbitrator with or without cause.*

DOL MANAGEMENT RESPONSE

7. *DOL is committed to working cooperatively with the unions regarding the arbitration process. Any agreement between the parties regarding expanding the contractually mandated pool of arbitrators beyond five (5) requires agreement with the various unions. DOL is committed to reviewing whether this is an issue that should be raised in bargaining.*
8. *DOL notes that Appendix Q of the CBA provides for the removal and replacement process of Arbitrators. Accordingly, since the CBA currently allows for either party to remove an arbitrator from the Appendix Q panel annually, DOL will continue to work with the unions when necessary to ensure any removal or replacement is properly followed pursuant to Appendix Q.*

V. CONCLUSION

The disciplinary grievance procedure is complex and involves several City agencies and private parties: MLAS, DOL, unions representing CPD sworn members, independent arbitrators, and the Police Board. As a substantial proportion of CPD's Sustained discipline cases passes through the grievance procedure system, it is imperative that the procedure and its outcomes are transparent and accountable to CPD members as well as the public. Any failures of transparency or gaps in accountability threaten public trust and member confidence in the fair operation of the disciplinary system as a whole.

APPENDIX A: CODING FRAMEWORK

OIG applied a qualitative coding framework of over 150 codes to a sample of BSOs and all arbitration decisions. Codes within the framework were either (A) rule violations, (B) arbitrator justifications, or (C) other miscellaneous aspects related to the investigating agencies. The codebook includes one code for violation of each of CPD's 54 Rules of Conduct.[56] Within the category of arbitrator justifications, OIG defined codes inductively and defined pairs of codes to create structural symmetry within the codebook. For example, "Length of Investigation – Excessive" and "Length of Investigation – Not Excessive" were both defined as codes, as well as "Officer History – Mitigating" and "Officer History – Aggravating."

Codes were applied to BSOs and arbitrations according to a consensus model. Two coders reviewed each decision independently and then resolved any discrepancies in their application of codes through a consensus meeting. The text below lists each of OIG's codes and definitions.

A. RULE VIOLATIONS

Rule Violations

The arbitrator explicitly states that during the disciplinary investigation, the offender was found to be in violation of the rule, or was found guilty of misconduct that would constitute the following:

Rule 1: Violation of any law or ordinance.

Rule 2: An impediment to the Department's efforts to achieve its policy and goals or brings discredit upon the Department.

Rule 3: A failure to promote the Department's efforts to implement its policy and accomplish its goals

Rule 4: An action taken to use the official position for personal gain or influence.

Rule 5: A failure to perform any duty.

Rule 6: Disobedience of an order or directive.

Rule 7: Insubordination or disrespect toward a supervisory member on or off duty.

Rule 8: Disrespect to or maltreatment of any person, while on or off duty.

Rule 9: Engaging in any unjustified verbal or physical altercation with any person, while on or off duty.

Rule 10: Inattention to duty.

Rule 11: Incompetency or inefficiency in the performance of duty.

Rule 12: Failure to wear the uniform as prescribed.

[56] Rule 19 was repealed by the Police Board in 1975.

Rule 13: Failure to secure and care for Department property.

Rule 14: Making a false report, written or oral.

Rule 15: Intoxication on or off duty.

Rule 16: Entering any tavern or bar while on duty or in uniform, except in the performance of a police duty.

Rule 17: Drinking alcoholic beverages while on duty or in uniform, or transporting alcoholic beverages on or in Department property, except in the performance of police duty.

Rule 18: Engaging directly or indirectly in the ownership, maintenance, or operation of a tavern or retail liquor establishment or engaging directly or indirectly in the ownership or leasing of a taxicab.

Rule 19: *This Rule was repealed by the Police Board in 1975.*

Rule 20: Failure to immediately a written report that any member, including self, is under investigation by any law enforcement agency other than the Chicago Police Department.

Rule 21: Failure to report promptly to the department any information concerning any crime or other unlawful action.

Rule 22: Failure to report to the Department any violation of Rules and Regulations or any other improper conduct which is contrary to the policy, orders, or directives of the Department.

Rule 23: Failure to obey Department orders concerning other employment, occupation, or profession.

Rule 24: Failure to follow medical roll procedures.

Rule 25: Failure to actually reside within the corporate boundaries of the City of Chicago.

Rule 26: Failure to provide the Department with a current address and telephone number.

Rule 27: Failure to report promptly any anticipated absence.

Rule 28: Being absent from duty without proper authorization.

Rule 29: Failure to be prompt for duty assignment, including roll call and court appearance.

Rule 30: Leaving duty assignment without being properly relived or without proper authorization.

Rule 31: Publicly criticizing the official actions of another Department member, when the result of such criticism can reasonably be foreseen to undermine the effectiveness of the official working relationship of the member of the member within his assigned unit.

Rule 32: Engaging in any public statements, interviews, activity, deliberation or discussion pertaining to the Police Department which reasonably can be foreseen to impair the discipline, efficiency, public service, or public confidence in the Department or its personnel, by false statements, or reckless, unsupported accusations or by the use of defamatory language, abusive language, invective or epithets.

Rule 33: Sitting in a public conveyance while in uniform or as a non-paying passenger when paying passengers are standing.

Rule 34: Failure to keep vehicle in public view while assigned to general patrol duty except when authorized by a supervisory member.

Rule 35: Concealing a Department vehicle for the sole purpose of apprehending traffic violators.

Rule 36: Permitting any person not on official police business to ride in a Department vehicle unless specifically authorized.

Rule 37: Failure of a member, whether on or off duty, to correctly identify himself by giving his name, rank and star number when so requested by other member of the Department or by a private citizen.

Rule 38: Unlawful or unnecessary use or display of a weapon.

Rule 39: Failure to immediately make an oral report to the desk sergeant at the District of occurrence and to follow such oral report with a written report on the prescribed form, whenever a firearm is discharged by a member.

Rule 40: Failure to inventory and process recovered property in conformance with Department orders.

Rule 41: Disseminating, releasing, altering, defacing or removing any Department record or information concerning police matter except as provided by Department orders.

Rule 42: Participating in any partisan political campaign or activity.

Rule 43: Discussing bail with a person who is in custody except by those specifically authorized to let to bond.

Rule 44: Giving an opinion as to fine or penalty.

Rule 45: Recommending any professional or commercial service.

Rule 46: Advising any person engaged in a professional or commercial service that such professional or commercial services may be needed.

Rule 47: Associating or fraternizing with any person known to have been convicted of any felony or misdemeanor.

Rule 48: Soliciting or accepting any gratuity, or soliciting or accepting a gift, present, reward, or other thing of value for any service rendered as a Department member, or as a condition for the rendering of such service, or as a condition for not performing sworn duties.

Rule 49: Giving to or receiving from any other member any gift, present, or gratuity excluding gifts accepted from relatives or close friends upon appropriate occasions. No supervisory member will receive a gift from a subordinate member.

Rule 50: Giving any gift, present, or gratuity to another member or a person not in his family without the specific approval of the Police Board, excluding donations not exceeding three dollars given in honor or retirements, or to hospitalized or deceased members, provided a member above the rank of captain has approved of the donation Party, dinner, and

entertainment expenses will be paid for individually by persons attending without prior collection through Department channels.

Rule 51: Failure to testify or give evidence before any grand jury, coroner's inquest or court of law or before any governmental, administrative, or investigative agency (city, state or federal) or by any investigative branch or superior officer of the Chicago Police Department or the Police board when properly called upon to do so, and when there is no properly asserted constitutional privilege, or when immunity from prosecution has been granted.

Rule 52: Seeking or soliciting contributions of any kind from anyone, by any means, for any purpose, under any circumstances, including collections for charitable purposes by any member or his agent, group of members of their agents, and including any sale or solicitation by any member of his agent, group or members of their agents, of advertising for any police journal, magazine or other publication identified with the Chicago Police Department or any association of its members, except as specifically authorized by resolution of the Police board.

Rule 53: Participating in, encouraging the participation of others in, or otherwise supporting any strike, demonstration, slowdown, or other such concerted action against the Department.

Rule 54: Joining or retaining membership in, or soliciting other members to join any labor organization whose membership is not exclusively limited to full time law enforcement officers or joining or retention of membership by supervisory personnel in any labor organization, whose membership is composed of rank and file members of the Department, and whose purpose is to represent its members concerning wages, hours, and working conditions.

Rule 55: Holding cigarette, cigar, or pipe in mouth while in uniform and in official contact with the public.

B. ARBITRATOR JUSTIFICATIONS

1. **Determination of Issued Discipline**
   - Investigation
     - Investigatory Process Inadequate: The arbitrator states or suggests that the process of the disciplinary investigation was inadequate.
     - Investigatory Process Adequate: The arbitrator states or suggests that the process of the disciplinary investigation was adequate.
     - Admits guilt: The arbitrator states that the offender acknowledges that he or she committed the violation in question. (Note: Use of this code does not necessarily imply a code of sufficient evidence).
     - Denies guilt: The arbitrator states that the offender denies that he or she committed the violation in question. (Note: Use of this code does not necessarily imply a code of insufficient evidence).
     - Sufficient Evidence in Investigation: The arbitrator states that there is enough evidence to support the conclusion of the disciplinary investigation. (Note: This code should be applied only when the arbitrator specifically evaluates the sufficiency of evidence or related terms (e.g., proof, facts, records). It should not be used when the arbitrator affirms the investigation's conclusion without an

evaluation of the sufficiency of evidence, even where specific pieces of evidence may be referred to).

- Insufficient Evidence in Investigation: The arbitrator states that there is not enough evidence to support the conclusion of the disciplinary investigation. (Note: This code can be used when arbitrators state that conclusions are inadequately supported even if they do not refer specifically to evidence. This code should also be used when the arbitrator's interpretation of available evidence does not accord with the investigating agency's arguments concerning the case).
- Excessive Length of Investigation: The arbitrator states that the length of the investigation was excessive. (Note: This code may be used when the arbitrator's assessment of the length of the investigation includes Command Channel Review. This code should not be used when the arbitrator mentions the length of investigation without stating or implying that the length was excessive).
- Not excessive length of investigation: The arbitrator states that the length of investigation was not excessive. (Note: This code may be used when the arbitrator's assessment of the length of the investigation includes Command Channel Review. This code should not be used when the arbitrator mentions the length of investigation without stating or implying that the length was excessive).
- Concurrence within the investigating agency (BIA or COPA/IPRA): The arbitrator states that most or all involved staff within the investigating body agrees with the findings of the investigation and/or the disciplinary recommendations.
- Non-concurrence within the investigating agency (BIA or COPA/ IPRA): The arbitrator states that there is some disagreement amongst the involved staff in the investigative body with either the findings of the investigation and/or the disciplinary recommendation.

- Command Channel Review (CCR)
  - Concurrence with the investigating agency: The arbitrator states that most or all supervisors within CCR agree with the findings of the investigation and/or disciplinary recommendation.
  - Non-concurrence with the investigating agency: The arbitrator states that there is some disagreement amongst the supervisors within CCR with either the findings of the investigation and/or the disciplinary recommendation
  - Concurrence within CCR: The arbitrator states that most or all supervisors within CCR agreed with each other in their assessments of the findings of the investigation and/or disciplinary recommendation.
  - Non-concurrence within CCR: The arbitrator states that the supervisors within CCR did not agree with each other in their assessments of the findings of the investigation and/or disciplinary recommendation.
  - Due consideration given: The arbitrator states that supervisors involved in CCR considered all of the facts and perspectives of the case when determining the discipline issued to the offender.

- Due consideration not given: The arbitrator states supervisors involved in CCR did not consider all of the facts and perspectives of the case when determining the discipline issued to the offender.
- Sufficient evidence – Issued discipline: The arbitrator states that there is enough evidence to support CCR's recommendation regarding issued discipline. (Note: This code can be used when arbitrators state that recommendations are adequately supported even if they do not refer specifically to evidence. This code should also be used when the arbitrator's interpretation of available evidence accords with CCR's arguments concerning the case).
- Insufficient evidence – Issued discipline: The arbitrator states that there is not enough evidence to support CCR's recommendation regarding issued discipline. (Note: This code can be used when arbitrators state that recommendations are inadequately supported even if they do not refer specifically to evidence. This code should also be used when the arbitrator's interpretation of available evidence does not accord with CCR's arguments concerning the case).
- Convincing arguments: The arbitrator states or suggests that he/she found some of the arguments advanced during CCR or other review— regardless of concurrence among reviewers or lack thereof—convincing and factored them into his/her decision.
- Unconvincing arguments: The arbitrator states or suggests that he/she found some of the arguments advanced during CCR or other review— regardless of concurrence among reviewers or lack thereof— unconvincing and factored them into his/her decision.

o Other reviewers
- Due consideration given: The arbitrator states that other reviewers (e.g., chief administrator of IPRA/COPA or chief of BIA) considered all facts and perspectives of the case when determining the discipline issued to the offender.
- Due consideration not given: The arbitrator states that that other reviewers (e.g., chief administrator of IPRA/COPA or chief of BIA) did not consider all of the facts and perspectives of the case when determining the discipline issued to the offender.
- Concurrence with investigating agency: The arbitrator states that other reviewers (e.g., chief administrator of IPRA/COPA or chief of BIA) agree with the findings and/or disciplinary recommendations presented by the investigative body. (Note: This code can be used when the chief administrator of IPRA/COPA or chief of BIA agree with the findings and/or disciplinary recommendations issued by members of their respective organizations).
- Non-concurrence with investigating agency: The arbitrator states that other reviewers (e.g., chief administrator of IPRA/COPA or chief of BIA) do not agree with the findings and/or disciplinary recommendations presented by the investigative body. (Note: This code can be used when the chief administrator of IPRA/COPA or chief of BIA disagree with the findings and/or disciplinary recommendations issued by members of their respective organizations).

- Concurrence with CCR: The arbitrator states that other reviewers (e.g., chief administrator of IPRA/COPA or chief of BIA) agree with the findings and/or disciplinary recommendations presented by CCR.
- Non-concurrence with CCR: The arbitrator states that other reviewers (e.g., chief administrator of IPRA/COPA or chief of BIA) do not agree with the findings and/or disciplinary recommendations presented by CCR.
- Sufficient evidence – Issued discipline: The arbitrator states that there is enough evidence to support other reviewers' (e.g., chief administrator of IPRA/COPA or chief of BIA) decision regarding issued discipline. (Note: This code can be used when arbitrators state that recommendations are adequately supported even if they do not refer specifically to evidence. This code should also be used when the arbitrator's interpretation of available evidence accords with other reviewers' arguments concerning the case).
- Insufficient evidence – Issued discipline: The arbitrator states that there is not enough evidence to support other reviewers' (e.g., chief administrator of IPRA/COPA or chief of BIA) decision regarding issued discipline. (Note: This code can be used when arbitrators state that recommendations are inadequately supported even if they do not refer specifically to evidence. This code should also be used when the arbitrator's interpretation of available evidence does not accord with other reviewers' arguments concerning the case).

o Superintendent
- Due consideration given: The arbitrator states that the superintendent considered all facts and perspectives of the case when determining the discipline issued to the offender.
- Due consideration not given: The arbitrator states that the superintendent did not consider all facts and perspectives of the case when determining the discipline issued to the offender.
- Concurrence with investigating agency: The arbitrator states that the superintendent agrees with the findings and/or disciplinary recommendations presented by the investigative body. (Note: This code can be used when arbitrators state that the superintendent agrees with the chief administrator of IPRA/COPA or the chief of BIA).
- Non-concurrence with investigating agency: The arbitrator states that the superintendent does not agree with the findings and/or disciplinary recommendations presented by the investigative body. (Note: This code can be used when arbitrators state that the superintendent disagrees with the chief administrator of IPRA/COPA or the chief of BIA).
- Concurrence with CCR: The arbitrator states that the superintendent agrees with the findings and/or disciplinary recommendations presented by CCR.
- Non-concurrence with CCR: The arbitrator states that the superintendent does not agree with the findings and/or disciplinary recommendations presented by CCR.
- Sufficient evidence – Issued discipline: The arbitrator states that there is enough evidence to support the superintendent's decision regarding issued discipline.

(Note: This code can be used when arbitrators state that recommendations are adequately supported even if they do not refer specifically to evidence. This code should also be used when the arbitrator's interpretation of available evidence accords with the superintendent's arguments concerning the case).

- Insufficient evidence – Issued discipline: The arbitrator states that there is not enough evidence to support the superintendent's decision regarding issued discipline. (Note: This code can be used when arbitrators state that recommendations are inadequately supported even if they do not refer specifically to evidence. This code should also be used when the arbitrator's interpretation of available evidence does not accord with the superintendent's arguments concerning the case).

- Unspecified
  - Sufficient evidence – Issued discipline: The arbitrator states that there is enough evidence to support a decision regarding issued discipline but does not specify which entity made the decision (Note: This code can be used when arbitrators state that recommendations are adequately supported even if they do not refer specifically to evidence. This code should also be used when the arbitrator's interpretation of available evidence accords with the unspecified member's arguments concerning the case).
  - Insufficient evidence – Issued discipline: The arbitrator states that there is not enough evidence to support a decision regarding issued discipline but does not specify which entity made the decision (Note: This code can be used when arbitrators state that recommendations are inadequately supported even if they do not refer specifically to evidence. This code should also be used when the arbitrator's interpretation of available evidence does not accord with the unspecified member's arguments concerning the case).

2. Assessment of Issued Discipline
   - Offender responsibility (mitigating/aggravating)
     - Department
       - Supervision: The arbitrator states that supervision (either during the initial incident or during subsequent review of the incident) was a factor in their decision about the discipline.
         - Aggravating
         - Mitigating
       - Policy: The arbitrator states that either the quality (or lack thereof) or the existence (or lack thereof) of Departmental policies were a factor in their decision about the discipline.
         - Aggravating
         - Mitigating
       - Training: The arbitrator states that training (or lack thereof) within the department was a factor in their decision about the discipline.
         - Aggravating
         - Mitigating

- Resources: The arbitrator states that resources (or lack thereof) within the department were a factor in their decision about the discipline.
    - Aggravating
    - Mitigating
- Providing reasonable accommodations: The arbitrator states that efforts to provide reasonable accommodations were a factor in their decision about the discipline.
    - Aggravating
    - Mitigating

- Officer
    - Situational Awareness: The arbitrator states that the offender's awareness (or lack thereof) of the particular circumstances during in incident was a factor in their decision about the discipline.
        - Aggravating
        - Mitigating
    - Knowledge
        - Procedural knowledge: The arbitrator states that the offender's knowledge (or lack thereof) of department procedure was a factor in their decision about the discipline.
            - Aggravating
            - Mitigating
        - Violation: The arbitrator states that the offender's knowledge (or lack thereof) of committing a violation was a factor in their decision about the discipline.
            - Aggravating
            - Mitigating
    - Acceptance of reasonable accommodations: The arbitrator states that the offender's acceptance or rejection of reasonable accommodations was a factor in their decision about the discipline.
        - Aggravating
        - Mitigating
    - Intent of officer: The arbitrator states that the offender's intentions were a factor in their decision about the discipline.
        - Aggravating
        - Mitigating
    - Level of involvement: The arbitrator states that the offender's level of involvement in the incident was a factor in their decision about the discipline. (Note: This code may be applied to situations in which the arbitrator refers to the offender's actions relative to the actions of co-offenders or when the arbitrator considers whether the offender is the only person or one of many people involved in the relevant incident).
        - Aggravating

- Mitigating
- Experience: The arbitrator states that the offender's experience or level of seniority was a factor in their decision about the discipline.
  - Aggravating
  - Mitigating
- Other extenuating circumstances: The arbitrator states there were extenuating circumstances outside of the control of the department or the offender that were a factor in their decision about the discipline.
  - Aggravating
  - Mitigating

- Purpose
  - Corrective/deterrent effect – Offender
    - Corrective/deterrent effect of penalty: The arbitrator states that the issued discipline would have a corrective or deterrent effect for the offender.
    - No corrective/deterrent effect of penalty: The arbitrator states that the issued discipline would not have a corrective or deterrent effect for the offender. (Note: this code includes instances in which the arbitrator states that the issued discipline is beyond what is needed to yield a corrective or deterrent effect).
  - Corrective/deterrent effect – Others
    - Corrective/deterrent effect of penalty: The arbitrator states that the issued discipline would have a corrective or deterrent effect on other members of the department.
    - No corrective/deterrent effect of penalty: The arbitrator states that the issued discipline would not have a corrective/deterrent effect on other members of the department. (Note: this code includes instances in which the arbitrator states that the issued discipline is beyond what is needed to yield a corrective/deterrent effect).
- Consistency
  - Comparison to other offenders
    - Consistent penalty: The arbitrator states that the issued discipline is consistent with discipline imposed on co-offender(s) or those who have committed comparable offenses.
    - Inconsistent penalty: The arbitrator states that the issued discipline is inconsistent with discipline imposed on co-offender(s) or those who have committed comparable offenses.
- Seriousness of offense
  - The arbitrator states that the seriousness of the offense was a factor in their decision about the discipline.
    - Aggravating
    - Mitigating

- Officer history
  - The arbitrator states that the offender's disciplinary or complimentary records were a factor in their decision about the discipline. (Note: This code may be used if the arbitrator refers to the offender's length of service without explicitly mentioning their disciplinary or complimentary records. The aggravating code should not be used if the arbitrator identifies the lack of a mitigating history).
    - Aggravating
    - Mitigating
  - Judgment of offender
    - Positive judgment: The arbitrator cites or refers to positive character traits or standing in the community as a factor in their decision about the discipline.
    - Negative judgment: The arbitrator cites or refers to negative character traits or standing in the community as a factor in their decision about the discipline.
- Response of offender
  - Remedial actions
    - Remedial actions taken: The arbitrator cites or refers to remedial actions taken by the offender as a factor in their decision about the discipline. (Note: Remedial actions may refer to any actions taken during or after the incident of misconduct that aim to mitigate the negative impact of the incident).
    - Remedial actions not taken: The arbitrator cites or refers to the offender not taking remedial actions as a factor in their decision about the discipline.
  - Contrition
    - Demonstrated contrition: The arbitrator cites or refers to contrition demonstrated by the offender as a factor in their decision about the discipline.
    - Did not demonstrate contrition: The arbitrator cites or refers to a lack of contrition demonstrated by the offender as a factor in their decision about the discipline.
  - Aggravating actions
    - Aggravating actions taken: The arbitrator cites or refers to aggravating actions taken by the offender as a factor in their decision about the discipline.
    - Aggravating actions not taken: The arbitrator cites or refers to aggravating actions not taken by the offender as a factor in their decision about the discipline.
- Other extenuating circumstances
  - The arbitrator states there are extenuating circumstances outside of the control of the department or the offender that affected the appropriateness of the issued discipline

- Aggravating
- Mitigating

- Arbitral principles
  - Balancing interests
    - Balanced interests: The arbitrator states that the issued discipline balanced the interests of the parties to the grievance.
    - Not balanced interests: The arbitrator states that the issued discipline did not balance the interests of parties to the grievance.
  - Progressive discipline
    - Reflects progressive discipline: The arbitrator states that the issued discipline reflects the principle of progressive discipline.
    - Violates progressive discipline: The arbitrator states that the issued discipline violates the principle of progressive discipline.
  - Disturbing the discipline
    - Basis to disturb: The arbitrator states that there is a basis to disturb the issued discipline because it is arbitrary, capricious, or discriminatory. (Note: This code may be used when the arbitrator refers to this issue as a matter of "arbitral precedent" rather than an "arbitral principle").
    - No basis to disturb: The arbitrator states that there is no basis to disturb the issued discipline because it is arbitrary, capricious, or discriminatory. (Note: This code may be used when the arbitrator refers to this issue as a matter of "arbitral precedent" rather than an "arbitral principle").
  - Other arbitral principles:
    - Reflects other arbitral principle: The arbitrator states that the issued discipline reflects another arbitral principle not captured by other codes.
    - Violates other arbitral principle: The arbitrator states that the issued discipline violates another arbitral principle not captured by other codes.

3. Hearing
   - Convincingness of arguments – Department
     - Department arguments reasonable: The arbitrator states that the arguments advanced by the department are reasonable and were a factor in their decision about the discipline. (Note: This code should be used when arbitrators refer to arguments presented during the hearing rather than evidence from the CR file).
     - Department arguments unreasonable: The arbitrator states that the arguments advanced by the department are not reasonable and were a factor in their decision about the discipline. (Note: This code should be used when arbitrators refer to arguments presented during the hearing rather than evidence from the CR file).
   - Convincingness of arguments – Union/grievant

- Union/grievant arguments reasonable: The arbitrator states that the arguments advanced by the union and/or grievant are reasonable and were a factor in their decision about the discipline. (Note: This code should be used when arbitrators refer to arguments presented during the hearing rather than evidence from the CR file).
- Union/grievant arguments unreasonable: The arbitrator states that the arguments advanced by the union and/or grievant are not reasonable and were a factor in their decision about the discipline. (Note: This code should be used when arbitrators refer to arguments presented during the hearing rather than evidence from the CR file).

4. Other Factors
   - Precedent
     - The arbitrator refers to precedent set by previous cases as a factor in their decision about the discipline. (Note: This code can be used when the arbitrator refers to previous arbitration decisions or to court decisions. It can also be used when the arbitrator refers to precedent that is either binding or persuasive).
     - The arbitrator refers to a lack of precedent set by previous cases as a factor in their decision about the discipline. (Note: This code can be used when the arbitrator refers to previous arbitration decisions or to court decisions. It can also be used when the arbitrator refers to precedent that is either binding or persuasive).
   - Miscellaneous
     - The arbitrator states that some other factor, not captured by other codes, was a factor in their decision about the discipline. (Note: Ideas about how to code the factor should be documented using the Comment function within QDA Miner).
       - Aggravating
       - Mitigating
   - Arbitrator expectations
     - The arbitrator states that their expectations or assumptions about police work were a factor in their decision about the discipline.
       - Aggravating
       - Mitigating

5. Arbitrator Determination
   - Just cause
     - Just cause for discipline
       - The arbitrator concludes that there is just cause for disciplining the offender.
       - The arbitrator concludes that there is not just cause for disciplining the offender.
     - Just cause for amount of discipline

- The arbitrator concludes that there is just cause for the extent of the discipline issued to the offender.
- The arbitrator concludes that there is not just cause for the extent of the discipline issued to the offender.

- Award
  - Discipline maintained: The arbitrator decided to maintain the discipline issued by CPD.
  - Discipline reduced: The arbitrator decided to reduce the discipline issued by CPD.
  - Discipline eliminated: The arbitrator decided to eliminate the discipline issued by CPD.

6. Miscellaneous Non-Factor Codes
   - Investigating agency mention
     - IPRA: The case was investigated by IPRA.
     - COPA: The case was investigated by COPA.
     - BIA: The case was investigated by BIA.
     - Supervisor: The case was investigated by the offender's supervisor.
     - Unclear: The arbitrator does not specify the investigating agency.
     - Other: The arbitrator mentions an investigating agency not captured by other codes.
   - Arbitrator comments
     - Disciplinary process: The arbitrator makes comments or reflects on the general functioning of the disciplinary process.
     - Grievance process: The arbitrator comments or reflects on the general functioning of the grievance process.
   - Affirmation of violation
     - The arbitrator affirms that the grievant committed misconduct without specifically evaluating the sufficiency of evidence.

APPENDIX B: ALL FACTORS CITED IN ARBITRATIONS AND BINDING SUMMARY OPINION (BSO) SAMPLE

OIG coded factors cited by arbitrators in a random sample of 129 BSOs (out of 270 decided in the period of analysis) and all 13 arbitrations decided in the period of analysis. The tables below list all factors cited by arbitrators in the sample BSOs and in arbitration decisions, respectively. In most BSO and arbitration decisions, arbitrators cite more than one factor influencing their decision. Therefore, the percentages in the right-hand column do not sum to 100%.

Factors Cited in BSOs	Number of BSOs (% of sample)
Officer History – Mitigating	62 (48%)
Insufficient Evidence – Investigation	43 (33%)
No Corrective/Deterrent Effect of Penalty – Offender	37 (29%)
Seriousness of Offense – Aggravating	31 (24%)
Sufficient Evidence – Investigation	28 (22%)
Admits Guilt	27 (21%)
Union/Grievant Arguments Unreasonable	26 (20%)
Intent of Officer – Mitigating	19 (15%)
Miscellaneous – Mitigating	19 (15%)
Concurrence within Command Channel Review	15 (12%)
Situational Awareness – Aggravating	14 (11%)
Miscellaneous – Aggravating	14 (11%)
Violates Progressive Discipline	13 (10%)
Inadequate Investigatory Process	12 (9%)
Non-concurrence with Investigative Body	11 (9%)
Expectations – Aggravating	11 (9%)
Concurrence with Investigative Body	10 (8%)
Supervision – Mitigating	10 (8%)
Excessive Length	9 (7%)
Non-concurrence within CCR	9 (7%)
Convincing Argument(s) – CCR	8 (6%)
Other Extenuating Circumstances – Mitigating	8 (6%)
Officer History – Aggravating	8 (6%)
Not Balanced Interests	8 (6%)
No Basis to Disturb	8 (6%)
Union/Grievant Arguments Reasonable	8 (6%)
Remedial Actions Taken	7 (5%)
Corrective/Deterrent Effect of Penalty – Offender	6 (5%)
Demonstrated Contrition	6 (5%)
Reflects Progressive Discipline	6 (5%)
Department Arguments Reasonable	6 (5%)

Inconsistent Penalty	5 (4%)
Adequate Investigatory Process	4 (3%)
Concurrence with CCR - Other Reviewer	4 (3%)
Non-concurrence with Investigative Body – Supt	4 (3%)
Non-concurrence with CCR – Supt	4 (3%)
Insufficient Evidence - Issued Discipline – Supt	4 (3%)
Resources – Mitigating	4 (3%)
Level of Involvement – Mitigating	4 (3%)
No Corrective/Deterrent Effect of Penalty – Others	4 (3%)
Precedent Set	4 (3%)
Insufficient Evidence - Issued Discipline – CCR	3 (2%)
Non-concurrence with CCR - Other Reviewer	3 (2%)
Level of Involvement – Aggravating	3 (2%)
Experience – Aggravating	3 (2%)
Positive Judgment	3 (2%)
Did Not Demonstrate Contrition	3 (2%)
Concurrence with Investigative Body - Other Reviewer	2 (2%)
Non-concurrence with Investigative Body - Other Reviewer	2 (2%)
Due Consideration Not Given – Supt	2 (2%)
Policy – Mitigating	2 (2%)
Intent of Officer – Aggravating	2 (2%)
Seriousness of Offense – Mitigating	2 (2%)
Basis to Disturb	2 (2%)
Department Arguments Unreasonable	2 (2%)
Not Excessive Length	1 (1%)
Due Consideration Not Given – CCR	1 (1%)
Due Consideration Not Given - Other Reviewer	1 (1%)
Due Consideration Given – Supt	1 (1%)
Policy – Aggravating	1 (1%)
Situational Awareness – Mitigating	1 (1%)
Procedural Knowledge – Aggravating	1 (1%)
Knowledge of Violation – Aggravating	1 (1%)
Experience – Mitigating	1 (1%)
Consistent Penalty	1 (1%)
Negative Judgment	1 (1%)
Remedial Actions not Taken	1 (1%)
Aggravating Actions Taken	1 (1%)
Violates Other Arbitral Principle	1 (1%)
Insufficient Evidence - Issued Discipline – Unspecified	1 (1%)
Expectations – Mitigating	1 (1%)

Factors Cited in Arbitrations	Number of Arbitrations (% of total)
No Corrective/Deterrent Effect of Penalty - Offender	9 (69%)
Precedent Set	9 (69%)
Insufficient Evidence - Investigation	8 (62%)
Excessive Length	7 (54%)
Sufficient Evidence - Investigation	6 (46%)
Officer History - Mitigating	6 (46%)
Non-concurrence with Investigative Body - Supt	5 (38%)
Non-concurrence with Investigative Body	4 (31%)
Concurrence with CCR - Supt	4 (31%)
Seriousness of Offense - Aggravating	4 (31%)
Union/Grievant Arguments Unreasonable	4 (31%)
Miscellaneous - Aggravating	4 (31%)
Miscellaneous – Mitigating	4 (31%)
Convincing Argument(s) - CCR	3 (23%)
Intent of Officer - Mitigating	3 (23%)
Inadequate Investigatory Process	2 (15%)
Adequate Investigatory Process	2 (15%)
Supervision – Mitigating	2 (15%)
Intent of Officer - Aggravating	2 (15%)
Experience – Aggravating	2 (15%)
Not Excessive Length	1 (8%)
Concurrence with Investigative Body	1 (8%)
Concurrence within CCR	1 (8%)
Concurrence with Investigative Body - Supt	1 (8%)
Non-concurrence with CCR - Supt	1 (8%)
Policy – Aggravating	1 (8%)
Situational Awareness - Aggravating	1 (8%)
Acceptance of Reasonable Accommodations - Aggravating	1 (8%)
Officer History - Aggravating	1 (8%)
Remedial Actions Taken	1 (8%)
Violates Progressive Discipline	1 (8%)
Expectations – Aggravating	1 (8%)

APPENDIX C: PBPA MEMBER OPTIONS FOR APPEAL FOLLOWING 2020 PBPA CONTRACT RENEGOTIATIONS

Following renegotiation of the PBPA contracts in 2020, Figure 3 in the report above no longer accurately reflects the appeal options available to CBA-covered sworn supervisors. The table below shows the appeal options available under the new contracts.

GRIEVANCE PROCEDURE AND DISCIPLINARY REVIEW PATHWAYS FOR PBPA MEMBERS AS OF JULY 2020					
PBPA-covered Sworn Supervisors	*Violation Noted*	Must accept	Not Eligible	Not Eligible	Not Eligible
	Reprimand	Must accept	Not Eligible	Not Eligible	Not Eligible
	Suspension (1-10 days)	May accept	Eligible	Not Eligible	Not Eligible
	Suspension (11-30 days)	May accept	Not Eligible	Eligible	Not Eligible
	Suspension (31-365 days)	May accept	Not Eligible	Eligible[57]	Not Eligible
	Suspension (>365 days)	Must go to Police Board review	Not Eligible	Not Eligible	Automatic, Non-waivable
	Separation	Must go to Police Board review	Not Eligible	Not Eligible	Automatic, Non-waivable

[57] PBPA contracts negotiated and approved in 2020 allow supervisors to file grievances for suspensions of 31–365 days, in place of the automatic, non-waivable Police Board reviews that were in place under the prior contracts The City of Chicago. 2020. *Agreement Between the City of Chicago and the Policemen's Benevolent & Protective Association of Illinois, Unit 156-Captains*. Art. 9, § 9 1. Chicago Chicago Police Department.
The City of Chicago 2020. *Agreement Between the City of Chicago and the Policemen's Benevolent & Protective Association of Illinois, Unit 156-Lieutenants*. Art 9, § 9 1 Chicago Chicago Police Department
The City of Chicago 2020. *Agreement Between the City of Chicago and the Policemen's Benevolent & Protective Association of Illinois, Unit 156 Sergeants*. Art. 9, § 9 1 Chicago. Chicago Police Department.

APPENDIX D: CPD RESPONSE TO RECOMMENDATIONS

Lori E. Lightfoot
Mayor

Department of Police · City of Chicago
3510 S. Michigan Avenue · Chicago, Illinois 60653

David O. Brown
Superintendent of Police

March 23, 2021

VIA ELECTRONIC MAIL

Ms. Deborah Witzburg
Deputy Inspector General
Public Safety Section
City of Chicago Office of Inspector General
740 N. Sedgwick, Suite 200
Chicago, Illinois 60654
dwitzburg@igchicago.org

Re: CPD's Response to OIG's Review of the Disciplinary Grievance Procedure for Chicago Police Department Members

Dear Deputy Inspector General Witzburg:

The Chicago Police Department ("Department") has prepared the following responses to recommendations 1 through 8 in the Review of the Disciplinary Grievance Procedure for Chicago Police Department Members.

Recommendation 1: *Given the potential benefits of understanding patterns in arbitrator decisions within and across BSO and arbitration awards, CPD and DOL should coordinate to review BSO and arbitration decisions on an annual basis. This review should focus on identifying, from individual arbitration awards and from aggregate patterns, how different factors influence arbitrators' decisions. As appropriate, CPD and DOL should provide counsel to the relevant City agencies (BIA and COPA) on any adjustments in investigative practices which might be appropriate in light of those factors.*

Response: The Department's Management and Labor Affairs Section (MLAS) already provides a documented analysis of all Department grievances filed during the previous year as required by Department Directive E01-06(V)(F). MLAS also provides counsel to both the Bureau of Internal Affairs (BIA) and the Civilian Office of Police Accountability (COPA) following the issuance of each Binding Summary Opinion (BSO). This individualized and real-time feedback on BSOs allows BIA and COPA to immediately consider MLAS's counsel rather than receiving this counsel only once per year.

Recommendation 2: *CPD and DOL should make information about disciplinary grievance procedure cases and the outcomes of BSOs, arbitrations, and settlements publicly available in a manner that protects the privacy of grievants, complainants, victims, and witnesses. Given that arbitrations have some precedential value and can "hold weight" in future cases, anonymized arbitration awards should be published, indexed by topic, and searchable. In addition to the data reporting required by the consent decree, public reports should also include aggregate statistics on:*

(a) the number of cases annually that are advanced through each grievance pathway;
(b) the rates at which discipline is reduced, eliminated, and maintained through each grievance pathway; and
(c) the number of grievance cases heard by each arbitrator.

Response: The Department disagrees with the recommendation that it publish a searchable index of arbitration awards. At present, the Department does not have resources available to create and make such an index available to the public.

With respect to the data reporting recommendation, the Department also disagrees and notes that it is already subject to substantial reporting obligations concerning grievances pursuant to Consent Decree paragraph 550(f). The Department further notes that Consent Decree paragraph 558(e) already imposes an obligation on the Public Safety Inspector General (PSIG) to regularly, and at least annually, conduct reviews and audits that analyze disciplinary grievance procedures and outcomes. The PSIG could certainly publish the additional data sought in this recommendation as part of its own review or audit.

Recommendation 3: *DOL and CPD should create a public-facing resource describing the settlement process, including a clear explanation of what kinds of disciplinary cases could lead to a settlement being attempted by CPD or DOL, and when, if ever, the circumstances of a case preclude CPD or DOL from attempting to reach a settlement agreement.*

Response: The Department agrees with this recommendation, which the Department could address with a directive.

Recommendation 4: *DOL and CPD should produce an annual accounting of the number of grievances that were resolved through the settlement process—as opposed to through an arbitration award—and the outcomes of these settlements in terms of discipline being eliminated, maintained, or reduced.*

Response: The Department's MLAS already produces an annual report as part of the Department's CALEA certification. This report details the number of grievances filed for a broad range of reasons and provides a breakdown of grievances that were resolved, including whether resolution was through settlement, being withdrawn, going to hearing, or other reasons.

Recommendation 5: *DOL and CPD should create a template to be used by all parties when drafting settlement documents and ensure that all crucial information is included in every agreement.*

Response: The Department normally enters into settlement agreements only with the involvement of DOL, and therefore relies upon DOL to advise concerning the proper content of such agreements. If DOL is not involved in settling a case, the Department would use template documents already developed in conjunction with DOL.

Recommendation 6: *DOL and CPD should ensure that settlement agreements document the rationale when Sustained rule violations are removed from members' records as part of an agreement.*

Response: The Department recognizes that the PSIG considers this recommendation to be a transparency issue but disagrees that this is the appropriate manner to achieve greater transparency. As noted above, the Department normally enters into settlement agreements only with the involvement of DOL, and therefore relies upon DOL to advise concerning the content of such agreements. Implementing this recommendation risks the Department's ability to maintain privileged communications with DOL, the disclosure of overall strategy, and may impugn employer confidentiality requirements. The Department remains open to further suggestions

concerning how to create appropriate transparency surrounding this issue.

Recommendation 7: *DOL and CPD should work with the unions representing CPD's sworn members to expand the pool of eligible arbitrators and should review whether having so few arbitrators responsible for a large majority of grievance resolutions is consistent with a fair disciplinary process.*

Response: The Department agrees with this recommendation but notes that implementation will require changes to the respective collective bargaining agreements. The Department will take this recommendation into consideration in its negotiations.

Recommendation 8: *DOL and CPD should work with the unions to implement formalized criteria for the selection, retention, and removal of eligible arbitrators from the pool, such as are contemplated in Appendix Q of the FOP CBA.*

Response: The Department agrees with this recommendation but notes that implementation will require changes to the respective collective bargaining agreements. The Department will take this recommendation into consideration in its negotiations. However, the Department cautions that providing formal criteria for removing an arbitrator could prove less favorable than the current authority to remove an arbitrator with or without cause.

Sincerely,

Scott Spears
Assistant General Counsel
Office of the Superintendent
Chicago Police Department

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OFFICE OF INSPECTOR GENERAL
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Management Response Form

Project Title: Review of the Disciplinary Grievance Procedure for Chicago Police Department Members

Project Number: 18-0101

Department Name: Chicago Police Department

Date: 3/23/2021

Department Head: David Brown

OIG Recommendation	Agree/ Disagree	Department's Proposed Action	Implementation Target Date	Party Responsible
1. Given the potential benefits of understanding patterns in arbitrator decisions within and across BSO and arbitration awards, CPD and DOL should coordinate to review BSO and arbitration decisions on an annual basis. This review should focus on identifying, from individual arbitration awards and from aggregate patterns, how different factors influence arbitrators' decisions. As appropriate, CPD and DOL should provide counsel to the relevant City agencies (BIA and COPA) on any adjustments in investigative practices which might be appropriate in light of those factors	Agree	The Department's Management and Labor Affairs Section (MLAS) already provides a documented analysis of all Department grievances filed during the previous year as required by Department Directive E01-06(V)(F). MLAS also provides counsel to both the Bureau of Internal Affairs (BIA) and the Civilian Office of Police Accountability (COPA) following the issuance of each Binding Summary Opinion (BSO). This individualized and real-time feedback on BSOs allows BIA and COPA to immediately consider MLAS's counsel rather than receiving this counsel only once per year.	None	None

OIG Recommendation	Agree/ Disagree	Department's Proposed Action	Implementation Target Date	Party Responsible
2. CPD and DOL should make information about disciplinary grievance procedure cases and the outcomes of BSOs, arbitrations, and settlements publicly available in a manner that protects the privacy of grievants, complainants, victims, and witnesses Given that arbitrations have some precedential value and can "hold weight" in future cases, anonymized arbitration awards should be published, indexed by topic, and searchable. In addition to the data reporting required by the consent decree, public reports should also include aggregate statistics on: (a) the number of cases annually that are advanced through each grievance pathway; (b) the rates at which discipline is reduced, eliminated, and maintained through each grievance pathway; and (c) the number of grievance cases heard by each arbitrator	Disagree	The Department disagrees with the recommendation that it publish a searchable index of arbitration awards At present, the Department does not have resources available to create and make such an index available to the public. With respect to the data reporting recommendation, the Department also disagrees and notes that it is already subject to substantial reporting obligations concerning grievances pursuant to Consent Decree paragraph 550(f) The Department further notes that Consent Decree paragraph 558(e) already imposes an obligation on the Public Safety Inspector General (PSIG) to regularly, and at least annually, conduct reviews and audits that analyze disciplinary grievance procedures and outcomes The PSIG could certainly publish the additional data sought in this recommendation as part of its own review or audit.	None	None
3. DOL and CPD should create a public-facing resource describing the settlement process, including a clear explanation of what kinds of disciplinary cases could lead to a settlement being attempted by CPD or DOL, and when, if ever, the circumstances of a case preclude CPD or DOL from attempting to reach a settlement agreement	Agree	The Department agrees with this recommendation, which the Department could address with a directive.	09/20/21	R&D

	OIG Recommendation	Agree/ Disagree	Department's Proposed Action	Implementation Target Date	Party Responsible
4	DOL and CPD should produce an annual accounting of the number of grievances that were resolved through the settlement process—as opposed to through an arbitration award—and the outcomes of these settlements in terms of discipline being eliminated, maintained, or reduced	Agree	The Department's MLAS already produces an annual report as part of the Department's CALEA certification. This report details the number of grievances filed for a broad range of reasons and provides a breakdown of grievances that were resolved, including whether resolution was through settlement, being withdrawn, going to hearing, or other reasons.	None	None
5	DOL and CPD should create a template to be used by all parties when drafting settlement documents and ensure that all crucial information is included in every agreement.	Agree	The Department normally enters into settlement agreements only with the involvement of DOL, and therefore relies upon DOL to advise concerning the proper content of such agreements. If DOL is not involved in settling a case, the Department would use template documents already developed in conjunction with DOL.	None	None
6	DOL and CPD should ensure that settlement agreements document the rationale when Sustained rule violations are removed from members' records as part of an agreement.	Disagree	The Department recognizes that the PSIG considers this recommendation to be a transparency issue but disagrees that this is the appropriate manner to achieve greater transparency. As noted above, the Department normally enters into settlement agreements only with the involvement of DOL, and therefore relies upon DOL to advise concerning the content of such agreements. Implementing this recommendation risks the Department's ability to maintain privileged communications with DOL, the disclosure of overall strategy, and may impugn employer confidentiality requirements. The Department remains open to further suggestions concerning how to create appropriate transparency surrounding this issue.	None	None
7.	DOL and CPD should work with the unions representing CPD's sworn members to expand the pool of eligible arbitrators and should review whether having so few arbitrators responsible for a large majority of grievance resolutions is consistent with a fair disciplinary process	Agree	The Department agrees with this recommendation but notes that implementation will require changes to the respective collective bargaining agreements. The Department will take this recommendation into consideration in its negotiations.	None	MLAS

	OIG Recommendation	Agree/ Disagree	Department's Proposed Action	Implementation Target Date	Party Responsible
8	DOL and CPD should work with the unions to implement formalized criteria for the selection, retention, and removal of eligible arbitrators from the pool, such as are contemplated in Appendix Q of the FOP CBA.	Agree	The Department agrees with this recommendation but notes that implementation will require changes to the respective collective bargaining agreements. The Department will take this recommendation into consideration in its negotiations. However, the Department cautions that providing formal criteria for removing an arbitrator could prove less favorable than the current authority to remove an arbitrator with or without cause	None	MLAS

APPENDIX E: DOL RESPONSE TO RECOMMENDATIONS

4750

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Management Response Form

Project Title: Review of the Disciplinary Grievance Procedure for Chicago Police Department Members

Project Number: 18-0101

Department Name: Department of Law

Date: 3/31/2021

Department Head: Celia Meza

OIG Recommendation	Agree/ Disagree	Law Department's Proposed Action	Implementation Target Date	Party Responsible
1. Given the potential benefits of understanding patterns in arbitrator decisions within and across BSO and arbitration awards, CPD and DOL should coordinate to review BSO and arbitration decisions on an annual basis. This review should focus on identifying, from individual arbitration awards and from aggregate patterns, how different factors influence arbitrators' decisions. As appropriate, CPD and DOL should provide counsel to the relevant City agencies (BIA and COPA) on any adjustments in		The Department of Law (DOL) responds by stating that for all arbitrations handled by DOL, the DOL Labor attorneys review the decision following each arbitration and provide the client department with legal counsel and recommendations where appropriate. This action is completed following the issuance of every award. Accordingly, DOL has already implemented the recommendation on a more frequent basis than recommended by the OIG. DOL will continue its current practice. DOL directs OIG to CPD for its responses to the recommendation.		

OIG Recommendation	Agree/ Disagree	Law Department's Proposed Action	Implementation Target Date	Party Responsible
investigative practices which might be appropriate in light of those factors.				
2. CPD and DOL should make information about disciplinary grievance procedure cases and the outcomes of BSOs, arbitrations, and settlements publicly available in a manner that protects the privacy of grievants, complainants, victims, and witnesses Given that arbitrations have some precedential value and can "hold weight" in future cases, anonymized arbitration awards should be published, indexed by topic, and searchable. In addition to the data reporting required by the consent decree, public reports should also include aggregate statistics on: (a) the number of cases annually that are advanced through each grievance pathway; (b) the rates at which discipline is reduced, eliminated, and maintained through each grievance pathway, and (c) the number of grievance cases heard by each arbitrator.		DOL does not have the data necessary to provide the information and public reports set forth in this recommendation. Further, since DOL is involved in such a small subset of discipline grievances, providing decisions, settlements or aggregate data would not capture the majority of discipline grievances.		
3. DOL and CPD should create a public-facing resource describing the settlement process, including a clear explanation of what kinds of		DOL will commit to creating a public-facing *process* sheet which will set forth the process that takes place in a settlement for discipline cases that are handled by DOL. The process sheet will not include		

OIG Recommendation	Agree/ Disagree	Law Department's Proposed Action	Implementation Target Date	Party Responsible
disciplinary cases could lead to a settlement being attempted by CPD or DOL, and when, if ever, the circumstances of a case preclude CPD or DOL from attempting to reach a settlement agreement.		specifics on the type of disciplinary cases that may lead to settlement being attempted or precluded because that information would infringe on privilege, work product, and litigation strategy.		
4. DOL and CPD should produce an annual accounting of the number of grievances that were resolved through the settlement process—as opposed to through an arbitration award—and the outcomes of these settlements in terms of discipline being eliminated, maintained, or reduced.		DOL is unable to produce an annual accounting of the number of grievances that were resolved through the settlement process because the DOL does not have access to all of the data that would be necessary to implement this recommendation. DOL is involved in a small subset of discipline grievances and therefore would be unable to report on the total number of discipline grievances resolved through the settlement process or the outcomes of those settlements.		
5. DOL and CPD should create a template to be used by all parties when drafting settlement documents and ensure that all crucial information is included in every agreement.		DOL is performing this recommended action. For arbitrations handled by DOL that are settled, the DOL attorneys use samples/templates with standard language. Standard language is modified as necessary to comport with the specifics of a case or changes within the law.		
6. DOL and CPD should ensure that settlement agreements document the rationale when Sustained rule violations are removed from members' records as part of an agreement.		DOL includes all necessary terms for the disciplinary grievance settlement agreements that it prepares. DOL does not include the rationale behind the settling of a specific case, as inclusion of this type of information would violate privilege, work product, and/or litigation strategy.		

OIG Recommendation	Agree/ Disagree	Law Department's Proposed Action	Implementation Target Date	Party Responsible
7. DOL and CPD should work with the unions representing CPD's sworn members to expand the pool of eligible arbitrators and should review whether having so few arbitrators responsible for a large majority of grievance resolutions is consistent with a fair disciplinary process.		DOL is committed to working cooperatively with the unions regarding the arbitration process. Any agreement between the parties regarding expanding the contractually mandated pool of arbitrators beyond five (5) requires agreement with the various unions. DOL is committed to reviewing whether this is an issue that should be raised in bargaining.		
8. DOL and CPD should work with the unions to implement formalized criteria for the selection, retention, and removal of eligible arbitrators from the pool, such as are contemplated in Appendix Q of the FOP CBA.		DOL notes that Appendix Q of the CBA provides for the removal and replacement process of Arbitrators. Accordingly, since the CBA currently allows for either party to remove an arbitrator from the Appendix Q panel annually, DOL will continue to work with the unions when necessary to ensure any removal or replacement is properly followed pursuant to Appendix Q.		

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- administrative and criminal investigations by its Investigations Section;
- performance audits of City programs and operations by its Audit and Program Review Section;
- inspections, evaluations and reviews of City police and police accountability programs, operations, and policies by its Public Safety Section; and
- compliance audit and monitoring of City hiring and human resources by its Compliance Section.

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OIG's authority to produce reports of its findings and recommendations is established in the City of Chicago Municipal Code §§ 2-56-030(d), -035(c), -110, -230, and 240.

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