



GOVERNMENT OF THE DISTRICT OF COLUMBIA OFFICE OF POLICE COMPLAINTS

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PCB POLICY REPORT #24-2: Education-Based Development in Lieu of Discipline

Introduction:

Police accountability is at the forefront of conversation in communities across the nation. Currently, the Metropolitan Police Department (MPD) has sole discretion in issuing discipline for officers with sustained allegations of misconduct based on community member complaints to the Office of Police Complaints (OPC). For years, OPC has detected a pattern wherein after an independent Complaint Examiner sustains one or more allegations of misconduct, officers are often issued Education-Based Development (EBD), which consists of re-training the member, in lieu of any actual discipline. After each sustained complaint, MPD sends two notices to OPC and the complainants. OPC has observed that in the first notice, MPD nearly always initially recommends the officer receive Adverse Action, which is department-level discipline. Yet, when MPD sends the second notice of final action from the Chief of Police to OPC and the complainants, the letters often state that officers were not disciplined at all and are instead given EBD. If police officers are allowed to violate MPD policies and District law without facing consequences, the public will grow increasingly reluctant to interact with officers at all, which will further erode community trust in MPD. Such distrust undermines the legitimacy of law enforcement and eradicates potential cooperation between the community and MPD.^{1 2}

Background:

OPC investigates complaints alleging that a member of MPD or the D.C. Housing Authority Police Department (DCHAPD) engaged in harassment, insulting language/conduct, retaliation, unnecessary/excessive force, discrimination, failure to identify, or failure to intervene. After a complaint is fully investigated by OPC,³ and there is reasonable cause to

¹ The Police Complaints Board (PCB) is issuing this report pursuant to D.C. Code § 5-1104(d), which authorizes the Board to recommend to the District of Columbia Mayor, Council, MPD Police Chief, and the Director of District of Columbia Housing Authority reforms that have the potential to improve the complaint process or reduce the incidence of police misconduct.

² OPC issued a similar policy recommendation in 2020, recommending that the DC Council amend DC Code §5-1112 to include a revised procedure for determining the level of discipline for sustained allegations of misconduct based on complaints made to OPC. To date, OPC's authority to issue discipline recommendations remains unchanged. That report also noted MPD's issuance of Education-Based Development in lieu of discipline for sustained complaints.

³ For more information on OPC's complaint process, see: <https://policecomplaints.dc.gov/page/complaint-process-opc>.

believe that police misconduct occurred, the case may be referred for adjudication by a Complaint Examiner.⁴ Complaint Examiners evaluate evidence submitted by OPC and the subject officers and/or their representatives. When the Complaint Examiner sustains at least one allegation of misconduct, OPC refers the case to the Chief of Police, per District law,⁵ to issue appropriate discipline. The Chief's imposition of discipline is not discretionary. DC Code § 5–1112 mandates, “the Police Chief shall issue a decision as to the imposition of discipline upon the subject police officer or officers.” Currently, neither the Police Complaints Board, nor Complaint Examiners, nor OPC’s Executive Director is authorized to provide disciplinary recommendations. Thus, when a Complaint Examiner sustains any misconduct allegation, it is imperative that MPD acknowledges that process and issues appropriate discipline, as is statutorily required, since MPD retains the sole authority to do so.

Discipline for Sustained OPC Complaints:

From January 2022 to July 2024, twenty-five OPC complaints went through the adjudication process and twenty-three complaints saw at least one allegation sustained by a Complaint Examiner. DC Official Code § 5- 1112(b) requires that when a sustained complaint is referred to the Chief of Police, they must impose an appropriate penalty from the Table of Penalties Guide in General Order 120.21 (Disciplinary Procedures and Processes).⁶ However, OPC has noted a concerning trend wherein MPD is not issuing any discipline for sustained complaints; but rather, is issuing officers EBD. This practice is inconsistent with both the DC Code and MPD’s own policies and procedures. General Order 120.21 defines EBD as an “alternative to discipline in lieu of corrective action” that is “focused on re-training the member,” illuminating that EBD is categorially different than disciplinary action, whether corrective or adverse.⁷

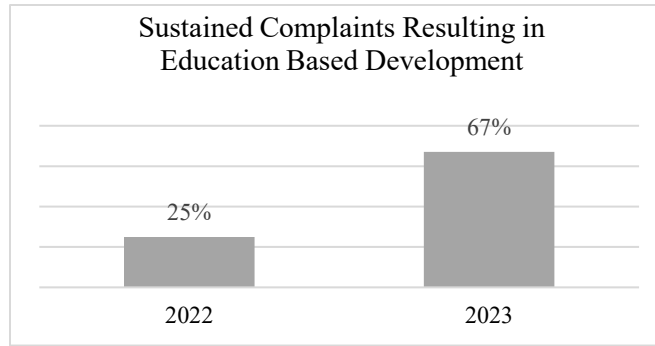
As noted above, the law requires MPD to impose an “appropriate penalty from the Table of Penalties Guide in General Order 120.21, Sworn Employee Discipline.” EBD is not discipline at all; it is merely additional training. For this reason, EBD is not listed in the Table of Penalties Guide; and thus, issuing EBD in lieu of discipline is effectively circumventing the law. As visualized in the graphic below, there was a dramatic increase in officers receiving EBD in lieu of discipline from 2022 to 2023.

⁴ For more information on Complaint Examiners, see: <https://policecomplaints.dc.gov/node/166342>.

⁵ Code of the District of Columbia § 5–1111. Complaint investigation, findings, and determination., available at <https://code.dccouncil.gov/us/dc/council/code/sections/5-1111>.

⁶ Code of the District of Columbia § 5–1112. Action by the Metropolitan Police Department., available at <https://code.dccouncil.gov/us/dc/council/code/sections/5-1112>.

⁷ [MPD General Order 120.21](#), Sworn Employee Discipline, defines Corrective Action as, “Unit-level, progressive discipline that ranges from the administration of a PD Form 750 (Dereliction Report), to a letter of reprimand (LOR), to an official reprimand (OR).” General Order 120.21 defines Adverse Action as, “Department-level discipline that includes any fine, suspension, reduction in rank or pay, or termination.”



The table below demonstrates that in 2024, most officers are receiving EBD, specifically for harassment allegations that not only violate MPD’s own policies, but also violate the Fourth Amendment.

OPC Case ⁸	Calendar Year	Sustained Allegations	MPD Initially Recommends Adverse Action	Discipline Issued	4 th Amendment violation
23-0558	2024	Harassment (Search Vehicle)	✓	None – EBD	✓
23-0586	2024	Harassment (Stop; Frisk Belongings)	✓	None – EBD	✓
23-0260	2024	Harassment (Stop)	✓	None – EBD	✓
23-0164	2024	Language/Conduct; Force (Strike; Push/Pull)	✓	Adverse Action; Corrective Action; EBD ⁹	
23-0707 & 23-0857	2024	Language/Conduct	✓	Corrective Action – Official Reprimand	
23-0772	2024	Harassment (Stop; Frisk; Handcuffing)	✓	None – EBD	✓
23-0735	2024	Harassment (Search Person)	✓	Pending	✓
23-0657	2024	Harassment (Entry)	✓	Pending	✓

Since the NEAR Act’s passage in 2016,¹⁰ OPC has had the authority to refer cases to MPD for policy training.¹¹ OPC’s decision about whether to refer a case for policy training or to complaint examination is based on a detailed review of the facts and circumstances of each case and each determination is made on a case-by-case basis. Thus, if the allegations were deemed appropriate for training, OPC would have referred the case for policy training, rather than going through the adjudication process to make a merits determination. The sanctions, or lack thereof, imposed by MPD in response to sustained community complaints suggest that the Department often goes outside of the Table of Penalties Guide and is disinclined to impose serious sanctions based on community complaints. Issuing EBD instead of discipline implies to officers and

⁸ This table represents all sustained cases from January 2024, to July 2024.

⁹ Officer 1 – Force; Language/Conduct (Adverse Action – Suspension); Officer 2 – Language/Conduct (Corrective Action – Official Reprimand); Officer 3 – Language/Conduct – (EBD).

¹⁰ D.C. Law 21-125. Neighborhood Engagement Achieves Results Amendment Act of 2016., available at <https://code.dccouncil.gov/us/dc/council/laws/21-125>.

¹¹ Code of the District of Columbia § 5–1107. Authority of the Office and processing of complaint., available at [https://code.dccouncil.gov/us/dc/council/code/sections/5-1107#:~:text=\(6\)%20Failure%20to%20wear%20or,a%20member%20of%20the%20public](https://code.dccouncil.gov/us/dc/council/code/sections/5-1107#:~:text=(6)%20Failure%20to%20wear%20or,a%20member%20of%20the%20public).

complainants that complaints from community members are unimportant and that MPD permits behaviors likely to produce complaints.

Complainant Notification:

Per District law, the Chief of Police must notify the complainant and OPC of MPD's initial discipline recommendation,¹² and then send notice of the final discipline shortly thereafter.¹³ In the letters issued to OPC and complainants by MPD after a Complaint Examiner sustains allegations from a complaint, the parties are frequently informed that "MPD's initial discipline recommendation for the subject officer is Adverse Action," which includes "Suspension, reduction in grade or pay, or termination." Yet, as seen in the table above, MPD nearly always recommends Adverse Action initially, but then repeatedly issues EBD without any real discipline. Whether this is intentionally misrepresentative or not, the letters lead complainants to believe that MPD will discipline the officer through Adverse Action, when this is not the result OPC has observed in a plethora of cases. These misleading letters further tarnish public trust in the Department.

Education-Based Development Limitations:

Moreover, General Order 120.21 states, "Members shall only be eligible to participate in EBD one time within a three-year period for similar conduct regardless of who issued the EBD (e.g., OPC, DRD, Use of Force Review Board)."¹⁴ MPD is not abiding by this policy. For example, MPD notified OPC on June 28, 2023, that the subject officer from OPC case 22-0573 was issued EBD for a harassment allegation, despite MPD initially recommending Adverse Action. Just over a year later, MPD notified OPC on July 19, 2024, that the same officer was issued EBD for three sustained harassment allegations in case 23-0772, again despite MPD initially recommending Adverse Action. That same officer had another harassment allegation sustained against them from a third complaint on May 30, 2024, and is awaiting discipline in that case. There are two significant concerns. First, MPD is evading its own policy. Second, the OPC complaints demonstrate that issuing EBD is not effectively training the officers to avoid the same type of behavior in the future.

Recommendations:

MPD's failure to issue adequate discipline to its members with sustained allegations of misconduct circumvents the legislative intent of the DC Council, significantly undermines OPC's entire investigatory process, and corrodes the community's trust in the District's police force. It is important to note that many of the sustained allegations stemming from community complaints do not just violate MPD's own policies and procedures, but also violate District law and the U.S. Constitution. These are factors that should be considered when determining whether discipline is warranted rather than sending the officer for re-training. EBD in lieu of discipline demonstrates to officers that complaints from community members are insignificant, and implies to the community that MPD endorses, or at least tolerates police misconduct, further driving a

¹² D.C. Code § 5-1112. (d).

¹³ D.C. Code § 5-1112. (f).

¹⁴ MPD General Order 120.21 (II)(B)(5)(b).

wedge between citizens and the police. Issuing appropriate discipline will demonstrate to the public that officers are being held accountable for committing acts of misconduct against the people they are sworn to serve and protect. To help improve and facilitate better relations and increase trust from community members, the PCB recommends that:¹⁵

1. MPD follow DC Code § 5–1112 and its own general order by imposing discipline from the Table of Penalties Guide in General Order 120.21 for sustained OPC complaints to ensure fairness and consistency. MPD should administer disciplinary action “in a manner, and at a level, appropriate with the member’s past record and the seriousness of the offense, giving due consideration to mitigating and aggravating factors,” per General Order 120.21. MPD should also follow the general order and not allow officers to participate in EBD more than once within a three-year period for similar conduct.
2. MPD should be more consistent in its initial and final disciplinary notices. For example, MPD should avoid stating in the initial discipline recommendation letters to community members that its recommendation is Adverse Action, which is founded on initial merit, and then continually issue the officers EBD in lieu of any Adverse or even Corrective Action. Furthermore, if the final disciplinary action differs from the initial recommendation, MPD should include an explanation for the discrepancy in the final notice. This will help eliminate the appearance of capriciousness in MPD’s current disciplinary process and help improve community trust in the Department.

¹⁵ OPC and the PCB provided a draft version of this recommendation to MPD for review and comment. MPD largely disagreed with this policy recommendation, and stated in its response, “The draft report incorrectly claims that MPD is in violation of DC Code and department policy, but neither the law nor MPD policy prohibit education-based development (EBD) for eligible officers when appropriate. MPD retains full authority for imposing discipline on officers pursuant to DC Code § 5–1112 and GO-PER-120.21 (Sworn Employee Discipline), and DC Code does not require different disciplinary options for the small number of cases that are sustained by OPC each year.” MPD did agree to add language to the final letter explaining why there may be a change from the initial recommendation to the final discipline issued.