

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF CITIZEN COMPLAINT REVIEW**

FINDINGS OF FACT AND MERITS DETERMINATION

Complaint No.:	02-0509
Complainant:	COMPLAINANT
Subject Officer(s), Badge No., District:	SUBJECT OFFICER #1, Third District SUBJECT OFFICER #2, Third District SUBJECT OFFICER #3, Third District
Allegation 1:	Harassment
Complaint Examiner:	Amy E. Wind
Merits Determination Date:	July 10, 2004

Pursuant to D.C. Official Code § 5-1107(a), the Office of Citizen Complaint Review (OCCR) has the authority to adjudicate citizen complaints against members of the Metropolitan Police Department (MPD) that allege abuse or misuse of police powers by such members, as provided by that section. This complaint was timely filed in the proper form as required by § 5-1107, and the complaint has been referred to this Complaint Examiner to determine the merits of the complaint as provided by § 5-1111(e).

I. SUMMARY OF COMPLAINT ALLEGATIONS

COMPLAINANT filed this complaint on behalf of her minor son, WITNESS #1, alleging that the subject officers (SUBJECT OFFICER #1, SUBJECT OFFICER #2, and SUBJECT OFFICER #3) harassed her son when the officers left him and another minor on the street without adult supervision after 12:00 midnight.

II. EVIDENTIARY HEARING

An evidentiary hearing was conducted regarding this complaint on April 29, 2004. The Complaint Examiner heard the testimony of WITNESS #1, WITNESS #2, WITNESS #3, WITNESS OFFICER #1, SUBJECT OFFICER #1, SUBJECT OFFICER #2, and SUBJECT OFFICER #3. The following exhibits, numbered consecutively to the exhibits in the Report of Investigation, were introduced and accepted at the hearing:

Exhibit 18: Layout of Parking Lot, Alley and Entrance to 9:30 Club

Exhibit 19: Reduced Version of Exhibit 18, marked by WITNESS #1

Exhibit 20: Partial Map of the District of Columbia

Exhibit 21: Reduced Version of Exhibit 18, marked by WITNESS #2

Exhibit 22: Reduced Version of Exhibit 18, marked by WITNESS #3

Exhibit 23: Photograph 1 of Alley

Exhibit 24: Photograph 2 of Alley

Exhibit 25: Internet Printout of MPD Website Showing D.C. Crime Statistics

Exhibit 26: Compilation of D.C. Crime Statistics by District

III. FINDINGS OF FACT

Based on a review of OCCR's Report of Investigation, the objections submitted by SUBJECT OFFICER #1, SUBJECT OFFICER #2, and SUBJECT OFFICER #3 on July 31, August 12, and July 30, 2003, respectively, an evidentiary hearing conducted on April 29, 2004, and the parties' closing briefs, the Complaint Examiner finds the material facts regarding this complaint to be:

1. WITNESS #1 and WITNESS #2 ("the boys") were both then 16 years old when they attended a show at a District of Columbia nightclub called the 9:30 Club on the night of September 13, 2002. Tr. 29, 88.¹ While both boys possessed learner's driving permits, neither was permitted to drive without a guardian present in the car. Tr. 30-31, 89-90.
2. They were accompanied to the show by WITNESS #2's mother, WITNESS #3. Tr. 150. When WITNESS #3 and the boys arrived at the club, they were directed to park in an alley adjacent to a parking lot. Tr. 156. The car was ticketed by SUBJECT OFFICER #2 and SUBJECT OFFICER #3 sometime thereafter for being illegally parked in a public alley. Tr. 40, 229.
3. WITNESS #3 was angry because she did not believe she deserved the parking citation. Tr. 65-66. WITNESS #3 ran down the alley to stop a police cruiser just leaving the alley, which contained SUBJECT OFFICER #2 and SUBJECT OFFICER #3. Tr. 231.
4. WITNESS #3 asked about the ticket in such a hostile manner that SUBJECT OFFICER #2 radioed for a supervisory officer to come to the scene to deal with an "irate citizen." Tr. 234. Dissatisfied with SUBJECT OFFICER #2's responses, WITNESS #3 began screaming, leaning over the cruiser's hood and pounding on the windshield. Tr. 235, 340. WITNESS #3 also touched SUBJECT OFFICER #2's arm and pushed the car door against her as the officer got out of the car. Tr. 238-40, 340.
5. Shortly before 1:00 a.m. on the morning of September 14, 2002, SUBJECT OFFICER #2 arrested WITNESS #3 for disorderly conduct and assaulting a police officer. Exhibit 12.

¹ Citations to the transcript of the evidentiary hearing held on April 29, 2004 will be cited as "Tr. ___." Citations to the exhibits contained in the Report of Investigation, as well as those accepted at the hearing, will be "Exhibit __, p. ___."

6. A small crowd of departing concertgoers formed to observe the incident (Tr. 241-2), so SUBJECT OFFICER #2 radioed a request for assistance from other officers. Tr. 241. SUBJECT OFFICER #3 exited the car at that time to deal with the crowd. Tr. 342. SUBJECT OFFICER #1 and other officers arrived a few minutes later in response to SUBJECT OFFICER #2's call for assistance. Tr. 241. An MPD Crime Scene Investigator, WITNESS OFFICER #1, also arrived, and observed the situation before leaving. Tr. 208-210.
7. WITNESS #1 and WITNESS #2 saw that WITNESS #3 was being arrested and ran toward where she was being held by SUBJECT OFFICER #2. Tr. 42, 99-100. SUBJECT OFFICER #1 initially kept them away, but then permitted them to approach the cruiser where WITNESS #3 was standing in handcuffs. Tr. 43.
8. Upon learning that she would be taken to a police station, WITNESS #3 asked SUBJECT OFFICER #2 how her children were going to get home, and whether the boys could accompany her to the police station. Exhibit 6; Tr. 163. WITNESS #3 said that the boys only had learner's driving permits and were not allowed to drive alone. Tr. 163, 211. SUBJECT OFFICER #2 responded that "that is your problem," and that "perhaps Child Protective Services would come pick them up." Exhibit 3; Tr. 47, 164, 211, 354. WITNESS #3 told her son to take her purse, which the police officers permitted him to do. Tr. 50, 367.
9. The boys asked several officers, including SUBJECT OFFICER #2, SUBJECT OFFICER #3 and SUBJECT OFFICER #1, how they could get to the police station. Tr. 344. WITNESS #2 was swearing in the general direction of the officers. Tr. 144, 332. The boys wanted to know what to do, stating they did not know the area, and did not know how to get to the police station. Tr. 48, 105.
10. SUBJECT OFFICER #2 advised the boys that they could walk to the police station, or that Child Protective Services could get them. Exhibit 3, 4; Tr. 73. She and SUBJECT OFFICER #1 gave them instructions on how to walk to the station. Exhibit 9; Tr. 324.
11. The boys walked in the neighborhood for about 15-30 minutes (Exhibit 5; Tr. 54), eventually hailing a cab that drove them to the Third District Police Station. Tr. 55. They waited in the station for several hours, called a friend's parent, and obtained a ride home. Tr. 56.

IV. DISCUSSION

Pursuant to D.C. Official Code § 5-1107(a), "The Office [of Citizen Complaint Review] shall have the authority to receive and to ... adjudicate a citizen complaint against a member or members of the MPD ... that alleges abuse or misuse of police powers by such member or members, including: (1) harassment; (2) use of unnecessary or excessive force; (3) use of language or conduct that is insulting, demeaning, or humiliating; (4) discriminatory treatment based upon a person's race, color, religion, national origin, sex, age, marital status, personal

appearance, sexual orientation, family responsibilities, physical handicap, matriculation, political affiliation, source of income, or place of residence or business; or (5) retaliation against a person for filing a complaint pursuant to [the Act].”

In this matter, Complainant has alleged that SUBJECT OFFICER #2, SUBJECT OFFICER #3 and SUBJECT OFFICER #1 harassed her son, WITNESS #1, when they refused to give him a ride to the police station, or otherwise help him get home, at approximately 1:00 a.m. on September 14, 2002. Harassment, as defined by MPD Special Order 01-01, Part III, Section G, includes “acts that are intended to bother, annoy, or otherwise interfere with a citizen’s ability to go about lawful business normally, in the absence of a specific law enforcement purpose.” The regulations governing OCCR further define harassment as “[w]ords, conduct, gestures or other actions directed at a person that are purposefully, knowingly, or recklessly in violation of the law or internal guidelines of the MPD ... so as to (1) subject the person to arrest, detention, search, seizure, mistreatment, dispossession, assessment, lien, or other infringement of personal or property rights; or (2) deny or impede the person in the exercise or enjoyment of any right, privilege, power or immunity. In determining whether conduct constitutes harassment, [OCCR] will look to the totality of the circumstances surrounding the alleged incident, including, where appropriate, whether the officer adhered to applicable orders, policies, procedures, practices, and training of the MPD ... the frequency of the alleged conduct, its severity, and whether it is physically threatening or humiliating.” D.C. Mun. Regs., Title 6A, § 2199.1

MPD General Order 201.26, Part I, Section A, No. 1 states “It is the duty and responsibility of each member of the police force to preserve the peace, protect life and property, prevent crime, apprehend criminals, recover lost and stolen property, and enforce all laws and ordinances of the District of Columbia and the United States in a fair and impartial manner.” Exhibit 15.

Section 2-1543(a)(1) of the D.C. Code states “[a] minor commits an offense if he or she remains in any public place or on the premises of any establishment within the District of Columbia during curfew hours.” D.C. Code § 2-1542(5) defines a minor as “... any person under the age of 17 years, but does not include a judicially emancipated minor or a married minor.” Exhibit 16.

D.C. Official Code § 2-1543 (c)(2) states “[i]f a police officer determines that a minor is committing a curfew offense, the police officer shall take the minor to the nearest available Police District headquarters or substation or other area designated by the Metropolitan Police Department.” Exhibit 16.

MPD Special Order 99.14 states “[t]he policy of the Metropolitan Police Department is to protect young people and the communities in which they live, by vigorously and fairly enforcing the city’s curfew law. Our purpose is to safeguard the health and well-being of our young people and reduce their chances of becoming either criminal offenders or victims of crime, especially during curfew hours. To accomplish these objectives, the Metropolitan Police Department will quickly and efficiently reunite curfew violators with their parents or legal guardians. We will

ensure the safety and security of the young person. Only as a last resort will child and family services of the courts get involved with a curfew violator.” Exhibit 17.

MPD Special Order 99.14 defines “curfew hours” as, “ ... from 11:00 p.m. (2300) on any Sunday, Monday, Tuesday, Wednesday or Thursday, until 6:00 a.m. (0600) on the following day; and from 12:01 a.m. (0001) until 6:00 a.m. (0600) on any Saturday or Sunday. During the months of July and August, the term “curfew hours” means from 12:01 a.m. (0001) until 6:00 a.m. (0600).” Exhibit 17.

This is not a matter involving an allegation of neglect of duty. Rather, the complaint alleges that the subject officers harassed WITNESS #1. The question addressed herein is whether SUBJECT OFFICER #2, SUBJECT OFFICER #3 or SUBJECT OFFICER #1 purposefully, knowingly or recklessly mistreated WITNESS #1 by failing to enforce any D.C. law or follow any MPD procedures when he and WITNESS #2 were left to walk alone after WITNESS #3 was arrested and taken into custody.

A. Violation of D.C. Law and MPD Directives

The subject officers were required to enforce the curfew law as part of their duty to enforce all laws and ordinances of the District of Columbia and the United States in a fair and impartial manner. MPD General Order 201.26, Part I, Section A, No. 1 (Exhibit 15). At 16 years of age, the boys were subject to the curfew law, which provides that minors may not remain in any public place after 12:01 a.m. on weekend nights such as the night in question. D.C. Code §§ 2-1542(5), 2-1543(a)(1); MPD Special Order 99.14.

WITNESS #3 was arrested and taken to the police station shortly before 1:00 a.m. Exhibit 12. The officers instructed the boys to walk to the police station in violation of the curfew law, and the MPD rules governing treatment of minors found to be violating curfew. The officers’ refusal to transport WITNESS #1, a curfew violator, to the police station violated their duty to reunite him with his family, or at a minimum, to take him to the police station. MPD Special Order 99.14; D.C. Official Code § 2-1543 (c)(2).² Thus, it is clear that failure to transport the boys to the police station violated both the D.C. Code and MPD directives regarding curfew for minors.

B. Mistreatment/Denial of A Personal Right to Be Safe and Secure During Curfew Hours

To constitute harassment under the OOCR regulations, the officers’ violation of the law or MPD guidelines must have subjected the recipient of the conduct to “arrest, detention, search, seizure, mistreatment, dispossession, assessment, lien, or other infringement of personal or

² D.C. Code § 2-1543 (c)(2) requires an officer to take a minor to a police station “[i]f a police officer determines that a minor is committing a curfew offense.” As is discussed below, the officers’ denials that they knew the boys were minors were contradicted by the evidence.

property rights ... [or] den[ied] or impede[d] the person in the exercise or enjoyment of any right, privilege, power or immunity.” D.C. Mun. Regs., Title 6A, § 2199.1.

Refusal to transport WITNESS #1 and his friend to the police station or their homes, and insistence that they walk to the station during curfew hours, constituted “mistreatment” in the sense that WITNESS #1 was forced to engage in potentially dangerous activity against his will. Additionally, the officers denied him his right as a minor to police protection under MPD Special Order 99.14 (police will “protect young people ... by vigorously and fairly enforcing the city’s curfew law” to “reduce their chances of becoming ... victims of crime, especially during curfew hours.”).

C. Purposeful, Knowing or Reckless Police Conduct

Under the OOCR definition of harassment, the conduct complained of must have been “purposefully, knowingly or recklessly” in violation of the curfew law. D.C. Mun. Regs., Title 6A, § 2199.1. Each of the subject officers denied knowing that the boys were minors and thus subject to the laws and rules pertaining to curfew. However, after consideration of the officers’ demeanor and testimony at the hearing, their earlier statements to the investigator, and the evidence presented at the hearing, it must be concluded that only SUBJECT OFFICER #1 can credibly claim not to have known that the boys were minors.

SUBJECT OFFICER #2’s conduct was purposefully and recklessly in violation of the curfew law. SUBJECT OFFICER #3’s conduct was knowing and reckless. Evidence adduced at the hearing established that WITNESS #3 and the boys conveyed to those officers that the boys were minors and would be left alone in a public space during curfew hours if they were not taken to the station. The evidence pertaining to each officer is discussed below.

1. SUBJECT OFFICER #2

SUBJECT OFFICER #2 testified that she did not know that WITNESS #3 was with any other people at the time of the arrest, and that she only realized the boys were with WITNESS #3 when she saw them back at the police station. Tr. 245. She also testified that she did not learn that the boys were juveniles until the OOCR complaint process had begun. Tr. 298. This testimony was not credible.

WITNESS #3 testified that when she learned that she would be taken to the police station, she asked SUBJECT OFFICER #2 that the boys be taken to the station, too. Tr. 163. She testified that she told SUBJECT OFFICER #2 that “they can’t drive” because “they only have their permits.” Tr. 163. This was confirmed by the statement and testimony of WITNESS OFFICER #1, the MPD Crime Scene Examiner who had responded to the scene, that he remembered WITNESS #3 saying something to SUBJECT OFFICER #2 “about her children who were with her at the 9:30 Club.” Exhibit 6; Tr. 211. Additionally, WITNESS #1 testified that he heard WITNESS #3 ask about what was going to happen to her kids. Tr. 47. Moreover, SUBJECT OFFICER #2 allowed WITNESS #3 to give her purse to the boys for safekeeping

shortly before she was transported to the station. Tr. 367. The evidence demonstrated that SUBJECT OFFICER #2 knew that the boys were with WITNESS #3.

SUBJECT OFFICER #2 also testified that she first learned that the boys were juveniles during the processing of the OCCR complaint. Tr. 298. This testimony was contradicted by WITNESS #3's credible testimony that when she told SUBJECT OFFICER #2 the boys could not drive because they only had driver's permits, SUBJECT OFFICER #2 responded "that's not my problem" and "maybe Child Protective Services will come get them." Tr. 164. "Child Protective Services" is the division of the D.C. Department of Human Services charged with taking custody of unattended and otherwise neglected minors in the District of Columbia. *See* D.C. Code § 16-2301. While SUBJECT OFFICER #2 denied making these statements, SUBJECT OFFICER #3 remembered hearing SUBJECT OFFICER #2 say "something about Child Protective Services." Tr. 354. WITNESS OFFICER #1 also confirmed that he "very well could have heard" that statement by SUBJECT OFFICER #2 (Tr. 215; Exhibit 6), and WITNESS #1 testified that he heard SUBJECT OFFICER #2 make the statement as well (Tr. 47).

Additionally, WITNESS #2 testified without contradiction that he told the officers that he was 16 years old and only had a permit to drive. Tr. 118, 141. And finally, based on testimony (see Tr. 28-29, 88), and the Complaint Examiner's direct observation at the hearing, there was nothing about the boys' physical stature or appearance (e.g., height, weight, facial hair) that made them look any older than their actual ages. The cumulative weight of all this evidence establishes that SUBJECT OFFICER #2 knew that WITNESS #1 was a minor.

Having concluded that SUBJECT OFFICER #2 was aware both of the boys' minor status, and that the adult who accompanied them was being taken to the police station, the issue is whether she purposely, knowingly or recklessly violated the D.C. curfew law by directing them to walk along the public streets to the police station at 1:00 a.m. SUBJECT OFFICER #2 testified that she had mostly worked on traffic assignments, not the nightclub detail, and did not expect minors to be coming out a nightclub. Tr. 246. She also testified somewhat surprisingly that that she was not familiar with curfew law (Tr. 267-8), was not responsible for keeping up with General and Special Orders (Tr. 268), and had not read MPD Special or General Orders for perhaps 5-10 years (Tr. 288).

It appears doubtful that SUBJECT OFFICER #2 was completely oblivious to her duty to enforce the curfew law. SUBJECT OFFICER #3 and SUBJECT OFFICER #1 agreed that police officers were responsible for enforcing the curfew law, and for carrying out Special Orders such as those relating to curfew. Tr. 325, 355-56. However, in light of SUBJECT OFFICER #2's testimony that she was not expecting minors to come out of a nightclub, and her professed lack of knowledge of the curfew law, the preponderance of the evidence does not support a conclusion that she knowingly violated the curfew law and procedures by leaving WITNESS #1 to walk to the station.

However, the evidence established that SUBJECT OFFICER #2's refusal to transport the boys to the station was purposeful. It was clear from SUBJECT OFFICER #2's testimony that

she felt WITNESS #3 had acted abrasively, even abusively, toward her in connection with the parking ticket. Tr. 232-240, 340. SUBJECT OFFICER #3 confirmed that SUBJECT OFFICER #2 and WITNESS #3 had been involved in a “verbal confrontation” where they were going “back and forth with each other.” Tr. 340.

Additionally, SUBJECT OFFICER #3 testified, and WITNESS #2 admitted, that he had engaged in profanity in the presence of the officers (Tr. 144, 343). SUBJECT OFFICER #1 offered his opinion that SUBJECT OFFICER #2 “probably would have taken [the boys] to the station” had WITNESS #2 had not cursed at her. Exhibit 9. This evidence helps explain SUBJECT OFFICER #2’s behavior as a response to a perception of verbal and physical abuse from the WITNESS #2 and WITNESS #3. It also is sufficient to establish that SUBJECT OFFICER #2’s refusal to arrange for WITNESS #1 and WITNESS #2 to be transported to the station was a purposeful violation of the curfew law.

At a minimum, SUBJECT OFFICER #2’s refusal to transport the boys was reckless. Reckless conduct is “characterized by the creation of a substantial and unjustifiable risk of harm to others and by a conscious (and sometimes deliberate) disregard for or indifference to that risk.” BLACK’S LAW DICTIONARY 1276 (7th ed. 1999). SUBJECT OFFICER #2 knew the boys’ adult supervisor was being taken to the station, that they could not legally drive, and that they could get “picked up by Child Protective Services.” The boys indicated that they did not know the area, and that they did not understand the directions given them for walking to the station. Tr. 48, 105. Regardless of the proximity of the station or the relative safety or danger of the neighborhood, SUBJECT OFFICER #2’s refusal to take the boys to the station violated the curfew law without regard to the potential risk to the boys of walking, unsupervised, late at night in an unfamiliar area. This was a reckless violation of the curfew law.

In summary, the evidence showed that SUBJECT OFFICER #2’s conduct directed at WITNESS #1 was purposefully and recklessly in violation of the curfew law and MPD directives.

2. SUBJECT OFFICER #3

SUBJECT OFFICER #3 testified that she did not transport WITNESS #1 to the station because she did not believe that WITNESS #1 and WITNESS #2 were minors, she thought they were with person other than WITNESS #3, and she was not aware that they wanted a ride. Tr. 344-5, 360, 365; Exhibit 7. This testimony was not credible.

SUBJECT OFFICER #3 testified that she was not directly involved in the arrest of WITNESS #3, and instead was busy controlling the small crowd of departing concert-goers that had gathered to watch the incident. Tr. 366. SUBJECT OFFICER #1 confirmed this, stating that when he arrived, SUBJECT OFFICER #3 was not standing near the police cruiser with SUBJECT OFFICER #2 and the handcuffed WITNESS #3. Tr. 312. However, SUBJECT OFFICER #3 also testified that after the officers responding to the call for assistance arrived, she returned to the cruiser, where she heard the “tail end” of a discussion in which SUBJECT OFFICER #2 was “saying something about Child Protective Services.” Tr. 344, 354, 369.

WITNESS #2 testified that there were three officers (two female and one male) standing “in a group” at the cruiser when he approached and asked what he “was going to do” because he was only 16 and could not legally drive the car. Tr. 102, 104-6, 118, 141.

Since SUBJECT OFFICER #3 was present for the conversations in which both WITNESS #3 and boys asked that they be taken to the station because they could not drive; in which SUBJECT OFFICER #2 stated that perhaps the Child Protective Services division could pick them up; and in which WITNESS #2 mentioned that he was 16 years old, her testimony that she was unaware that the boys were minors was not credible. SUBJECT OFFICER #3’s assertion was further undercut by the statement she provided OCCR, where she explained to the investigator that she encountered two boys who appeared to be “approximately 15 to 17 years old,” and who yelled at WITNESS #3, “how are we going to get home?” Exhibit 7.

Along these same lines, SUBJECT OFFICER #3’s testimony that she believed the boys were accompanied by a male in his late 20’s (Tr. 360) is not credible in light of the facts that no other witness reported any other person involved in the discussions, and that SUBJECT OFFICER #3 indicated she heard the boys say to WITNESS #3 that they had no ride home. Tr. 343. Clearly SUBJECT OFFICER #3 was present when the boys were asking what to do and where to go, since she described in detail the instructions SUBJECT OFFICER #2 gave them (Exhibit 7). The evidence thus showed that SUBJECT OFFICER #3 had reason to believe the boys were minors who necessarily would be in a public place once WITNESS #3 was taken to the station.

SUBJECT OFFICER #3 also acknowledged her knowledge of and duty to enforce the curfew laws, stating that while it was in an officer’s discretion how to treat minors, she herself always took them to Child Protective Services. Tr. 355-6. The evidence thus established that she knowingly violated the curfew law and associated MPD procedures when she made no effort to arrange for the boys to be picked up by Child Protective Services or taken to the station. There was no evidence, however, that SUBJECT OFFICER #3 purposely violated the curfew law.

Finally, there was considerable evidence that SUBJECT OFFICER #3’s conduct was reckless. Recklessness is a state of mind in which a person does not care about the consequences of his or her actions. BLACK’S LAW DICTIONARY 1277 (7th ed. 1999). SUBJECT OFFICER #3 allowed the boys to be sent off walking at 1:00 a.m., despite knowledge of the curfew law, awareness that they were minors, and that it might be dangerous for them to walk in an unfamiliar area at that time of night.

It was established by a preponderance of the evidence that SUBJECT OFFICER #3 knowingly and recklessly violated the curfew law and procedures when she left WITNESS #1 to walk to the station at 1:00 a.m.

3. SUBJECT OFFICER #1

SUBJECT OFFICER #1 testified that he was unaware that WITNESS #1 and WITNESS #2 were minors, in part because he did not realize that a nightclub that served alcohol was permitted to admit minors, and in part because no one told him the boys' ages. Tr. 313; Letter from SUBJECT OFFICER #1 to Investigator Huang (July 31, 2003). SUBJECT OFFICER #1 testified that he arrived at the scene of the arrest initially in response to SUBJECT OFFICER #2's request for an official to deal with an irate citizen. Tr. 309. Once he learned that the citizen had been arrested, his role was to assure that charges that were being brought by the officers against WITNESS #3 were "appropriate for placing her under arrest and taking her into custody." Tr. 310.

SUBJECT OFFICER #1 testified that the boys did not indicate to him that they were too young to drive, but rather simply asked him for directions to the station. Tr. 324. SUBJECT OFFICER #1 stated that things would have been done differently if he had known that the boys were minors. Exhibit 10; Letter from SUBJECT OFFICER #1 to Investigator Huang (July 31, 2003).

SUBJECT OFFICER #1's testimony was credible. He was present at the scene for only 15-20 minutes in a supervisory capacity (Tr. 310; Exhibit 9), and his primary role was to hear the events leading to the arrest and ensure that proper charges were brought. There was no evidence that he heard SUBJECT OFFICER #2's comments about Child Protective Services.

WITNESS #1 testified that he expressly said "we're minors" in the presence of all three officers (including SUBJECT OFFICER #1). Tr. 76. Similarly, WITNESS #2 testified he told the three officers that he was 16 years old and only had a learner's permit. Tr. 118, 141-42. However, these witnesses' demeanor and the context of their testimony created an impression that their testimony was improvised and opportunistic. On balance, SUBJECT OFFICER #1's testimony that he did not know that the boys were minors when he gave them directions to the station was more believable than the boys' testimony that they specifically mentioned their age or minor status to all three officers.

While SUBJECT OFFICER #1 undeniably contributed to the violation of the curfew law and procedures when he directed the two minor boys to walk to the Third District Police Station, there is insufficient evidence that he knew, or should have known that WITNESS #1 and WITNESS #2 were minors. Thus, it cannot be found that he purposefully, knowingly, or recklessly violated the curfew law when he failed to arrange to transport them to the station.

D. Totality of the Circumstances

In deciding whether conduct constitutes harassment, OCCR will look to the totality of the circumstances involved in the incident, including whether the officer adhered to applicable MPD orders, policies, procedures, practices and training; the frequency of the alleged conduct; severity of the alleged conduct; and whether the conduct was physically threatening or humiliating. D.C. Mun. Regs., Title 6A, § 2199.1.

First, it is clear that the officers did not adhere to the applicable MPD policies and practices when they directed the boys to walk to the station. The D.C. Code specifically provides that when minors are found to be committing a curfew offense, the police officer should take the minor to the nearest available station. D.C. Official Code § 2-1543 (c)(2). Further, MPD Special Order 99.14 describes the official MPD curfew policy as favoring the quick and efficient reuniting of curfew violators with their parents or legal guardians. None of that happened here.

Second, there was no evidence that the conduct complained of in this complaint was a frequent occurrence.

Third, refusing to drive minors to the station and advising them to walk there alone at 1:00 a.m. was relatively severe misconduct, because it posed genuine issues to the minors' safety. While the officers themselves did not engage in any physical threats, the results of their conduct could have been quite physically threatening to the boys.

Given the totality of these circumstances, including the facts that the curfew law and procedures were completely ignored by the officers and the boys could have suffered grave harm, it must be found that SUBJECT OFFICER #2 and SUBJECT OFFICER #3 harassed WITNESS #1 when they refused to transport him to the station and sent him to walk down unfamiliar streets at 1:00 a.m. SUBJECT OFFICER #2 and SUBJECT OFFICER #3 engaged in conduct directed at WITNESS #1 that was purposefully, knowingly, and recklessly in violation of the law and internal guidelines of the MPD, and which subjected him to mistreatment and denied him the right to be safe and secure after midnight. D.C. Mun. Regs., Title 6A, § 2199.1. Therefore, the allegation of harassment made by complainant must be sustained as to SUBJECT OFFICER #2 and SUBJECT OFFICER #3. However, because the evidence did not establish that SUBJECT OFFICER #1 knew that WITNESS #1 was a minor, the allegation is not sustained.

V. SUMMARY OF MERITS DETERMINATION

SUBJECT OFFICER #1

Allegation 1:	Exonerated
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SUBJECT OFFICER #2

Allegation 1:	Sustained
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SUBJECT OFFICER #3

Allegation 1:	Sustained
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Submitted on July 10, 2004.

Amy E. Wind
Complaint Examiner