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The Honorable Eric Adams
Mayor of New York City
City Hall
New York, NY 10007

Dear Mayor Adams:

We write from The Legal Aid Society to bring to your attention new concerns about the NYPD's systemic failure to impose appropriate discipline on officers found to have committed misconduct. As we have discussed in several meetings over the past year, the NYPD's disciplinary system has long been criticized as inefficient, unjust, and fostering a culture of impunity. Recently, Legal Aid conducted a review of Civilian Complaint Review Board (CCRB) data and reports and discovered new areas of concern, consistent with these criticisms, which warrant immediate action by the Mayor and City Council.

Following Commissioner Sewell's December 2022 announcement to NYPD members of service that she departed from CCRB recommendations over seventy times that year, Legal Aid began a review of the departure letters published on the CCRB's website. As you know, departure letters are required explanations of the Commissioner's decision to depart from the disciplinary recommendation of the CCRB or the mitigated penalty prescribed in the NYPD's Disciplinary Matrix. Our review also included a quantitative analysis of complaint and penalty data published by the CCRB in the City's OpenData portal and a review of data we obtained through the Freedom of Information Law (FOIL).

This review was prompted by both the number of alleged departures—which represented a notable increase compared to previous years—as well as the Commissioner's stated intention of amending the NYPD Disciplinary Matrix to make discipline less severe. As detailed in this letter, our review revealed a consistent tendency by the Commissioner to undermine the systems designed to hold NYPD officers accountable and protect the public from officers who have

engaged in repeated misconduct.

Background: Longstanding Issues with the NYPD Discipline System and the Mandate to Create the Disciplinary Matrix

The CCRB is one of the agencies tasked with providing independent oversight of the NYPD and plays a critical role in ensuring that civilian complaints of police misconduct are investigated in a thorough, fair, and impartial manner. CCRB investigations are carried out by trained, independent investigators who rely on interviews, video footage, and department records to make evidence-based determinations regarding allegations of police misconduct. When the facts establish that an officer engaged in misconduct, the CCRB can recommend that the NYPD discipline the officer. In more serious cases, the CCRB may also pursue its recommended discipline by administratively prosecuting the officer in a department trial.

In all instances, the Police Commissioner retains final authority for discipline, and may accept, modify, or reject the CCRB’s recommended penalty. The Police Commissioner’s complete and unchecked discretion in disciplinary matters has prompted significant criticism from experts, elected officials and members of the public, who have noted that disciplinary outcomes have been inconsistent, unjust, and a significant contributor to the longstanding culture of impunity that permeates the NYPD. In 2019, an independent panel report outlined several weaknesses in the NYPD’s disciplinary process, including that little guidance existed on determining penalties for most offenses and that “there is significant suspicion and speculation by the public that disciplinary decisions are not always fair, evenhanded, and consistent.”¹ Among the panel’s recommendations was that the NYPD adopt a disciplinary matrix to promote consistent penalty determinations and enhance the consistency and overall legitimacy of the disciplinary process.² The following year, in the wake of widespread racial justice protests, the City passed Local Law 69, requiring the NYPD to develop and implement a disciplinary matrix.³

The NYPD published the first version of its proposed disciplinary matrix for public comment on August 31, 2020. The Department expressed hope that its matrix would bring greater transparency, oversight, and consistency to the discipline process.⁴ It also acknowledged inconsistencies in the existing system and “oversights that diminished the system’s fairness and efficacy in the eyes of both the public and our own employees.”⁵

During the public comment period, community members and advocacy groups—including The Legal Aid Society—raised several concerns about the initial draft of the proposed

¹ MARY JO WHITE ET AL., THE REPORT OF THE INDEPENDENT PANEL ON THE DISCIPLINARY SYSTEM OF THE NEW YORK CITY POLICE DEPARTMENT 51 (2019).

² *Id.*

³ Int. No. 1309-B.

⁴ Hicks, Nolan et al., *NYPD’s Shea signs agreement with CCRB to follow ‘discipline matrix’*, N.Y. POST (Feb. 4, 2021), <https://nypost.com/2021/02/04/nypds-shea-signs-discipline-matrix-agreement-with-watchdog/> <https://www.nyc.gov/site/nypd/news/pr1110/nypd-vision-fair-effective-discipline>.

⁵ DISCIPLINARY SYSTEM PENALTY GUIDELINES, NYPD (2021), Letter from Police Commissioner Shea, https://www.nyc.gov/assets/nypd/downloads/pdf/public_information/disciplinary-system-penalty-guidelines-effective-01-15-2021-compete-.pdf.

matrix.⁶ Among these concerns was a lack of a concrete “penalty range” for each type of misconduct that would replace the presumptive penalty with a mitigated or aggravated penalty depending on the individual circumstances of each case. An additional concern was the draft’s failure to meaningfully memorialize progressive discipline, or penalty enhancements for repeated misconduct by the same officer.

In a series of encouraging steps, the NYPD incorporated both penalty ranges and progressive discipline in its first operative version of the Matrix.⁷ Similarly encouraging was the fact that the NYPD and CCRB entered a memorandum of understanding concerning use of the Matrix.⁸ Notably, in furtherance of Matrix’s transparency goals, the memorandum requires the Police Commissioner to publish a “departure letter” explaining the factors taken into consideration when the penalty imposed by the Police Commissioner is either less than the CCRB’s recommended penalty or the mitigated penalty as per the Matrix.⁹ Coupled with the Matrix’s guidance that penalties less than the mitigated penalty for the offense shall be imposed only in “extraordinary circumstances,”¹⁰ many hoped that the Matrix would result in greater accountability and consistency in the NYPD disciplinary system. Then-Commissioner Shea pledged, “when we have a set of rules, whether as a police officer or a police commissioner putting out discipline, when we are working on agreed upon rules, the expectation is that they are going to be followed.”¹⁴

The Commissioner Has Dramatically Understated the Frequency of Her Downward Departures from the CCRB’s Discipline Recommendations

Our analysis revealed a significant discrepancy between the Commissioner’s statement that she had departed from discipline recommendations “over seventy times” and the true number of penalty departures for 2022. In fact, the data we obtained via the Freedom of Information Law shows that the Commissioner understated her departures by a factor of six, departing from the CCRB’s recommended penalty on 425 complaints in 2022.¹¹ The Commissioner has not provided any accounting for many of these decisions, a concerning omission that may violate the agreement between the CCRB and the NYPD regarding the Matrix.¹²

⁶ TESTIMONY OF THE LEGAL AID SOCIETY SPECIAL LITIGATION UNIT COP ACCOUNTABILITY PROJECT, The Legal Aid Society, September 17, 2020,

https://www.nyc.gov/assets/ccrb/downloads/pdf/about_pdf/board/20200917_testimony_LAS.pdf.

⁷ DISCIPLINARY SYSTEM PENALTY GUIDELINES, NYPD (2022),

https://www.nyc.gov/assets/nypd/downloads/pdf/public_information/nypd-disciplinary-penalty-guidelines-effective-2-15-2022-final.pdf, [hereinafter “Matrix”].

⁸ Civilian Complaint Rev. Bd. & Police Dep’t of the City of N.Y., *Memorandum of Understanding Between the Civilian Complaint Review Board and the Police Department of the City of New York Concerning the Processes of Substantiated Complaints* (Apr. 2, 2012), https://www1.nyc.gov/assets/ccrb/downloads/pdf/about_pdf/apu_mou.pdf. [hereinafter “MOU”].

⁹ *Id.* at 4.

¹⁰ *Id.*; *Deviation Letters*, NYPD, <https://nypdonline.org/link/1031>.

¹¹ Some complaints name multiple officers, and we count these as multiple complaints, one against each unique officer. This total does not include two complaints that the Commissioner dismissed during their administrative trials, imposing no discipline, and one complaint for which the Commissioner reversed a guilty administrative trial finding, imposing no discipline. It does include eight complaints the Commissioner “retained” in order to impose lesser or no discipline. The CCRB recommended Charges and Specifications for seven of these complaints.

¹² MOU at 1.

The frequency of these departures, combined with a lack of forthrightness about the total number of departures, suggest a disregard for the primary goals of the Disciplinary Matrix mandated by the New York City Counsel—that is, transparent, fair, and predictable accountability for officer misconduct. This also further erodes public trust in the NYPD’s disciplinary system.

The Commissioner Allowed the Statutes of Limitations to Expire in Many Cases, Resulting in the Evasion of any Discipline for Substantiated Misconduct

We understand that in the 346 departures not accounted for in published departure letters, the Commissioner rejected the CCRB’s recommendation not on the case’s merits, but because the NYPD unilaterally decided that the CCRB transmitted its recommendation to the NYPD too close to the complaint’s statute of limitations, and therefore decided to abandon these matters entirely, imposing no discipline whatsoever.

In fact, for many of these complaints, the Commissioner had weeks or even months from the date the CCRB transmitted its disciplinary recommendation until the expiration of the statute of limitations. According to data Legal Aid obtained through a FOIL request, for these 346 complaints, the average time between the date of the CCRB’s recommendation and the statute of limitations was over three weeks.¹³ For multiple complaints, it was longer than 50 days. Failing to act within these reasonable time periods is indefensible when the result is that officers who committed misconduct will not be held accountable in any way.

Regardless, the Commissioner had an option for holding officers accountable even on the complaints with shorter timelines. The statute of limitations does not apply to discipline of Training or Instructions. Though many of these complaints likely warranted more severe penalties, the Commissioner could have imposed Training or Instructions on every complaint where it was truly impossible to act prior to the expiration of the statute of limitations. If nothing else, imposing Training or Instructions in these cases would have created a record of discipline for these officers, signaled the Commissioner’s commitment to officer accountability, and provided redress for hundreds of complainants who experienced police misconduct and placed their trust in the NYPD’s disciplinary process.

The Commissioner’s complete disregard of 346 complaints—when only 363 complaints resulted in *any discipline at all* in 2022¹⁴—violates the spirit of this agreement and the promises of the Matrix, if not the terms of the agreement themselves.

¹³ This average excludes 11 complaints for which the statute of limitations appears to have already expired by the time the CCRB transmitted its recommendation to the Commissioner. However, the publicly available CCRB data indicate that the NYPD did not designate any of them as such, instead reflecting that the Commissioner declined to impose discipline absent the expiration of the statute of limitations.

¹⁴ CCRB OpenData, downloaded January 24, 2023.

The Commissioner's Reasons for Departing from Discipline Recommendations Frequently Are Not Justifiable

Our review of the 101¹⁵ departures from CCRB recommendations that were published, covering 79 complaints, revealed concerning patterns in the way the Commissioner exercises her discretion. The Commissioner demonstrated a troubling tendency to disregard factual findings reached after extensive investigation, offered vague and inconsistent justifications for departing from presumptive and mitigated penalties, exhibited misunderstandings of the Matrix and what is considered lawful conduct by a police officer, and failed to impose more severe penalties for officers who engaged in repeated misconduct.

Disregarding factual findings and overturning allegation dispositions

Among the most crucial steps in the police accountability process is gathering facts and evidence to prove or disprove that the alleged misconduct took place. CCRB investigators undergo extensive training to ensure that their investigations are both thorough and impartial. Completed investigations are thereafter reviewed by experienced supervisors for completeness. Once finalized, these investigations are presented to the agency's civilian board, which includes a Police Commissioner appointee, for a final review, vote on the disposition of each allegation, and recommend a penalty if applicable. Given these multiple layers of review, we were troubled to find that the Police Commissioner disputed that any misconduct occurred and imposed no penalties in 70 of these 101 departures.¹⁶ In all of these instances, the Commissioner provided thin justifications for disagreeing with CCRB's findings of fact, disregarding the investigators' training, the Board members' and supervisors' years of experience, and their superior vantage point having heard direct testimony from the relevant parties.

In a letter concerning case #202101995, for example, the Commissioner wrote, "there is insufficient evidence to support a finding" that the accused officer violated the Right to Know Act but did not elaborate on the circumstances of the case, the CCRB's findings, or her reasons for disagreeing with the CCRB's conclusions.¹⁷

Where the Commissioner does explain her rejection of the CCRB's factual conclusions, that explanation often reveals a selective and possibly biased account of the facts. For example, the CCRB's closing report for case #202001702 found that a 240 lb. officer approached a 14-year-old boy having an altercation with another child, lifted the boy into the air "so that his head [was] above" him, and brought his "small, skinny" body "rapidly" to the ground, injuring his

¹⁵ This number is the number of *allegations* on which the Commissioner departed, across 79 complaints. It counts departures on multiple allegations of violations of the Right to Know Act against the same officer in the same complaint as a single departure, which the Commissioner explains in her departure letters is the way she believes they should be counted.

¹⁶ This number includes several "retained" cases in which the Commissioner imposed no discipline but did not explain her reasoning in the departure letter. See CIVILIAN COMPLAINT REV. BD. 2020 PROTESTS, Appendix D, https://www.nyc.gov/assets/crb/downloads/pdf/policy_pdf/issue_based/2020NYCProtestReport.pdf. Legal Aid FOIL requested additional documents explaining her reasoning but has not yet received them.

¹⁷ Police Commissioner Departure Letter for Complaint # 202101995, https://www.nyc.gov/assets/crb/downloads/pdf/complaints/complaint-outcomes/redacted-departure-letters/202101995_Tax936676_RedactedDepartureLetter.pdf.

back and elbow, without having issued him a verbal warning beforehand.¹⁶ Despite the fact that the officer admitted in his CCRB interview that the boy stopped fighting and did not resist as soon as the officer placed his arm on him, the Police Commissioner denied that the subsequent takedown amounted to excessive force, noting that the officer “described his actions as controlled,” and did not penalize the officer.

In other cases, the Commissioner substituted her own credibility assessment for that of the on-the-ground factfinder. Concerning case #202100619, the Commissioner wrote that the complainants’ accounts of misconduct, coupled with the officer’s denial, amounted to insufficient evidence that the officer was discourteous.¹⁸ In fact, the CCRB’s closing report revealed that the accused officer both contradicted himself and claimed he could not remember whether he screamed profanities at the complainants.¹⁹ Meanwhile, the complainants’ accounts remained consistent.²⁰ The CCRB reached its conclusions after interviewing the relevant parties directly to assess credibility, something the Commissioner did not do.

Unsound justifications for departures

In some instances, our review of the Commissioner’s justifications for departures revealed either a misunderstanding of or disregard for established principles and classifications of misconduct outlined in the Matrix. In at least one case, the Commissioner failed to meaningfully engage with the question of whether the subject officer violated an individual’s Fourth Amendment rights.

In her letter concerning case #202003842, the Commissioner disputed that an officer’s actions amounted to excessive force.²¹ To justify reducing the penalty to training, which is lower than the mitigated penalty prescribed by the Matrix, the Commissioner repeatedly emphasized that the complainant suffered “no discernible injuries.”²² But the CCRB’s recommendation of Command Discipline B is the presumptive penalty specifically for excessive force *that did not result in injuries*.²³ The Commissioner’s implication that a lack of injuries justified reducing this penalty represents either a misunderstanding of the Matrix or an attempt to mislead.

In another case, the Commissioner disagreed with a CCRB finding of unlawful search, though none of the facts she cited as justification would make a warrantless search lawful. In case #202103424, an officer performed a “limited search” of both floors of the home of an

¹⁸ Police Commissioner Departure Letter for Complaint # 202100619, https://www.nyc.gov/assets/ccrb/downloads/pdf/complaints/complaint-outcomes/redacted-departure-letters/202100619_Tax936258_RedactedDepartureLetter.pdf.

¹⁹ CCRB Closing Report for Complaint # 202100619, https://www.nyc.gov/assets/ccrb/downloads/pdf/closing-reports/202100619_RedactedClosingReport.pdf.

²⁰ *Id.*

²¹ Police Commissioner Departure Letter for Complaint # 202003842, https://www.nyc.gov/assets/ccrb/downloads/pdf/complaints/complaint-outcomes/redacted-departure-letters/202003842_Tax958411_RedactedDepartureLetter.pdf

²² *Id.*

²³ Matrix at 23.

individual in mental health crisis who was removed to the hospital.²⁴ The Commissioner wrote that the officer searched the home to “secure the premises and to ensure the now-vacant apartment did not pose any hazards to others by having, *inter alia*, a running gas stove within.”²⁵ Contrary to the Commissioner’s reasoning, neither this alleged motivation, nor the allegation that the search “was not conducted to yield any evidence or contraband,”²⁶ would legally justify a warrantless search.

Far from limiting complete departures from the Matrix to “extraordinary circumstances,” the Commissioner made a complete departure—imposing a penalty lower than the mitigated penalty for the offense—in at least 58 complaints, on at least 76 allegations, not including the 346 complaints for which she allowed the statute of limitations to expire. By way of comparison, this year the Commissioner imposed discipline on only 363 complaints.

Failure to implement progressive discipline for repeat misconduct

Furthermore, some of the Commissioner’s departures show a disregard for the Matrix’s guidance to impose harsher discipline for repeated misconduct—messaging to officers that the Department’s leadership will not meaningfully punish problem officers.

For instance, in case #202100292, the CCRB recommended Command Discipline B for an officer’s violation of the Right to Know Act, a penalty consistent with the aggravated penalty prescribed by the Matrix.²⁷ The Commissioner reduced the penalty to training and Command Discipline A, noting that Command Discipline A was the presumptive penalty.²⁸ But this was the officer’s *third* substantiated Right to Know Act offense within two years,²⁹ and the Matrix defines the presumptive penalty as “the assumed penalty generally deemed appropriate for the first instance of a specific proscribed act.”³⁰ Similarly, in case # 202004183, the Commissioner declined to bring Charges against an officer for beating a protestor with a nightstick, instead imposing Command Discipline B.³¹ Command Discipline B is consistent with the presumptive penalty for excessive force that does not cause physical injury—but this officer had received discipline in multiple previous incidents, once for two counts of excessive force.

The Commissioner also reduced or eliminated penalties for 18 other officers with one or more prior substantiated complaints, despite Matrix guidance to consider officers’ disciplinary histories.

²⁴ Police Commissioner Departure Letter for Complaint # 202103424, https://www.nyc.gov/assets/ccrb/downloads/pdf/complaints/complaint-outcomes/redacted-departure-letters/202103424_Tax939414_RedactedDepartureLetter.pdf.

²⁵ *Id.*

²⁶ *Id.*

²⁷ CCRB OpenData; Matrix at 28.

²⁸ Police Commissioner Departure Letter for Complaint # 202100292, https://www.nyc.gov/assets/ccrb/downloads/pdf/complaints/complaint-outcomes/redacted-departure-letters/202100292_Tax948119_RedactedDepartureLetter.pdf.

²⁹ CCRB OpenData.

³⁰ Matrix at 8.

³¹ See CIVILIAN COMPLAINT REV. BD. 2020 PROTESTS, Appendix D, https://www.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/issue_based/2020NYCProtestReport.pdf.

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The pattern of reported and unreported departures described above, as well as their frequency, contravenes the Matrix's goals of transparency, fairness, accountability, and promoting public confidence. In her statement regarding the departures, the Commissioner expressed concern that "unduly punitive dispositions" would "foster a sense of resentment" among officers.³² But her departures in 2022 threaten to create resentment among members of the communities the NYPD serves, who have long called for NYPD leadership to take discipline seriously and lamented the Department's repeated failures to address patterns of misconduct, as well as among officers who observe inconsistencies in discipline.

We respectfully call on you to uphold your promise to take police accountability seriously and tackle the NYPD's longstanding culture of impunity.³³ We ask that you instruct the Commissioner to develop and publish new guidelines to govern the exercise of her discretion that will ensure that factual findings produced by CCRB investigation are not second-guessed, conclusions are reached consistent with the Matrix's terms, progressive discipline is imposed, and prompt action is taken to avoid statute of limitations problems.

The patterns identified in this letter also deprive the Commissioner's call to further water down the Matrix of any credibility. We ask that you reject this call and commit not to propose changes to the Matrix that would increase the Commissioner's discretion or reduce penalties for misconduct.

Thank you for your consideration of these issues. We hope to have a response from you within the next two weeks and would be happy to meet with you to discuss further. We also want to inform you that we will be sharing the concerns raised in this letter with Speaker Adams and Chair Hanks of the City Council and with the NYPD Monitor appointed by Judge Torres, as some of the issues raised here may implicate matters under the stop-and-frisk cases.

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³² Commissioner's 2022 Statement on Departures.

³³ Geringer-Sameth, Ethan, *Mayor-Elect Adams' Biggest Campaign Promises*, GOTHAM GAZETTE (Nov. 2, 2021), <https://www.gothamgazette.com/city/10872-eric-adams-biggest-promises-if-elected-mayor-policy-priorities#:~:text=In%20part%20because%20of%20his%20background%20and%20in,policing%20is%20done%20appropriately%20and%20without%20racial%20bias.>