



OFFICE OF THE POLICE COMMISSIONER  
ONE POLICE PLAZA • ROOM 1400

November 22, 2024

Memorandum for: Deputy Commissioner, Trials

Re: **Police Officer Erica Fermin**  
Tax Registry No. 962402  
Firearms Suppression Section  
Disciplinary Case No. 2022-24516

The above named member of the service appeared before Assistant Deputy Commissioner Vanessa Facio-Lince on June 11, 2024, and was charged with the following:

**DISCIPLINARY CASE NO. 2022-24516**

1. Police Officer Erica Fermin, on or about December 14, 2019, at approximately 0900 hours, while assigned to 044 PCT and on duty, in the vicinity of [REDACTED] wrongfully used force, in that she used a chokehold against Complainant [REDACTED] without police necessity.

**P.G. 221-02, Page 3, Prohibition 2**

**FORCE GUIDELINES**

2. Police Officer Erica Fermin, on or about December 14, 2019, at approximately 0900 hours, while assigned to 044 PCT and on duty, in the vicinity of [REDACTED] abused her authority as a member of the New York City Police Department, in that she searched [REDACTED] without sufficient legal authority.

**P.G. 203-10, Page 1, Prohibition 5**

**PROHIBITED CONTACT –  
PROHIBITED CONDUCT**

In a Memorandum dated July 24, 2024, Assistant Deputy Commissioner Facio-Lince found Police Officer Fermin guilty of Specification No. 1, and not guilty of Specification No. 2 in Disciplinary Case No. 2022-24516. The facts and circumstances presented in the Memorandum from Assistant Deputy Commissioner of Trials, Facio-Lince, have been carefully considered, I do not agree with the guilty finding of Specification No. 1 as well as the proposed penalty recommendation for the forfeiture of thirty (30) vacation days and one (1) year dismissal probation.

In this matter, Police Officer Fermin and other officers responded to a 911 call regarding an emotionally disturbed person at an apartment residence. Upon entering the apartment, Police Officer Fermin witnessed a verbal altercation between the complainant and her mother where the complainant was screaming at her mother. Officers attempted to de-escalate the situation, but the complainant ignored multiple directives from the officers. Police Officer Fermin attempted to place her hand on the complainant's shoulder, however, in response, the complainant pushed Police Officer Fermin's hands away and yelled at her stating "Don't touch me." Police Officer Fermin stated she then proceeded to try and guide the complainant toward the couch, as the complainant continued to act uncooperative, and a brief struggle ensued. While falling onto the couch, Police Officer Fermin's hand was momentarily near the complainant's neck area. Body worn camera footage also depicts the complainant's hand on Police Officer Fermin's neck, while Police Officer Fermin is stating "She's got my neck." Another officer's hand is captured pulling the complainant's hand away from Police Officer Fermin's neck.

After reviewing the totality of the circumstances, specifically the chaotic nature of this incident, the video corroborates that any contact with the complainant's neck was inadvertent. It appears from the video that the momentum occasioned by the complainant and Police Officer Fermin toppling over the couch, caused Police Officer Fermin's hand to briefly and unintentionally be in the area of the complainant's neck, while she was actively resisting, and officers were attempting to subdue her. Police Officer Fermin was also struggling to push away from the complainant, due to the complainant having her hand on Police Officer Fermin's neck. Furthermore, the complainant never alleged any pressure to her neck during her interview with the CCRB. Therefore, the Police Commissioner, based on the totality of the circumstances, finds Police Officer Fermin not guilty of Specification No. 1.

In regard to Specification No. 2, the Police Commissioner agrees with the decision of the trial judge. Viewing the totality of the circumstances, the Police Commissioner agrees this does not rise to the level of sanctionable misconduct. Police Officer Fermin's actions were done in good faith, attempting to find the complainant's shoes, before she was removed from the apartment on a December night. Police Officer Fermin was performing a caretaking function, and was not searching for any evidence or contraband.

Thus, the Police Commissioner directs that Police Officer Fermin be found not guilty of all specifications in this matter and receive no disciplinary action.

  
Thomas G. Donlon  
Police Commissioner



POLICE DEPARTMENT

July 24, 2024

-----X

In the Matter of the Charges and Specifications	:	Case No.
- against -	:	2022-24516
Police Officer Erica Fermin	:	
Tax Registry No. 962402	:	
Firearms Suppression Section	:	

-----X

At: Police Headquarters  
One Police Plaza  
New York, NY 10038

Before: Honorable Vanessa Facio-Lince  
Assistant Deputy Commissioner Trials

APPEARANCES:

For the CCRB: Nicole Jardim, Esq.  
Civilian Complaint Review Board  
100 Church Street, 10<sup>th</sup> Floor  
New York, NY 10007

For the Respondent: Craig Hayes, Esq.  
Worth, London & Martinez, LLP  
111 John Street, Suite 640  
New York, NY 10038

To:  
HONORABLE EDWARD A. CABAN  
POLICE COMMISSIONER  
ONE POLICE PLAZA  
NEW YORK, NY 10038

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## CHARGES AND SPECIFICATIONS<sup>1</sup>

1. Police Officer Erica Fermin, on or about December 14, 2019, at approximately 0900 hours, while assigned to 044 PCT and on duty, in the vicinity of [REDACTED] wrongfully used force, in that she used a chokehold against Complainant [REDACTED] without police necessity.

P.G. 221-01, Page 3, Prohibition 2

FORCE GUIDELINES

2. Police Officer Erica Fermin, on or about December 14, 2019, at approximately 0900 hours, while assigned to 044 PCT and on duty, in the vicinity of [REDACTED] abused her authority as a member of the New York City Police Department, in that she searched [REDACTED], without sufficient legal authority.

P.G. 203-10, Page 1, Prohibition 5

PUBLIC CONTACT-  
PROHIBITED CONDUCT

## REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on June 11, 2024. Respondent, through her counsel, entered a plea of Not Guilty to the charged misconduct. The Civilian Complaint Review Board (hereinafter “CCRB”) did not call any witnesses at the hearing, but entered in evidence Body-Worn Camera (BWC) footage and photos of the incident in question, along with Complainant’s hearsay statement. Respondent testified on her own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner’s review. Having evaluated all of the evidence in this matter, the Tribunal finds Respondent Guilty of Specification 1 (use of a prohibited chokehold) and Not Guilty of Specification 2 (unlawful search), and recommends the forfeiture of 30 vacation days and a one-year period of dismissal probation.

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<sup>1</sup> Specification 3, which alleged an untruthful statement, was dismissed by CCRB prior to trial.

## ANALYSIS

It is uncontested that on December 14, 2019, at approximately 9:00 a.m., Respondent and Officers [REDACTED] and [REDACTED] responded to a 911 call regarding an emotionally disturbed person at an apartment residence in the Bronx. Upon entering the apartment, Respondent encountered a heated verbal altercation between a mother and daughter/complainant. Respondent stepped in to intervene between the two women. The scene inside the apartment was chaotic. Complainant was crying as she was screaming at her mother and at the officers who were attempting to calm her down. Despite repeated attempts to quell Complainant, she ignored the officers' directives and a brief scuffle ensued involving Respondent and her partners. Ultimately, Complainant was brought down to the living room couch, and then the adjacent floor by the officers, including Respondent, before she was handcuffed. Prior to leaving the apartment to transport Complainant to the precinct, Respondent searched the apartment to find a pair of shoes for her to wear.

It was during the above-mentioned scuffle that Respondent is alleged to have used a chokehold on Complainant in violation of the Patrol Guide's express prohibition. Although the video evidence and Respondent's testimony confirm that Respondent did in fact place her hand on Complainant's neck area, the issue for this Tribunal is whether in doing so, Respondent applied any pressure to complainant's throat or windpipe that *may* have prevented or hindered her breathing, constituting a prohibited chokehold under the Patrol Guide. Also at issue is whether Respondent's attempt to locate shoes for Complainant constitutes an unlawful search.

The encounter involving Respondent and Complainant was captured on Officer [REDACTED]'s BWC. Below is a summary of the relevant portion of that recording.



CCRB Ex. 1

- 01:40 – 02:02      Respondent can be seen walking into the apartment and saying “ma’am, ma’am, come on.” A woman with a black coat, unzipped, and wearing a blue shirt that is visible, is guided away from Complainant who is yelling, “I’m an embarrassment, right?” You should have had a fucking abortion with me.” Respondent then proceeds to place her hands on Complainant, while stating, “hey, hey, hey.” Complainant pushes Respondent’s hands away. Complainant then yells, “I’m an ungrateful bitch, right?” “I hate you, I hate you, I hate you.” Respondent then states, “sit down.” “Come on, come on, come on.” Respondent then says “sit right here,” while attempting to grab hold of Complainant’s arms. Complainant then states, “get the fuck off of me. Don’t touch me . . . get the fuck off me.”
- 02:03 – 02:10      Respondent begins guiding complainant to a nearby couch that is to the Respondent’s right and complainant’s left. Complainant’s right hand reaches over Respondent’s left arm and makes contact with her shirt. Respondent’s right hand is grabbing the left arm of Complainant. Respondent then grabs Complainant’s neck area while continuing to guide complainant to the couch. Complainant can be heard screaming, “Get off of me.” Respondent simultaneously yells, “Get off of me, she’s on my neck.” Complainant repeats, “Get off of me.” Respondent repeats, “She’s on my neck.” An officer wearing blue gloves can be seen removing Complainant’s hand from Respondent’s neck area.
- 02:14 – 03:15      An officer is heard yelling, “Cuffs, cuffs, cuffs.” Complainant continues to scream, “Get off of me . . . I said get off of me.” An unidentified male is heard saying, “Don’t taser her, don’t taser her, please.” An unidentified female officer that says, “If you kick me, I’m going to taser you.” Complainant then states, “Get off of me, you’re on my fucking leg, right?” An unidentified female officer says, “She had her hand around her fucking neck.” The complainant responds, “I didn’t have my hand [unintelligible].” Simultaneously, a female’s voice can be heard saying, “Yes, you did.” The complainant interjects, “I had it on her collar, there’s a difference.”

CCRB Ex. 3

07:02 – 07:40      Officers are seen getting Complainant ready to leave the apartment. Respondent asks complainant, “Where are your shoes?” Complainant does not answer, but proceeds to turn around and attempts to walk toward the back of the apartment, before she is stopped by several officers. An unidentified male officer says, “You’re not going to get them, obviously . . . so where’s the shoes located.” Complainant does not respond, but instead asks, “Can you get me some tissue, please.” An unidentified officer then states, “Ma’am.” Respondent interjects, “They’ll give it to you in the ambulance.” An unidentified male officer repeats, “They’ll give it to you in the ambulance.” Respondent then proceeds to walk in the same direction where complainant was initially walking. Respondent walks into an open bedroom door, peers around the bed, looks in the direction of the floor and is heard saying, “There’s nothing here.” Respondent then immediately exits the bedroom.

07:41 – 08:00      Respondent while standing outside of the bedroom door opens a hallway closet door. It appears to be a linen closet and Respondent says, “Chancletas.” Respondent then bends down and picks up what appears to be slippers and walks back into the living room area. She immediately returns to the linen closet and closes the door then reenters the living room.

*Complainant’s Hearsay Statement:*

Complainant did not appear before this Tribunal. CCRB submitted into evidence a hearsay statement from Complainant, which CCRB obtained during a January 13, 2020 in-person interview, one month after the incident. (CCRB Exs. 6 & 6A)

During the interview, Complainant stated that she and her mother were involved in a heated verbal altercation. At some point during the argument, she went to the bathroom to change her clothes and when she came out of the bathroom, there were several uniformed police officers in her apartment. Despite the presence of the officers, Complainant was going to confront her mother about something she said earlier. (CCRB Ex. 6A at 3-4)

As Complainant approached her mother, she remembered that a “Hispanic cop” (later identified as Respondent) grabbed her “by the hood” of her sweatshirt. (*Id.* at 4) She told

Respondent to “get off” of her three times before “she grabbed her back in the same place where she grabbed me.” Complainant then recalled being “slammed” onto her couch and hearing Respondent yell “let go of me.” Complainant told Respondent “I’ll let go of you when you let go of me.” (*Id.* at 5) She then stated that Respondent started elbowing her in the face and she heard another female officer threaten to “tase” her if she did not stop. Complainant was subsequently “slammed” to the ground and placed in handcuffs. (*Id.* at 6)

Complainant told investigators that Respondent accused Complainant of choking her. Complainant denied the allegation, but asserted that she “held her collar.” She also recalled Respondent “correcting herself” and agreeing that complainant was holding her collar.

Midway through the interview, the investigator focused on how Respondent grabbed Complainant’s shirt collar. The CCRB investigators specifically asked the following:

Investigator: Okay. Did she grab you with one or two hands?

Complainant: She like had like her hand on my arm and then she had that one right here.

Investigator: Did you have any trouble breathing when she grabbed you there?

Complainant: No.

(*Id.* at 32, lines 16-22)

Complainant later reiterated that Respondent had her hand around her neck, but made no mention as to whether Respondent applied any pressure to her throat or windpipe when doing so. She also described Respondent’s action as “grabbing the center of the collar of her shirt and pulling it toward her.” Complainant specified that “She (Respondent) didn’t like yank me. I guess it was just like to get a firm hold.” (*Id.* at 49) There were no further questions about



neck/throat contact or any difficulty breathing and the interview shifted back to other aspects of the encounter.

Complainant also informed the investigator that Respondent elbowed her approximately four times in the eye, causing her glasses to slam into her face and resulting in her sustaining bruising under her eye. (*Id.* at 37-38) After the struggle with police concluded, Complainant stated she was seen by EMT and transported to the hospital where she was treated for a contusion to her eye. (*Id.* at 6, 42-43)<sup>2</sup>

*Respondent's testimony:*

Respondent testified that on the date of the incident, she and her partner were responding to a call of a domestic incident involving a "violent EDP." Upon arriving at the apartment, Respondent recalled speaking with complainant's grandmother who stated, "They all need therapy." Respondent observed two females yelling and screaming at one another. The older of the two females (later identified as Complainant's mother) walked away, while Complainant continued yelling and screaming as her brother was physically holding her back. (Tr. 27-29)

According to Respondent, she attempted to calm Complainant down by placing her hand on Complainant's shoulder. However, in response, Complainant snapped at her and yelled, "Don't touch me!" Respondent further recalled that Complainant threw an object across the room, although she could not tell what it was. Respondent then proceeded to try to "guide" Complainant toward the couch that was next to them, but she continued to be combative and would not allow anyone to touch her. Respondent testified that when she grabbed Complainant to guide her toward the couch, they both toppled over and fell onto the couch. (Tr. 29-31)

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<sup>2</sup> CCRB did not offer Complainant's medical records in evidence.

Respondent testified that once Complainant was on the couch, “she grabbed me by the collar, by my shirt, and pressed her knuckles towards her throat.” (Tr. 31) Respondent then tried to get Complainant off her neck by striking her arm to loosen her grip. When that did not immediately work, other officers assisted her and were ultimately able to place Complainant in handcuffs despite her resistance.

Respondent asserted that at no point during the physical encounter with Complainant did she grab Complainant’s neck or apply pressure to her throat in any sort of choking manner. (Tr. 32-33) However, when confronted with CCRB’s Exhibit 4 (a still image captured from Officer [REDACTED]’s BWC footage), Respondent acknowledged that her hand was “near [Complainant’s neck,] on her chest.” Still, she contended, “it’s not on her neck.” (Tr. 55)

Once the officers had Complainant in handcuffs, while awaiting removal to the hospital, Respondent noticed that Complainant was not wearing any shoes. Because it was a cold December day and Respondent did not want Complainant to walk outside barefoot, she began searching the apartment for shoes. Respondent testified that she first looked inside a bedroom and then a hallway closet until she found a pair of sandals for Complainant. Respondent affirmed that she did not search any other room of the apartment except the bedroom and closet. She further stated that she was not searching for contraband of any kind, but that she was “strictly searching for shoes.” (Tr. 35-36) Respondent acknowledged that she did not ask Complainant or any other member of the household for consent to search for or retrieve the shoes. Once Respondent found sandals, Complainant informed her that they did not belong to her, so her grandmother found a pair of sneakers and put them on her instead. (Tr. 37, 58)

*Specification 1: Use of Chokehold*

Respondent is charged with using a chokehold against Complainant. The Patrol Guide states, “Members of the service **shall not**...use a chokehold.” It defines a chokehold as, “A chokehold shall include, but is not limited to, any pressure to the throat, carotid artery or windpipe, which *may* prevent or hinder breathing, or reduce intake of air or blood flow.” (P.G. 221-01) The Patrol Guide in effect at that time of this incident explicitly rules out chokeholds as a force option—one of the few express prohibitions contained therein. Moreover, as written, what constitutes a chokehold under the Patrol Guide is broadly defined, and *mens rea* is not a delineated factor. The sole factual issue to be determined is whether, irrespective of her intention or mental state, Respondent's hand made contact with Complainant's throat or windpipe in a manner, which *may* have hindered her breathing. I find that, based on a preponderance of the credible, relevant evidence, Respondent used a chokehold as defined by Patrol Guide Section 221-01.

In reaching this finding, this Tribunal is mindful of the challenging circumstances under which Respondent interacted with Complainant. Respondent arrived at the location of this incident with the knowledge supplied by the 911 call that she may be encountering an Emotionally Disturbed Person (“EDP”). In fact, immediately upon arrival, Respondent observed Complainant and her mother engaged in a heated verbal altercation. Her brother was holding Complainant, who appeared to be suffering a mental health crisis, back, while she was crying and furiously screaming at her mother. Respondent attempted to de-escalate the situation by telling Complainant to calm down and to have a seat; however, Complainant continued being belligerent and became combative with the officers. Although Respondent asserted that she did not make contact with Complainant's neck, the video evidence and corresponding still frame photo provide a different visual interpretation.

A close review of the BWC footage entered into evidence establishes that Respondent used a chokehold against Complainant as defined by the Patrol Guide. The pivotal piece of evidence is CCRB's Exhibit 1, which shows, at 02:03, Respondent's hand on Complainant's neck as she is being pushed onto the couch. It appears that the momentum of Complainant falling back on the couch while Respondent is directly in front of her causes Respondent's hand to apply some pressure to Complainant's neck for a few seconds. It is in connection with this piece of evidence that Complainant's hearsay statement is critical. In her CCRB interview, Complainant stated, "She (Respondent) didn't like yank me. I guess it was just like to get a firm hold." (CCRB Ex. 6A at 49) This description adds a narrative to the visual depiction of Respondent's actions, which enhances the probative value of CCRB Ex.1.

Respondent's counsel suggested that because Complainant never described Respondent's actions as a chokehold, nor did she state that her breathing was impaired during the interaction, this Tribunal must therefore conclude that a chokehold did not occur. However, this Tribunal is not guided by Complainant or Respondent's assessment of what constitutes a chokehold, but rather by the definition provided in the Patrol Guide which does not require that a subject's breathing be hindered. Furthermore, the Patrol Guide prohibits *any* pressure applied to the throat or windpipe, which *may* prevent or hinder breathing or reduce intake of air. If an officer exerts any pressure on a person's throat area in the manner proscribed, that officer will have run afoul of the guidelines, and be subject to discipline. Thus, despite Complainant's description of Respondent's actions and Respondent's denial of intentional contact with the neck or throat, the video evidence shows Respondent's hand, however briefly, making contact with Complainant's throat in a manner, which *may* have restricted her breathing.

Based upon the foregoing, I find that CCRB has met its burden of proof by a preponderance of the evidence that Respondent used a chokehold in violation of Patrol Guide Section 221-01. Accordingly, I find Respondent Guilty of Specification 1.

*Specification 2: Unlawful Search of Apartment*

Respondent is charged with unlawfully searching Complainant's apartment when she entered one of the bedrooms in the apartment and opened a hallway closet to locate a pair of shoes. The issue for the Tribunal is whether Respondent's actions constituted an unlawful search. Under the facts of this particular case, I find CCRB has not presented sufficient evidence to establish that Respondent's actions amounted to sanctionable misconduct.

Respondent was investigating a 911 call regarding a domestic dispute inside the apartment. When Respondent arrived at the apartment, a woman, who appeared to be a tenant and the 911 caller, invited her in. It is therefore, undisputed that Respondent was legally authorized to be inside said premises. Respondent credibly testified that as they were getting ready to escort Complainant to the hospital, she noticed that Complainant was not wearing shoes, so she went to look for them.

The video evidence (CCRB Exhibit 3) corroborates Respondent's testimony in that she asks complainant where her shoes are and when she does not answer, Respondent takes it upon herself to look for them. Respondent walks into a bedroom for a total of approximately ten seconds (CCRB Ex. 3 07:26-07:36). Respondent then exits the bedroom, opens a hallway closet and states that she found "chancletas"<sup>3</sup> (*Id.* at 07:40-07:49). As Respondent brought the shoes she found in the closet to Complainant, her grandmother appeared with a pair of sneakers for her,

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<sup>3</sup> Respondent testified that "chancletas" is the Spanish word for slippers.

so Respondent puts the slippers back in the closet where she found them. CCRB contends that Respondent's action of entering a bedroom in the apartment and searching a hallway closet for shoes exceeded her legal authority and constitutes an impermissible search. This Tribunal disagrees with CCRB's assessment.

While Fourth Amendment jurisprudence determining the suppression of evidence provides a guide for the resolution of misconduct such as charged in this case, it is not always dispositive. In order to establish misconduct, CCRB must put forth evidence of bad faith, motive or ignorance of available facts that would be considered negligent, such that this limited search would constitute actionable misconduct. *See* Disciplinary Cases No. 2017-17622 (Apr. 26, 2019) Mere errors of judgment, lacking in willful intent, and not so unreasonable as to be considered negligence, are not a basis for finding misconduct. As to negligent conduct, the degree of carelessness must be more than *de minimis*, since minor or inconsequential errors do not rise to the level of misconduct. *Police Dep't v. Wenz*, OATH Index No. 132/89 (May, 12, 1989) (“[a]ny strict liability standard would be inapplicable in a disciplinary hearing.”) In short, not all technical violations amount to misconduct in disciplinary matters.

Based upon the record before me, I find no showing of fault establishing that misconduct was committed. While it is indisputable that Respondent conducted a limited search without the express consent of the apartment's occupants, under these circumstances, this particular search does not rise to the level of sanctionable misconduct.

Accordingly, I find Respondent Not Guilty of Specification 2.

## PENALTY

In order to determine an appropriate penalty, this Tribunal, guided by the Department's Disciplinary System Penalty Guidelines, considered all relevant facts and circumstances,



including potential aggravating and mitigating factors established in the record. Respondent's employment history also was examined. *See* 38 RCNY § 15-07. Information from her personnel record that was considered in making this penalty recommendation is contained in an attached memorandum. Respondent, who was appointed to the Department on October 11, 2016, had no prior formal disciplinary history. Additionally, Respondent has not faced any further discipline since this incident occurred, over four years ago.

The presumptive penalty for the application of a chokehold is termination and the mitigated penalty is forced separation. CCRB has requested the mitigated penalty of forced separation for Specification 1. Based upon the totality of the circumstances presented here, I find that a downward departure from the Disciplinary System Penalty Guidelines is warranted in this case.

On the one hand, this Tribunal remains mindful of the serious nature of chokehold offenses which is underscored by the Patrol Guide's emphatic prohibition against their use. While there must be some accountability here, the penalty should be a measured one, taking into account Respondent's history as well as the particular circumstances in which the chokehold was used and other mitigating factors including: the rapidly unfolding nature of the event not allowing for deliberate reflection on the part of Respondent, the absence of Respondent's intent in applying the chokehold, Respondent's attempt to de-escalate the encounter and the limited nature and extent of the harm caused to Complainant by Respondent's actions.

The record in this case established that Respondent was dealing with a combative and uncooperative subject in Complainant. Respondent initially tried to quell the heated encounter between Complainant and her mother by asking Complainant to "calm down and have a seat." When Respondent endeavored to maneuver Complainant toward the couch, she initially placed

her hand on the Complainant's chest, not her throat. However, it appeared from the video that the momentum occasioned by Complainant and Respondent toppling over the couch caused Respondent's hand to move to Complainant's throat for a few seconds as she was actively resisting, and officers tried to subdue her. Although it was reasonable to conclude from the video footage of the incident that some level of pressure was applied to the throat area that *may* have hindered Complainant's breathing, it does not appear that it was an intentional act by Respondent. While the prohibition against the use of chokeholds takes no account of the actor's intent or mental state, I find it mitigating that Respondent's use of a chokehold appears to have been inadvertent and brief. Moreover, Complainant specifically told CCRB that she did not sustain any injury as a result of the chokehold and that her breathing was not actually hindered or impeded.

Although none of the above-mentioned surrounding circumstances justify Respondent's use of a chokehold, they do provide important context for assessing her conduct and determining the appropriate penalty. Members of service are expected to adhere to Department policies with steadfast fidelity and when they do not, equitable discipline will result. Fairness within the disciplinary system, however, requires this Tribunal to objectively review the totality of the circumstances surrounding each case and impose discipline proportionate to the substantiated misconduct. While the Disciplinary Penalty Guidelines provide a framework for the fair administration of discipline, the final penalty recommendation may vary based upon a consideration of numerous factors including the unique circumstances surrounding a particular case. This case, as described above, presented several factors that warrant a deviation from the penalties prescribed for chokeholds.

Accordingly, I recommend that Respondent forfeit 30 vacation days and that she be DISMISSED from the New York City Police Department, but that her dismissal be held in abeyance for a period of one (1) year pursuant to Section 14-115(d) of the Administrative Code, during which time she remains on the force at the Police Commissioner's discretion and may be terminated at any time without further proceedings. This proposed penalty is aimed at deterring similar future misconduct, while imposing an appropriate penalty that is fair and proportional to the actions of Respondent.

Respectfully submitted,



Vanessa Facio-Lince  
Assistant Deputy Commissioner Trials

**DISAPPROVED**

NOV 22, 2024  
  
**THOMAS G. DONLON**  
**POLICE COMMISSIONER**



## POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials

To: Police Commissioner

Subject: SUMMARY OF EMPLOYMENT RECORD  
POLICE OFFICER ERICA FERMIN  
TAX REGISTRY NO. 962402  
DISCIPLINARY CASE NO. 2022-24516

Respondent was appointed to the Department on October 11, 2016. On her three most recent annual performance evaluations, she was twice rated “Meets Standards” for 2021, and 2022, and “Exceeds Expectations” for 2020. Respondent has been awarded one medal for Excellent Police Duty.

Respondent has no formal disciplinary history.

For your consideration.

Vanessa Facio-Lince  
Assistant Deputy Commissioner Trials