Jess Vigil
Deputy Director of the Department of Safety

1331 Cherokee Street

Room 302
Denver, CO 80204
p: 720.913.6020
f: 720.913.7028
www.denvergov.org/safety

DENVER
PUBLIC SAFETY

June 15, 2016

DEPARTMENTAL ORDER OF DISCIPLINARY ACTION

Case No. IC2015-0090

BRIAN BEARY (P13002)
Officer in the Classified Service
of the Denver Police Department

This is before the Executive Director of the Department of Safety to approve, modify or disapprove the Chief of Police's Written Command ordering disciplinary action for Officer Brian Beary. The Chief has determined that Officer Beary violated RR-112.2, Commission of a Deceptive Act, of the Denver Police Department Operations Manual, when he made false statements during an IAB investigation about an incident involving a juvenile. The Written Command imposed a presumptive penalty of termination for this pre-determined Conduct Category F violation.[1]

Civilians employed by the Arapahoe Juvenile Assessment Center (JAC) and Arapahoe County Sheriff's Deputies contacted the Denver Police Department Internal Affairs Bureau to complain about the conduct of Officer Beary during a September 8, 2015 incident involving a juvenile he took to the JAC. On October 13, 2015, Officer Beary was advised that he was under a DPD IAB investigation for alleged rule violations involving Discourtesy and Inappropriate Force.

Many of the facts involved in this incident are not disputed. On September 8, 2015, at around 9 p.m., Sergeant Larry Valencia was contacted by the Bear Valley Cop Shop near West Dartmouth Avenue and South Zenobia Street regarding two suspicious individuals. Sergeant Valencia responded and made contact with a security guard who indicated that two individuals, one of whom was later identified as a runaway juvenile, were trespassing. As they were still on the scene, Sergeant Valencia called for cover officers.

Officer Beary was on duty but taking a break when the call came in. Indicative of his annoyance at having his break interrupted, Officer Beary stated, "So nobody else pipes up to cover my break from my call that I'm on and I go to cover." When Officer Beary arrived at the location, Sergeant Valencia was speaking with a 38-year old male and a young female. Sergeant Valencia asked Officer Beary to run law enforcement database queries on the name the female had provided to him and on the name on a debit card that the female had in her possession. The query turned up no information on the name the female gave to Sergeant Valencia. However, when the name on the debit card, MM, was queried, Office Beary learned that MM was a juvenile who had been reported as a runaway. He was also able to obtain a phone number for MM's mother.

---

[1] Officer Beary also received a Written Reprimand for the inappropriate verbal exchanges he had with the juvenile. His behavior was deemed by the Chief to be a violation of RR-140.1, Discourtesy, of the Denver Police Department Operations Manual.

The juvenile denied she was MM and claimed she was 19 years old. Officer Beary dialed the phone number he had obtained from the query. MM's mother answered the phone and gave Officer Beary a description of her daughter that matched that of the juvenile at the scene. Officer Beary asked the mother to come to the scene to get MM. MM's mother told Officer Beary that, because it was 9:30 p.m. and she had to get a friend to drive with to the scene, "she would get there as soon as she could." Officer Beary indicated that MM's mother was "starting to become uncooperative." MM's mother indicated that Officer Beary was "really rude" to her when she told him that it was late and she would get to the scene as soon as she could. MM's mother stated that Officer Beary told her, "You just need to come get her, she's not my problem, she is your problem." Officer Beary indicated that he told her, "Well Ma'am, I'm sorry to tell you this but that's not really our problem; I mean you reported her as a runaway; she's your daughter." At the end of this exchange, MM's mother agreed to come to the scene to get MM.

Officer Beary stated that he and Sergeant Valencia waited about 45 minutes for MM's mother but she still had not arrived. According to Officer Beary, Sergeant Valencia got "a little impatient" waiting for her. Sergeant Valencia called Parker PD and learned that they use the Arapahoe County Juvenile Assessment Center (JAC) for runaways. Officer Beary indicated that Sergeant Valencia said, "Well take her there."

MM was placed in handcuffs and put in the back of the police car. Officer Beary indicated that MM began "screaming back there and then she starts crying and --- then she calms down." Officer Beary left the location and headed to the JAC. While in transit, Officer Beary called JAC to inform staff that he would be bringing a juvenile runaway in as the mother was "refusing to pick her up." MM's mother arrived at the scene after Officer Beary had left to take MM to the JAC.

Officer Beary indicated that when they got to the JAC, MM was "initially cooperative." He said he removed the handcuffs and sat her down on a chair. Staff of the JAC called for a Deputy Sheriff from the Arapahoe Detention facility to come to the JAC to pat search MM. Deputy Deborah Calvin came into the JAC, pat searched MM and then left. Officer Beary stated that he began filling out paperwork so that the JAC could take custody of MM and JAC staff began asking MM questions about her background.

Meredith Slocum, a Mental Health Specialist at the JAC, described MM as "pleasant and polite upon arrival." Ms. Slocum said that MM answered all the medical questions she was asked during the intake process. MM's attitude quickly changed, however, when Kayla Duran, a Bilingual Assessment Specialist at the JAC, informed MM that, pursuant to their policy, she needed to remove lip and belly button piercings. The staff at the JAC indicated that jewelry is not forcibly removed from juveniles who are received at the facility.

Ms. Duran indicated that MM became "argumentative and refus[ed] to remove any piercings or jewelry." Ms. Duran indicated that Officer Beary argued with MM about "removing the requested articles." Ms. Slocum stated that MM "beg[an] to argue with Officer Beary about not wanting to remove her piercings." Officer Beary stated that MM told JAC staff that she was not going to remove her lip piercings.

BRIAN BEARY (P13002)
Officer in the Classified Service
of the Denver Police Department

Because of the argument over the piercings, Deputy Calvin was called back to the JAC. She was told by JAC staff that MM was "not cooperating in taking out her piercings." Deputy Calvin indicated that MM told her that she did not want to remove the piercings because "they were sentimental to her." Later, MM told Deputy Catherine Crow who, as discussed below, came to the JAC after MM was taken to the ground, that she didn't want to remove her piercings because she "had lost everything today and wasn't giving those up too."

The verbal exchanges over the removal of the piercings became even more heated. Accounts that witnesses provided are consistent and do not provide a flattering portrayal of Officer Beary's unprofessional and inappropriate interaction with MM. In her report of the incident, Ms. Slocum stated:

> [MM] begins to argue with Denver Officer Beary about not wanting to remove her piercings. Officer Beary tells her "you aren't in control here even though you want to be, you don't know everything." [MM] yells at officer and says "I can say whatever the fuck I want." She tells Officer Beary she does not want to take the piercings out for sentimental reasons. [MM] continues to argue with Officer Beary... Officer Beary insists youth is not going to comply with the rule and that we need to hold her down and "rip them out of her face." He demands that I call female deputies again for assistance. I tell Officer Beary we do not prefer to call deputies if she is not being combative. Officer Beary continues to antagonize youth calling her a "brat" and telling her she does not have any control. Youth gets to the point of escalation and screams at Officer Beary "fuck you." At this point, I feel it is necessary to have another deputy for assistance... Arguing is escalated; however, youth is not physically aggressive to officer in any way. [Officer Beary] decides youth needs to be held down to have deputies remove piercings. Officer Beary and Deputy Calvan [sic] take youth to the ground in a hold. Youth screams at Officer Beary and Deputy Calvan [sic] "don't fucking touch me." Officer Beary begins to argue telling youth she is a "brat" and that he would "never want a child like her." Youth is resistant for a short period of time, maybe [ten] seconds... She says she is going to "sue his ass" and complains of her face being pushed in the ground. Officer Beary told her she was a "mooch off society" and that her parents don't even want to come get her, and that she was "probably out on the streets being trafficked and raped."

Similarly, Ms. Duran reported that, as MM and Officer Beary argued about the removal of the piercings, Officer Beary "kept saying we can rip them out of your face." After MM was taken to the ground, Ms. Duran indicated that Officer Beary called MM a "brat," told MM he "understands why [her mother] won't come get her," told MM "I'm sure your parents are proud of you now," called MM a "mooch," and told MM, "You are lucky I picked you up because you would be trafficked and abused." Ms. Duran stated that at one point Officer Beary told MM, "I wouldn't want a child like you" and then asked Deputy Calvin, "Would you want a child like her?" Ms. Duran indicated that Deputy Calvin did not respond to Officer Beary's question.

Deputy Calvin indicated that after MM was taken to the ground, MM continued to argue with Officer Beary about her piercings. Deputy Calvin stated the Officer Beary told MM that he could "charge her with resisting" and this would allow him to "rip the piercings out of her face." Deputy Calvin reported that Officer Beary told MM, "No wonder your mom doesn't want to

come and pick you up," told MM she was a "drain on our society" and said, "I wouldn't want a daughter like this." Deputy Calvin indicated that Officer Beary asked her if she wanted a daughter like MM. Deputy Calvin stated that she did not respond to this question.

Deputy Crow who, as noted above, came back into the JAC after MM had been taken to the ground, observed some of Officer Beary's interaction with MM. She described Officer Beary as "bec[oming] more and more agitated" as he interacted with MM. Deputy Crow stated that Officer Beary told MM that the piercings would have to be "removed whether she took them out or not."

Officer Beary acknowledged engaging in the verbal exchanges that the witnesses provided in their accounts of the incident and admitted making many of the statements attributed to him. However, contrary to what the other witnesses related, Officer Beary claimed that he "tried to reason with [MM] in a calm voice and attempted to set the context about her failing to follow the facility's rule... [and] that as the argument continued, [he] continued to try and set context for [MM] throughout the interaction by advising her on the nature of her behavior." Officer Beary stated:

> I did tell [MM] she was 'acting like a brat', concerning the refusal to temporarily remove her piercings... I also did advise [MM] that, given the nature of her conduct, I could 'see why your mom did not want to come get you.'

Officer Beary claimed that he was not trying to be discourteous to MM. He stated, "Making these statements to [MM] was not done to be mean or discourteous to her, but rather to set a context for [MM] to hopefully realize her behavior and actions were not appropriate."

Officer Beary denied telling MM he would "rip the piercings out of her face." Instead, he claimed:

> I even said, you know what, I don't know what their protocol is, but... in a typical jail setting... if you wouldn't take your piercings out... they may have to take them out for you if you're not going to do it yourself. So trying to tell her... just take them out. You don't want these guys taking them out of your face for you.

Officer Beary indicated that he did not recall telling MM she was a "mooch on society" and was probably getting "trafficked and raped." He said, "Not specifically that wording, I wouldn't say something of that specific wording."

Finally, with regard to content of the verbal exchanges the witnesses indicated he had with MM, Officer Beary indicated that he didn't recall telling MM, "Now I can arrest you for resistance." He also stated that he didn't recall whether anyone might have told MM anything similar.

During the argument over the removal of MM's piercings, an attempt to re-handcuff MM was made. MM pulled away or resisted and she was taken to the ground. The facts concerning the circumstances around this are severely disputed. All of the witnesses indicated that Officer Beary, on his own and with no direction from anyone, announced that MM should be

restrained so that the piercings could be removed. All of the witnesses, save for Officer Beary, indicated that Officer Beary initiated this effort. Officer Beary claims otherwise.

Officer Beary had three opportunities to accurately and truthfully describe his involvement in this incident and explain his actions. Officer Beary prepared a written report dated September 9, 2015 about this incident. On October 19, 2015, Officer Beary provided written responses to written questions that were asked of him by the DPD IAB. Finally, On November 23, 2015, Officer Beary was interviewed by the DPD IAB. That interview was video-taped and a transcript of the interview was subsequently produced. The accounts provided by JAC staff and Arapahoe County Deputies are consistent with each other, but are at great variance with what Officer Beary indicated occurred.

In his September 11, 2015 written statement, Officer Beary indicated that an Arapahoe County Deputy instructed MM to stand up to be re-handcuffed because she was refusing to remove her piercings. He stated:

> After about 30 minutes of the staff, [Deputy Calvin] and I trying to negotiate with her, MM continued to refuse to remove the piercings. MM was explained the consequences several times. MM insisted she was not going to comply. MM was instructed to stand up to be placed back in handcuffs. [MM] pulled away from [Deputy Calvin] and it appeared the Deputy had trouble controlling her. I grabbed [MM's] right arm and was able to get it behind her back. [MM] was pushed towards the floor after coming out of her seat and I assisted the Deputy in placing [MM] in handcuffs.

In the October 19, 2015 written report to IAB, the following questions were asked by IAB staff member Sergeant R. Steinke and the following responses were provided by Officer Beary:

Q: What was the reason for initiating the movement to place [MM] back in handcuffs?

A: ... [MM] was told by the staff that she could not be processed unless she took the piercings out. I told [MM] that the staff may have to place her back in handcuffs to ensure she does not harm herself or anyone else. **[Deputy Calvin] then informed me we were going to have to place [MM] back in handcuffs while a solution was determined.** (Emphasis Added)

Q: Who made the decision to re-apply the handcuffs?

A: **[Deputy Calvin] informed me [MM] was going to have to be placed back in handcuffs.** (Emphasis Added)

Q: Please describe who **made** the decision and why it was necessary to direct [MM] to the ground while handcuffing?

A: **[Deputy Calvin] informed me [MM] was going to have to be placed in handcuffs.** [MM] was told to stand up and refused. **[Deputy Calvin] was the first to make physical contact with [MM] by attempting to grab and control [MM's] left arm.** [MM] then began to flail her arms above her head.

> I looked at the other two staff members and each sat at their respective desks staring at [Deputy Calvin]. [Deputy Calvin] did not appear able to control [MM]. Fearing for the safety of [Deputy Calvin] and the situation rapidly becoming out of control, **I assisted [Deputy Calvin] by trying to control [MM's] right arm.** [MM] then kicked her legs outward and continued to resist the Deputy's and my attempt to place her arms behind her back. I was able to get [MM's] right arm behind her back with the application of rear wrist lock. (Emphasis Added)
>
> [MM] continued to kick her legs out and came forward out of her seat and began to stand up. **I could see [Deputy Calvin] still struggling to maintain control of [MM's] left arm. I suggested to [Deputy Calvin] that [MM] be pushed downwards to better control her. [Deputy Calvin] and I pushed [MM] towards the ground and [MM] initially came to her knees. [Deputy Calvin] appeared to have pulled [MM] towards her, as [MM] landed in a diagonal fashion.** Once at her knees, [MM] continued to flail around and I pushed her midsection downward so she could be controlled close to the ground. This was done to minimize any potential injury to [MM] and those involved. I then placed my right knee across the lower middle of her back to keep [MM] from continuing the struggle. At this time, I looked at [Deputy Calvin] and the Deputy stared blankly at me. **I was expecting [Deputy Calvin] to handcuff [MM], as it was her decision to do so.** When [Deputy Calvin] continued to stare at me, I reached for my handcuffs and applied them to [MM's] wrists to secure [MM] and stop any further resistance. (Emphasis Added)

During the November 23, 2015 IAB interview, Officer Beary maintained that when [MM] continued to argue about removing her piercings, he told a JAC staff member, "Hey, do you need to call [Deputy Calvin] back up here? Because I'm like, you know, who's—who's in charge of, you know, determining, you know, what to do when somebody's not going to follow your rules?" As noted above, Ms. Slocum told Officer Beary that the JAC does "not prefer to call deputies if [MM] is not being combative." Ms. Slocum stated that she reconsidered and called for Deputy Calvin when Officer Beary "continued to antagonize" MM. Officer Beary claims that later, he "had [staff] call for another deputy" because MM wouldn't get up off of the ground. However, Ms. Slocum indicated that she called for Deputy Crow because Deputy Calvin had asked her to do so.

Officer Beary indicated that when Deputy Calvin returned, she told him, **"We're going to put her back in handcuffs."** (Emphasis Added)

During the interview, Officer Beary claimed Deputy Calvin began the process of re-handcuffing MM. He described how this happened:

> So basically, say I'd be standing here in the room and then the deputy's on her left side, Okay? **Goes to grab her arm**, and then I see her raise her --- she raises her arms up --- kind of starts raising her arms up over her head. So I look at the two civilians sitting there and they're just staring at me and the deputy and

> I'm kind of thinking, well, I don't know why they're not doing anything. But I then become concerned for obviously the deputy's safety as well as [MM's] because I'm like, well, I don't know where this is going to go or how bad this is going to go. So I go and grab her right arm to try to control it, and then I get it most of the way behind her back and then she kind of starts leaning forward but then starts trying to stand up ... **So from there, that's when I tell [Deputy Calvin] --- it's like, 'well let's get her down towards the ground because if we can control her lower to the ground, it's like hopefully we'll minimize injury to anybody involved and this doesn't get worse than, you know, what it is right now.'**
> . . .
>
> **So then we kind of push her forward.** She kind of goes down onto her knees originally, and then what I recall is the --- obviously the deputy on the left side --- she kind of goes down on her knees. I --- I think I may have let her arm go forward a little bit because I didn't just hold it right there the entire time because then I saw her kind of leaning on her left elbow, and then the deputy is still trying to get her arm kind of behind her back. So that's kind of when I pushed her mid-section down and it's just like, 'Hey, stop.' ... And then I see the deputy was finally able to get her arm behind her back as well. But then the deputy's sitting there holding her arm just staring at me. **I'm like, you're the one that made the decision to put her back in handcuffs. Why aren't you reaching for your handcuffs? So, again to end this, I grab my handcuffs and I apply them to her**, and then I look at the deputy and say --- it's like, you know, 'What --- what are you guys going to do now from here?' you know, because like I said, what --- what was probably the biggest concern on my part from them and the whole facility was it seemed like they had no response or no way to deal with somebody not being compliant to what they wanted them to do and they're just looking at me to solve their problems for them and that's what I didn't understand. It's like, well, this is your facility. It's like, well, what --- what are you guys doing about this? (Emphasis Added)

During the interview, Officer Beary was asked why he didn't just leave the JAC. He stated he didn't leave at that point because he saw Deputy Calvin "grab [MM's] arm and she starts struggling with [Deputy Calvin]" and became concerned for her safety. Officer Beary insisted that he **"didn't grab [MM] until after she started struggling with Deputy Calvin"** and that he **"assisted in placing [MM] back in handcuffs."** He insisted that Deputy Calvin **"made me handcuff [MM]."** (Emphasis Added)

However, JAC staff and Arapahoe Sheriff's Deputies are adamant that Officer Beary was the one who determined that it was necessary to re-handcuff MM so that her piercings could be removed. The JAC staff indicated that in their facility, they do not forcibly remove jewelry from juveniles and that "runaways" are not handcuffed because they are "status offenders" and cannot be handcuffed. The witnesses indicated that Officer Beary was not asked to do this. Ms. Slocum stated in her report that Officer Beary "decide[d [MM] had to be held down to have deputies remove piercings." She indicated that Officer Beary said, "We need to hold her down and rip them out of her face." She stated that Officer Beary and Deputy Calvin took MM to the ground. In a subsequent telephone interview, Ms. Slocum indicated that Officer Beary told MM he was going to take her to the ground because her piercings were going to be forcibly

removed. She also indicated that Officer Beary made the decision to take MM to the ground so that the piercings could be removed and that he made this decision "on his own."

Ms. Duran gave a similar account. She said Officer Beary "kept saying, we can rip [the piercings] out of your face." She indicated that Officer Beary told Deputy Calvin, "Just put her in handcuffs so we can take the piercings out." She stated that Officer Beary went to grab MM by the arm to restrain MM and MM pulled away. She indicated that Officer Beary "tightened up" his hold on MM and said, "Take her down, take her down, take her down." Ms. Duran stated that Officer Beary "initiated and controlled the majority of the take down."

Deputy Calvin's description of Officer Beary's actions was consistent with how the other witnesses described them. Deputy Calvin indicated that Officer Beary made the decision to handcuff MM and that there was never any discussion between her and Officer Beary about putting MM back in handcuffs. She stated:

> [MM] did not want to comply with anything that we asked of her. At this point [Officer] Beary said 'we are going nowhere with this.' Beary took [MM's] right arm to put it behind her back to handcuff her. [MM] tried to pull away and struggled to keep from being cuffed. [Officer] Beary placed what appears to be a bent wrist hold on her and as they struggled, he took her down to the ground and cuffed her. I took [MM's] left arm as [Officer] Beary was taking her to the ground and held her arm at the wrist as he place[d] the cuffs on her. We talked again with [MM] trying to convince her to comply with taking out her piercings. [MM] continued to argue with [Officer] Beary. [Officer] Beary said to [MM] now he could charge her [f]or resisting and that would let him rip the piercings out of her face. [MM] yelled that [Officer] Beary had made her hit her head and that he was kneeling on her back. [Officer] Beary said he was just holding her with his knees and was not leaning on her ... It did not appear that [Officer] Beary was putting much pressure on [MM] as she was able to continue to yell and argue with him... [Officer] Beary said, 'No wonder your mom doesn't want to come and pick you up.' [Officer] Beary said he 'wouldn't want a daughter like this.' He then asked me if I would and I did not answer him. Beary said she was 'a drain on our society.'

MM was left on the ground, lying on her stomach with her hands cuffed behind her back. Deputy Crow, who had been summoned to the JAC by Ms. Slocum at the request of Deputy Calvin, arrived as Officer Beary was still arguing with MM over the removal of her piercings. She reported that upon her arrival, she heard Officer Beary tell MM that the piercings "had to be removed whether she took them out [herself] or not." Deputy Crow stated that MM responded by saying, "You'll have to rip them out of my face."

Deputy Crow was concerned that Officer Beary was becoming "more and more agitated." Officer Beary asked her to "exchange handcuffs" so that he could take the cuffs he had placed on MM and leave. Officer Beary removed his cuffs from MM and Deputy Crow and Deputy Calvin replaced Officer Beary's cuffs with a set of their own.

Officer Beary asked if they had surveillance cameras and said, "If she's going to make an injury claim, you know, this is something we need to look at and potentially know that, you know, if we need to come back and look at it later or whatever, that do you have this on video so we can --- we can review it if need be." The staff told him there were no video cameras.

Deputy Crow stated that Officer Beary "looked as though he needed to go." She saw him placing his hands "in and out of his pockets" and "crossing and uncrossing his arms." Deputy Crow indicated that Officer Beary told her that he had "spent the last 5 hours with [MM] and [he] had other things going on in Denver that he needed to take care of." The JAC staff told Officer Beary he couldn't leave until they finished processing MM. Ms. Duran stated that Officer Beary said, "You can call my supervisor, but I'm leaving, this is ridiculous" and, "We have shootings and southwest Denver [Police Station] is down an officer because I'm here." They reported that Officer Beary said "Call my supervisor, I'm done wasting my time" and left.

As he was leaving, Officer Beary called his supervisor, Sergeant Theodore Steinway. Officer Beary claimed in the September 11, 2015 report that Sergeant Steinway "was informed about this matter, agreed with my decision and instructed me to return to the District." A reading of Sergeant Steinway's report to DPD IAB dated October 14, 2015, indicates that Officer Beary was not forthright or forthcoming about what he told Sergeant Steinway during that phone conversation. Sergeant Steinway related his conversation with Officer Beary as follows:

> [Officer Beary] called to talk to a sergeant because the staff at the facility was insisting that he remove [MM's] jewelry, when she refused to take it off herself. [Officer Beary] did not want to take her jewelry off forcefully, and I concurred that that would not be appropriate. I told him that if he had delivered her to the social services facility in the appropriate county (which he had), his job was done. I told him that he should not remove her jewelry, but that they could call their sheriffs or use their private security officers to do that if they needed to. I told [Officer Beary] that he was authorized to go out to his car and depart the facility, and that if they had a problem with that, they could call me and talk about it, which they never did.

Officer Beary called Sergeant Steinway **after** MM had already been taken to the ground and as he was leaving the JAC. Officer Beary's involvement with MM was finished. Yet Officer Beary represented to Sergeant Steinway that the staff was presently asking him to remove MM's piercings and that he did not want to do so. Officer Beary did not tell Sergeant Steinway that he was on his way out of the JAC. He did not tell Sergeant Steinway about the verbal exchanges and argument he had with MM about the piercings or that, during an attempt to re-cuff MM, he had taken MM to the ground. Sergeant Steinway indicated that Officer Beary "said nothing about using any force at all." Sergeant Steinway stated, "In fact, it seemed like he called me in order to avoid being put in a position by the staff there in which he might have to use force (removing her jewelry)."

Once Officer Beary left the JAC, the Deputies and the JAC were able to calm MM. She agreed to remove her piercings and they were placed in a plastic bag which she was allowed to hold.

BRIAN BEARY (P13002)
Officer in the Classified Service
of the Denver Police Department

Officer Beary continues to insist that he has been "one hundred percent truthful" and everyone else is "absolutely wrong." He refuses to take responsibility for his conduct.

RR-112.2 – Commission of a Deceptive Act, of the Denver Police Department Operations Manual, provides that:

> In connection with any investigation or any judicial or administrative proceeding, officers shall not knowingly commit a materially deceptive act.

Appendix D of the DPD Discipline Handbook indicates that "Investigation includes any Internal Affairs investigation" and provides that:

> Knowingly means aware of the nature of the conduct. It refers to general intent with respect to conduct, not with respect to a circumstance or to a result of conduct, as defined in C.R.S 18-1-501(6).
>
> Knowledge of the materiality of the deceptive conduct is not a required element of the violation. Accordingly, the nature of deceptive conduct is untruthful representation, and does not include materiality. Rather, materiality is a relationship of the conduct to an investigation, or to a judicial or administrative proceeding. Deceptive conduct is material to an investigation, or to a judicial or administrative proceeding, if it has any significance, bearing, or weight with respect [to] the subject of the investigation or proceeding; it need not be outcome determinative nor probative.

Three independent witnesses, who have no stake in the outcome of this case and are clearly disinterested witnesses, have provided consistent descriptions of Officer Beary's behavior and actions at the JAC that contradict the representations made by Officer Beary. The statements that are at variance include these:

- In the October 19, 2015 written report to IAB, Officer Beary claimed that he "attempted to reason with [MM] in a calm voice" and that telling [MM] that she was "acting like a brat" and that he "could see why [MM's mother] did not want to come get [her]" was "not done to be mean or discourteous to her but rather to set a context for [MM] to hopefully realize her behavior and actions were not appropriate."

  However, witnesses gave different descriptions of Officer Beary's manner and demeanor with MM. They did not describe Officer Beary as being "calm" during this incident. Ms. Duran indicated that Officer Beary "continue[d] to argue with [MM]." Ms. Slocum indicated that Officer Beary "continue[d] to antagonize [MM]", calling her a "brat" and telling her she does not have any control. Ms. Slocum indicated that the "argument [was] escalating" between Officer Beary and MM, that Officer Beary "continued to threaten [MM]" and that Officer Beary "continued to insult [MM] on a personal level." Finally, Deputy Crow indicated that Officer Beary "became more and more agitated" during the incident.

- During the IAB investigation, Officer Beary claimed he did not tell MM that he would "rip the piercings out of her face." Instead, he claimed that he told MM that "[JAC staff or the deputies] may have to take them out" and that "You don't want these guys taking them out of your face for you."

  However, four witnesses provided consistent and detailed information that directly contradicted Officer Beary's contentions. Ms. Slocum stated that Officer Beary kept stating that MM was not going to comply with requests to remove her piercings and that Officer Beary said that "we needed to hold her down" and "rip [the piercings] out of her face." Similarly, Ms. Duran stated that Officer Beary kept saying "we can rip [the piercings] out of your face." Deputy Calvin stated that Officer Beary told MM that he "could charge her with resistance" and this would allow him to "rip the piercings out of her face." Finally, Deputy Crow stated that Officer Beary "became more and more agitated" and told MM that the piercings would "have to be removed whether she took them out or not."

- During the IAB investigation, Officer Beary claimed that he did not recall telling MM that she was a "mooch on society" and that she was probably getting "trafficked and raped." He stated, "Not specifically that wording, I wouldn't say something of that specific wording."

  However, at least three witnesses contradicted Officer Beary's assertions. Ms. Slocum indicated that Officer Beary told MM, as he argued with her about the piercings, that she was "a mooch off society" and that she was "probably out on the streets being trafficked and raped." Ms. Duran stated that Officer Beary told MM that she was a "mooch" and that MM was lucky that he picked her up because otherwise she would be "trafficked and abused." Deputy Calvin indicated that Officer Beary told MM that she was a "drain on our society."

- During the IAB investigation, Officer Beary claimed that he did not recall telling MM, "Now I can arrest you for resistance."

  However, at least two witnesses indicated otherwise. Ms. Slocum stated in her report that "Officer Beary continued to threaten [MM] with charges of resisting arrest." Deputy Calvin indicated that after MM was taken to the ground, Officer Beary told her, "Now I can charge you with resisting."

- Officer Beary claimed that Deputy Calvin made the determination that MM would be placed back in handcuffs so that her piercings could be removed. In the October 19, 2015 IAB report, Officer Beary stated that Deputy Calvin "informed me that we were going to have to place MM back in handcuffs while a solution [to her refusal to remove piercings] was determined." In the same report, Officer Beary claimed that Deputy Calvin made the decision to re-handcuff MM. He stated, "[Deputy Calvin informed me [MM] was going to have to be placed back in handcuffs." Finally, in this report, while describing how he was able to control MM on the ground, Officer Beary stated, "I was expecting [Deputy Calvin] to

handcuff MM, as it was her decision to do so. When [Deputy Calvin] continued to stare at me, I reached for my handcuffs and applied them to [MM's] wrists to secure [MM] and stop any further resistance." During the November 23, 2015 IAB interview, Officer Beary stated that when Deputy Calvin was called back into the JAC, she told him, "We're going to put [MM] back in handcuffs." As he described how the take down of MM occurred, Officer Beary, as if to explain why his cuffs and not Deputy Calvin's cuffs ended up on MM, indicated that Deputy Calvin was "just staring at him" and he was "like, you're the one that made the decision to put [MM] back in handcuffs. Why aren't you reaching for your handcuffs?" Finally, Officer Beary stated that Deputy Calvin "made me handcuff MM and then just sits there and looks at me."

However, several witnesses directly contradicted Officer Beary's assertions. Ms. Slocum stated in her report that Officer Beary "decide[d] [MM] had to be held down to have deputies remove the piercings." Ms. Slocum indicated that Officer Beary said, "We need to hold her down and rip them out of her face." In an interview conducted by IAB, Ms. Slocum stated that Officer Beary told MM that he was going to take her to the ground because her piercings were going to be forcibly removed. She indicated that Officer Beary made the decision, on his own, to take MM to the ground so that he could remove her piercings. Ms. Duran indicated that Officer Beary told Deputy Calvin, "Just put her in handcuffs so we can take the piercings out." Deputy Calvin stated that Officer Beary made the decision to handcuff MM. She indicated that there was no discussion between her and Officer Beary about re-handcuffing MM.

- Officer Beary claimed that Deputy Calvin, having made the decision to restrain MM, initiated the contact with MM. In his September 11, 2015 report, Officer Beary indicated that Deputy Calvin instructed MM to stand up to be placed in handcuffs and that he intervened because "it appeared that Deputy [Calvin] had trouble controlling her." In the report he prepared on October 19, 2015, Officer Beary stated that "[MM] was told to stand up and refused." He claimed that "[Deputy Calvin] was the first to make physical contact with [MM] by attempting to grab and control [MM's] left arm." In his IAB interview on November 23, 2015, Officer Beary claimed that Deputy Calvin, and not he, initiated the physical contact with MM for the purpose of restraining her. He claimed that Deputy Calvin, "Goes to grab [MM's] arm and then I see [MM] raise her --- she raises her arms up ... I become concerned for, obviously the deputy's safety ... so I go and grab [MM's] right arm to try to control it." During this interview, Officer Beary also claimed that he "didn't grab [MM] until after she started struggling with Deputy Calvin" and that he "assisted in placing [MM] back in handcuffs."

  The witnesses gave a different account. Deputy Calvin stated that as MM continued to argue about removing her piercings, Officer Beary said, "We are going nowhere with this" and he took MM's right arm to "put it behind her back to handcuff her." Ms. Duran indicated that Officer Beary initiated the physical contact with MM. She stated that Officer Beary went to grab MM by the arm to restrain her and she pulled away. Ms. Duran stated that Officer Beary

"tightened up" his hold on MM and said, "Take her down, take her down, take her down."

- In his report to IAB dated October 19, 2015, Officer Beary stated that MM was continuing to resist, even when he intervened, so he "suggested to [Deputy Calvin] that [MM] be pushed downwards to better control her." He indicated that he and Deputy Calvin "pushed [MM] to towards the ground and [MM] initially came to her knees." He also stated that "[Deputy Calvin] appeared to have pulled [MM] towards her, as [MM] landed in a diagonal fashion." During the IAB interview, Officer Beary indicated that when he decided to intervene to help Deputy Calvin restrain MM, MM was leaning forward and trying to stand up. Officer Beary stated, "So from there, that's when I tell [Deputy Calvin] --- it's like, well let's get her down towards the ground because if we can control her lower to the ground, it's like hopefully we'll minimize injury to anybody involved..." Officer Beary stated, "So then we kind of push her forward. She kind of goes down onto her knees, originally..."

  The other witnesses' statements contradicted this account provided by Officer Beary. Ms. Duran stated that as MM was resisting the attempt to handcuff her, Officer Beary shouted "Take her down" multiple times and he, not Deputy Calvin, "initiated the majority of the take down." Deputy Calvin indicated that as Officer Beary grabbed MM's right arm, MM pulled away and "struggled to keep from being cuffed." She stated that Officer Beary "placed what appear[ed] to be a bent wrist hold on her and as they struggled, he took her down to the ground and cuffed her."

- During the IAB interview, Officer Beary stated that he asked JAC staff for an additional deputy because MM was still refusing to remove her piercings and was refusing to stand up.

  However, Ms. Slocum indicated that she called for Deputy Crow because Deputy Calvin, not Officer Beary, requested that she do so.

The question of whether Officer Beary engaged in deceptive conduct requires a careful review of "only the evidence that is contained in the investigative file and any reasonable inferences to be drawn from that evidence." (Section 10.3 of the Matrix) As noted above, there is serious disagreement about what Officer Beary said and did during this incident. The credibility of the witnesses is the central issue in this case. The matrix is instructive with respect to determining the credibility of witnesses. Section 10.6 of the Matrix provides, in part, as follows:

> As the finder of fact, the reviewer must judge the credibility of witnesses and the weight to be given their statements.
>
> In doing so, he/she should take into consideration the witnesses' means of knowledge, strength of memory and opportunities for observation; the reasonableness or unreasonableness of their statements; the consistency or lack of consistency in their statements; their motives, whether their statement

> has been contradicted or supported by other evidence; their bias, prejudice, or interest, if any; their manner or demeanor while making statements; and all other facts and circumstances shown by the evidence which affect the credibility of the witnesses.

The factors set forth above are helpful in assessing the credibility of the witnesses to this incident. The JAC staff and Deputies Calvin and Crow are disinterested witnesses and have no stake in the outcome of this matter. They came forward to complain because they were concerned with the behavior that Officer Beary displayed while interacting with a juvenile. Officer Beary, on the other hand, does have a stake in the outcome of this case. He is an interested witness. The preponderance of evidence shows:

- Officer Beary used inappropriate and demeaning language as he interacted with a juvenile and he used force to restrain her;
- A complaint against Officer Beary was filed with DPD IAB alleging inappropriate behavior;
- Officer Beary was notified that he was under investigation for Discourtesy and Inappropriate Force and was brought in for an interview; and
- Officer Beary had a motive for presenting statements that were self-serving and that put his behavior in the best light possible in order to avoid responsibility for conducting himself inappropriately with the juvenile in the presence of JAC staff and Arapahoe County Deputy Sheriff's Deputies.

Officer Beary's statements, given on three separate occasions, omitted certain information that is present in the other statements he provided and lack the consistency, accuracy and detail displayed by those provided by other witnesses. The other witnesses were consistent in their descriptions of Officer Beary's verbal confrontations with the juvenile. They were consistent in relating the rude and discourteous behavior of Officer Beary. They were consistent in reporting the demeaning names and terms Office Beary used as he tried to get the juvenile to remove her piercings. They were consistent in describing how Officer Beary announced that the juvenile would be held down. Finally, they were consistent in describing who initiated the contact with the juvenile and in describing the actions of Deputy Calvin and Officer Beary.

Officer Beary acknowledged using certain disrespectful and inappropriate terms and phrases the witnesses attributed to him but claimed he used them in a different context. The witnesses said Officer Beary called the juvenile a "brat." Officer Beary admits using the term "brat" but claims he told the juvenile she was "acting like brat." The witnesses indicated that Officer Beary told the juvenile that she was a "mooch on society" and that her "parents don't even want to come and get her." Officer Beary claimed he told the juvenile that he "could see why your mom did not want to come get you." Finally, the witnesses were consistent in their statements about how Officer Beary announced that the juvenile had to be restrained so that her piercings could be removed and in describing his actions and efforts to take her to the ground.

In his initial written statement, Officer Beary provided scant information and left out many significant details. He inaccurately described the verbal assaults he and the juvenile

exchanged as a process of "negotiation." He failed to mention the words, phrases or labels he used against the juvenile. In all of his statements, he mischaracterized the tone of voice he used with the juvenile and the manner and demeanor he displayed. His description of how the juvenile was taken down and the extent of the force used to do so was inaccurate and scant.

Officer Beary wrote that "Sgt. Steinway was informed about this matter," but this assertion too was inconsistent and inaccurate. He inaccurately described the interactions with the juvenile. He failed to mention the verbal fighting with MM. He misled Sergeant Steinway when he stated that the JAC staff was asking him to forcibly remove the piercings from MM and that he didn't want to do this. He failed to mention that his involvement with this incident had ended and he had announced that he was leaving the JAC. He also misled Sergeant Steinway into believing that no force had been used against the juvenile.

The accounts provided by the JAC staff and Deputies Calvin and Crow not only are plausible and reasonable, but they are credible when viewed with other evidence in this case. These witnesses described the conduct of an officer who was in a hurry, impatient and annoyed that the juvenile was uncooperative. Officer Beary's statements during the IAB investigation also showed that he was extremely frustrated and annoyed with the juvenile's behavior.

It is clear that from the start that Officer Beary was annoyed that his break was interrupted by Sergeant Valencia's call for help. During the IAB interview, he said, "So nobody else pipes up to cover my break from my call that I'm on and I go to cover." He became very annoyed with the juvenile's mother when she explained that it would take her some time to get to the scene. He was rude to her and displayed his impatience when he told her, "You just need to come get [the juvenile], she's not my problem, she is your problem." Officer Beary described having to wait at the scene for 45 minutes and the juvenile's mother still had not arrived.

When he got to the JAC, Officer Beary grew even more impatient, annoyed and angry with the juvenile. Officer Beary resorted to name calling and used other inappropriate words and phrases as he argued with the juvenile. Officer Beary demanded that JAC staff call for deputies. Witnesses stated that when they asked the juvenile to remove her piercings and she refused, Officer Beary proclaimed that "we are going nowhere with this" and initiated the contact with the juvenile that resulted in her being taken to the ground.

Officer Beary continued to display impatience, and annoyance, if not anger, when he insisted that he had to leave and asked Deputy Calvin to switch out the handcuffs that he placed on the juvenile so that he could leave. When JAC staff advised that he couldn't leave because they had not finished with the intake or processing procedures, Officer Beary said he was "done wasting his time." He said, "You can call my supervisor, but I'm leaving, this is ridiculous" and he said, "We have shootings and southwest Denver is down an officer because I'm here." He became "more and more agitated" and said that he "had spent five hours with [the juvenile] and had other things that he needed to do."

Officer Beary's claim that Deputy Calvin decided to handcuff MM to remove the piercings is unreasonable, given that status offenders are not handcuffed in the JAC and given the JAC's practice and protocol to use verbal persuasion, rather than force, to take jewelry from juveniles. Officer Beary's contention is also unreasonable in that it makes little sense that Deputy Calvin would decide that the juvenile needed to be held to remove the piercings and "just stared" at Officer Beary as he struggled to restrain the juvenile. Finally, it is unreasonable

to believe that Deputy Calvin would make the decision to hold MM and allow Officer Beary to use his handcuffs, rather than her handcuffs, to restrain MM.

Officer Beary's conduct following the take down of MM is quite revealing and is similar to "consciousness of guilt" behavior in the criminal law context. It lends credence to what other witnesses stated about Officer Beary's actions and conduct during this incident. Soon after MM was taken to the ground and handcuffed, Officer Beary began acting nervously "placing his hands in and out of his pockets and crossing and uncrossing his arms." He asked if there were video surveillance cameras in the JAC. When he left the facility, he called to talk to a supervisor. This too was "consciousness of guilt" behavior engaged in solely for the purpose of providing "cover." Instead of informing Sergeant Steinway of everything that occurred, including that he used force to take MM to the ground, he misrepresented the circumstances and the extent of his involvement in the incident.

Finally, other statements Officer Beary provided during the IAB investigation make the accounts the other witnesses provided more credible than that which was provided by Officer Beary. As he described how he restrained MM and placed her in his handcuffs, Officer Beary indicated that "the whole facility was (sic) it seemed had no response or no way to deal with somebody not being compliant to what they wanted them to do and they're just looking at me to solve their problem for them, and that's what I didn't understand." He was asked, "If you were thinking that at the time, and it's their facility and their rules which you're not really familiar about ... Why didn't you just leave?" In response, Officer Beary stated, "Well, first, I would say the process wasn't done completely at that point because I didn't know what they needed --- other paperwork from me or anything else they needed ... obviously I didn't know how the process goes." When viewed with the other evidence and inferences from that evidence, these statements are quite revealing and self-serving. Officer Beary was not pleased with the pace at which processing MM was proceeding. He took it upon himself to speed the process along by grabbing MM to restrain her so that the piercings could be removed. He later attempted to justify his inappropriate behavior by claiming that they had no procedures for dealing with a difficult juvenile and claiming that they were looking at [him] to solve their problem for them." It's also quite telling that he said he didn't leave the facility because "the process wasn't done completely" and he didn't know what they needed. This flies in the face of what he actually did. He left despite being told that the process had not been completed.

Officer Beary became extremely frustrated with MM and extremely annoyed, if not angry, because she was uncooperative and because the process of dropping MM at the JAC became long and arduous. In fact, he was so frustrated that he argued with MM and used unprofessional and insulting language against her. The frustration and annoyance that he was experiencing makes it more likely than not that Officer Beary decided that MM had to be handcuffed so that her piercings could be removed and he took her to the ground. After MM was handcuffed and on the ground, Officer Beary knew he had engaged in misconduct, suspected that a use of force complaint might be filed against him, and then begin to act in a manner to minimize and misrepresent his behavior. This began with the initial written report where he mischaracterized and minimized his actions and it continued during the IAB investigation. From the outset, Officer Beary knew there were no surveillance videos that recorded the incident. He was free to craft a version of the truth that best served him, and did so. In the course of the IAB investigation of the complaint filed in this case, Officer Beary provided the false statements noted above. The deception Officer Beary engaged in was

material because the untruthful statements he made had "significance, bearing or weighty with respect to the subject of the investigation", which included Discourtesy and Inappropriate Force. In making these untruthful statements, Officer Beary violated the above departmental rule because he "knowingly commit[ted] a materially deceptive act."

A violation of RR-112.1 is a predetermined Conduct Category F violation pursuant to the DPD Disciplinary Code or Matrix. By committing a materially deceptive act in connection with an IAB investigation, Officer Beary engaged in conduct that involved "[an] act which demonstrates a serious lack of the integrity, ethics [and] character related to an officer's fitness to hold the position of police officer; [and] involve[d] egregious misconduct substantially contrary to the standards of conduct reasonably expected of one whose sworn duty is to uphold the law."

The presumptive penalty for Deceptive Conduct is termination. Although a mitigating penalty of 90 suspended days is allowed under the matrix, the matrix provides that mitigation may be appropriate where the untruthfulness "would not have been discovered but for the officer coming forward and making a truthful statement" or where "an admission of untruthfulness is made after an officer has been untruthful." None of these circumstances is present here. Officer Beary dug in deep and continues to maintain that he is being "100 percent truthful" and the others are lying. Office Beary is a young officer and has no significant discipline with this department or the sheriff's department in which he served prior to beginning his service here. Nevertheless, the deceptive behavior here raises serious questions about Officer Beary's trustworthiness and integrity. Officer Beary is not fit to be a police officer. To allow him to remain in the Department would likely impact his ability to effectively perform his duties and responsibilities with regard to the criminal justice system. That simply cannot be allowed to happen.

Accordingly, the Written Command is hereby approved. Officer Beary shall be dismissed from the Department effective immediately for violating RR-112.2, Commission of a Deceptive Act.

Pursuant to Denver City Charter § 9.4.15(A), Officer Beary has ten (10) days from receipt of this order to file an appeal with the Civil Service Commission.

BY ORDER:

Jon Vigil 6-15-16

Deputy Director of Safety Date

OFFICER'S RETURN

I hereby certify that I received the within Departmental Order of Disciplinary Action and have delivered a true copy thereof to the within-named Brian Beary this 15th day of June, 2016.

BRIAN BEARY (P13002)
Officer in the Classified Service
of the Denver Police Department