OFFICE OF THE POLICE COMMISSIONER
ONE POLICE PLAZA • ROOM 1400

July 25, 2025

Memorandum for: Deputy Commissioner, Trials

Re: **Police Officer Malachi McKenith**
Tax Registry No. 945983
Manhattan Court Section
Disciplinary Case No. 2023-29383
PODS Case No. C-031450

The above named member of the service appeared before Assistant Deputy Commissioner, Trials Anne E. Stone, on April 23, May 28 and 29, 2025 and was charged with the following:

DISCIPLINARY CASE NO. 2022-27051

1. Said Police Officer Malachi McKenith, while on-duty and assigned to the 40 Precinct, on or about September 10, 2023, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department to wit: Said Police Officer Malachi McKenith intentionally touched an intimate part of a member of service known to the Department, causing said member of service to become uncomfortable. (*As amended*)

P.G. 304-06, Page 1, Paragraph 1 **PROHIBITED CONDUCT**

2. Said Police Officer Malachi McKenith, while on-duty and assigned to the 40 Precinct, on or about September 10, 2023, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department to wit: Said Police Officer Malachi McKenith made inappropriate comments of a sexual nature to other members of service known to the Department.

P.G. 304-06, Page 1, Paragraph 1 **PROHIBITED CONDUCT**

In a Memorandum dated June 18, 2025, Assistant Deputy Commissioner, Trials Stone found Officer McKenith guilty of Specification Nos. 1 and 2. Having read the Memorandum and analyzed the facts of this matter, I approve of the findings, but disapprove the penalty.

FIRST DEPUTY COMM.
REC'D JUL 28 2025 14:13

I have considered the totality of the circumstances concerning the misconduct for which Officer McKenith has been found guilty and deem that separation from the Department is warranted. However, instead of an outright dismissal from the Department, an alternative manner of separation from the Department will be permitted for Officer McKenith at this time.

It is therefore directed that an ***immediate*** post-trial settlement agreement be implemented with Officer McKenith in which he shall forfeit thirty (30) suspension days (to be served), be placed on one (1) year dismissal probation, forfeit all time and leave balances, and immediately file for vested-interest retirement. Additionally, Officer McKenith will retire while on suspended duty status.

Such vested interest retirement shall also include Officer McKenith's written agreement to not initiate administrative applications or judicial proceedings against the New York City Police Department to seek reinstatement or return to the Department. This agreement is to be implemented ***IMMEDIATELY.*** Should Police Officer McKenith not agree to the terms of this vested-interest retirement agreement as noted, I shall direct that said Police Officer be terminated from the Department without further proceedings.

Jessica S. Tisch
Police Commissioner

POLICE DEPARTMENT

June 18, 2025

In the Matter of the Charges and Specifications	:	Case No.
- against -	:	C-031450
Police Officer Malachi McKenith	:	
Tax Registry No. 945983	:	
Manhattan Court Section	:	

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

Before: Honorable Anne E. Stone
Assistant Deputy Commissioner Trials

APPEARANCES:

For the Department: Stephanie McCarthy, Esq.
Joanna Berlin, Esq.
Department Advocate's Office
One Police Plaza, Room 402
New York, NY 10038

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

To:

HONORABLE JESSICA S. TISCH
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NY 10038

CHARGES AND SPECIFICATIONS

1. Said Police Officer Malachi McKenith, while on duty and assigned to the 40 Precinct, on or about September 10, 2023, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, to wit: Said Police Officer Malachi McKenith intentionally touched an intimate part of a member of service known to the Department, causing said member of service to become uncomfortable. *(As amended)* [1]

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2. Said Police Officer Malachi McKenith, while on duty and assigned to the 40 Precinct, on or about September 10, 2023, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, to wit: Said Police Officer Malachi McKenith made inappropriate comments of a sexual nature to other members of service known to the Department.

   A.G. 304-06, Page 1, Paragraph 1 PROHIBITED CONDUCT

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on April 23, May 28 and 29, 2025. Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. The Department called Complainant[2], Police Officer Jeffrey Molina, Police Officer Anthony Santos, Police Officer Heather Humphreys, and Sergeant David Verna[3]. Respondent testified on his 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, I find Respondent Guilty of the charged misconduct and recommend that he be DISMISSED from the New York City Police Department.

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[1] At the outset of trial, the Department moved to amend Specification 1 to remove Penal Law Section 130.52 from the caption of the charge; Respondent made no objection to this amendment and it was thereafter entered on the record.

[2] Complainant is a Police Officer whose name is known to the Department.

[3] Sergeant Verna investigated these allegations and testified that the precinct EEO liaison reported the incident to IAB.

ANALYSIS

This case arises from an allegation that Respondent touched and squeezed Complainant's breast when he was hugging her and then made comments of a sexual nature. The following is a summary of facts which are not in dispute.

Respondent and Complainant met in 2010 at the 40 Precinct. Complainant and Respondent never worked directly together, or on the same tour, but a friendship developed when they met in passing at the command. Although they did not socialize outside of the workplace, Respondent and Complainant often confided in, and offered advice to, each other on personal matters. As a result of this mutual fondness, whenever they met Respondent and Complainant greeted each other with a hug and a kiss on the cheek. (Tr. 19-20, 57-59)

On September 10, 2023, Complainant was in the muster room speaking to Police Officer Jeffrey Molina and waiting for the end of her shift. Respondent, who was starting his tour, entered the room. Complainant held her arms out to him to receive a hug. It is undisputed that during the embrace Respondent's hand touched her breast. The parties further agree that Complainant pushed Respondent away and made a verbal objection to which Respondent replied in sum and substance "it's not like I touched your nipple," and "it is ok, you were supposed to be my first wife." In dispute is whether Respondent's contact with Complainant's breast was intentional. (Tr. 21-22, 25, 78, 85, 93, 101, 195-96)

Complainant took the stand and testified that she has been assigned to the 40 Precinct for fifteen years, since graduating from the Police Academy. She recalled that Respondent was the first person she met at the precinct. She described him as "friendly," "very helpful," "compassionate," and "understanding." (Tr. 17-20) Complainant acknowledged that their close friendship spanned her tenure at the 40 Precinct up until the date of this incident. Complainant

readily acknowledged that whenever she saw Respondent, the two would hug and exchange a kiss on the cheek. During cross-examination, Complainant conceded that on one prior occasion Respondent's hand accidentally touched her breast during an embrace. She recalled that when that happened, Respondent immediately apologized. (Tr. 19-20, 57-59, 75-76)

Complainant recounted that during their hug on September 10, 2023, she felt Respondent's "hand went under my breast, his right index and middle finger under my breast, thumb on top of, and squeezed." (Tr. 75) She remembered being "shocked" and pulled back from Respondent, while covering her chest. When Respondent questioned her response Complainant told Respondent to, "just get off of me. Just let me go." Complainant testified that Police Officer Molina was present and confronted Respondent demanding, "What are you doing?" Complainant recalled that Respondent, whose hand was still on her breast replied, "Relax, I'm only grabbing the side of her boob; it's not like I grabbed her nipple." (Tr. 21) Complainant recalled retreating from the embrace and noticing that her bra was out of place. (Tr. 20-22, 24-26, 33, 75)

Complainant continued, explaining that after she gathered her belongings Police Officer Santos leaned forward and whispered in her ear that it was time to go. She stated that as she was walking towards the door, Respondent followed and grabbed her from behind and chided, "That was a sensual kiss between you two. It was like this." (Tr. 31) Respondent then gave her a "sloppy" kiss on her right cheek. Complainant recalled him then announcing to the room, "It's okay. You know, she was supposed to be my first wife." She continued, "I was shocked. Upset. I felt really sad that he told people in the muster room basically that it was okay that he grabbed me." (Tr. 25) Complainant also asserted that she felt "very uncomfortable" and attempted to pull Police Officer Santos behind her to buffer her from Respondent. (Tr. 25-31, 33)

Complainant acknowledged that Respondent came out to speak with her in the parking lot and said that, "he would go in front of roll call and let them know it wasn't okay to grab me, that he didn't mean it." (Tr. 76) However, she maintained that Respondent did not apologize to her, he simply made "justifying statements," telling her he had gotten too comfortable with her and thought of her as a sister. Complainant testified that this incident troubled her to the point that it affected her relationship with her family because she no longer wanted to be touched by her husband and children. As a result, she sought counseling. (Tr. 38-41, 76, 87)

There were a number of witnesses to the events that transpired. Police Officer Molina testified that he saw Respondent place his left arm around Complainant's back, his right arm under her left shoulder and pull Complainant into him. Police Officer Molina stated that during the clinch, he observed Respondent's hand "cupping" Complainant's left breast. (Tr. 93-94)

Police Officer Anthony Santos testified that he was in the muster room, getting ready to leave and said goodbye to Complainant with a hug. As Police Officer Santos walked away, he recalled that she held tightly onto his arm and wasn't "letting go." Respondent followed Complainant and embraced her again from behind. Complainant extracted herself and left the room. She signed out at the desk and headed to the parking lot accompanied by Police Officer Molina who described her as crying and visibly upset. In addition, he remembered that Complainant told him she felt "violated." (Tr. 24-25, 37, 80-81, 94-99, 116-117)

Police Officer Heather Humphreys testified that she spoke with Complainant and Police Officer Molina by their cars. She recalled that Complainant was crying and holding her arms over her chest in a protective manner. Complainant told her that Respondent had just "grabbed" her breast in the muster room. Police Officer Molina testified that he returned to the Precinct and told Respondent that Complainant was, "crying in the parking lot, whatever happened to go fix

it." He recalled a "nervous" Respondent "running" out of the precinct to the parking lot to speak to Complainant. (Tr. 98, 107, 141-142)

Police Officer Humphreys recalled that when Respondent arrived in the parking lot he stated that, "he's sorry, that he didn't mean to grab [Complainant], he meant to grab her 'chichos.'"[4] Respondent offered to make a public apology during roll call. After a few minutes, Respondent stated to Complainant in sum and substance, "you have to do what you need to do" and walked back into the precinct. While driving home Complainant called the precinct Equal Employment Opportunity liaison, who reported the incident to the Internal Affairs Bureau. (Tr. 39, 76-77, 124, 144, 157, 180)

Respondent testified that his friendship with Complainant lasted thirteen years. When asked to describe his relationship with Complainant, Respondent characterized it as "brother and sister." He contended that early on Complainant asked him for advice about a "family issue" and from then on, they had a close, "playful" rapport. Respondent explained that each time he saw Complainant they would give each other a hug and a kiss. (Tr. 165-166, 169-170)

Respondent recounted that, in the weeks preceding this incident, there was a day when he did not embrace Complainant when he saw her. He stated that he was having marital troubles and when Complainant approached him and asked him for a hug, he refused because he was in a bad mood. Respondent stated that they talked about his situation and because of Complainant's advice he made the decision to move out. Respondent testified that on September 10, 2023, when he saw Complainant, he wanted to "scoop her up and hug her…and you know, give her a nice squeeze" to thank her for helping him. Respondent claims that when Complainant pushed him

[4] When asked by the Tribunal for a definition of the word "chichos," Police Officer Humphreys responded, "They refer to fat rolls on the side of [the] body." (Tr. 143)

away and exclaimed "what the F," he thought she was "kidding." He admitted responding. "it's not like I grabbed your nipple" but claims that he did so because he thought they were joking around, as they often did. Respondent alleges that Complainant yelled at him, "I'm not your wife" to which he replied, "well, you're supposed to be my wife, remember?" (Tr. 170-175)

When asked to explain the "wife" statement, Respondent recounted that early in their friendship he and Complainant were flirtatious with one another and briefly explored the possibility of starting a romantic relationship. As a result of their differing schedules, a romance did not materialize, but the two remained good friends. Respondent stated that he and Complainant would often jest that they would have gotten married if Respondent did not snore. (Tr. 175-176, 196-197)

Respondent acknowledged hugging Complainant as she walked out of the muster room but insisted that he did not kiss her cheek. He also repeatedly denied intentionally touching Complainant's breast. On cross-examination Respondent explained that, during past hugs, he had "tickled" Complainant under her arms, on her "chichos" and planned to do so again on this day.[5] Respondent testified that, "you have to squeeze to tickle" and admitted that while trying to "tickle" Complainant's "chichos," he grasped her left breast. (Tr. 184-193)

Respondent stands charged with engaging in conduct prejudicial to the good order of the Department by touching an intimate part of Complainant's body and when confronted about it, making comments of a sexual nature. Administrative Guide 332-01 prohibits conduct, including *any* unnecessary or unwanted touching, patting, or pinching, which has the effect of

[5] Respondent defined "chichos" as "right under the arm" (Tr. 185)

unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive work environment. (*emphasis added)*

Although emotional at times, Complainant testified in a detailed, credible, manner about the events which occurred on September 10, 2023. She was forthcoming about her previous friendship with Respondent, including admitting that they embraced and kissed each time they saw each other. During direct examination, she volunteered the information that on the day this happened she opened her arms to Respondent welcoming a hug. Complainant described in detail that Respondent's right hand came under her arm and feeling him grab and squeeze the side of her left breast. Complainant also repeatedly described the statements that Respondent made in the aftermath of this incident, which were corroborated by both Police Officer Molina and Respondent himself. She recounted with sincerity the lasting effects this incident has had on her personal and professional life, which included regret at the loss of her friendship with Respondent.

Police Officers Molina, Santos, and Humphreys each took the stand and gave straightforward, unembellished recitations of what happened on the date in question. These officers had neither a close relationship with either Respondent or Complainant, nor an interest in the outcome of these proceedings, and I credit their testimony.

With regard to Specification 1, although Respondent did not deny grabbing Complainant's breast, his repeated claim that the contact was made inadvertently, while he was trying to "tickle" and "squeeze" Complainant's "chichos," called into question the credibility of his version of events. His insistence that he had touched her in this way before, with Complainant's acquiescence, was a transparent attempt to excuse himself from any responsibility for this incident. The Department goes to great lengths, including mandatory annual trainings, to

educate its members about sexual harassment in the workplace. Respondent, who has worked for the NYPD since 2008, cannot claim to be ignorant of these policies.

Respondent admitted that he intended to tickle and squeeze Complainant's body in the vicinity of her breast. The result was that he grabbed her left breast, without her permission, in front of other members of service, causing her to be humiliated and distressed. Respondent's argument that Complainant had been a willing participant to being "tickled" in the past is unpersuasive and condescending. It goes without saying that past acquiescence would not give Respondent a green light to touch Complainant in this manner whenever he pleased. In any event, this type of overly familiar, intimate touching is completely inappropriate for the workplace. It violates not only the NYPD's sexual harassment policy, but constitutes conduct prejudicial to the good order of the Department. Accordingly, I find Respondent Guilty of Specification 1.

With regards to Specification 2, Respondent has conceded that he stated to Complainant, "at least I didn't touch your nipple" and "it's ok, you were supposed to be my wife anyway" when she confronted him about touching her breast. Within this context, both statements are offensive and sexually suggestive. I find Respondent's argument that he made these statements in jest, to be an unpersuasive attempt to avoid responsibility for his egregious behavior. Rather than taking responsibility for uttering these inappropriate sentences, Respondent is, in essence, attempting to shift the blame by painting Complainant as overly sensitive and incapable of taking a harmless joke. For the foregoing reasons, I find Respondent Guilty of Specification 2.

PENALTY

In order to determine an appropriate penalty, this Tribunal, guided by the Department's Disciplinary System Penalty Guidelines ("Matrix"), considered all relevant facts and circumstances, including potential aggravating and mitigating factors established in the record. Respondent's employment history was also examined. *See* 38 RCNY § 15-07. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached memorandum.

Respondent, who was appointed to the Department on January 7, 2008 and has no formal disciplinary history, has been found guilty of touching Complainant's breast and making inappropriate comments of a sexual nature, while they were both on duty, causing Complainant distress. The Department has recommended a penalty of termination.

The presumptive penalty in the Matrix for verbal sexual harassment is the forfeiture of twenty (20) vacation days, and the presumptive penalty for overt sexual touching/intimate physical contact is termination. (Matrix, p. 51) I agree with the Department Advocate and recommend that Respondent's employment with the NYPD be terminated.

Respondent's conduct in this matter runs completely contrary to the good order and discipline of the Department. His actions on September 10, 2023 exhibit poor judgement and an appalling lack of professionalism. Respondent, under the guise of an amicable hug, groped his female colleague, who considered him a trusted friend. When Complainant objected, he subjected her to further abuse and humiliation by making crude comments in front of their colleagues, implying that she was overreacting and that it was acceptable for him to touch her this way because of the nature of their relationship. He ran out of the precinct that day not because of concern for Complainant's well-being, but to try and stop her from making a

complaint against him. When "apologizing" to Complainant in the parking lot, Respondent simply denied any wrongdoing by characterizing his actions as accidental and his words as uttered in jest.

This Tribunal takes note that when testifying two years later, Respondent lacked any understanding of the gravity of his actions and continued to dismiss his behavior as innocent. Even after watching Complainant, his former friend, cry when recounting these events, Respondent showed no remorse on the stand for the turmoil he has caused her. His attempt to portray himself as being punished for simply hugging a good friend is evidence that there is no potential for rehabilitation.

In sum, Respondent has demonstrated that he lacks the good judgment and impulse control required of a member of this Department, and his continued employment is untenable. Based on the totality of the facts and circumstances in this matter, I recommend that Respondent be DISMISSED from the New York City Police Department.

Respectfully submitted,

Anne E. Stone

Anne E. Stone
Assistant Deputy Commissioner Trials

DISAPPROVED

JUL 25 2025

JESSICA S. TISCH
POLICE COMMISSIONER

POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials

To: Police Commissioner

Subject: SUMMARY OF EMPLOYMENT RECORD
POLICE OFFICER MALACHI MCKENITH
TAX REGISTRY NO. 945983
DISCIPLINARY CASE NO. C-031450

Respondent was appointed to the Department on January 7, 2008. On his three most recent annual performance evaluations, he was rated "Exceptional" for 2022, 2023, and 2024. He has been awarded one medal for Meritorious Police Duty and two medals for Excellent Police Duty.

Respondent has no formal disciplinary history. In February 2018, Respondent was placed on Level 1 Force Monitoring due to receiving three or more CCRB complaints over a one-year period; this monitoring remains ongoing. Respondent was previously on Level 1 Force Monitoring from May 2014 to May 2015.

For your consideration.

Anne E. Stone
Assistant Deputy Commissioner Trials