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**DOI REPORT FINDS MISMANAGEMENT AND LEADERSHIP FAILURES IN THE LIFEGUARD DIVISION AND  
ISSUES 13 RECOMMENDATIONS TO IMPROVE MANAGEMENT AND ACCOUNTABILITY**

Daniel G. Cort, Acting Commissioner of the New York City Department of Investigation (“DOI”), issued a Report today finding that the structure, history, and culture of the Lifeguard Division within the City Department of Parks and Recreation (“DPR”) reveals systemic dysfunction in its management and accountability. The Report details the causes for these failures and provides 13 recommendations for reform, urging the City to act on its recommendations and address the longstanding issues within the Lifeguard Division that have undermined the professional management of lifeguards in New York City. DPR officials have expressed support for the reforms recommended by DOI. The investigation that resulted in this Report began in August 2020 and focused on the Lifeguard Division’s disciplinary process, as well as its management structure and personnel practices. DOI’s Report is attached to this release and can also be found at this link: <https://www1.nyc.gov/site/doi/newsroom/public-reports.page>

Acting Commissioner Cort said, “DOI’s Report exposes the long-standing and continuing problems with the City’s Lifeguard Division, revealing leadership and management failures; a lack of accountability and transparency; as well as a now-expired collective bargaining agreement that constrains the Parks Department’s ability to have visibility into and effectively oversee the Lifeguard Division’s operations, particularly as they relate to the disciplinary process. This 16-month investigation lays bare the facts, many of which have been uncovered in previous DOI investigations from decades ago and never acted on. If there is one take away from DOI’s investigation it is this: reform must be implemented within the Lifeguard Division to strengthen and improve its management and operations and to ensure that there is accountability and fairness guiding the employee disciplinary process. DOI has issued 13 recommendations that can begin the necessary and vital reforms and we hope the City will implement them.”

DOI found that DPR does not exercise sufficient oversight of its Lifeguard Division operations, a failure based on the management structure of the Lifeguard Division and caused, in part, by the now-expired collective bargaining agreement (“CBA”) between the City and the lifeguard union as well as other factors, such as the elimination of intermediate managers, a lack of accountability in the disciplinary process for lifeguards, unclear lines of authority, and ineffective communication by Lifeguard Division leadership. The CBA established a direct reporting relationship between DPR’s First Deputy Commissioner and the Lifeguard Coordinator, the top position in the Division, an arrangement that along with the absence of intermediate managers, allowed the Division to operate with significant autonomy, little transparency, and without effective DPR oversight. In addition, DOI found that the disciplinary process for lifeguards lacks adequate accountability practices because (a) the hearing officer for disciplinary hearings is a member of the Lifeguard Division rather than someone outside the chain of command; (b) the former Lifeguard Coordinator, who served as the long-time hearing officer, failed to properly perform the duties of a hearing officer; and (c) lines of authority, ineffective communication, and a failure of leadership, among other challenges, undermined the effectiveness of the disciplinary process.

Specifically, DOI found that the disciplinary process lacks accountability for several reasons, including the former Lifeguard Coordinator failing to timely respond to hearing requests and in at least one matter failing to properly render a decision on misconduct charges against a supervisor who reported to him; unclear lines of authority between the First

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Deputy Commissioner and the Advocate's Office, including in instances in which the Advocate's Office felt pressure from the First Deputy Commissioner in particular cases, as well as other challenges such as a lack of cooperation from the union in certain cases. Some of these problems are the product of the CBA, while others are not. This investigation demonstrates the need to enhance DPR oversight, to standardize Lifeguard Division practices, and adopt changes to promote a fair and effective disciplinary process for lifeguards.

To that end, DOI issued 13 recommendations to DPR and, where applicable, to the City Office of Labor Relations ("OLR"), including:

- With the current CBA expired, DPR and OLR should pursue changes to terms and conditions in any future CBA that will allow DPR to improve the management structure, personnel practices, and disciplinary process of the Lifeguard Division, including the reforms in DOI's recommendations.
- Several recommendations focus on improving the Lifeguard Division's management structure and its disciplinary process, such as eliminating the direct reporting relationship between the Lifeguard Coordinator and the First Deputy Commissioner, to better align the Lifeguard Division with other divisions with DPR; and clarifying and reinforcing the authority of the Advocate's Office over the investigation and prosecution of disciplinary matters for the agency, including lifeguard matters.
- DPR should ensure the Lifeguard Division maintains sufficient documentation of personnel actions and information related to disciplinary matters consistent with agency policies and procedures.
- DPR should require the Lifeguard Division to conform its personnel practices to standard agency procedures, subject to any modifications DPR deems appropriate to accommodate the operational needs of the Division.
- DPR should ensure that relevant divisions outside of the Lifeguard Division provide annual anticorruption, ethics, and sexual harassment trainings to all lifeguards.

Acting DOI Commissioner Cort thanks DPR Commissioner Gabrielle Fialkoff and her staff for their cooperation in this investigation and OLR Commissioner Renee Campion and her staff for their assistance.

Acting DOI Commissioner Cort also recognizes the dedication and work of former DOI Commissioner Margaret Garnett, whose guidance on this investigation was invaluable.

This investigation was conducted by DOI's Office of Inspector General for DPR, specifically Confidential Investigator Katherine O'Toole, under the supervision of Deputy Commissioner for Legal Affairs and General Counsel Andrew Brunsten, Deputy Commissioner / Chief of Investigations Dominick Zarrella, and Acting First Deputy Commissioner Philip Hung. The investigation was also informed by prior investigations conducted under the supervision of Inspectors General Clinton Daggan and Ann Petterson.

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New York City  
Department of Investigation



## DOI's Investigation into the Parks Department's Lifeguard Division

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## Executive Summary

The New York City Department of Investigation (DOI) has completed an investigation that identified mismanagement of the Lifeguard Division of the New York City Department of Parks and Recreation (DPR). This is not the first time.

Over the years, DOI has conducted a number of investigations related to the City's lifeguard corps, which performs the critical public safety responsibility of protecting people who swim at City beaches and pools from the risks of drowning and injury. In the 1990's, for example, an earlier DOI investigation into the Lifeguard Division found mismanagement, union interference, and deficient recordkeeping. At the time, DOI recommended changes to the lifeguard supervisory structure, as well as additional recommendations that sought to improve DPR oversight of the Division. However, these recommendations were not fully implemented.

The current investigation reveals the continued need to address longstanding, persistent issues with the Lifeguard Division. In recent years, DOI has conducted investigations concerning DPR's policies and practices for addressing employee misconduct.<sup>1</sup> In August 2020, after separate investigations into DPR employment practices, review of complaints, and media reports, DOI initiated an investigation focused on the Lifeguard Division's disciplinary process, as well as its management structure and personnel practices. This report sets forth DOI's findings and recommendations.

DOI found that DPR does not exercise sufficient oversight of Lifeguard Division operations. A primary explanation for this failure is the now expired collective bargaining agreement with the lifeguard union that established a direct reporting relationship between DPR's First Deputy Commissioner and the Lifeguard Coordinator, the top position in the Division. This arrangement, along with the absence of intermediate managers and the Division's insular operations, has resulted in limited DPR oversight capacity and visibility. These factors have also contributed to a lack of transparency as to the Division's personnel and

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<sup>1</sup> See, e.g., Letter from DOI Commissioner to DPR Commissioner (July 26, 2017) (making 12 recommendations relating to equal employment opportunity matters and employee discipline); DOI Policy and Procedure Information System, <https://www1.nyc.gov/site/doi/about/ppr-portal-report.page> (indicating DPR's acceptance and implementation of the 12 recommendations).

disciplinary practices. One senior DPR official described the Lifeguard Division as a “black box” to DPR management. Some witnesses also described the unions and, in particular Peter Stein, the president of one of the local lifeguard unions, as resistant to management changes.

DOI also found several issues that demonstrate a lack of accountability in the disciplinary process for lifeguards. Significantly, while DPR generally requires that a hearing officer come from outside the unit of the employee subject to disciplinary charges, the hearing officer for lifeguard disciplinary cases is a member of the Division’s chain of command, which raises concerns about a lack of impartiality. Richard Sher, the Division’s Lifeguard Coordinator until his recent retirement, had long been the hearing officer for lifeguard discipline. DOI found that Sher was often nonresponsive to hearing requests from the DPR Advocate’s Office, which handles disciplinary matters, resulting in delays to those matters. In one case alleging misconduct by a senior lifeguard supervisor, Sher failed to properly render a decision on the disciplinary allegations, making it impossible for formal disciplinary action to be taken if required. Despite concerns raised internally at DPR about Sher, the First Deputy Commissioner Liam Kavanagh failed to resolve Sher’s deficient performance as a hearing officer.

Unclear lines of authority, ineffective communication, and failed leadership, among other issues, further undermines the effectiveness of the disciplinary process for lifeguards. DOI found that Kavanagh did not consistently respond to referrals or inquiries from the DPR Advocate’s Office and, along with Division officials, often handled matters without the involvement of the Advocate’s Office. In addition, though Kavanagh did not possess authority to direct Advocate’s Office decisions, there were instances when the Advocate’s Office perceived Kavanagh as exerting pressure to influence its pursuit of disciplinary matters. Moreover, a lack of cooperation from the unions was the cited reason for closure of several disciplinary matters.

When DOI spoke with Stein to arrange an interview, which he ultimately declined to schedule, he offered a telling remark during the brief conversation: he wanted to know why coverage of the lifeguards does not focus on their protection of people from drowning at City beaches and pools. This report provides an answer—the structure,

history, and culture of the Lifeguard Division reveals systemic dysfunction in its management and accountability.

This report offers a call to action and concrete proposals for the City to finally remedy longstanding issues that undermine professional management of the lifeguards who could be better known for lifesaving efforts, but for the notoriety of the Division's persistent mismanagement and resistance to change. Senior DPR officials have expressed support for reform. DOI makes 13 recommendations to correct deficiencies in the management and operation of the Lifeguard Division, including changes to the now expired collective bargaining agreement and organizational structure that will enable the leadership of DPR to provide more effective supervision; reforms of the disciplinary process to facilitate fair and timely determinations; and standardized practices and internal controls to promote transparency and consistency in personnel actions.

## Background

### The New York City Department of Parks and Recreation Lifeguard Division

DPR maintains 14 miles of beach and 53 outdoor pools between Memorial Day weekend and mid-September, and 12 indoor pools year-round, for swimming and recreational activities in New York City. DPR's Lifeguard Division is responsible for public safety at City beaches and pools and employs approximately 1,400 lifeguards to protect the millions of people who visit City beaches and pools each year. In addition, the Lifeguard Division recruits and trains lifeguards.<sup>2</sup> Although the Lifeguard Division has approximately 60 permanent employees, the majority of lifeguards are seasonal employees.

The Lifeguard Division includes a Lifeguard Coordinator, three Assistant Lifeguard Coordinators, seasonal and non-seasonal Chief Lifeguards, five seasonal Borough Coordinators, seasonal and non-seasonal Lieutenant Lifeguards, and seasonal lifeguards. The Lifeguard Coordinator is responsible for management of the Division. Richard Sher had been the Lifeguard Coordinator since the 1990's, until his retirement in August 2021.<sup>3</sup> The Lifeguard Coordinator reports directly to DPR's First Deputy Commissioner. Liam Kavanagh is the First Deputy Commissioner and has held that position since 2002. In addition to direct supervision of the Lifeguard Division, the First Deputy Commissioner has broad responsibilities for supervision of agency operations across the five boroughs.

Lifeguards are represented by two District Council (DC) 37 local union chapters: Local 461 for seasonal lifeguards and Local 508 for supervisors. Peter Stein is the president of Local 508 and a Vice

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<sup>2</sup> DPR conducts an annual publicity campaign through radio, print, and social media outlets, and Division staff perform outreach through local schools, swim clubs, and recreation centers, to recruit lifeguards. To enter the City's lifeguard training program, an applicant is required to meet vision requirements and pass a qualifying test. The training program includes instruction on CPR, first aid, and rescue techniques. At the conclusion of the program, candidates must complete a swim test, pass written and practical exams, and earn their CPR certification. A candidate who successfully completes these requirements may be offered a position as a lifeguard.

<sup>3</sup> Available records did not indicate Sher's precise start date as Lifeguard Coordinator.

President of DC 37.<sup>4</sup> Historically, the terms and conditions of lifeguard employment have been governed by a collective bargaining agreement (CBA) entered into by the City and DC 37. As discussed further below, the CBA includes provisions related to management of the Lifeguard Division and the lifeguard disciplinary process. The current CBA expired on May 23, 2021, though its terms continue pending future negotiation.

Generally, the DPR Advocate's Office is responsible for the investigation and prosecution of allegations of employee misconduct. The Advocate's Office has the authority to bring disciplinary charges when it substantiates a violation of the DPR Code of Conduct and to enforce the charges through a disciplinary hearing, which is also known as an informal conference.<sup>5</sup> Under the CBA, a lifeguard subject to disciplinary charges is entitled to a hearing before the "Division Head."<sup>6</sup> Although that term is not defined in the CBA, DPR officials explained that Sher historically served as the designated hearing officer based on his role as Lifeguard Coordinator, which is the highest ranking title within the Lifeguard Division.

### **DOI's Investigation**

As noted above, lifeguards and their unions have been the subject of complaints, investigations, and negative media reports for decades. For example, in the 1990's, DOI investigated allegations of lifeguard misconduct and Division mismanagement. That investigation identified a number of challenges faced by investigators including deficient recordkeeping practices, a lack of cooperation by the unions, and complainants' fear of retaliation by superiors and union officials for reporting potential wrongdoing. Among its findings, the investigation

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<sup>4</sup> Stein holds a Chief Lifeguard title, but DOI was informed he was "released" to the union.

<sup>5</sup> With limited exceptions, DPR employees subject to charges are entitled to a hearing and subsequent opportunities to appeal an adverse decision. Most probationary DPR employees are not entitled to a hearing during their first year of employment, though lifeguard employees still receive a hearing despite more limited rights.

<sup>6</sup> Seasonal Agreement between the City of New York and DC 37, Article XX (July 18, 2012). Under the CBA, the rights to a hearing vary to some extent based on a lifeguard's years of service. However, the process generally involves a first step disciplinary hearing, a second step appeal of any adverse decision, and subsequent steps to challenge the decision. Lifeguards in their first season are also entitled to a hearing with respect to disciplinary action, albeit with more limited rights.

determined that Sher and another Division official falsified City time records, and that Sher failed to report an arrest in accordance with agency policy. The investigation resulted in 12 recommendations to DPR including but not limited to renegotiation of the lifeguard CBA; assignment of Division oversight to a DPR official other than Sher and his direct reports; better recordkeeping practices; and agency audits of the Division. However, as indicated by findings discussed below, Sher retained his position as Lifeguard Coordinator until his recent retirement, and recommendations from the earlier review were not fully implemented.

In August 2020, after separate investigations into DPR employment practices, review of complaints about the Lifeguard Division, and media reports indicated the persistent issues with the Division, DOI initiated an investigation focused on the Lifeguard Division's management structure, personnel practices, and disciplinary process. DOI's investigation included, among other steps, analysis of the CBA and related documentation; examination of misconduct allegations received by the DPR Advocate's Office; review of DPR communications and records regarding such allegations and disciplinary matters; and interviews of several current and former lifeguards, Advocate's Office staff, senior DPR personnel with duties related to operations, labor relations, and personnel management, and the First Deputy Commissioner. DOI contacted Sher and Stein multiple times to arrange their interviews and offer them an opportunity to provide their perspectives. However, both ultimately did not respond to DOI to schedule interviews.

## Findings of Investigation

### **1. Insufficient DPR Oversight of the Lifeguard Division Due to Management Structure**

The Lifeguard Division has an anomalous management structure in contrast to other DPR units. While the heads of other DPR divisions generally report to intermediate managers charged with overseeing

those divisions,<sup>7</sup> the Lifeguard Coordinator reports directly to the First Deputy Commissioner. The direct reporting relationship is set forth in the CBA between the City and DC 37, as well as a 1996 stipulation of settlement between DPR and the unions.<sup>8</sup> The 1996 stipulation resolved a union grievance, in part, by removal of any supervisory role for intermediate managers outside of the Lifeguard Division. The stipulation took away any role supervising lifeguards from DPR's Assistant Commissioner of Citywide Services and eliminated the position of Central Director of Pools and Beaches, which had been another supervisory position outside the Division.<sup>9</sup> One DPR official with experience in labor relations considered it highly unusual that a bargaining unit had the ability to dictate the supervisory structure for a class of employees.

As a result of this structure, the Lifeguard Division operates with significant autonomy, and DPR management has limited oversight capacity. Kavanagh explained that the Lifeguard Division and the unions resist his delegation of management tasks even to his own staff, and insist on his personal involvement to the exclusion of others within DPR. While he described engaging in frequent communication with Stein and Lifeguard Division supervisors during the summer season, the First Deputy Commissioner has a broad set of responsibilities for operational management across a large agency that constrain his ability to provide active supervision to the Division. He acknowledged that oversight of the Division would benefit from the addition of experienced, intermediate supervisors within DPR management. Other senior officials concurred in this view, including one witness who noted the advantage of intermediate managers available to deploy to dispersed operational locations, rather than primarily manage from a centralized location (when lifeguards, by the nature of their jobs, are deployed in the field).

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<sup>7</sup> For example, a senior DPR official explained that borough park units have a deputy commissioner, borough commissioners, and chief and deputy chiefs of operations as intermediate managers between the units and the First Deputy Commissioner.

<sup>8</sup> Seasonal Agreement between the City of New York and DC 37, Appendix B (July 18, 2012) (stating that a “Lifeguard Coordinator [will] report[] directly to the Deputy Commissioner of Operations”); *see also* Stipulation of Settlement between DPR, DC 37, Local 508, and Local 461, ¶ 4 (June 28, 1996) (“The Lifeguard Coordinator shall report directly to, and shall be directly supervised by, the First Deputy Commissioner for Operations.”).

<sup>9</sup> Stipulation of Settlement between DPR, DC 37, Local 508, and Local 461 ¶ (June 28, 1996).

DPR management also has limited visibility into lifeguard operations based on the existing structure. A senior DPR official called the Lifeguard Division a “black box” with respect to personnel decisions related to assignments, transfers, and promotion of lifeguards. As to promotions, for example, DPR officials explained that the Lifeguard Division sends a fax to notify the personnel office about promotions, but does not provide backup documentation to provide justifications for such promotions, which is typically done by other DPR units.<sup>10</sup> The lack of intermediate management, standardization, and transparency limits outside scrutiny and evaluation of Division practices. These issues are particularly concerning in light of reports from several lifeguards that Division leadership makes personnel decisions based on connections rather than merit, or in retaliation for internal complaints. Lifeguards variously cited the use of assignments as decisions that may be retaliatory, and unfair administration of the qualifying swim test as a way to disfavor some candidates. These complaints do not appear to have reached Kavanagh who stated that he had not personally received these types of complaints.<sup>11</sup>

Senior DPR officials identified the CBA as the primary reason for DPR’s limited supervisory oversight of the Lifeguard Division, even while some witnesses opined that the agency has some ability to expand its oversight or direct certain changes without changing the CBA. Some witnesses also referenced the lifeguard unions’ resistance to management changes as a challenge for improved oversight. At the same time, some witnesses described factors that made a degree of delegation necessary, including the need to rely on experienced lifeguards to address safety concerns and training, to assess qualifications for hiring, and to manage a mostly seasonal workforce. Nonetheless, most witnesses expressed the view that the current structure was either not optimal or an impediment to effective supervision.

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<sup>10</sup> The First Deputy Commissioner acknowledged this issue with promotional decisions, while noting some standardization efforts within the Division in recent years. One witness also noted that promotions in the Lifeguard Division tend to be rare given the presence of long-tenured supervisors.

<sup>11</sup> While the investigation did not reach conclusive findings as to the individual circumstances of these complaints, the complaints reinforce concerns about transparency in the Division and support enhanced attention to Division practices.

## **2. Disciplinary Process Lacks Adequate Accountability Practices**

As discussed below, DOI determined that the disciplinary process for lifeguards lacks adequate accountability practices because (a) the hearing officer for disciplinary hearings is a member of the Lifeguard Division, rather than someone outside the chain of command; (b) the former Lifeguard Coordinator, who served as the long-time hearing officer, failed to properly perform the duties of a hearing officer; and (c) unclear lines of authority, ineffective communication, and a failure of leadership, among other challenges, undermined the effectiveness of the disciplinary process.

### **a. Hearing Officer Within the Lifeguard Division**

As discussed above, based on CBA provisions, the Lifeguard Coordinator has historically served as the hearing officer for lifeguard disciplinary cases. DPR officials stated that having Sher, the Lifeguard Coordinator, as the hearing officer was inconsistent with the agency's standard practice for the assignment of hearing officers in cases involving other DPR units.<sup>12</sup> Multiple witnesses confirmed that in disciplinary cases involving employees from units other than the Lifeguard Division, the Advocate's Office secures assignment of a senior staff member from outside the unit of the employee who is subject to charges. According to witnesses, the Lifeguard Division is the only unit within DPR that has a member of the supervisory chain of command serve as the hearing officer in disciplinary cases.

Advocate's Office staff explained that the reason for selection of hearing officers from outside an employee's unit or chain of command is to ensure impartial decision-making and avoid the appearance of bias. Witnesses stated that these objectives are best achieved by creating separation between operational supervision of the employee and evaluation of any disciplinary charges against the employee. The assignment of a member of the Lifeguard Division as hearing officer, by contrast, does not

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<sup>12</sup> Although witnesses noted that there were a few occasions when someone other than Sher served as hearing officer, they said that it was other lifeguard supervisors who served as hearing officer in these cases, which means the hearing officer remained an individual within the Lifeguard Division.

promote impartial adjudication of disciplinary cases, which can result both in unduly lenient treatment and unfairly harsh treatment.

**b. Hearing Officer Performance Deficiencies**

DOI found that Sher's performance as hearing officer interfered with effective prosecution and disposition of disciplinary matters. A number of witnesses informed DOI that Sher often did not respond in a timely manner to requests to schedule disciplinary hearings. They explained that Sher primarily communicated regarding scheduling of hearings by fax, and that this method of communication was a barrier to scheduling efforts. Although DOI determined that Sher's unresponsiveness negatively affected the progress of lifeguard disciplinary cases, DOI was unable to quantify the precise number of cases without timely hearings or the length of delays based on records provided by the First Deputy Commissioner and the Advocate's Office.

Some witnesses also stated that Sher, as well as the Lifeguard Division more generally, treated matters initiated by the Division differently from matters that the Advocate's Office initiated on its own based upon complaints from members of the public or other sources outside the Division. Specifically, multiple witnesses stated that their experience indicated that matters emanating from the Lifeguard Division appear to have received a greater level of attention, urgency, and cooperation from the Division and the unions than matters started by the Advocate's Office, which more often experienced a lack of cooperation or delays. The following example illustrates the concern of disparate treatment.

DOI identified a disciplinary case involving a senior lifeguard supervisor in which Sher failed to properly render a decision. In September 2014, a DPR employee, who was not a member of the Lifeguard Division, reported to the Advocate's Office an alleged incident of misconduct by a lifeguard supervisor at a recreation center.<sup>13</sup> The Advocate's Office forwarded the complaint to the First Deputy Commissioner and others in DPR management, initiated an investigation, and drafted charges against the lifeguard supervisor.<sup>14</sup> Sher was the direct supervisor of the

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<sup>13</sup> Specifically, the lifeguard supervisor licked his finger and touched the employee's forehead.

<sup>14</sup> The Advocate's Office brought the following charges of violations of the DPR Standards of Conduct: (1) conduct prejudicial to good order and discipline; (2) acting in such a manner as to

official subject to charges, but nonetheless served as hearing officer, per the procedures described above. Although Sher held a hearing in this particular case within a reasonable time in December 2014, he failed to render a formal decision on the charges.

DPR Advocate's Office notice of charges generally state that the hearing officer will issue a written decision within five business days after the hearing. In March 2016, more than a year after the hearing, the Advocate's Office notified Kavanagh that Sher had not rendered a decision on the case and requested that he contact Sher regarding the case. In July 2017, more than two and a half years after the hearing, the Advocate's Office again contacted Kavanagh because Sher still had not rendered a decision on the matter. In the email, the official from the Advocate's Office explained that if Sher did not render a decision, then the matter would need to be administratively closed, with no discipline having been issued. The official also asked Kavanagh to assign a new hearing officer for future cases, stating that Sher had been "completely uncooperative, consistently unavailable, and unresponsive."

DOI was unable to determine whether Kavanagh took any action in response to these communications from the Advocate's Office about the lack of a decision because he did not respond to the email communications and did not recall what, if any, action he had taken. Another senior DPR official said that he contacted Stein to request assistance with Sher's failure to issue a decision and believed that Sher subsequently issued a supervisory conference notice to the supervisor.<sup>15</sup> Witnesses informed DOI that issuance of a supervisory conference notice is an inappropriate disposition after a disciplinary hearing, which requires a written decision on the charges. Even so, neither Sher nor the Lifeguard Division ever informed the Advocate's Office of such an outcome, and DOI did not receive any record of such action in a document production of disciplinary matter dispositions during the investigation.

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jeopardize the health and safety of a fellow employee or private citizen; and (3) failure to be courteous to and considerate of the public and other municipal employees.

<sup>15</sup> A supervisory conference is a meeting between the manager and employee to address a violation of the standards of conduct without formal disciplinary charges or a hearing. A supervisory conference notice is a DPR document that memorializes the discussion from the meeting.

During the week before the release of this report, DPR provided DOI with two documents they said were newly discovered, both of which appear to be copies of faxes, and which had not been previously provided during the investigation: (1) an undated memo to the Advocate purporting to represent Sher's findings and (2) a reprimand addressed to the supervisor, dated January 6, 2016, purportedly intended for placement in his personnel file.<sup>16</sup> These documents were never provided to the Advocate and were not placed in the employee's personnel file. As a result, the Advocate was unable to communicate the disposition to the supervisor, which would be standard process for disciplinary matters. Further, DPR records do not reflect any discipline—rather, the Advocate's Office administratively closed the matter.<sup>17</sup> Accordingly, these documents do not represent a formal decision or disposition. Further, the belated discovery is one more revelation that reflects a broken disciplinary process for lifeguards and continued deficiencies in recordkeeping.

Sher thus failed to properly discharge his responsibilities as hearing officer through his lack of responsiveness and his failure to render a formal decision on serious charges against one of his direct reports. In addition, Kavanagh failed to adequately address Sher's deficiencies as the hearing officer.

### **c. Ineffective Communication, Unclear Lines of Authority, Failure of Leadership, and Other Challenges**

DOI identified a variety of additional challenges that further undermine the effectiveness of the lifeguard disciplinary process. One of the challenges relates to communication and lines of authority between the First Deputy Commissioner and the Advocate's Office. Although the Advocate's Office has the authority to prosecute disciplinary cases, employees in the office explained that they rely on the First Deputy Commissioner for assistance with lifeguard matters given the management structure and his supervisory role. Further, the aforementioned obstacles to securing the cooperation of the Lifeguard Coordinator in disciplinary matters were another reason that the

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<sup>16</sup> These documents were discovered in the files of the senior DPR official mentioned in the previous paragraph who said he had contacted Stein about Sher's lack of decision.

<sup>17</sup> The subject of the charges remains a senior lifeguard supervisor to this day.

Advocate's Office enlisted the assistance of the First Deputy Commissioner when needed.

DOI received reports that Kavanagh did not regularly respond to inquiries from the Advocate's Office regarding lifeguard allegations or matters. In addition to the case mentioned above, DOI found further information that indicated Kavanagh did not uniformly respond to certain requests and referrals from the Advocate's Office. DOI analyzed records related to a selection of 71 lifeguard-related complaints before the Advocate's Office over a seven-year period from 2014 to 2021. The review identified matters opened by the Advocate's Office that were substantiated and unsubstantiated, as well as matters that were administratively closed or referred outside the office. Records revealed 25 referrals of lifeguard complaints or requests for assistance on lifeguard disciplinary matters made to Kavanagh. DOI's review of email communications identified additional documentation for 18 of these referrals and requests. DOI's review of these communications, as well as records produced by Kavanagh, supported the conclusion that he responded to only 9 of the 18 Advocate's Office inquiries related to lifeguard disciplinary matters.

At the same time, DOI found that Kavanagh participated more frequently in lifeguard disciplinary decisions that did not directly involve the Advocate's Office. He explained that members of the Lifeguard Division often reported complaints to him, and that he engaged directly with Division supervisors to handle disciplinary issues. Records provided by Kavanagh documented supervisory conferences held internally at the Lifeguard Division to address various employee issues, as well as a number of instances when he suspended lifeguards for alleged misconduct.<sup>18</sup> The Advocate's Office did not consistently receive notification of these actions. Although DOI recognizes that City agencies often handle certain employee conduct issues informally without invocation of the formal disciplinary process, the barriers to using the formal process here suggest that internal and informal handling of disciplinary issues became the default method of addressing lifeguard misconduct, and that this approach limited the involvement of the Advocate's Office, perhaps by design. Given the numerous

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<sup>18</sup> DOI notes that some of the suspensions did not include supporting documentation to account for the employee misconduct that warranted such action.

allegations regarding favoritism and differential treatment of employees within the Lifeguard Division, an informal approach to discipline raises particular concern.

DOI also considered whether the First Deputy Commissioner sought informal resolution through pressure on the Advocate's Office to not pursue particular disciplinary matters. DOI identified one case in which statements and records indicated that Kavanagh told the Advocate's Office not to pursue a matter against a lifeguard who drove a vehicle over the foot of a pedestrian, but rather, to alternatively address the issue outside the formal process. In his interview, Kavanagh stated that he did not generally recall ever giving a direction in a lifeguard case not to pursue a matter. During the investigation, DOI received additional reports that Kavanagh intervened in at least three other disciplinary matters not involving lifeguards. Kavanagh stated that he expressed disagreement with the charges in two of these cases and did not recall taking a position on the other case.<sup>19</sup> He also stated during the interview that he does not have authority to direct the Advocate's Office to refrain from discipline, which the Advocate's Office confirmed to DOI. However, whether Kavanagh's statements were framed as directions or expressions of opinion, DOI found that they influenced the disciplinary process, given the senior role of the First Deputy Commissioner in DPR. A witness told DOI that – even absent formal lines of authority over the Advocate's Office – the First Deputy Commissioner exerted pressure on the office in these cases, and the office acted differently than it would have in the absence of pressure.

In addition, DOI found a lack of clarity regarding the authority to place holds on returning seasonal employees who were subject to past disciplinary investigation. DPR has a “verify hire list” that exists to require interviews of seasonal employees before they may return to work in future seasons when they have pending disciplinary investigations or

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<sup>19</sup> In one case, the First Deputy Commissioner expressed disagreement with the Advocate Office's recommendation of termination for an employee's violation of the agency's equal employment opportunity policy, and appears to have been involved in the employee's transfer to a position in another DPR unit. In another case, the First Deputy Commissioner, along with another supervisor, disagreed with charges against an employee for alleged falsification of records, and the Advocate's Office then did not proceed with the charges. In a third case arising from an employee's failure to notify DPR about an arrest, the First Deputy Commissioner reportedly told the Advocate's Office to wait on holding a disciplinary hearing, and the case was later closed.

allegations. Witnesses and records indicate multiple instances when the Advocate's Office sought to place lifeguard employees on the verify hire list, but the employees were not then placed on the list. While the Advocate's Office staff indicated a belief that the First Deputy Commissioner's approval was needed to place employees on the list, the First Deputy Commissioner said that his approval was not required.

Another challenge to effective lifeguard discipline is the interaction between the Advocate's Office and the lifeguard unions. DOI's analysis of lifeguard-related complaints filed with the Advocate's Office revealed 13 cases over a seven-year period where the cited reason for closure of the case was a lack of cooperation or response by the unions. Specifically, in 12 of these cases, the reported reason for closure was a union refusal to schedule interviews or hearings.<sup>20</sup> One DPR official reported that the unions sometimes refused to participate in interviews based on a CBA provision requiring an advance "statement of the reason" for an interview.<sup>21</sup> Kavanagh reported that he was not aware of any disciplinary case that had been closed due to a lack of cooperation by the unions.

## Conclusion and Recommendations

In sum, DOI found during its investigation that DPR lacks adequate supervision of the Lifeguard Division and visibility into its operations due in large part to the management structure of the Lifeguard Division. DOI also found that the lifeguard disciplinary process lacks sufficient accountability practices for several reasons: (a) the hearing officer for lifeguard disciplinary matters is a member of the Division's chain of command; (b) the former Lifeguard Coordinator failed to timely respond to hearing requests and, in at least one case, failed to properly render a decision on misconduct charges against a supervisor who reported to him; and (c) there exists ineffective communication and unclear lines of authority between the First Deputy Commissioner and the Advocate's Office, including instances in which the Advocate's Office felt pressure from Kavanagh in particular cases, and other challenges such as a lack

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<sup>20</sup> The Advocate's Office explained that one of the unions refused to represent the lifeguard in one case.

<sup>21</sup> Seasonal Agreement between the City of New York and DC 37, Article XXIII (July 18, 2012).

of cooperation from the unions in certain cases. Some of these problems are the product of the CBA, while others are not.

This report catalogues systemic problems with the management and accountability of the Lifeguard Division that are attributable, in large part, to an entrenched structure and culture. After decades of dysfunction, the time for action is now. This investigation demonstrates the need to enhance DPR oversight, to standardize Division practices with the agency, and adopt changes to promote a fair and effective disciplinary process for lifeguards. DOI makes the below recommendations to DPR and, where applicable, to the Office of Labor Relations (OLR). DPR indicated its agreement with the below recommendations, noting that some may be dependent on a change in the CBA, and stated that it will coordinate with OLR.

1. With the current CBA expired, DPR and OLR should pursue changes to terms and conditions in any future CBA that will allow DPR to improve the management structure, personnel practices, and disciplinary process of the Lifeguard Division, including the reforms set forth below.
2. DPR and OLR should eliminate the direct reporting relationship between the Lifeguard Coordinator and the First Deputy Commissioner, to better align the Lifeguard Division with other divisions with DPR.
3. DPR should assign any intermediate managers the agency deems appropriate to enhance supervision of the Lifeguard Division.
4. DPR should consider further clarification and reinforcement of the authority of the Advocate's Office over the investigation and prosecution of disciplinary matters for the agency, including lifeguard matters.<sup>22</sup>

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<sup>22</sup> In August 2021, during the pendency of DOI's investigation, DPR issued a memorandum to clarify the Advocate Office's authority to initiate investigations and pursue disciplinary matters without additional authorization.

5. DPR Advocate's Office staff must be provided with Lifeguard Division records upon request and access to DPR facilities used by lifeguard personnel.
6. DPR should appoint individuals from outside the Lifeguard Division's chain of command to serve as disciplinary hearing officers, and OLR should accordingly seek changes to the CBA.
7. DPR must ensure that lifeguard disciplinary hearings are scheduled in a timely matter.
8. DPR should ensure the Lifeguard Division maintains sufficient documentation of personnel actions and information related to disciplinary matters consistent with agency policies and procedures.
9. The DPR Advocate's Office should track additional, relevant information regarding the progress of lifeguard disciplinary matters in its case database, including the length of time to schedule interviews, the length of time to schedule a hearing and decision, the length of time between hearing and decision, and any other information that bears on the quality of the process.
10. DPR should require the Lifeguard Division to conform its personnel practices to standard agency procedures, subject to any modifications DPR deems appropriate to accommodate the operational needs of the Division.
11. DPR should evaluate whether to assign individuals from outside the Lifeguard Division to attend and monitor the qualifying swim tests.
12. DPR should create a process within the Division for lifeguards to file internal complaints regarding their supervision, assignments, evaluation, and other personnel decisions and provide additional notice of existing DPR process to file complaints outside the Division.

13. DPR should ensure that relevant divisions outside of the Lifeguard Division provide or arrange annual anticorruption, ethics, and sexual harassment trainings to all lifeguards.