

DEPARTMENT OF PARKS AND RECREATION

- Letter of Preliminary Determination December 15, 2010
- Agency Response January 31, 2011
- Letter of Final Determination February 22, 2011
- Agency Response March 23, 2011



EQUAL EMPLOYMENT PRACTICES COMMISSION

City of New York

40 Rector Street, 14th Floor, New York, New York 10006

Telephone: (212) 788-8646 Fax: (212) 788-8652

Cesar A. Perez, Esq.

Chair

Angela Cabrera

Malini Cadambi Daniel

Elaine S. Reiss, Esq.

Arva A. Rice

Commissioners

Abraham May, Jr.

Executive Director

Charise Hendricks, PHR

Deputy Director

Judith Garcia Quiñonez

Counsel

December 15, 2010

Adrian Benepe

Commissioner

Department of Parks and Recreation

830 5th Avenue

New York, NY 10021

Re: Preliminary Determination Pursuant to the Audit of the Department of Parks and Recreation (DPR) and its Compliance with the City's Equal Employment Opportunity Policy from January 1, 2006 through December 31, 2008

Dear Commissioner Benepe:

Pursuant to Chapter 35, Section 814(a)(12) of the New York City Charter, the City established the Citywide Equal Employment Opportunity Policy (EEOP), a set of uniform standards and procedures designed to ensure the equality of opportunity for women and minority municipal government employees and job applicants, and, consistent with federal, state and local laws, identified other groups for protection from discrimination in employment by city agencies.

Pursuant to Chapter 36, Section 831(d)(5) of the New York City Charter, the Equal Employment Practices Commission (EEPC) is empowered to audit and evaluate the employment practices, programs, policies and procedures of city agencies and their efforts to ensure fair and effective equal employment opportunity for minority group members and women.

Section 831(d)(2) authorizes this Commission to make recommendations to city agencies of procedures and measures to be utilized by such agencies to ensure equal employment opportunity for city employees and for those who seek employment with city agencies.

The Charter defines city agency as any "city, county, borough or other office, administration, board, department, division, commission, bureau, corporation, authority, or other agency of government, where the majority of the board members of such agency are appointed by the mayor or serve by virtue of being city officers or the expenses of which are paid in whole or in part from the city treasury..."

This letter contains the preliminary determinations of the EEPC pursuant to its audit of compliance by the Department of Parks and Recreation (DPR), which may be referred to herein as "the agency," during the thirty-six-month period commencing January 1, 2006 and ending December 31, 2008. Requests for corrective actions and/or recommendations are included where the EEPC has determined that the agency has failed to comply in whole or in part with the City's EEO Policy.

All recommendations for corrective actions are consistent with both the audit's findings and the parameters set forth in the EEO Policy, which, in accordance with Section 815 of the City Charter, holds agency heads responsible for the effective implementation of equal employment opportunity. Therefore, the Department of Parks and Recreation should incorporate these recommendations in its agency-specific EEO Plan. The relevant sections of the City's EEO Policy are cited in parenthesis at the end of each recommendation. In addition, this Commission is empowered by Section 831 of the City Charter to recommend all necessary and appropriate actions to ensure fair and effective affirmative employment plans for minority group members and women.

The purpose of this audit is to evaluate the agency's compliance with the EEOP, not to issue findings of discrimination pursuant to the New York City Human Rights Law.

Scope and Methodology

Audit methodology included an analysis of the agency's responses to an EEPC Document and Information Request Form. The EEPC sent preliminary interview questionnaires to the agency's EEO Officer/Section 55-A Coordinator, EEO Counselor/Investigator, Director of Training, General Counsel, Director of Personnel, 5 Career Counselors, Accessibility Coordinator, and 12 EEO Counselors. The EEPC auditors then conducted an in-depth interview with the EEO Officer/Section 55-A Coordinator and Deputy Director of EEO.

The City-wide Equal Employment Database System (CEEDS) data prepared by the Department of Citywide Administrative Services determines underutilizations and concentrations of targeted groups within the agency's workforce. These designations represent imbalances between the number of employees in a particular job category and the number that would reasonably be expected when compared to their availability in the relevant labor market. CEEDS data is critical in identifying underutilization in the city's workforce. Where underutilization is revealed within an agency's workforce, auditors determine whether an agency has undertaken reasonable measures for addressing underutilization.

Typically, auditors would analyze underutilization data for a complete measure of the employment practices of an agency. At present, the CEEDS data for the entire period is unavailable. The EEPC anticipates updated data for this period from the DCAS. Upon its availability, the EEPC will review the data and make supplemental recommendations pursuant to this audit.

According to the agency's quarterly reports, DPR has approximately 2,200 full-time employees, 1,300 year-round seasonal employees, as well as summer seasonal employees, Work

Experience Program participants, and Job Training participants. The EEPC requested the agency head's assistance in emailing full-time employees a link to an electronic version of the *EEPC's Employee Survey*. This version of the *EEPC's Employee Survey* received a low response rate of 4%. These results were discarded and 3,616 employees were given an opportunity to take a paper version of the survey – which was disseminated by the DPR's Human Resources Office; the paper version yielded a much higher response rate of 21% (760 employees).

Since the City's EEO Policy holds managers and supervisors accountable for “effectively implementing EEO-related policies” and ensuring non-discrimination within their departments or units, the EEPC also requested the agency head's assistance in emailing supervisors and managers a link to the *EEPC's Supervisor/Manager Survey*. The link was sent to 335 supervisors and managers, 37% (125) responded. The results of both surveys are attached (Appendix 1 and 5) and discussed in this report.

Description of the Agency

The New York City Department of Parks and Recreation is the chief steward of the City's parkland -- about 29,000 acres of land including more than 5,000 individual properties ranging from Coney Island Beach and Central Park to community gardens and Greenstreets. DPR operates over 800 athletic fields and nearly 1,000 playgrounds, 550 tennis courts, 66 public pools, 48 recreational facilities, 17 nature centers, 13 golf courses, and 14 miles of beaches. DPR also cares for 1,200 monuments and 23 historic house museums, and looks after 600,000 street trees, and two million more in parks. It is New York City's principal provider of recreational and athletic facilities and programs and home to free concerts, world-class sports events, and cultural festivals.

Personnel Activity During the Audit Period

According to data provided by the agency, during the audit period, 1,522 people were hired: 443 African-Americans, 111 Asian/Pacific Islanders, 627 Caucasians, 242 Hispanics, 15 Native Americans and 84 “Unknown.” Of the hires, 568 were female. Seven hundred thirty-one individuals were promoted during the audit period: 235 African Americans, 34 Asians, 134 Hispanic, 309 Caucasians, 4 Native Americans, and 15 “Unknown.” Of the promotions, 279 were female. (Appendix 4)

One hundred fifty-six full-time employees were involuntarily separated during the audit period: 72 African Americans, 7 Asian/Pacific Islanders 48 Caucasians, 26 Hispanics, and 3 “Unknown.” Of the employees separated, 53 were female. Between January 2006 and December 2008, the total number of employees increased from 6,800 to 7,857. As a result, the number of African-American employees increased from 3,444 to 4,005, Asian/Pacific Islander employees slightly decreased from 201 to 200, Caucasian employees increased from 1,688 to 1,754, Hispanic employees increased from 1,402 to 1,809, and Native American employees increased from 34 to 37. Female employees increased from 3,523 to 4,285. (Appendices 2 and 3)

Discrimination Complaint Activity During the Audit Period

During the period in review, 43 internal discrimination complaints were filed: 24 Sexual Harassment, 2 Disability, 7 Race, 1 Age/Gender, 1 Race/Retaliation, 1 Sexual Harassment/Gender/Retaliation, and 1 Age; 2 additional complaints were not EEO-related, 4 were pending at the time this audit was conducted. Of these complaints, 9 had probable cause determinations.

A total of 57 complaints were filed with external agencies: 34 were filed with the New York State Division of Human Rights, 8 with the New York City Commission on Human Rights and 15 with the Equal Employment Opportunity Commission. The nature of the complaints are: 2 National Origin, 11 Disability, 4 Age, 2 Race, 7 Race/Color, 5 Sex, 3 Gender, 1 Gender/Sexual Harassment, 1 Sex/Sexual Orientation, 2 Arrest/Conviction Record, 1 Sex/Sexual Harassment, 4 other and another 14 complaints with multiple bases. Fifteen of these complaints included allegations of Retaliation. Of these complaints: 3 received probable cause determinations, 1 was settled, 4 were dismissed, 4 were withdrawn, 4 were administrative closures (with 3 right to sue letters), 2 were settled, 3 received dismissals with notice of rights, 3 received annulment determinations, and 23 received no probable cause determinations; responses were filed for the remaining 10.

Legal Issues

During this audit, 23 lawsuits against the DPR (based on race, color, national origin, retaliation, age, sex, disability, conviction record, and/or marital status) were pending.

The United States Department of Justice commenced an action against the DPR in 2002 alleging that the agency had engaged in discriminatory employment practices in violation of Title VII of the Civil Rights Act of 1964. In its lawsuit, the Government alleged that the DPR had engaged in a pattern or practice of discrimination against its Black and Hispanic employees on the basis of their race and/or national origin in making promotion decisions.

A Consent Decree which incorporated the terms of the settlement was approved on June 8, 2005 and provided for a three-year period of monitoring and oversight by the Government to ensure that the DPR's promotions practices comply with federal law. Under the terms of the Consent Decree, DPR agreed to, among other things, implement and maintain a policy requiring the internal posting of job vacancies to the agency's workforce and the filling of those vacancies through a fair, competitive process and make career counselors and supervisory training courses available to all employees.

PRELIMINARY DETERMINATION

Following are our preliminary determinations with required corrective actions and recommendations for the audit period.

Plan Dissemination – Internally

The DPR is in compliance with the following requirements:

1. The EEO Policy (with addendums) and the EEO Policy statement were distributed to managerial staff electronically and updated on an ongoing basis. In addition, 88% of respondents to the *EEPC's Supervisor/Manager Survey* indicated that they had received a copy of the agency's EEO Policy statement and the majority of the respondents (84%) indicated the policy could be found on the agency's Intranet.
2. A copy of the City's EEO Policy Handbook - *About EEO: What You Need to Know?* was available to all employees via the agency's Intranet and on bulletin boards at each site where the agency conducts business. The bulletin boards were checked and maintained to ensure that EEO information is clearly posted and current. The policies were also distributed at new employee orientation sessions and in the new hire packet. In addition, 70% of respondents to the EEPC's Employee Survey indicated they were given a copy of the EEO Policy Handbook and 71% indicated the City's EEO Policy was posted on the agency's bulletin boards or kept in an area accessible to employees.

Plan Dissemination – Externally

The DPR is in compliance with the following requirement:

All of five city-wide job vacancy notices submitted to the EEPC, (e.g. 2008 – Adventure Course Captain, Program Assistant, Steam Fitter, Director of Children's Programs, Citytime Analyst, Senior Outreach Director; 2007 – Volunteer Projects Manager/Partnerships for Parks, Director of New Media, Adventure Course Supervisor, and Director of Concessions) indicated that the Department of Parks and Recreation and the City of New York is an equal opportunity employer.

In 2009, the DPR advertised for an Assistant Interagency Coordinator via the NY Times.com/Monster, Craigslist, New York Amsterdam News, El Diaro, and HBCU Connect. It also advertised for a Deputy Director of Systems & Analysis in the NY Times.com/Monster, New York Amsterdam News and for a Director of Architecture in the Times.com/Monster. These advertisements carried the Equal Opportunity Employer (EOE) tagline.

EEO for Persons with Disabilities and Reasonable Accommodations

The DPR is in compliance with the following requirements:

1. The agency participates in the Section 55-A Program. The EEO Officer serves as the Section 55-A Coordinator. This individual makes employees aware of the program, provides resources/help for employees that are interested in becoming participants and directs potential participants to a Section 55-A contact at the Department of Citywide Administrative Services (DCAS). There were 2 program participants within the past 5 years.

2. The agency's EEO Officer is aware that alternative formats of the EEO Policy (i.e. Braille, audio tape and large print) are available via the DCAS and will request them for distribution as needed.
3. The agency has developed an extensive transition plan to ensure full accessibility compliance in accordance with the ADA Accessibility Guidelines (ADAAG) and Local Law 58. The DPR's *American with Disabilities Act (ADA) Transition Plan Executive Summary* identifies obstacles that could limit persons including employees and applicants with physical disabilities from having access to facilities, and details the efforts the agency has taken, and will take, to remove barriers. According to page 6 of the plan, "Employee work areas must be designed so employees with disabilities can approach, enter and exit the areas... Where there are a series of workstations of the same type, 5% but not less than one of each type should be constructed so that employees with disabilities can use the work station. As long as an employee with a disability can enter the building and get to his or her workstation, modifications in a particular workstation including maneuvering space and adjustable shelving can be made as a reasonable accommodation to that employee." The agency is working on updating and maintaining access that is consistent with the established standards.
4. A portion of the EEO Officer's responsibilities is to handle reasonable accommodation requests and ensure compliance with all federal, state, and local laws, as well as City and agency policies, pertaining to persons with disabilities. The EEO Officer maintains files on all requests for accommodation. The agency provided documentation of requests for accommodation (based on disability, childcare, religious observances) that were granted. In addition, 93 (12%) respondents to the *EEPC's Employee Survey* indicated that they had requested reasonable accommodations and 72% of these respondents indicated their accommodations were granted.
5. The agency appointed an Accessibility Coordinator who is responsible for reviewing facility assessments to ensure facilities, programs, and services are accessible, conducting site visits to ensure that accessible features are maintained in usable condition, developing a training curriculum to familiarize Parks employees with ADA policies, and establishing/working with an Accessibility Advisory Committee with community members to evaluate and develop facility programs/services.

The DPR is in partial compliance with the following requirement:

Although the agency has appointed an Accessibility Coordinator and has given the EEO Officer the responsibility of granting reasonable accommodation requests, 73% of respondents to the *EEPC's Employee Survey* indicated they did not know who their Disability Rights Coordinator is. Corrective action is required.

Recommendation: To ensure that all employees are aware of the Disability Rights Coordinator (or Accessibility Coordinator) -- responsible for handling reasonable accommodation requests and ensuring compliance with all federal, state, and local laws, as well as City and agency policies, pertaining to persons with disabilities -- the agency should re-distribute to all employees in writing the name, location, and telephone number of this person(s). (Sect. VB and VC, EEO)

Discrimination Complaint and Investigation Procedures

The DPR is in compliance with the following requirements:

1. The EEO Officer kept a monthly log for maintaining and updating the status of discrimination complaints filed against the agency.
2. The agency appointed at least 2 EEO representatives who are not of the same gender (a male EEO Officer and a female Deputy EEO Officer) to receive discrimination complaints and conduct investigations.
3. The DPR's Director of Training completed the DCAS/ Division of Citywide Equal Employment Opportunity (DCEEO) Train-the-Trainer program and conducts EEO training agency-wide. The EEO Officer/Section 55-A Coordinator and former Deputy Director of EEO completed the basic training course for EEO professionals administered by the DCAS/DCEEO in 2003-2005 and EEO training administered via the NYC Law Department in 2006-2008. Subsequently, the EEO Officer provided EEO training to the agency's EEO Counselors. The Counselors also received supplementary EEO training via an online tutorial.
4. Prior to this audit, the current Deputy Director of EEO had completed the agency's online EEO training and received training from the EEO Officer, but did not complete the DCAS/DCEEO Basic Training for EEO Professionals. The Deputy Director of EEO received the aforementioned training and provided a copy of the certificate of completion during the audit.

The following section refers to the 10 latest internal discrimination complaints that were submitted by the DPR for the period in review.

The DPR is in compliance with the following requirement:

Complaints EEO 08-02, EEO 08-08, EEO 08-09, EEO 08-11, and EEO 08-13 did not contain a Notice of Complaint form or document that includes the respondent's right to respond to the allegations and right to be accompanied by a representative of his/her choice. Subsequent to the period in review, the agency established a procedure whereby the respondent received a Notice of Complaint letter that explained his/her right to respond to the allegations and right to be accompanied by a union representative along with a copy of the complaint. The EEO Officer maintained receipts regarding the service of notice to the respondent in the complaint file. Copies of complaints investigated via the new procedure were provided.

The DPR is not in compliance with the following requirements:

1. Complaints EEO 08-06 and EEO 08-08 did not contain an *Agency Complaint of Discrimination Based on Anonymous/Oral Complaint Form* or a complaint that captures the information required on this form. As a result, the date the complaint was filed and the duration of the investigation (not to exceed 90 days) could not be determined. Corrective action is required.

Recommendation: All internal discrimination complaint files should include an *Agency Complaint of Discrimination Based on Anonymous/Oral Complaint Form* completed by the complainant or an EEO representative, or a complaint that captures the information required on this form. (DCPIG Sect. 10/12 and Appendix D)

2. Complaints EEO 08-02, EEO 08-03, EEO 08-10, and EEO 08-11, did not contain documentation that corrective action was taken as a result of the EEO Officer's investigation. Corrective action is required.

Recommendation: Since the EEOP states that all complaints, requests, mediation efforts, investigations, requests for accommodation and their outcomes must be documented by the EEO Office, it is the Commission's position that all internal discrimination complaint files should contain written indication of the corrective action(s) taken as a result of the determination. (Sect. III and IV, EEOP and EEPC Position)

3. The confidential written reports for complaints EEO-08-02 and EEO 08-06 did not contain the agency head's signature to indicate that the final determinations were reviewed and approved. Corrective action is required.

Recommendation: The agency head should sign off on all final determinations concerning EEO complaint resolutions to indicate that they have been reviewed and whether the recommendations, if any, have been approved and adopted. Such sign off may be in written or electronic form. (Sect. VB, EEOP and Sect. 12b, DCPIG)

EEO Training

The DPR is in compliance with the following requirement:

EEO training is conducted annually on an ongoing basis. The agency's *EEO Policy and Procedures/Sexual Harassment Prevention Training* curriculum includes information regarding EEO laws and the Americans with Disabilities Act; the rights and responsibilities of employees, managers, and supervisors; the agency's discrimination complaint and investigation procedures; and 2 training videos on sexual harassment prevention (one for managers and one for non-managers). In addition, the agency conducts a 2-day orientation session for new full-time employees and seasonal employees employed for 6 or more months. The orientation package includes the DCAS EEO guidebook *About EEO: What You Need to Know?* and an agency-issued informational cover memo with contacts. These items are discussed and distributed at each session.

Pursuant to a Consent Decree with the Federal government, the DPR was required to certify that all full-time employees were trained in EEO by July 2006. The agency implemented an on-line training course on preventing employment discrimination and sexual harassment. As of 2006, all employees had been trained pursuant to the Consent Decree. In 2007, 2,231 full-time, seasonal, and JTP employees were trained and by the fourth quarter of 2008, 57 additional EEO training sessions had been conducted. In addition, 73% of respondents to the

EEPC's Employee Survey indicated that they had received EEO training within the past 2 years and 60% indicated they knew how to file an EEO complaint.

The agency also developed a special training course for supervisors and managers entitled, *Supervision Skills from an EEO Perspective* which addresses anti-discrimination laws, sexual harassment, reasonable accommodation internal and external complaint procedures, and the role of the supervisor in relation to the agency's EEO Office. Seventy-nine percent of respondents to the *EEPC's Supervisor/Manager Survey* indicated they had also completed the DCAS *Division of Citywide EEO's Computer Based Training* and 75% of respondents indicated they had received sexual harassment prevention training, 65% of respondent indicated the training was done in the past 2 years.

Selection and Recruitment

The DPR is in compliance with the following requirements:

1. According to the DPR's Agency-Specific EEO Plan for fiscal year 2008, all managers and supervisors involved in the interviewing process had received structured interviewing training and new employees who will participate in the interviewing process would also receive training. Also, 72% of 103 respondents to the *EEPC's Supervisor/Manager Survey* who indicated they interviewed candidates for positions also indicated they had received training and/or a guide that outlines illegal or discriminatory questions and includes instructions for conducting a structured interview.
2. The DPR developed and used a list of recruitment resources that included newspapers and organizations geared toward protected groups. The list included HOY, El Diario, the Amsterdam News, hbuconnect.com, the Association of Women in Architecture, the Gotham Gazette, the Filipino Reporter, the Haitian Times, the Jewish Press, the India Times, the Queens Tribune, the Rockaway Wave, the National Association of Black Engineers and myriad other recruitment resources. The agency also attended the Employment Guide Diversity Job Fair (6/10, 7/8, and 4/8/2008), a Monster sponsored event for veterans, and job fairs sponsored by the National Society of Hispanic Professionals-Metropolitan Pavilion, Bridges to Success, and DC 37 (4/16, and 10/29/2008) among others.

In addition, the DPR's leadership development program is open to non-entry level employees interested in becoming managers. Participants attend monthly classes designed to broaden their understanding of the diverse functions of parks and develop advanced managerial skills. The DPR's newsletters publicize entry-level and transfer opportunities, employee(s) of the month, opportunities to grow, and how to access job postings within the agency.

The DPR is in partial compliance with the following requirements:

1. The agency used applicant logs to retain applicant/hire information for its discretionary positions (i.e. name, agency code, agency, title code, job title, recruitment source, gender, ethnicity, disability status, veteran's status, date, person interviewed by, and unit/work location). Candidates were interviewed by panels and received a separate rating from each

panel member. However, neither the applicant logs nor rating sheets contained information such as the reason for selection/rejection. Corrective action is required.

Recommendation: Because the EEOP holds each agency responsible for retaining information about personnel actions, discretionary hiring, and applicants as required by federal, state and local law and/or the City's official records retention schedule, the agency should maintain complete applicant logs (which include the *Division/Unit, JVN#, Civil Service Title, Office Title, Interviewers' Names, Applicants Names, Security Number, Ethnicity, Gender, Disability, Veteran, Interview Date, Result, Reason Selected/Not Selected, and Recruitment Source*) for all discretionary appointments. (Sect. IV, EEOP and DCAS issued *Applicant Log*).

2. In 2008, the agency conducted an assessment of the manner in which mid-level to high-level candidates are selected for employment to determine whether there is any adverse impact upon any particular racial, ethnic, disability, or gender group. The results of the study, however, were inconclusive as to whether there was adverse impact on any particular racial, ethnic, disability, or gender group, or whether the agency head, Human Resources Director and EEO Officer used the results to determine a recruitment strategy for positions where underutilization existed. Corrective action is required.

Recommendation: Since the EEOP requires that each agency assess its criteria for selecting persons for mid-level to high-level discretionary positions to determine whether there is adverse impact upon any particular racial, ethnic, disability, or gender group, the DPR should conduct an assessment of its selection criteria for discretionary titles. The DPR can use, and may modify, the Disparate Impact Analysis Program (an on-line Internet based application) recommended by DCAS/DCEEEO by accessing: <http://www.hr-software.net/EmploymentStatistics/DisparateImpact.htm>. To the extent that adverse impact is discovered, the agency head should determine whether the criteria being utilized are job-related. If the criteria are not job-related, the agency should discontinue using those criteria. (Sect. IV, EEOP)

Promotional Opportunities

The DPR is in compliance with the following requirements:

1. Eighty-nine percent of respondents to the *EEPC's Employee Survey* indicated that they had received an annual performance evaluation within the past 2 years. In addition, 74% of respondents to the *EEPC's Supervisor/Manager Survey* indicated that they received their employee evaluation within the past year. Ninety-two percent of respondents to the *EEPC's Supervisor/Manager Survey* also indicated they conduct formal evaluations of the employees under their supervision annually.
2. The agency formally appointed persons familiar with civil service and provisional jobs to provide career counseling in each borough to employees who request such guidance. The Career Counselors received relative training from the Director of Human Resources. An agency-wide memo notifying employees of the name and telephone number of the career counselors in all 5 boroughs was distributed. The memo encouraged the use of the Career Counseling services and noted the Counselors' year-round availability. It also gave examples of topics (i.e. identifying how job vacancies are filled, scheduling upcoming civil

service exams, and training opportunities) that may be covered on a visit and encouraged employees to contact the Deputy Director of the EEO Office with detailed feedback. During career counseling, a Career Development form is filled by a counselor, copies are kept in local borough office, personnel office, and EEO office.

The DPR is in partial compliance with the following requirements:

1. Although the agency appointed Career Counselors, 69% of respondents to the *EEPC's Employee Survey* indicated they did not know the names of the persons responsible for providing career counseling in their agency. Corrective action is required

Recommendation: To ensure that employees know the identities of the agency's Career Counselors, the personnel officer should re-distribute to all employees the identity and the type of guidance which is available from the Career Counselors. This should be done at least once each year. (12/14/ 2006 *Addendum to EEOP Standards and Procedures to Be Utilized By City Agencies (2005)* and Sect. VF, EEOP)

2. The agency's managerial performance evaluation form contains an EEO Section. Section A. *Responsibilities & Performance Expectations*, contains a notation of whether the supervisor/manager has violated the EEO Policy, failed to cooperate with the EEO Office or promptly report any allegations of discriminatory conduct, or provided exceptional service in support of the EEO Office.

The managerial performance evaluation, however, did not contain an EEO rating which covers responsibilities and processes for assuring that people are appropriately employed, effectively and efficiently utilized, and dealt with in a fair and equitable manner. Corrective action is required.

Recommendation: Since the City's Equal Employment Opportunity Policy holds managers and supervisors accountable for effectively implementing EEO-related policies and ensuring non-discrimination within their departments or units, the agency's managerial performance evaluation form should contain a rating for EEO – which covers responsibilities and processes for assuring that people are appropriately employed, effectively and efficiently utilized, and dealt with in a fair and equitable manner. (EEOP, Sect. VE)

Supervisory Responsibility in EEO Plan Implementation

The DPR is in compliance with the following requirement:

The agency head's accountability statement in Agency Specific EEO Plan encouraged managers/supervisors to support a work environment that values fairness, equity and respect and holds managers, supervisors, EEO representatives, and HR professionals accountable for implementing policy and ensuring that the agency does not harass or discriminate against employees and applicants for employment.

The DPR is in partial compliance with the following requirement:

Although the agency head's accountability statement in Agency Specific EEO Plan contained the aforementioned language, supervisors and managers were not specifically told to emphasize their commitment to the agency's EEO policies and affirm the right of each employee to file a discrimination complaint with the EEO office with their subordinates during normal staff meetings. Although managers and supervisors held staff meetings during the period in review, no documentation that such discussions took place was maintained. Corrective action is required.

Recommendation: At least twice a year during normal staff meetings, managers and supervisors must emphasize their commitment to the agency's EEO policies and affirm the right of each employee to file a discrimination complaint with the EEO office. These meetings must be documented. (DCAS, Model Agency EEO Commitment Memo and EEPC Position)

EEO Personnel Reporting Arrangement

The DPR is in compliance with the following requirements:

1. According to the agency's organizational chart, the EEO Officer reports to the Agency Head on EEO matters.
2. The EEO Officer meets with EEO professionals periodically to review their work and/or keep them abreast of EEO developments. An agenda and sign-in sheets for these meetings was maintained.

The DPR is in partial compliance with the following requirement:

According to the agency's organizational chart, the EEO Officer reports to the Agency Head on EEO matters. Documentation of these meetings, however, was not maintained. Corrective action is required

Recommendation: Because the EEOP requires the EEO Officer to report directly to the agency head (or if approved by DCAS, to a direct report to the agency head), appropriate documentation of meetings and other communications between the EEO Officer and the agency head regarding decisions that impact the administration of the agency's EEO program must be maintained. (Sect. VB, EEOP, and EEPC Position)

EEO Officer Responsibilities

The DPR is in compliance with the following requirement:

The agency has consistently submitted its agency-specific plan, three quarterly reports, and an annual fourth quarter final report to the EEPC for each fiscal year. These reports have been submitted no later than thirty days following each reporting period.

SUMMARY OF RECOMMENDED CORRECTIVE ACTIONS

1. To ensure that all employees are aware of the Disability Rights Coordinator (or Accessibility Coordinator) -- responsible for handling reasonable accommodation requests and ensuring compliance with all federal, state, and local laws, as well as City and agency policies, pertaining to persons with disabilities -- the agency should re-distribute to all employees in writing the name, location, and telephone number of this person(s). (Sect. VB and VC, EEOP)
2. All internal discrimination complaint files should include an *Agency Complaint of Discrimination Based on Anonymous/Oral Complaint Form* completed by the complainant or an EEO representative, or a complaint that captures the information required on this form. (DCPIG Sect. 10/12 and Appendix D)
3. Since the EEOP states that all complaints, requests, mediation efforts, investigations, requests for accommodation and their outcomes must be documented by the EEO Office, it is the Commission's position that all internal discrimination complaint files should contain written indication of the corrective action(s) taken as a result of the determination. (Sect. III and IV, EEOP and EEPC Position)
4. The agency head should sign off on all final determinations concerning EEO complaint resolutions to indicate that they have been reviewed and whether the recommendations, if any, have been approved and adopted. Such sign off may be in written or electronic form. (Sect. VB, EEOP and Sect. 12b, DCPIG)
5. Because the EEOP holds each agency responsible for retaining information about personnel actions, discretionary hiring, and applicants as required by federal, state and local law and/or the City's official records retention schedule, the agency should maintain complete applicant logs (which include the *Division/Unit, JVN#, Civil Service Title, Office Title, Interviewers' Names, Applicants Names, Security Number, Ethnicity, Gender, Disability, Veteran, Interview Date, Result, Reason Selected/Not Selected, and Recruitment Source*) for all discretionary appointments. (Sect. IV, EEOP and DCAS issued *Applicant Log*).
6. Since the EEOP requires that each agency assess its criteria for selecting persons for mid-level to high-level discretionary positions to determine whether there is adverse impact upon any particular racial, ethnic, disability, or gender group, the DPR should conduct an assessment of its selection criteria for discretionary titles. The DPR can use, and may modify, the Disparate Impact Analysis Program (an on-line Internet based application) recommended by DCAS/DCEEO by accessing: <http://www.hr-software.net/EmploymentStatistics/DisparateImpact.htm>. To the extent that adverse impact is discovered, the agency head should determine whether the criteria being utilized are job-related. If the criteria are not job-related, the agency should discontinue using those criteria. (Sect. IV, EEOP)
7. To ensure that employees know the identities of the agency's Career Counselors, the personnel officer should re-distribute to all employees the identity and the type of guidance which is available from the Career Counselors. This should be done at least once each year.

(12/14/ 2006 Addendum to EEOP Standards and Procedures to Be Utilized By City Agencies (2005) and Sect. VF, EEOP)

8. Since the City's Equal Employment Opportunity Policy holds managers and supervisors accountable for effectively implementing EEO-related policies and ensuring non-discrimination within their departments or units, the agency's managerial performance evaluation form should contain a rating for EEO – which covers responsibilities and processes for assuring that people are appropriately employed, effectively and efficiently utilized, and dealt with in a fair and equitable manner. (EEOP, Sect. VE)
9. At least twice a year during normal staff meetings, managers and supervisors must emphasize their commitment to the agency's EEO policies and affirm the right of each employee to file a discrimination complaint with the EEO office. These meetings must be documented. (DCAS, Model Agency EEO Commitment Memo and EEPC Position)
10. Because the EEOP requires the EEO Officer to report directly to the agency head (or if approved by DCAS, to a direct report to the agency head), appropriate documentation of meetings and other communications between the EEO Officer and the agency head regarding decisions that impact the administration of the agency's EEO program must be maintained. (Sect. VB, EEOP, and EEPC Position)

In addition to the above recommendations, during the compliance process, the Commission requires that the agency head distribute a memorandum to all staff informing them of the changes that are being implemented in the agency's EEO program pursuant to the audit. This memorandum should re-emphasize the agency head's commitment to the agency's Equal Employment Opportunity Program.

Conclusion

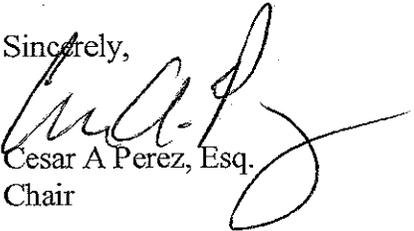
Pursuant to Chapter 36 of the New York City Charter and the previously cited preliminary determinations relating to the EEPC's audit of the DPR's compliance with its Equal Employment Opportunity Policy, and EEO standards expressed in the Citywide EEO Policy, we respectfully request your response to the aforementioned preliminary determinations.

Your response should indicate what corrective actions your office will take to bring the agency into compliance with the aforementioned policies and which recommendations it intends to follow. Please forward your response within thirty days of receipt of this letter.

Pursuant to Section 832 of the New York City Charter, as amended in 1999, if you do not implement all of these recommendations for corrective actions during a compliance period not to exceed six months, this Commission may publish a report and recommend to the Mayor the appropriate corrective actions that you should implement in your agency's EEO Plan.

In closing, we want to thank you and your staff for the cooperation extended to the Equal Employment Practices Commission's auditors during the course of this audit. If you have any questions regarding these preliminary determinations, please let us know.

Sincerely,

A handwritten signature in black ink, appearing to read 'C. A. Perez', written in a cursive style.

Cesar A Perez, Esq.
Chair

cc: EEO Officer, Ricardo Granderson

APPENDIX - 1

[DEPARTMENT OF PARKS AND RECREATION]
EMPLOYEE SURVEY RESULTS

Employees = 2200 Survey Respondents = 78 4%

A. GENERAL OVERVIEW

1. Equal Employment Opportunity (EEO) guarantees the right of all persons to be accorded full and equal consideration on the basis of merit, regardless of protected group status. Do you agree with this principle?
Yes (74) No (3)
2. Do you know who your agency's EEO Officer is?
Yes (66) No (11)
3. Is the City's EEO Policy posted on your agency's bulletin boards or kept in an area otherwise accessible to employees?
Yes (66) No (11)
4. Were you given a copy of the EEO Policy Handbook - About EEO: What You Need to Know?
Yes (67) No (9)
5. Do you believe your agency practices equal opportunity (i.e. ensures fairness in all aspects of employment including hiring, selection, promotions, etc.)?
Yes (43) No (34)
6. Has your manager or supervisor discussed the agency's commitment to the principle of Equal Employment Opportunity during staff meetings at least twice within the past year?
Yes (42) No (24) Do not remember (11)
7. Has your manager or supervisor discussed employees' right to file a discrimination complaint with the agency's EEO Officer during staff meetings at least twice within the past year?
Yes (31) No (34) Do not remember (11)
8. When hired, were you advised of the City's EEO policies, and of your rights and responsibilities under such policies?
Yes (46) No (12) Do not remember (18)

B. EEO COMPLAINTS

9. Do you know how to file an EEO complaint?
Yes (55) No (22)
10. If you had an EEO complaint, would you bring it to your agency's EEO Office?
Yes (45) No (17) Undecided (15)
11. Would you prefer to file an EEO complaint with an office outside your agency rather than your agency's EEO Office?
Yes (36) No (24) Undecided (17)
12. During the past 3 years, did you file a complaint with your agency's EEO Office?
Yes (2) No (75)
13. Was your manager or supervisor supportive of your right to file a complaint?
Yes (2) No (3) Not Applicable (72)

C. EEO TRAINING

14. During the past 2 years, did you receive EEO training?
Yes (64) No (13)
15. How informative was this training?
Very informative (31) Somewhat informative (26)
Not really informative (9) Not Applicable (11)

SURVEY RESULTS CONTINUED

D. JOB PERFORMANCE/ADVANCEMENT

16. Does your agency use training and development programs in order to improve job performance and/or career opportunities?
Yes (56) No (16) I do not know (5)
17. Were vacant positions advertised on bulletin boards or other areas accessible to employees in a timely manner?
Yes (71) No (3) Do not remember (3)
18. The Personnel Rules and Regulations of the City of New York and the Guidelines for Evaluating Managerial Performance in NYC Agencies require that all employees (managerial and non-managerial) receive at least one performance evaluation a year. Have you received annual performance evaluations within the past 2 years?
Yes (68) No (6) Employed for less than 12 mos (3)
19. Did your evaluation contain recommendations for improving your job performance?
Yes (40) No (25) Not Applicable (0)
20. Did your evaluation contain recommendations for career advancement with your agency?
Yes (22) No (40) Not Applicable (0)
21. Do you know the name of the person in your agency that is responsible for providing career counseling?
Yes (44) No (30)

E. SPECIFIC PROTECTIONS

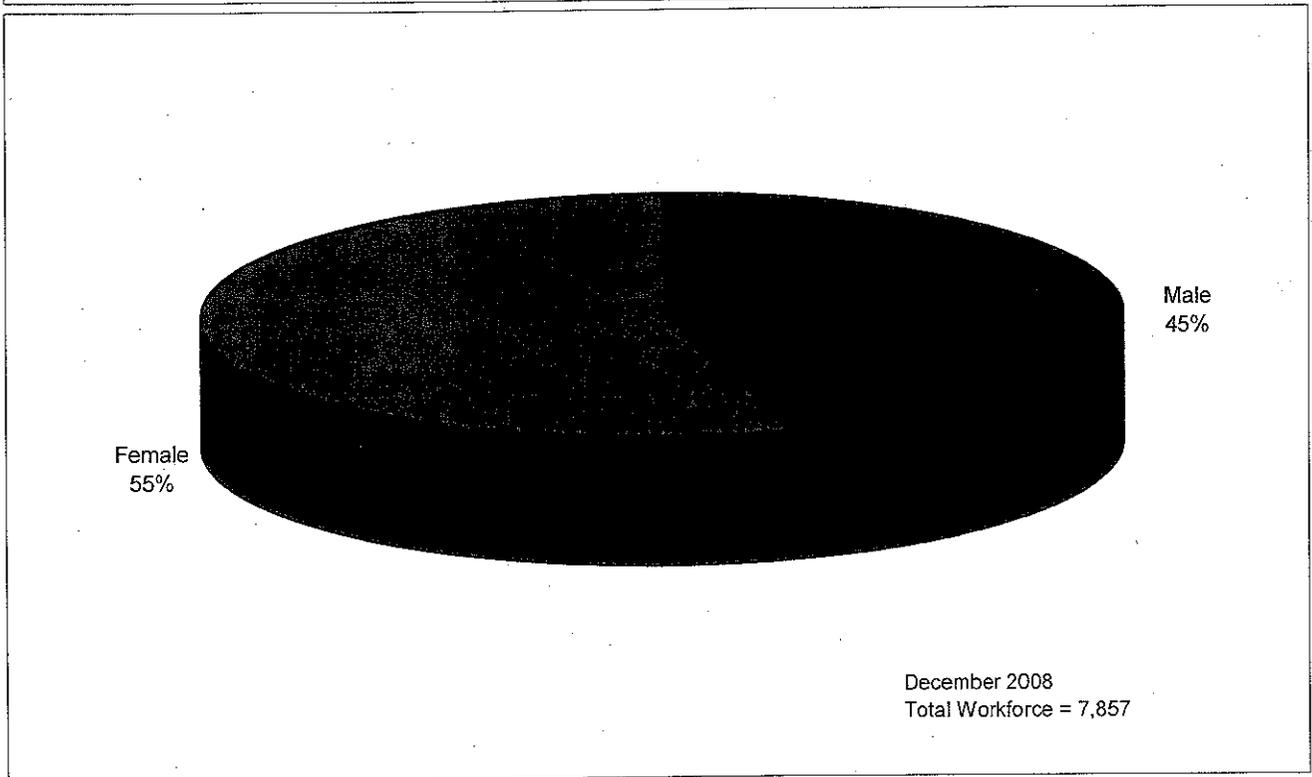
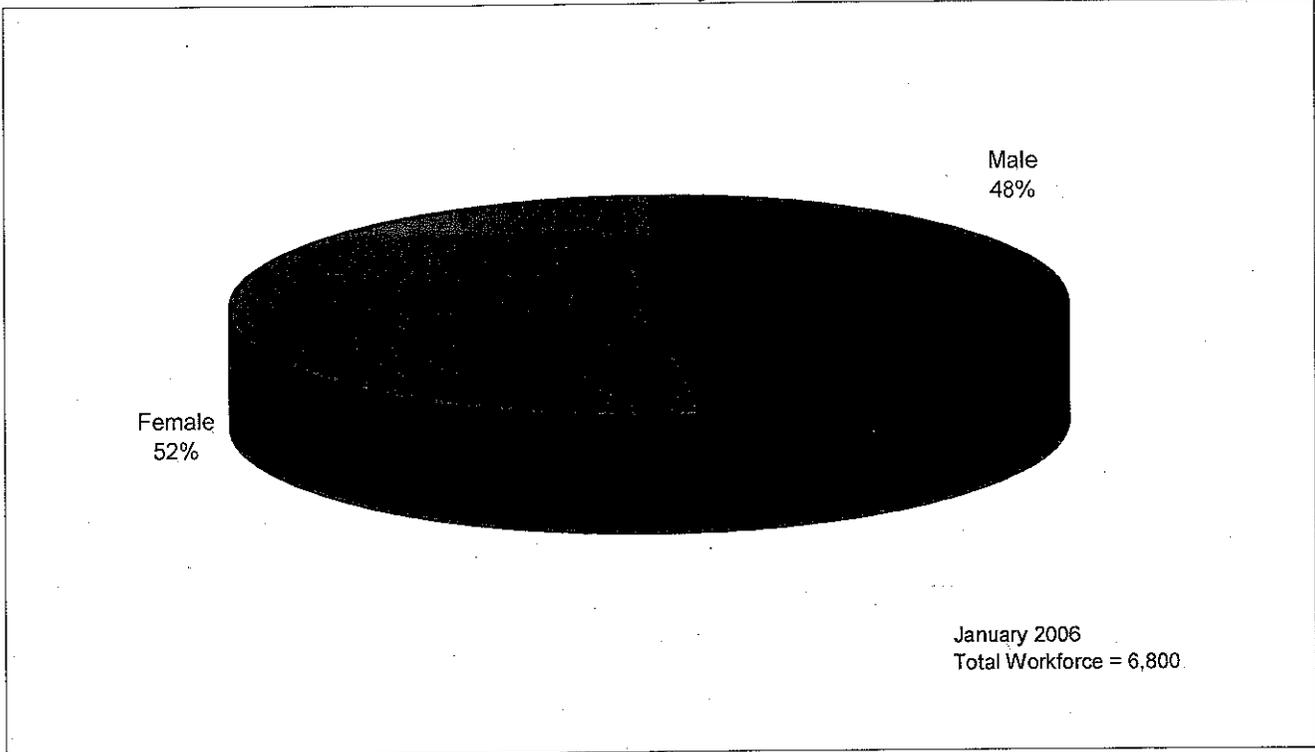
22. Do you know who your agency's Disability Rights Coordinator is?
Yes (43) No (33)
23. The City's EEO Policy requires that agencies take appropriate action to reasonably accommodate qualified employees and applicants with disabilities, and those who are victims of domestic violence, sex offenses, or stalking, to enable to them to perform their jobs or enjoy equal benefits and privileges of employment. It also requires agencies to provide reasonable accommodations for the religious observances, beliefs and practices of an employee or applicant. During the past 3 years, did you ask for a reasonable accommodation due to any of the above?
Yes (4) No (72)
24. Was your accommodation granted?
Yes (5) No (34)

OPTIONAL INFORMATION

25. Race/Ethnicity
Asian or Pacific Islander (0) Hispanic (9)
American Indian or Alaska Native (1) White (not of Hispanic origin) (36)
Black (not of Hispanic origin) (21) Other (3)
26. Gender
Male (33) Female (39)

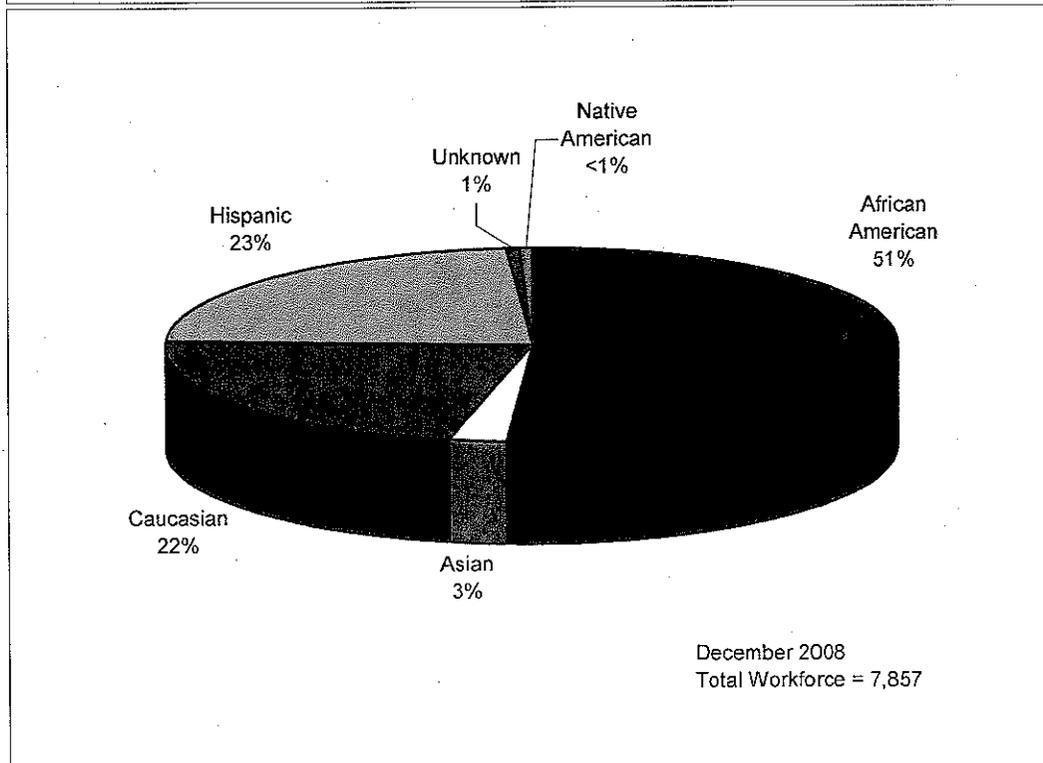
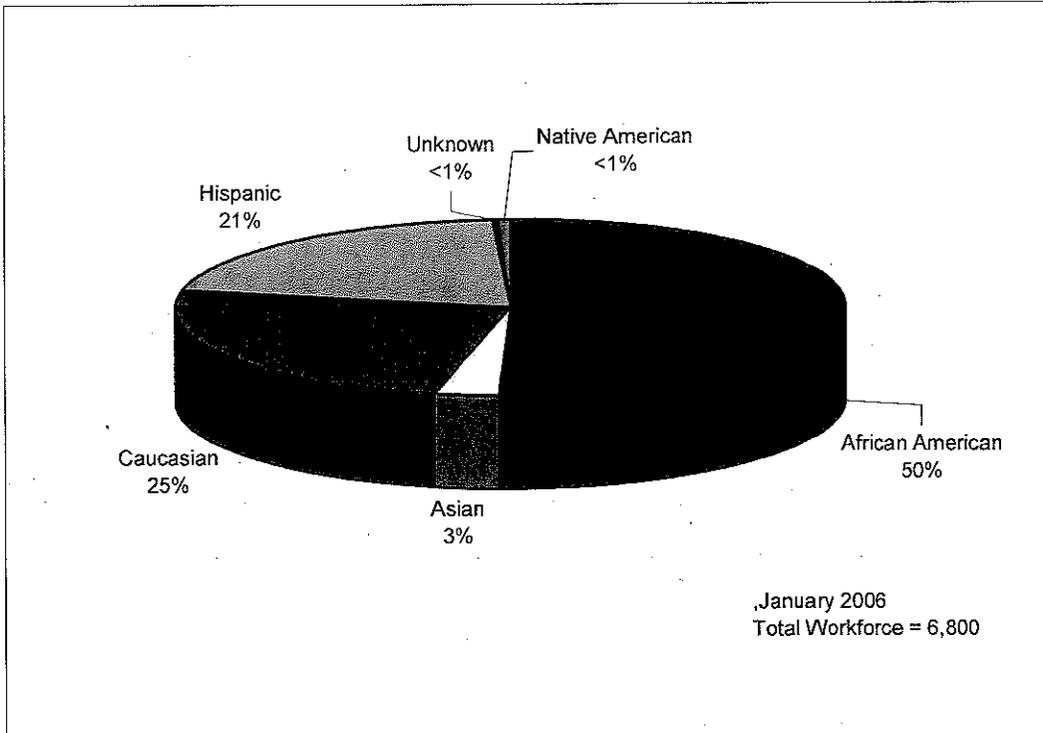
Appendix - 2

Department of Parks and Recreation Workforce by Gender



Appendix - 3

Department of Parks and Recreation Workforce by Ethnicity



APPENDIX – 4

The following table indicates personnel activity during the audit period, January 1, 2006 to December 31, 2008

Department of Parks and Recreation

Hires by Gender and Ethnicity

Total Hires: 1,522

Male	Female	Total	Caucasian	African American	Hispanic	Asian	American Indian/Alaska Native	Unknown	Total
954	568	1,522	627	443	242	111	15	84	1,522

Promotions by Gender and Ethnicity

Total Promotions: 731

Male	Female	Total	Caucasian	African American	Hispanic	Asian	American Indian/Alaska Native	Unknown	Total
452	279	731	309	235	134	34	4	15	731

Source: Audit data supplied by DORIS

DEPARTMENT OF PARKS AND RECREATION

SUPERVISOR/MANAGER QUESTIONNAIRE RESULTS

Total Supervisors = 335 Completed Questionnaire = 125 (37%)

1. Which of the following are you?
Supervisor (31) Manager (91)
2. How many employees are under your supervision?
Less than 5 (29) 11 - 20 (19)
6 - 10 (24) 21 or more (50)
3. How long have you worked for this agency?
3yrs or less (10) Over 3 yrs (112)
4. Each agency head may distribute a statement in support of Equal Employment Opportunity to all employees. Have you received a copy of your agency's EEO Policy Statement?
Yes (110) No (11) Do not remember (0)
5. In your agency, where can the City's EEO Policy be found?
In the EEO Office (78) In my office (60)
In the HR/Personnel Office (68) I do not know (1)
On the Intranet (105)
6. Of the choices indicated, which is most easily accessible to you?
The EEO Office (3) Your Office (24)
The HR/Personnel Office (8) Not applicable (0)
The Intranet (87)
7. Is the Discrimination Complaint Procedure included with the EEO Policy?
Yes (85) No (3) Do not know (30)
8. Do you know the name of your agency's EEO Officer?
Yes (115) No (1) Do not know (4)
9. Did the EEO Officer meet with you to discuss your EEO rights as an employee?
Yes (101) No (16)
10. Did the EEO Officer meet with you to discuss your EEO responsibilities as a supervisor or manager?
Yes (97) No (24)
11. Did you complete the Department of Citywide Administrative Services' (DCAS) Division of Citywide EEO Computer based Training?
Yes (99) No (21)
12. In your role as a supervisor/manager, have you discussed the agency's commitment to the principle of Equal Employment Opportunity during staff meetings at least twice within the past year?
Yes (67) No (51)
13. In your role as a supervisor/manager, have you discussed with employees their right to file a discrimination complaint with the agency's EEO Officer during staff meetings at least twice within the past year?
Yes (62) No (59)
14. Did you receive sexual harassment prevention training from your agency?
Yes (94) No (28)
15. Please indicate when the training was done.
Within the past 2 years (81) over 2 years ago (12)
16. Did all of the employees that you supervise receive sexual harassment prevention training?
Yes (66) No (15) Do not know (41)

SUPERVISOR/MANAGER QUESTIONNAIRE CONTINUED

17. When you were hired, did you receive an orientation session that included a review of the City's EEO Policy?
Yes (36) No (28) Do not remember (57)
18. Do you participate in orientation sessions for new employees?
Yes (38) No (84)
19. Do new employee orientation sessions include information on the City's EEO Policy?
Yes (69) No (2) Do not know (51)
20. Do you interview candidates for positions in your agency?
Yes (103) No (19)
21. If you are involved in interviewing job applicants, did your agency provide you with training and/or a guide that outlines illegal or discriminatory questions and includes instructions for conducting a structured interview?
Training (16) Both training and guide (74)
Guide (10) I do not interview applicants (19)
22. When was your last performance evaluation?
Within the past year (93) Over a year ago (29)
23. Were you informed that fulfillment of your EEO responsibilities will be part of your overall performance evaluation and will be considered in determining your eligibility for promotions and merit increases?
Yes (61) No (53) Not applicable (8)
24. Does your performance evaluation include an EEO component? (A section that rates your ability to make employment decisions based on merit and equal consideration, or treat others in an equitable and impartial manner.)
Yes (74) No (45) I do not receive performance evaluations (0)
25. Do you conduct formal evaluations of the employees under your supervision annually?
Yes (115) No (7)
26. Do you believe the agency has provided sufficient training to supervisors/managers on their responsibilities in assisting employees who may complain about discrimination or harassment?
Yes (103) No (18)

OPTIONAL INFORMATION

27. Race/Ethnicity
Asian or Pacific Islander (10) Hispanic (12)
American Indian or Alaskan Native (0) White (52)
Black (15) Other (4)
28. Gender
Male (53) Female (45)

DEPARTMENT OF PARKS & RECREATION (846)

JOB GRP	FEMALE										MALE									
	WHITE	BLACK	HSPN	ASIAN	NATIVE AMER	UKWN	WHITE	BLACK	HSPN	ASIAN	NATIVE AMER	UKWN	WHITE	BLACK	HSPN	ASIAN	NATIVE AMER	UKWN	OTHR	TOTAL
001	4	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	5
002	122	42	24	16	0	1	61	13	7	4	1	1	61	13	7	4	1	1	0	292
003	39	19	5	10	0	1	25	10	3	7	0	0	25	10	3	7	0	0	0	119
004	80	7	3	14	2	2	36	11	7	4	0	0	36	11	7	4	0	0	0	166
006	7	1	0	0	0	0	4	0	0	1	0	0	4	0	0	1	0	0	0	13
007	33	73	14	6	0	0	30	64	23	3	0	0	30	64	23	3	0	0	0	246
008	0	0	0	0	0	1	3	4	0	1	0	0	3	4	0	1	0	0	0	9
009	4	1	1	0	0	0	5	0	0	1	0	0	5	0	0	1	0	0	0	12
010	11	11	3	3	0	0	7	0	1	2	0	0	7	0	1	2	0	0	0	38
012	39	20	13	9	0	0	53	63	26	8	1	1	53	63	26	8	1	1	0	233
013	21	25	6	3	0	0	40	90	41	4	0	0	40	90	41	4	0	0	0	230
018	42	52	41	5	1	1	30	54	38	4	0	0	30	54	38	4	0	0	0	268
019	328	118	302	25	6	24	160	25	62	10	2	3	160	25	62	10	2	3	0	1065
022	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
023	9	55	22	2	1	0	8	45	30	1	0	0	8	45	30	1	0	0	0	173
024	538	494	334	29	6	1	100	144	65	2	3	1	100	144	65	2	3	1	0	1717
025	207	38	36	10	0	0	1	1	0	0	0	0	1	1	0	0	0	0	0	293
026	3	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	3
028	47	675	197	7	7	6	80	2224	772	10	6	16	80	2224	772	10	6	16	2	4050
031	39	31	20	8	0	0	52	41	30	8	0	0	52	41	30	8	0	0	0	229
TOTAL	1573	1655	1021	147	23	37	695	2789	1105	70	13	22	695	2789	1105	70	13	22	2	9162
%TAGE	17%	18%	11%	2%	<1%	<1%	8%	30%	12%	1%	<1%	<1%	8%	30%	12%	1%	<1%	<1%	<1%	100%

DEPARTMENT OF PARKS & RECREATION (846)

JOB GRP	MALE						FEMALE						TOTAL	
	WHITE	BLACK	HSPN	ASIAN	NATIVE AMER	UKWN	WHITE	BLACK	HSPN	ASIAN	NATIVE AMER	UKWN		OTHR
001	4	1	0	0	0	0	1	0	0	0	0	0	0	6
002	145	42	25	20	0	0	64	14	10	6	0	1	0	327
003	41	24	4	13	0	0	35	16	6	7	0	0	0	146
004	83	9	7	13	2	1	40	12	7	5	0	0	0	179
006	7	1	1	0	0	0	3	0	0	1	0	0	0	13
007	32	68	17	5	0	0	26	66	22	4	1	0	0	241
008	1	0	0	0	0	1	2	4	0	2	0	0	0	10
009	2	1	1	0	0	0	5	0	0	1	0	0	0	10
010	12	11	5	4	0	0	4	1	1	2	0	0	0	40
012	37	20	14	9	1	0	55	62	31	6	1	2	0	238
013	15	23	5	1	0	0	32	81	31	2	0	0	0	190
018	41	52	39	8	1	0	30	54	37	1	1	1	0	265
019	11	5	25	1	0	3	2	0	2	0	0	0	0	49
022	0	1	0	0	0	0	0	0	0	0	0	0	0	1
023	6	38	21	2	0	0	6	31	17	1	1	0	0	123
024	512	480	330	30	6	1	88	143	68	5	2	0	0	1665
025	208	37	42	8	0	0	1	1	0	0	0	0	0	297
026	3	0	0	0	0	0	0	0	0	0	0	0	0	3
028	40	594	186	11	2	6	57	2033	808	13	19	32	3	3804
031	39	28	18	9	0	0	64	52	29	10	0	1	0	250
TOTAL	1239	1435	740	134	12	12	515	2570	1069	66	25	37	3	7857
%TAGE	16%	18%	9%	2%	<1%	<1%	7%	33%	14%	1%	<1%	<1%	<1%	100%



City of New York
Parks & Recreation

The Arsenal
Central Park
New York, New York 10065

Adrian Benepe
Commissioner

10391

January 31, 2011

Honorable Abraham May
Executive Director
Equal Employment Practices Commission
40 Rector Street, 14th Floor
New York, NY 10006

Re: Preliminary Determination Pursuant to the Audit of the Department of Parks & Recreation and its Compliance with the City's Equal Employment Opportunity Policy from January 1, 2006 through December 31, 2008

Dear Mr. May:

We are in receipt of your letter dated December 15th and submit the following response. Based on your review, the Agency is either in full compliance or partial compliance with most of the audit requirements. As indicated during the December Audit meeting, all recommendations were implemented prior to our meeting. Our analysis of your Summary of Recommended Corrected Actions is as follows:

Recommendation # 1: The Distribution of the Communication to identify the Disability/Accessibility Coordinator

The identity and contact information of the Disability Rights Coordinator has been listed on the Agency's website for six (6) years. Two to four times a year EEO and related information is distributed electronically and with paychecks. There have been more than fifty (50) requests for reasonable accommodations and 55-A which suggest that the information is available and accessible to those employees who require those particular services. Those employees who are unaware of the identity of the Coordinator may not have a need or interest in the service. The information will be retained on the site and a broadcast and letter was drafted for distribution in January 2011.



Recommendation #2: Completion of Forms for Each Complaint

As conveyed in the Audit meeting, 95% of our complaints are conveyed via telephone by employees who work out of doors and who do not have access to technology that would facilitate writing. Literacy is also an issue for many of our staff. All verbal complaints are memorialized in a written "Communication Log." That information is then transferred into the written complaint format. As a result, Complaint forms only existed for those who had submitted forms. Upon receipt of your suggestion before the Audit meeting, we implemented this recommendation and transferred information from the Communication Log to the complaint forms.

Recommendation #3: Written Indication of Corrective Action

The written corrective action is already contained in the reports. Therefore, this recommendation is most relevant to the follow up. We already have the practice of a written nine month follow-up with complaints and will follow up with either the Disciplinary Division or Management as recommended.

Recommendation #4: Agency Head Sign-Off on Final Determinations

This is already the practice and has been for the past six years.

Recommendation #5: Maintenance of Complete Applicant Logs

Our Personnel division already maintains applicant logs. The logs are contained in the Vacancy Accountability and Tracking System (VAT) and are reviewed by the EEO office for all fulltime hires. The VAT contains a Discretionary Applicant Form, which contains demographic data, resumes, rating sheets, etc.

**Recommendation #6: The Use of an Adverse Impact analysis for "Mid-to High Level"
Discretionary Positions**

We will explore this recommendation, but it is important to note that "mid to high" level positions are usually governed by the VAT process (see above) and include strict scrutiny by the EEO office.



Recommendation #7: Annual Distribution of the Identities of Career Counselors

The Career Counselors are listed on the Agency's intranet site and written communications have been distributed electronically and with paychecks, at least twice a year, and as many as quarterly in some years. A communication will be transmitted in January.

Recommendation #8: An EEO Rating Section on Manager's Evaluation

This was previously negotiated and was implemented four years ago.

Recommendation #9: Twice a Year Supervisors/Managers Must Emphasize their Commitment to EEO Policies and Affirm the Right of Employees to File Complaints

While this affirmation is contained in the on-line EEO/Harassment Training, we will prepare an affirmation for distribution.

Recommendation #10: Documentation of Meetings with the Agency Head

This Recommendation was implemented after the December Audit meeting. The memorandum reflects the existence of a meeting, but does not memorialize the communications of the meeting.

Based on your Audit, the Agency is in compliance with most practices relative to EEOP. With regard to your recommendations, the Agency had already been implementing most of the practices, and has implemented those that were new, i.e. memoranda reflecting meetings with Agency head, corrective action follow up. Thank you for your professionalism and guidance during this process. We are pleased because this audit reflects a significant improvement over the prior audit.

Respectfully Submitted,



Adrian Benepe

Cc: Ricardo Granderson, Alessandro Olivieri, Robert Garafola, David Stark, David Terhune





EQUAL EMPLOYMENT PRACTICES COMMISSION

City of New York

40 Rector Street, 14th Floor, New York, New York 10006

Telephone: (212) 788-8646 Fax: (212) 788-8652

Cesar A. Perez, Esq.

Chair

Angela Cabrera

Malini Cadambi Daniel

Elaine S. Reiss, Esq.

Arva A. Rice

Commissioners

Abraham May, Jr.

Executive Director

Charise Hendricks

Deputy Director

Judith Garcia Quiñonez

Counsel

February 22, 2011

Adrian Benepe

Commissioner

Department of Parks and Recreation

830 5th Avenue

New York, NY 10021

Re: ~~Final Determination Pursuant to the Audit of the Department of Parks and Recreation (DPR)~~
and its Compliance with the City's Equal Employment Opportunity Policy from January 1, 2006
through December 31, 2008

Dear Commissioner Benepe:

Thank you for your January 31, 2011 response to our December 15, 2010 Letter of Preliminary Determination pursuant to the Referenced audit.

As we indicated in our Preliminary Determination Letter, our findings and recommendations are based on the collection of documents in response to an EEPC *Document and Information Request Form*; interview questionnaires completed by the DPR's EEO Officer/Section 55-A Coordinator, EEO Counselor/Investigator, Director of Training, General Counsel, Director of Personnel, 5 Career Counselors, Accessibility Coordinator and 12 EEO Counselors; in-person interviews with the EEO Officer/Section 55-A Coordinator and the Deputy Director of EEO; and responses to the EEPC's *Employee Survey* and *Supervisor/Manager Survey*.

After reviewing your response, our Final Determination is as follows:

Agree

We agree with your responses to the following EEPC recommendations, pending documentation that can be attached to your reply or provided during the compliance period:

Recommendation #1

To ensure that all employees are aware of the Disability Rights Coordinator (or Accessibility Coordinator) -- responsible for handling reasonable accommodation requests and ensuring compliance with all federal, state, and local laws, as well as City and agency policies, pertaining to

persons with disabilities -- the agency should re-distribute to all employees in writing the name, location, and telephone number of this person(s). (Sect. VB and VC, EEOP)

Recommendation #2

All internal discrimination complaint files should include an Agency Complaint of Discrimination Based on Anonymous/Oral Complaint Form completed by the complainant or an EEO representative, or a complaint that captures the information required on this form. (DCPIG Sect. 10/12 and Appendix D)

Recommendation #7

To ensure that employees know the identities of the agency's Career Counselors, the personnel officer should re-distribute to all employees the identity and the type of guidance which is available from the Career Counselors. This should be done at least once each year. (12/14/ 2006 *Addendum to EEOP Standards and Procedures to Be Utilized By City Agencies (2005)* and Sect. VF, EEOP)

Disagree

We respectfully disagree with your statement that "all recommendations were implemented prior to our meeting." For the following reasons, hereafter identified as *EEPC Rationale*, we disagree with your response to the following recommendations:

Recommendation #4

The agency head should sign-off on all final determinations concerning EEO complaint resolutions to indicate that they have been reviewed and whether the recommendations, if any, have been approved and adopted. Such sign off may be in written or electronic form. (Sect. VB, EEOP and Sect. 12b, DCPIG)

Your Response

This is already the practice and has been for the past six years.

EEPC Rationale

Confidential written reports for complaints EEO 08-02 and EEO 08-06 did not contain your signature to indicate that the final determinations were reviewed and approved.

Recommendation #5

Because the EEOP holds each agency responsible for retaining information about personnel actions, discretionary hiring, and applicants as required by federal, state and local law and/or the City's official records retention schedule, the agency should maintain complete applicant logs (which include the *Division/Unit, JVN#, Civil Service Title, Office Title, Interviewers' Names, Applicants Names, Security Number, Ethnicity, Gender, Disability, Veteran, Interview Date, Result, Reason Selected/Not Selected, and Recruitment Source*) for all discretionary appointments. (Sect. IV, EEOP and DCAS issued *Applicant Log*)

Your Response

Our Personnel division already maintains applicant logs. The logs are contained in the Vacancy Accountability and Tracking System (VAT) and are reviewed by the EEO office for all

fulltime hires. The VAT contains a Discretionary Applicant Form, which contains demographic data, resumes, rating sheets, etc.

EEPC Rationale

The DPR used applicant logs to retain applicant/hire information for its discretionary positions (i.e. name, agency code, agency, title code, job title, recruitment source, gender, ethnicity, disability status, veteran's status, date, person interviewed by, and unit/work location). Candidates were interviewed by panels and received a separate rating from each panel member. However, neither the applicant logs nor rating sheets identified the reason for selection/non-selection. Your response does not indicate that the agency records this information as a practice. The Recommendation reflects this finding.

Recommendation #6

Since the EEOP requires that each agency assess its criteria for selecting persons for mid-level to high-level discretionary positions to determine whether there is adverse impact upon any particular racial, ethnic, disability, or gender group, the DPR should conduct an assessment of its selection criteria for discretionary titles. The DPR can use, and may modify, the Disparate Impact Analysis Program (an on-line Internet based application) recommended by DCAS/DCEEO by accessing: <http://www.hr-software.net/EmploymentStatistics/DisparateImpact.htm>. To the extent that adverse impact is discovered, the agency head should determine whether the criteria being utilized are job-related. If the criteria are not job-related, the agency should discontinue using those criteria. (Sect. IV, EEOP)

Your Response

We will explore this recommendation, but it is important to note that "mid to high" level positions are usually governed by the VAT process (see above) and include strict scrutiny by the EEO office.

EEPC Rationale

Your response does not indicate that the results of the past assessment (of the manner in which mid-level to high-level candidates are selected for employment to determine whether there is any adverse impact upon any particular racial, ethnic, disability, or gender group) were conclusive as to whether there was adverse impact on any particular racial, ethnic, disability, or gender group. Nor does it indicate whether the agency head, Human Resources Director and EEO Officer used the results to determine a recruitment strategy for positions where underutilization existed.

Recommendation #8

Since the City's Equal Employment Opportunity Policy holds managers and supervisors accountable for effectively implementing EEO-related policies and ensuring non-discrimination within their departments or units, the agency's managerial performance evaluation form should contain a rating for EEO – which covers responsibilities and processes for assuring that people are appropriately employed, effectively and efficiently utilized, and dealt with in a fair and equitable manner. (EEOP, Sect. VE)

Your Response

This was previously negotiated and was implemented four years ago.

EEPC Rationale

The managerial performance evaluation form submitted to the EEPC by DPR contains an EEO Section with a *notation* of whether the supervisor/manager has violated the EEO Policy, failed to cooperate with the EEO Office or promptly report any allegations of discriminatory conduct, or provided exceptional service in support of the EEO Office.

The agency head's accountability statement in Agency Specific EEO Plan encouraged managers/supervisors to support a work environment that values fairness, equity and respect and holds them accountable for implementing the policy and ensuring that the agency does not harass or discriminate against employees and applicants for employment. However, their evaluations did not contain an EEO *rating* which covers these responsibilities.

Recommendation #10

Because the EEOP requires the EEO Officer to report directly to the agency head (or if approved by DCAS, to a direct report to the agency head), appropriate documentation of meetings and other communications between the EEO Officer and the agency head regarding decisions that impact the administration of the agency's EEO program must be maintained. (Sect. VB, EEOP, and EEPC Position)

Your Response

This Recommendation was implemented after the December Audit meeting. The memorandum reflects the existence of a meeting, but does not memorialize the communications of the meeting.

EEPC Rationale

In order to maintain the integrity of the DPR's EEO Program, appropriate documentation of decisions that impact the administration of the agency's EEO program must be maintained.

Requires Clarification

Your response to the following recommendations requires clarification:

Recommendation #3

Since the EEOP states that all complaints, requests, mediation efforts, investigations, requests for accommodation and their outcomes must be documented by the EEO Office, it is the Commission's position that all internal discrimination complaint files should contain written indication of the corrective action(s) taken as a result of the determination. (Sect. III and IV, EEOP and EEPC Position)

Your Response

The written corrective action is already contained in the reports. Therefore, this recommendation is most relevant to the follow-up. We already have the practice of a written nine month follow-up with complaints and will follow up with either the Disciplinary Division or Management as recommended.

EEPC Rationale

Complaints EEO 08-02, EEO 08-03, EEO 08-10, and EEO 08-11, did not contain documentation that corrective action was taken as a result of the EEO Officer's investigation. Your response states that a practice is in place, but does not address the recommendation that these and all complaint files should contain written indication of the corrective action(s) (i.e. documentation of training, reprimand, etc.) that occurred as a result of a determination.

Recommendation #9

At least twice a year during normal staff meetings, managers and supervisors must emphasize their commitment to the agency's EEO policies and affirm the right of each employee to file a discrimination complaint with the EEO office. These meetings must be documented. (DCAS, Model Agency EEO Commitment Memo and EEPC Position)

Your Response

While this affirmation is contained in the on-line EEO/Harassment Training, we will prepare an affirmation for distribution.

EEPC Rationale

Your response does not indicate whether managers and supervisors will be directed to emphasize their commitment to the agency's EEO policies and affirm the right of each employee to file a discrimination complaint with the EEO office during staff meetings at least twice a year.

Conclusion

Pursuant to section 832 of the New York City Charter, this Commission will initiate an audit compliance procedure not to exceed six months. However, you may respond to the aforementioned determinations prior to the initiation of audit compliance. If you choose to issue a written response, please do so within thirty days. If you choose not to issue a written response, we will initiate audit compliance shortly thereafter. EEPC Counsel/Compliance Director Judith Quiñonez or her designee will contact your EEO Officer in seven days to ascertain your intentions.

In closing, we want to thank you and your staff for your cooperation during the audit process. Pursuant to your commitment to ensuring that the City's EEO Policy is fully implemented in the DPR, we look forward to a mutually satisfactory compliance process.

Sincerely,


Abraham May, Jr.
Executive Director

C: Ricardo Granderson, EEO Officer
Judith Garcia Quiñonez, Counsel/Compliance Director



City of New York
Parks & Recreation

The Arsenal
Central Park
New York, New York 10065

Adrian Benepe
Commissioner

10349

March 23, 2011

Mr. Abraham May
Executive Director
Equal Employment Practices Commission
40 Rector Street, 14th Floor
New York, New York 10006

Re: Final Determination Pursuant to the Audit of the Department of Parks & Recreation ("Parks") and its Compliance with the City's Equal Employment Opportunity Policy from January 1, 2006 through December 31, 2008

Dear Mr. May:

Thank you for your February 22, 2011 comments to Parks' initial response to the Equal Employment Practices Commission's ("EEPC") Preliminary Determination concerning the above referenced audit. As previously conveyed in writing and during our meeting in December 2010, Parks has implemented all of the EEPC's requested recommendations, unless otherwise specifically indicated below. In addition, as per your request, we herein supplement our previous response.

We understand that the EEPC is seeking documentation to support Parks' position that it is in compliance with Recommendations #1, #2, and #7.

Specifically, Recommendation #1 seeks documentation that Parks has redistributed to all employees in writing the name, location, and telephone number of the Disability Rights Coordinator (or Accessibility Coordinator). A memorandum addressing this recommendation was sent to all Parks employees in January 2011 and is attached hereto as Exhibit A. In addition, Parks will continue to send similar communications throughout the year to staff advising them how they may contact the Disability Rights Coordinator.

Recommendation #2 seeks documentation that all internal discrimination complaint files included an Agency Complaint of Discrimination Based on Anonymous/Oral Complaint Form completed by the complainant or an EEO representative, or a complaint that captures the information required on this form. As we noted in our earlier response, this information has now been transferred to the complaint forms and an example is attached hereto as Exhibit B.



Recommendation #7 seeks documentation that the Parks Personnel Director has redistributed to all employees the identity and type of guidance, which is available from the Career Counselors. A memorandum addressing this recommendation was sent to all Parks employees in January 2011 and is attached hereto as Exhibit C. In addition, Parks will continue to provide this information to employees throughout the year.

We also understand that the EEPC disagrees with Parks' response to Recommendations #4, #5, #6, #8, and #10.

Recommendation #4: The agency head should sign-off on all final determinations concerning EEO Complaint resolutions to indicate that they have been reviewed and whether the recommendation, if any, has been approved and adopted. Such sign off may be in written or electronic form.

Parks initial Response: This is already the practice and has been for the past six years.

EEPC Reply: Confidential written reports for complaints EEO 08-02 and EEO 08-06 did not contain your signature to indicate that the final determinations were reviewed and approved.

Parks supplement Response: Parks does not deny that there are two instances where the complaint resolution forms do not contain my signature. However, the existence of these two unsigned reports do not represent a departure from the policy, but only two instances of human error. The policy is that the Commissioner review and sign off on the letters. Indeed, the other thirty four (34) reports during the period of the audit were signed. Parks will continue to implement the practice of the Commissioner review/signoff on the reports and to strive to avoid any further instances where reports are inadvertently not signed by the Commissioner.

Recommendation #5: Because the EEOP holds each agency responsible for retaining information about personnel actions, discretionary hiring, and applicants as required by federal, state, and local law and/or the City's official records retention schedule, the agency should maintain complete applicant logs (which include the *Division/Unit, JVN#, Civil Service Title, Office Title, Interviewers' Names, Applicants Names, Social Security Number, Ethnicity, Gender, Disability, Veteran, Interview Date, Result, Reason Selected/Not Selected, and Recruitment Source*) for all discretionary appointments.

Parks initial Response: Our Personnel division already maintains applicant logs. The logs are contained in the Vacancy Accountability and Tracking System (VAT) and are reviewed by the EEO office for all fulltime hires. The VAT contains a Discretionary Applicant Form, which contains demographic data, resumes, rating sheets, etc.

EEPC Reply: The DPR used applicant logs to retain applicant/hire information for its discretionary positions (i.e. agency code, agency, title code, job title, recruitment source, gender, ethnicity, disability status, veteran status, date, person interviewed by, and unit/work location).



Candidates were interviewed by panels and received a separate rating from each panel member. However, neither the applicant logs nor rating sheets identified the reason for selection/non-selection. Your response does not indicate that the agency records this information as practice. The Recommendation reflects this finding.

Parks supplemental Response: While Parks does not dispute that the documents that are created by the VAT process do not explicitly state the reason why a candidate was selected or not, Parks does believe that the documents that are part of the VAT process effectively conveys such information in acceptable manner. Moreover, nothing in the Citywide EEO Policy requires that the applicant log state a reason for the determination. The documents that make-up the VAT process include the job postings and amendments thereto, the identification of the panel and their titles, the matrix or questions to be asked of candidates, the resumes, the Discretionary Applicant forms, Panel Attestation forms and related memoranda, ratings forms. Moreover, the Parks EEO Officer must approve the VAT at each stage. With regard to an expressed "reason" for the selection, we discussed this at our meeting in December. Pursuant to the VAT process, the selecting official is presented with candidates that are considered by the interview panel to be the top candidates and the selecting official must choose one of those candidates, or explain in writing why a different candidate was selected. If one of those candidates is selected it is because the selecting official has determined that he or she is the most qualified and the other recommended candidates, although capable of performing the job are not as qualified. As noted, the Citywide EEO Policy does not require that a reason be stated in the log and under the VAT process, no practical or prudent purpose would be served to provide a further explanation and any such explanations would primarily serve as fodder for a possible litigation regarding the selection. However, a written explanation is required if the selecting official seeks to select a candidate not recommended by the panel, since such a deviation from the VAT process warrants a documented reason. Moreover, for those employees who believe that the interview and hiring process was unfair in some manner, or they are merely curious as to why they were not selected, they can contact a career counselor or the Personnel Office to obtain information, including interview scores, to assist the employee in future job applications or in seeking redress for any discrimination or retaliation against them.

Recommendation #6: Since the EEO requires that each agency assess its criteria for selecting persons for mid level to high level discretionary positions to determine whether there is adverse impact upon any particular racial, ethnic, disability, or gender group, the DPR should conduct an assessment of its selection criteria for discretionary titles. The DPR can use, and may modify, the Disparate Impact Analysis Program (an on-line Internet based application) recommended by DCAS/DCEEEO by accessing: <http://www.hr-software.net/EmploymentStatistics/DisparateImpact.htm>. To the extent that adverse impact is discovered, the agency head should determine whether the criteria being utilized are job related. If the criteria are not job-related, the agency head should discontinue using those criteria.



Parks initial Response: We will explore this recommendation, but it is important to note that “mid to high” level positions are usually governed by the VAT process (see above) and include strict scrutiny by the EEO office.

EEPC Reply: Your response does not indicate that the results of the past assessment (of the manner in which mid level to high level candidates are selected for employment to determine whether there is any adverse impact upon any particular racial, ethnic, disability, or gender group) were conclusive as to whether there was adverse impact on any particular racial, ethnic, disability, or gender group. Nor does it indicate whether the agency head, Human Resource Director and EEO Office used the results to determine a recruitment strategy for positions where underutilization existed.

Parks supplemental Response: Parks agreed that we would explore using the recommend software. However, it must be noted that Parks conducts analyses that are far more than what would be achieved by using the Disparate Impact Analysis Program. Pursuant to the *Wright v. Stern* Stipulation whereby Parks conducts an annual adverse impact study¹ of the selections made for certain job titles (which would be considered mid to high level positions) and if in the aggregate the analysis shows a selection rate for African-American and Hispanic candidates (combined) that is less than eighty percent of the selection rate for Caucasian candidates, Parks will conduct a content validity study of one job title amongst those subject to the adverse impact study. So far, Parks has performed two content validity studies, although, in one instance Parks did not concede that the selection rate for African-Americans and Hispanics was less than eighty percent of the selection rate for Caucasians. The content validity studies to-date, have been for the titles of Parks & Recreation Manager and Recreation Center Manager. Another content validity study is planned for Deputy Chief of Operations. Parks intends to implement the some of the suggested interview questions resulting from these studies in future job postings for such titles. Furthermore, to the extent that such studies or any other assessment suggests the need to review Parks’ recruitment strategy for positions where underutilization is found, Parks will, if necessary, revise its applicable recruitment strategies.

Recommendation #8: Since the City’s Equal Employment Opportunity Policy holds managers and supervisors accountable for effectively implementing EEO-related policies and ensuring non-discrimination within their departments or units, the agency’s managerial performance evaluation form should contain a rating for EEO – which covers responsibilities and processes for assuring that people are appropriately employed, effectively and efficiently utilized, and dealt with in a fair and equitable manner.

Parks initial Response: This was previously negotiated and was implemented four years ago.

¹ Parks did not agree in the Stipulation that it is appropriate under the Uniform Guidelines to aggregate job titles or racial groups in performing an adverse impact study



EEPC Reply: The managerial performance evaluation form submitted to the EEPC by DPR contains an EEO Section with a *notation* of whether the supervisor/manager has violated EEO Policy, failed to cooperate with the EEO Officer or promptly report any allegations of discriminatory conduct, or provided exceptional service in support of the EEO Office. The agency head's accountability statement in Agency Specific EEO Plan encouraged manager/supervisors to support a work environment that values fairness, equity and respect and holds them accountable for implementing the policy and ensuring the agency does not harass or discriminate against employees and applicants for employment. However, their evaluations did not contain an EEO rating which covers these responsibilities.

Parks supplemental Response: Nothing in the Citywide EEO Policy requires that managerial performance evaluations include a section for specifically rating managers/supervisors on their support of a work environment that values fairness, equity and respect holds them accountable for implementing the policy and ensuring the agency does not harass or discriminate against employees and applicants for employment. Nevertheless, Parks agrees that it is important to consider whether managers/supervisors have violated EEO Policy, failed to cooperate with the EEO Officer or promptly report any allegations of discriminatory conduct, or provided exceptional service in support of the EEO Office and believes that the space provided for EEO to make a notation is more than adequate to serve this purpose.

Recommendation #10: Because the EEOP requires the EEO Officer to report directly to the agency head (or if approved by DCAS, to a direct report to the agency head), appropriate documentation of meetings and other communications between the EEO Officer and the agency head regarding decisions that impact the administration of the agency's EEO program must be maintained.

Parks initial Response: This recommendation was implemented after the December Audit meeting. The memorandum reflects the existence of a meeting, but does not memorialize the communications of the meeting.

EEPC Reply: In order to maintain the integrity of the DPR's EEO Program, appropriate documentation of decisions that impact the administration of the agency's EEO program must be maintained.

Parks supplemental Response: Nothing in the Citywide EEO Policy requires documentation of decision that impact the administration of the agency's EEO program. Nevertheless, Parks agrees that it is advisable to document decisions that substantially impact the administration of any agency program. However, the decision as to whether and how much documentation is appropriate is a managerial one. Since the December meeting, there have been three (3) meetings between the Commissioner, the EEO Officer and the Agency General Counsel. The EEO Officer has drafted a memorandum for each meeting memorializing decisions that were made that impact the administration of the Agency's EEO program. In addition, minutes are



kept from the Advisory Committee meetings which are held quarterly. The Advisory Committee is comprised of the EEO Officer, the General Counsel, the Commissioner and three African American and/or Hispanic Parks employees and addresses employment discrimination and retaliation concerns.

Finally, we understand that the EEPC seeks clarification regarding Parks' responses to Recommendations #3 and #9.

Recommendation #3: Since the EEOP states that all complaints, requests, mediation efforts, investigations, requests for accommodation and their outcome must be documented by the EEO Office, it is the Commission's position that all internal discrimination complaint files should contain written indication of corrective action(s) taken as a result of the determination.

Parks initial Response: The written action is already contained in the reports. Therefore, this recommendation is most relevant to follow-up. We already have the practices of a written nine month follow-up with complaints and will follow-up with either the Disciplinary Division or Management as recommended.

EEPC Reply: Complaints EEO 08-02, EEO 08-03, EEO 08-10, and EEO 08-11, did not contain documentation that corrective action was taken as a result of the EEO Officer's investigation. Your response states that a practice is in place, but does not address the recommendation that these and all complaint files should contain written indication of the corrective action(s) (i.e. documentation of training, reprimand, etc.) that occurred as a result of a determination.

Parks supplemental Response: The Investigation Report contains a "Recommendation section" which has any proposed corrective action. As a result of the EEPC's recommendation, we also follow up with either the Parks' Advocate's Office or the appropriate management division to confirm that the corrective action(s) took place and are documented in the report. The four (4) reports that lacked documentation of corrective action are not emblematic of a failure to provide the recommended documentation. Nonetheless, the EEO Office will strive to ensure that all reports have documented the corrective action taken.

Recommendation #9: At least twice a year during normal staff meetings, managers and supervisors must emphasize their commitment to the agency's EEO policies and affirm the right of each employee to file a discrimination complaint with the EEO office. These meetings must be documented.

Parks initial Response: While this affirmation is contained in the on-line EEO/Harassment Training, we will prepare an affirmation for distribution.

EEO Reply: Your response does not indicate whether managers and supervisors will be directed to emphasize their commitment to the agency's EEO policies and affirm the right of each

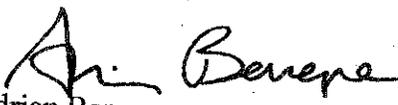


employee to file a discrimination complaint with the EEO office during staff meetings at least twice a year.

Parks supplemental Response: To clarify our initial response, Parks will require managers and supervisors to affirm their commitment to the Agency's EEO policies and to affirm the right of each employee to file a discrimination complaint with the EEO office during staff meetings at least twice a year. There is no requirement in the Citywide EEO Policy that managers and supervisors submit written affirmations.

We were pleased with the minimal exceptions that were discovered and have implemented, or in the process of implementing all of your recommendations, with the exception of a portion of Recommendation #5, as discussed above. However, Parks believes that its existing practices comply with the purpose of Recommendation #5 and that with Parks' supplemental response we have demonstrated that a reason for selection/non-selection is clear upon an inspection of the relevant VAT documents. Thank you again for your efforts. If there are any questions, please contact Ricardo Granderson at 212-360-2782.

Respectfully Submitted,


Adrian Benepe

Cc: Ricardo R. Granderson, Alessandro Olivieri, David Stark, Robert Garafola

