



The City of New York
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DOI ISSUES REPORT ON NYC BOARD OF ELECTIONS' MISUSE OF ANNUAL AND SICK LEAVE PAYMENTS TO ITS FORMER GENERAL COUNSEL DURING FOUR-MONTH PERIOD BETWEEN 2020 AND 2021

-The former General Counsel was under investigation during this time and later convicted of Official Misconduct-

Jocelyn E. Strauber, Commissioner of the New York City Department of Investigation ("DOI"), released a Report today on the misuse of annual and sick leave by the Board of Elections ("BOE") in the City of New York involving its former General Counsel Steven H. Richman. During the relevant four-month period noted in this Report, Richman was under criminal investigation, which resulted in Richman's pleading guilty to two counts of Official Misconduct in June 2022. DOI found that during the four-month period between August 2020 and January 2021, BOE advanced Richman 23 days of annual leave that he had not earned, and permitted him to use approximately 60 days of undocumented sick leave, when there was no evidence that he was actually sick.

DOI findings included that BOE acted inconsistently with its standard practices concerning advancement of annual leave and its policies concerning sick leave. DOI also found that BOE has no written policies with respect to the advancement of annual leave and that BOE failed to document or explain the basis for its approach to the handling of both sick and annual leave in this instance. While BOE Commissioners have discretion to depart from BOE policy, their actions in this instance appear improper and their failure to document the basis for their decisions falls far short of best practices. DOI has not made a determination whether Richman owes the City any money; however, it has determined that the 23 annual leave days and the approximately 60 days of sick leave improperly provided to Richman in both instances is valued at a total of \$61,609.24. This Report and its findings have been referred to the NYC Office of the Comptroller for it to take any action it deems necessary.

DOI made recommendations to improve BOE's annual leave and sick leave recordkeeping practices, as well as to improve the New York City Comptroller's methods of reviewing time balances when employees separate from City service. The New York City Comptroller accepted DOI's recommendations. The BOE indicated it would respond to DOI's recommendation upon public issuance of this Report, a copy of which is attached to this release and can be found here: <https://www.nyc.gov/site/doi/newsroom/public-reports.page>

DOI Commissioner Jocelyn E. Strauber said, "Consistent application of annual and sick leave policies, and documentation concerning any exceptions to the same, are intended to ensure that all City employees, no matter their position, are treated with fairness and equity and that public funds are used appropriately. DOI's investigation of how BOE chose to pay its former General Counsel, while that individual was under criminal investigation, found that BOE failed to document its actions and failed to comply with best practices and, in some respects, with its own policies. DOI has issued recommendations to BOE to improve its process. I thank the New York City Comptroller for its collaboration on this investigation and its swift acceptance of DOI's recommendations to strengthen its auditing procedures when employees separate from the City."

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DOI began investigating allegations of misconduct by Richman with respect to BOE legal interns in January 2020. As a result of that investigation, in June 2022, Richman was arrested and pleaded guilty to two counts of Official Misconduct, class A misdemeanors. As part of a plea agreement he received an unconditional discharge, and was required to report his conviction to the Appellate Division of the New York State Supreme Court within 30 days. In June 2023, Richman's license to practice law was suspended. Richman's appeal of this decision remains pending.

On August 25, 2020, during the criminal investigation of Richman's conduct that resulted in the above conviction on Official Misconduct charges, Richman was placed on a "leave of absence" by the BOE, also referred to as a "suspension." Richman remained on leave for approximately four months, until January 31, 2021, when he retired from City service. He was paid in full during that period.

DOI's investigation included a review of Richman's annual and sick leave usage during his four-month leave period. The investigation found that BOE granted Richman 23 days of annual leave that he had not earned and permitted him to use that annual leave without explanation or justification, or repayment obligation if Richman left BOE. BOE also permitted Richman to use approximately 60 days of undocumented sick leave, when there was no evidence that he was actually sick. Through the use of unearned annual leave, and sick leave, Richman received full pay during the entirety of his leave of absence. DOI also reviewed the "Time Balance for Management Employee Pay Plan" for Richman, a document created by the City Comptroller's Office for all employees leaving City service in accordance with Personnel Order 88/5 and Mayor's Executive Order 25 dated October 13, 1970. This information is required in order to process lump sum payments for the liquidation of leave balances upon separation from City service.

DOI's investigation identified that the BOE granted leave time to Richman without explanation, and in a manner inconsistent with BOE's own practices or policies:

- The BOE added 23 days of annual leave to Richman's balance after he was suspended due to an active investigation, inconsistent with BOE's practices.
- The BOE permitted Richman to utilize "sick leave" for approximately 60 days without any written documentation, in violation of its own internal policies.

DOI issued three recommendations to the BOE, which indicated it would respond when the Report was publicly issued. Specifically, DOI recommended:

- 1: The BOE must enforce its written policy requiring that proper documentation be provided to the agency when an employee uses three consecutive sick leave days, is on sick leave more than five times in a six-month period, or is sick more than four times on the day immediately preceding a holiday or day off.
- 2: The BOE should create a written policy stating that advanced leave may only be granted in writing, detailing: the date of such advance; the reason for the advance; the individual(s) authorizing the advance; and the process by which the advance will be repaid.
- 3: The BOE should take appropriate payroll action to collect the money owed by Richman to the City once the Comptroller's Office completes a new audit of Richman's annual leave and sick time balances.

DOI issued two recommendations to the New York City Comptroller, which accepted each recommendation and noted that the Comptroller's Office had no knowledge of Richman's suspension from his position until receiving the DOI report; and that BOE did not disclose that information to the Comptroller's Office, nor was it recorded in the City's database where it would have been available to the Comptroller's Office and factored into its review. Specifically, DOI recommended:

- 1: The Comptroller's Office should conduct a new audit of Richman's annual leave and sick time balances based on the information contained in this Report.

- 2: As a general policy, the Comptroller's Office should require documentation for any unusual addition of annual leave or sick days found while conducting their audit of an individual separating from City service.

The investigation was conducted by Assistant Inspector General Gina N. Diaz of DOI's Office of the Inspector General for BOE and was supervised by Deputy Inspector General Trenton Sweeney, Senior Inspector General Eleonora Rivkin, Deputy Commissioner of Strategic Initiatives Christopher Ryan, and Deputy Commissioner/Chief of Investigations Dominick Zarrella.

DOI is one of the oldest law-enforcement agencies in the country and New York City's corruption watchdog. Investigations may involve any agency, officer, elected official or employee of the City, as well as those who do business with or receive benefits from the City. DOI's strategy attacks corruption comprehensively through systemic investigations that lead to high-impact arrests, preventive internal controls and operational reforms that improve the way the City runs.

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New York City
Department of Investigation

NYC Board of Elections' Misuse of Annual and Sick Leave Related to Its Former General Counsel

Jocelyn E. Strauber
Commissioner

Eleonora B. Rivkin
Inspector General for the New York City Board of Elections

JULY 2024



Table of Contents

I. Executive Summary 1

II. Investigative Findings..... 3

 A. Steven Richman's Leave of Absence..... 3

 B. DOI's review of the BOE's personnel guidelines pertaining to annual leave, sick leave, and suspension 9

III. Recommendations..... 13

IV. Agency Response 135

I. Executive Summary

The role of the General Counsel of the Board of Elections (BOE) is to provide legal counsel to the ten Commissioners of the BOE and to the BOE executive staff on matters related to ballots, the conduct of elections, and governmental agency administration. The BOE's General Counsel acts as the Board's liaison with the Board's trial counsel on all matters of litigation involving the BOE, its operations, and personnel.

Steven H. Richman (Richman), was the General Counsel to the BOE from January 1999 to January 2021.

In January 2020, the New York City Department of Investigation (DOI) began investigating allegations of misconduct by Richman with respect to BOE legal interns. As a result of that investigation, in June 2022, Richman was arrested and pled guilty to two counts of Official Misconduct (Penal Law § 195.00), class "A" Misdemeanors. As a part of his plea agreement, Richman received an unconditional discharge, and was required to report his conviction to the Appellate Division of the New York State Supreme Court within 30 days. In June 2023, Richman's license to practice law was suspended.¹

On August 25, 2020, while the criminal investigation of Richman's conduct that resulted in the above-referenced charges was ongoing, Richman was placed on a "leave of absence" by the BOE. Richman remained on leave for approximately four months, until January 31, 2021, when he retired from City service. He was paid in full during that period.

DOI's investigation, which included a review of Richman's annual and sick leave usage during his four-month leave period, found that Richman was granted and permitted to utilize 23 days of annual leave that he had not earned, without explanation or justification, and approximately 60 days of undocumented sick leave, when there was no evidence that he was actually sick. Through the use of unearned annual leave, and sick leave, Richman received full pay during the entirety of his leave of absence.²

DOI concluded that the BOE decided to place Richman on paid leave, but did not thereafter pay him his salary, the standard practice for city employees on paid

¹ As of the date of the issuance of this Report, the New York State Unified Court System reports that the matter regarding the appeal of Richman's license to practice law is still pending.

² The Board of Elections had the authority to suspend Richman without pay, pending an active investigation. Moreover, as a City employee, Richman could have been placed on an unpaid leave status for 30 days without a finding of wrongdoing.

leave. Instead, the BOE appears to have advanced Richman annual leave that he had not yet earned, with no repayment obligation in the event that he was terminated from BOE, so that his leave could be “paid.” When Richman exhausted that annual leave, the BOE permitted Richman to utilize sick leave so that his leave could continue to be “paid”, without requiring Richman to provide any documentation or other evidence that he was in fact sick. In so doing, BOE acted inconsistently with its own policies concerning sick leave, and its standard practices concerning the handling of non-union employees who are placed on leave, and failed to document or explain the basis for its approach.

This report details DOI’s findings and includes recommendations to improve BOE’s annual leave and sick leave recordkeeping practices, as well as to improve the Comptroller’s methods of reviewing time balances (that is, employees accrued annual leave and sick leave) when employees separate from City Service.

The Board of Elections and Executive Order 16

The BOE is a non-mayoral agency that consists of an independent Board of Commissioners established pursuant to Article 2, Section 8 of the New York State Constitution, as codified in the New York State Election Law. The BOE is not established by regulations or policies, but by the highest authoritative legal document in the state, the Constitution of the State of New York.

The BOE is not subject to the provisions of Executive Order 16, issued July 16, 1978. However, pursuant to Article 34, Section 803 of the New York City Charter, DOI is authorized and empowered to make any study or investigation including but not limited to, the affairs, functions, accounts, methods, personnel or efficiency of any agency. This includes the Board of Elections.³

³The BOE’s status was acknowledged by Michael Ryan, Executive Director of the BOE, in response to a DOI Report issued in December 2013.

II. Investigative Findings

A. Steven Richman's Leave of Absence

On August 24 2020,⁴ at DOI's request and in light of an ongoing investigation into misconduct, Richman was asked to depart from his BOE office at 32-42 Broadway, New York County. DOI was informed by Michael Ryan, Executive Director of the BOE, that Richman was placed on a leave of absence the following day, August 25, 2020, until September 25, 2020. On October 5, 2020, DOI was advised by Ryan that Richman would remain suspended until November 27, 2020, and BOE's General Counsel advised DOI at the time that Richman would be suspended with pay.⁵ Ryan indicated that the BOE payroll department was directed to utilize Richman's accrued annual leave for his suspension, which is inconsistent with the determination that he be suspended with pay; employees suspended with pay typically are paid a salary, they are not required to use annual leave time.⁶ Ryan subsequently informed DOI that the BOE Commissioners voted and agreed at a fall 2020 meeting that Richman could use his sick leave during his suspension – without regard to whether he was in fact sick -- but provided no documentation (such as Board meeting minutes or other Board records) or other proof of this agreement, which was not consistent with BOE or City policy concerning the use of sick leave.

⁴ On August 24, 2020, DOI also requested that the BOE secure Richman's office with a key. On August 26, 2020, working with the New York County District Attorney's Office, DOI executed a search warrant for Richman's office and adjacent conference room.

⁵ In an email dated October 5, 2020, DOI contacted Ryan regarding the status of Richman's suspension. Ryan replied that Richman's leave was granted by the BOE Commissioners through November 27, 2020. When clarifying whether that leave was paid or unpaid, in a May 17, 2023 email to DOI, BOE General Counsel Hemalee Patel stated that, "Mr. Richman was initially removed from the Board offices at the request of the Manhattan District Attorney's Office. He was suspended with pay."

⁶ In the course of DOI's investigation, Ryan told DOI that he thought that this arrangement would be "cheaper" for the City, but did not explain why. DOI requested more information about the date and time of that meeting, as well as a copy of the minutes memorializing the decision to have Richman use sick leave during his suspension. DOI received no minutes or other documentation of this decision. In response to these questions, BOE General Counsel Hemalee Patel informed DOI via email that "...the decisions were made on a rolling basis as time went on." Patel added: "they do not know which Commissioners were present at any individual meeting during the time period, however, that there would have been a vote of six to confirm any decision."

Ryan reviewed DOI's report and he disputes DOI's assertion that advancing annual leave to Mr. Richman is inconsistent with Ryan's prior statement that Mr. Richman would be paid out of his accrued annual leave. (See Letter of February 13, 2024 from Executive Director Ryan to Inspector General Rivkin). Ryan makes the perplexing assertion that once the Board decided to suspend Mr. Richman "with pay" the Board was required to advance Mr. Richman annual leave that he had not earned, because Mr. Richman did not have sufficient annual leave to continue to earn income during his leave period. Ryan does not explain why BOE did not simply continue to pay Mr. Richman's salary, once it had concluded that he would be placed on leave with pay.

DOI's analysis of Richman's leave balances revealed that on August 25, 2020, the day he was placed on leave, Richman had an annual leave balance of 8 days, 3 hours, and 10 minutes. Additionally, he had a sick leave balance of 157 days, 4 hours, and 15 minutes of sick leave.

DOI reviewed Richman's CityTime records and learned the following: From August 25, 2020, through October 30, 2020, many more days than his annual leave balance as of August 25 would support, Richman's CityTime submissions indicated that he was on "annual leave" for "personal business." On November 2, 2020 and thereafter, Richman's leave was marked as "sick leave." The reason for the sick leave was listed as "undocumented."⁷ Richman's CityTime timesheets reflected that he was on sick leave until his retirement date of January 31, 2021, using 60 days of the 157 sick leave days he had as of August 25.⁸

DOI further reviewed the "Time Balance for Management Employee Pay Plan" for Steven Richman, a document created by the New York City Comptroller's Office.⁹ This document included a monthly calculation of Richman's annual leave and sick leave balances. In relevant part, Richman's Time Balance showed the following:

⁷ According to the BOE Policy and Procedure handbook, page C19, "Sick leave is a benefit that may only be used to cover a legitimate personal illness of an employee. Medical documentation may be required for sick leave and for granted sick leave purposes." Furthermore, the handbook states that, "Medical documentation is required when an employee uses three consecutive sick leave days, is on sick leave more than five times in a six-month period, or is sick more than four times on the day immediately preceding a holiday or day off."

⁸ DOI determined from its analysis of Richman's Citytime records that BOE improperly gave him 60 days of sick leave, as follows: 20 days in November 2020; 21 days in December 2020; and 19 days in January 2021. Richman's annual salary was \$193,730, so his daily pay was approximately \$742.28. The value of the 60 days of sick leave used by Richman was therefore 60 times \$742.28, equaling \$44,536.80.

⁹ DOI was informed by the New York City Comptroller's Office that a "Managerial Pay Plan Summary" is created for all employees leaving City service by the Comptroller's Office in accordance with Personnel Order 88/5 and the Mayor's Executive Order No. 25, dated October 13, 1970. This information is required in order to process lump sum payments for the liquidation of leave balances upon separation from City service.

TIME BALANCE FOR MANAGEMENT EMPLOYEE PAY PLAN

LEAVE YEAR: 2020

Page 22 of 23

NAME: Steven Richman

EIN: 045 9854

BALANCES AS OF 12/31/77 OR <u>1/3/1999</u>				ANNUAL LEAVE		SICK LEAVE		OVERTIME					
DATE OF ENTRY TO M.P.P. - (WHICHEVER IS LATER)				0	0	0	0	0	0	0	0	0	
ADJUSTED PRE '78 OR SUB-M.P.P. BALANCES				0	0	0	0	0	0	0	0	0	
CURRENT BALANCES				0	-4	-15	151	1	15				
	Salary and Effective Date	ANNUAL LEAVE			SICK LEAVE			OVERTIME					
		Monthly Activity	Running Balance Amount		Monthly Activity	Running Balance Amount		Running Balance Amount					
Jan.		Earn 2 : 0 : 35			1	0	0						
		Used 2 : 5 : 15			1	0	0					0 : 0 : 0	
		Bal. 0 : -4 : -40	-1	-1	-55	0	0	0	151	1	15		0 : 0 : 0
Feb.		Earn 2 : 0 : 35			1	0	0						
		Used 0 : 0 : 0			0	4	0					0 : 0 : 0	
		Bal. 2 : 0 : 35	0	5	40	0	3	0	151	4	15		0 : 0 : 0
Mar.		Earn 2 : 0 : 35			1	0	0						
		Used 5 : 0 : 0			0	0	0					0 : 0 : 0	
		Bal. -2 : -6 : -25	-2	0	-45	1	0	0	152	4	15		0 : 0 : 0
Apr.		Earn 2 : 0 : 35			1	0	0						
		Used 0 : 0 : 0			0	0	0					0 : 0 : 0	
		Bal. 2 : 0 : 35	0	0	-10	1	0	0	153	4	15		0 : 0 : 0
May		Earn 2 : 0 : 35			1	0	0						
		Used 0 : 0 : 0			0	0	0					0 : 0 : 0	
		Bal. 2 : 0 : 35	2	0	25	1	0	0	154	4	15		0 : 0 : 0
June		Earn 2 : 0 : 35			1	0	0						
		Used 0 : 0 : 0			0	0	0					0 : 0 : 0	
		Bal. 2 : 0 : 35	4	1	0	1	0	0	155	4	15		0 : 0 : 0
July		Earn 2 : 0 : 35			1	0	0						
		Used 0 : 0 : 0			0	0	0					0 : 0 : 0	
		Bal. 2 : 0 : 35	6	1	35	1	0	0	156	4	15		0 : 0 : 0
Aug.	8/24/20 LDPW	Earn 25 : 0 : 35			1	0	0						
		Used 4 : 6 : 0			0	0	0					0 : 0 : 0	
		Bal. 20 : 1 : 35	26	3	10	1	0	0	157	4	15		0 : 0 : 0
Sept.		Earn 0 : 0 : 0			0	0	0						
		Used 21 : 0 : 0			0	0	0					0 : 0 : 0	
		Bal. -21 : 0 : 0	5	3	10	0	0	0	157	4	15		0 : 0 : 0
Oct.		Earn 0 : 0 : 0			0	0	0						
		Used 21 : 0 : 0			0	0	0					0 : 0 : 0	
		Bal. -21 : 0 : 0	-15	-3	-50	0	0	0	157	4	15		0 : 0 : 0
Nov.		Earn 0 : 0 : 0			0	0	0						
		Used 0 : 0 : 0			20	0	0					0 : 0 : 0	
		Bal. 0 : 0 : 0	-15	-3	-50	-20	0	0	137	4	15		0 : 0 : 0
Dec.		Earn 0 : 0 : 0			0	0	0						
		Used 0 : 0 : 0			21	0	0					0 : 0 : 0	
		(Adj.) 0 : 0 : 0			0	0	0						
		Bal. 0 : 0 : 0	-15	-3	-50	-21	0	0	116	4	15		0 : 0 : 0
ADJUSTED PRE '78 OR SUB M.P.P. BALANCES				0	0	0	0	0	0	0	0	0	
CURRENT BALANCES				-15	-3	-50	116	4	15				

In reviewing this document, DOI observed the following: From January through July 2020, while an active employee of BOE, Richman earned 2 days and 35 minutes per month of annual leave, an amount consistent with his monthly earnings for prior years. In August 2020, the month that he was placed on leave from BOE, Richman earned 25 days and 35 minutes of annual leave. In September 2020, Richman stopped accruing annual leave, and used 21 annual leave days. In

subsequent months, which cover the time period during which Richman was suspended due to the investigation, Richman earned no annual leave and carried a negative annual leave balance.

DOI asked the New York City Comptroller's Office to explain how 23 days were added to Richman's leave balance in August 2020, that is, why instead of earning 2 days and 35 minutes during that month, as in past months, he instead earned 25 days and 35 minutes of annual leave. The Comptroller's Office responded that any leave used during the period while Richman was suspended would be identified during the final reconciliation of leave balances that is conducted for every City worker leaving City service. Any unauthorized or excessive leave would be identified and returned to the City.

DOI then asked the BOE to explain how 23 days were added to Richman's leave balance in August 2020. Ryan informed DOI that at a BOE Commissioner's meeting,¹⁰ the Board of Commissioners agreed to grant Richman the 23 annual leave days.¹¹ While such an action would not normally be permissible for City employee, Ryan informed DOI that the BOE Commissioners were able to vote and override any City policy.

However, there is no documentation or other proof explaining that determination or the basis for it. Indeed, BOE was unable to provide the date of the meeting, and there is no documentation such as Board minutes or other indicia that a Board meeting was held to discuss this issue, nor that the Board agreed to grant 23 annual leave days at that meeting. Furthermore, Ryan's account is contradicted by an internal BOE email from Ryan to the BOE Director of Payroll on October 1, 2020, in which Ryan stated that Richman would use his accrued annual leave during his period of leave, and did not indicate that he was granted additional annual leave days. In this email, which was provided to DOI by the Comptroller's Office, Ryan stated, "Re the above employee, I have been directed by the Board of Commissioners a leave request has been granted through November 27, 2020. The Commissioners have directed that the time be deducted from Mr. Richman's annual leave accruals

¹⁰ As noted above, the BOE was not able to identify the exact date of the meeting, stating that during COVID the Commissioners would hold emergency meetings, and the Richman situation may have come up at any one of those emergency meetings. When DOI requested the minutes from the meeting, BOE stated that no such minutes existed.

¹¹ As noted in footnote 8, *supra*, Richman's annual salary was \$193,730, so his daily pay was approximately \$742.28. The value of the 23 days of unearned annual leave was therefore 23 times \$742.28, equaling \$17,072.44.

(presently 180 hours or 5.15 weeks).¹² Please note that while Mr. Richman remains on payroll, he will continue to accrue annual leave. As such, he will have more than 180 total hours available during the leave period. In any event, upon exhaustion of his annual leave accruals, Mr. Richman will be advanced time subject to repayment. If Mr. Richman ultimately returns to work at the Board the overage will be deducted from future accrued leave balances. If Mr. Richman does not return to work at the Board, any advance leave will require repayment.” That is, Ryan represented that Richman would use his annual leave balance until it was exhausted, and then be advanced time subject to repayment. This is inconsistent with Ryan’s representation to DOI that the BOE Commissioners had granted Richman 23 unearned annual leave days, which were added to Richman’s leave balance in August 2020 — that is, prior to this October 1, 2020 email.

DOI’s review of Richman’s annual leave balances, as detailed in the Comptroller’s Time Balance (see preceding page), found the following: In July of 2020, Richman had 6 days, 1 hour, and 35 minutes of annual leave listed in the column titled “Running Balance Amount.” In August of 2020, Richman received an additional 25 days and 35 minutes of annual leave,¹³ and used 4 days and 6 hours of annual leave, bringing his running balance amount to 26 days, 3 hours, and 10 minutes of annual leave. In September of 2020, Richman used 21 annual leave days, and had 5 days, 3 hours, and 10 minutes of annual leave remaining. During the month of October 2020, Richman accrued 0 annual leave days and used 21 annual leave days, and had a negative balance of 15 days, 3 hours, and 50 minutes of annual leave remaining. This negative annual leave balance continued for the rest of 2020.

DOI’s review of Richman’s sick leave balances, also as detailed in the Comptroller’s Time Balance (see preceding page), found the following: Richman accrued one sick leave day per month through August of 2020. In the months of September and October of 2020, Richman had 157 days, 4 hours, and 15 minutes of sick leave, accrued during his BOE employment. In November of 2020, the first month after Richman used more annual leave than he had available, resulting in a negative annual leave balance, Richman used 20 days of sick leave. In December of 2020, Richman used 21 days of sick leave. In January of 2021, (see chart below), Richman used 19 days of sick leave, for a total of 60 leave days. As discussed further below, BOE was unable to provide DOI with any documentation or other evidence indicating that Richman was in fact sick during this period, or otherwise qualified for the use of sick leave. As a result of Richman’s use of his sick leave, the running balance amount at the end of January 2021 (as of Richman’s retirement) indicated

¹² Ryan’s email to the BOE Director of Payroll regarding Richman’s annual leave appears to be inaccurate as to Richman’s leave balance at the time of his leave period. Richman did not have 180 hours of annual leave at the beginning of his suspension.

¹³ As Richman typically accrued 2 days and 35 minutes of annual leave per month, the amount added was 23 days.

that Richman had 97 days, 4 hours, and 15 minutes of sick leave, remaining, as follows:

	Salary and Effective Date	ANNUAL LEAVE			SICK LEAVE			OVERTIME Running Balance Amount
		Monthly Activity	Running Balance Amount	Monthly Activity	Running Balance Amount			
Jan.	1/29/21 Retirement	Earn 0 : 0 : 0		0 : 0 : 0				
		Used 0 : 0 : 0		19 : 0 : 0			0 : 0 : 0	
		Bal. 0 : 0 : 0	-15 : -3 : -50	-19 : 0 : 0	97 : 4 : 15		0 : 0 : 0	

On January 31, 2021, Richman retired from his City position as General Counsel of BOE. By the Comptroller's final calculation, at the time of his separation from City service, Richman had a negative annual balance leave of 15 days 3 hours and 50 minutes, which was calculated to have a monetary value of \$11,553.03, as shown in the document created by the Comptroller's Office, below:

CURRENT Leave Balances

Date of Managerial Status:	01/03/1999	Last Managerial Salary	\$193,730	Leave Balances	Work Days			Calendar Days			Amount
					Days	Hrs	Mins	Days	Hrs	Mins	
				Annual Leave (AL)	7	1	20	11	1	20	\$5,939.20
				AL Adjustment	-15	-3	-50				-\$11,553.03
				Sick Leave (SL)	90	2	0	130	2	0	\$69,150.44
				SL Adjustment	32	3	45	47	3	45	\$24,408.77
				Totals							\$75,089.64
				Adjusted Totals							\$12,855.74

Overall Total Amount: \$12,855.74

Adjustments Made By Agency (If Applicable): _____

Agency's Reason For Adjustment: _____

Total Lump Sum Amount Requested: _____

Adjusted Lump Sum Total Amount \$12,855.74

The Comptroller's calculation of Richman's sick leave showed that at his separation from City service, he was compensated for 32 days, 3 hours, and 45 minutes of sick leave that remained outstanding. The Comptroller's Office informed DOI that, per standard City practice, Richman was paid one-third of his sick leave balance: 32 days, 3 hours, and 45 minutes, which is one-third of the time in Richman's sick leave "running balance" amount of 97 days, 4 hours, and 15 minutes. This sick leave balance was calculated to have a value of \$24,208.77.

DOI's review of documents provided by the Comptroller's Office found that the Comptroller's Office contacted BOE's Director of Payroll to inquire regarding the type of leave utilized by Richman after he had exhausted his annual leave, in the fall of

2020. In an August 3, 2021 email, the BOE Director of Payroll told the Comptroller's Office that Richman was out on non-sick leave. Based on the information discussed above, including BOE's City Time records, the Director of Payroll's statement was incorrect — in fact, once Richman exhausted his annual leave in the fall of 2020, he was out on paid sick leave.

DOI asked the Comptroller's Office whether they were currently considering or initiating any measures to recoup funds from Richman, specifically the 23 annual leave days. In addition, DOI inquired if the Comptroller's Office would reevaluate Richman's Managerial Lump Sum balances to reflect the hypothetical scenario of his compensation if the BOE had disclosed Richman's suspension and accurately recorded it in PMS.

In response, the Comptroller's Office advised DOI as follows: "In accordance with Comptroller's Directive #14: Leave Balance Payments, the Office of the Comptroller's role is to audit the Managerial Leave Balance Payment calculations performed by City agencies. Once our office has completed the audit, we return the case to the City agency from which the employee separated. They then execute the payment of the leave balance. In this case, the City agency that executed the payment is the Board of Elections (BOE). If DOI's investigation reveals that the record-keeping in Mr. Richman's case was erroneously implemented based on City regulations and recommends in their final report that BOE correct the documentation in Mr. Richman's record, the Office of the Comptroller will audit the new information in the resubmission of his Managerial Leave Balance Payment calculation. The Board of Elections will then need to execute the appropriate payroll action to make any necessary recoupments or other adjustments in alignment with our audit."

B. DOI's review of the BOE's personnel guidelines pertaining to annual leave, sick leave, and suspension

DOI reviewed BOE's personnel guidelines, "Board of Elections City of New York, Personnel Guidelines dated Revised February 23, 2018," as contained on the BOE website <https://vote.nyc/page/personnel-guidelines>. In the *Sick Leave* section on page C19, under the *Rules, Regulations and Laws Governing employees on any type of leave*, the guidelines state in relevant part: "*Sick leave is a benefit that may only be used to cover a legitimate personal illness of an employee. Medical documentation may be required for sick leave and for leave granted for sick leave purposes.*"

Furthermore, under the same section and page titled *Sick Leave Usage*, the guidelines state that: "*Medical documentation is required when an employee uses three consecutive sick leave days, is on sick leave more than five times in a six-month period, or is sick more than four times on the day immediately preceding a holiday or day off.*"

Lastly, on page C21, under the *Discretionary Grant After 10 Years of Service* section, the guidelines state: “*At the discretion of the Board of Commissioners, a permanent employee with at least 10 years of paid service, who has exhausted ALL of their accrued leave balance due to personal illness may be granted paid sick leave up to 420 hours (three months). Annual and/or Sick leave is **not** accrued during this time, this type of a grant of time does **not** have to be paid back.*” [Emphasis in original].

DOI requested that BOE provide any relevant sick leave documentation submitted by Richman during the period from November 1, 2020, through January 31, 2021. The BOE did not provide any such documentation.

DOI's investigation therefore found no evidence that Richman was sick during the period from November 1, 2020, through January 31, 2021. BOE's decision to charge Richman's leave during that period to “sick leave” violated its own written internal policies, as detailed above.

While BOE's Personnel Guidelines state that the BOE generally follows City rules and regulations, the Guidelines note that “[b]enefits and obligations mentioned in this handbook may change as a result of a change in laws, rules, regulations or orders; or as a result of a collective bargaining agreement, Comptroller's determination, or at the direction of the City or Agency.” In an interview with DOI detailed below, BOE's General Counsel stated that BOE Commissioners are “solely the decision makers with regards to hiring, firing, and other specific things that are in their discretion,” such as annual and sick leave.

DOI interviewed BOE Director of Personnel Steven Guglielmi to discuss BOE's annual leave, sick leave, and suspension policies, particularly in light of the above findings.¹⁴ DOI learned the following regarding the BOE's sick leave procedures: BOE confirmed that should an employee call out sick three days or more, medical documentation would have to be provided to the agency upon their return. If an employee failed to provide medical documentation upon their return to the office, the agency may deduct the days from their annual leave or compensatory time balance.¹⁵

In terms of annual leave, DOI learned that following: An advancement of annual leave may be granted to a BOE employee by the BOE Commissioners. BOE's position is that their Commissioners are “solely the decision makers with regards to

¹⁴ Also, in attendance were BOE General Counsel Hemalee Patel and Deputy General Counsel Rafael Savino.

¹⁵ Guglielmi informed DOI that if an employee were to call out sick for more than three days, and exhaust all of their sick leave, the agency would then begin to use their annual leave and/or compensatory time until the employee returns to the office and can begin to accrue additional sick leave.

hiring, firing, and other specific things that are in their discretion.”¹⁶ The BOE Commissioners can vote to grant an individual advanced time on a case by case basis. According to Patel, there is no record of the Commissioners' decisions regarding grants of annual leave to “protect the privacy” of employees. When questioned by DOI as to how such decisions are memorialized or actuated, Patel stated that the Commissioners' decisions are relayed via email by executive management to the relevant staff members.¹⁷

BOE informed DOI that employee suspensions are handled differently, depending on whether the employee is a part of a union. When a union employee is suspended, the suspension is typically without pay, not to exceed 30 days, and followed by a hearing. If a union employee is suspended with pay, the agency will use their annual leave to continue to pay them.

Former General Counsel Steven Richman is not a union employee. When a non-union employee is suspended by the BOE, DOI was informed that the BOE Commissioners generally decide by vote whether to terminate the employee or allow the employee to exhaust their annual leave, followed by their sick leave pending the Commissioner's final decision.¹⁸

Advancing annual leave to an employee who is suspended by the BOE, while a determination within the discretion of the BOE, also appears to be inconsistent with BOE's general approach concerning suspended employees, whether union or non-union. In light of the lack of documentation or other explanation, it remains unclear to DOI why BOE would use city funds to advance unearned annual leave to an employee suspended due to a criminal investigation, and then fail to seek to recoup that annual leave when that employee left City service. Furthermore, allowing the use of sick leave without medical necessity or medical documentation is contrary to the sick leave requirements in the BOE's personnel guidelines (detailed above).

Patel explained to DOI that “[The BOE] are not a Mayoral agency. To the extent that we adopt the City's rules with regard to any of these things, it is voluntary by our Commissioners.” Patel went on to say, “...The policies are the policies, 97% of the time we follow them. The Commissioners can make a decision for any one individual person to exempt them from what we have. Because there are extreme or

¹⁶ Guglielmi informed DOI that “permission may be granted to use annual before it is there, not exceeding 10 days.” When asked to provide DOI a specific example of a time that the Board Commissioners had granted 10 annual leave days to a staff member, Guglielmi told DOI: “I don't know of an example offhand where the Commissioners granted someone 10 annual leave days.”

¹⁷ With respect to Richman, DOI identified an email dated August 27, 2020, in which Guglielmi advised BOE Director of Payroll Tracy Royal that Richman was granted 161 hours (23 days) of paid leave of absence by the Commissioners, which began on August 25, 2020 (the day after Richman was asked to leave the BOE office).

¹⁸ Patel explained that a managerial staff member can request to use their sick leave upon the exhaustion of their annual leave. This request could be granted by a vote of six out of ten BOE Commissioners.

egregious situations where people are subject to things that are beyond their control. And depending on the employee and how many years they've served and what their title is and how valuable they are, whether you want them to come back or not, whether you want to make them be able to come back or not, that's a policy decision. It's always made by the Commissioners.” Again, this general explanation of BOE’s approach does not explain why Mr. Richman was advanced annual leave that he had not earned, without an explicitly delineated obligation of repayment, and permitted to use his sick leave when there was no documentation indicating that he was in fact sick, during a months-long period when he was on leave with pay after being identified as the target of a criminal investigation.

III. Recommendations

DOI's investigation and review of Richman's leave during the period from August 24, 2020, through his retirement date of January 31, 2021, identified two separate misuses: (1) the BOE added 23 days of annual leave to Richman's balance after he was suspended due to an active investigation; and (2) the BOE permitted Richman to utilize "sick leave" for approximately 60 days without any written documentation, in violation of its own internal policies.

DOI's investigation identified several issues within BOE's personnel guidelines regarding time and leave that should be remedied. DOI therefore makes the following recommendations to the BOE:

1. The BOE must enforce its written policy requiring that proper documentation be provided to the agency when an employee uses three consecutive sick leave days, is on sick leave more than five times in a six-month period, or is sick more than four times on the day immediately preceding a holiday or day off.
2. The BOE should create a written policy stating that advanced leave may only be granted in writing, detailing: the date of such advance; the reason for the advance; the individual(s) authorizing the advance; and the process by which the advance will be repaid. Furthermore, annual leave should only be granted to an employee with reasonable assurance that an employee be in a pay status long enough to repay the agency the granted advanced leave. However, if it is not known or the supervisor does not have reasonable assurance that the employee will remain on a pay status, the requested advanced annual leave should be denied.
3. The BOE should take appropriate payroll action to collect the money owed by Richman to the City once the Comptroller's Office completes a new audit of Richman's annual leave and sick time balances.

DOI has not made a determination whether Richman owes the City any money; however, it has determined that the 23 annual leave days and the approximately 60 days of sick leave improperly provided to Richman were valued at a total of approximately \$61,609.24. This Report and its findings have been referred to the Comptroller's Office for it to take action as it deems necessary.

Moreover, DOI's review of documentation provided by the Comptroller's Office identified that although the Comptroller's Office inquired about the type of leave used for Richman and requested supporting documentation during its time and leave

audit, the Comptroller's Office did not inquire why Richman was granted an additional 23 days of annual leave.

DOI therefore makes the following recommendations to the Comptroller's Office:

1. The Comptroller's Office should conduct a new audit of Richman's annual leave and sick time balances based on the information contained in this report.
2. As a general policy, the Comptroller's Office should require documentation for any unusual addition of annual leave or sick days found while conducting their audit of an individual separating from City service.

IV. Agency Response

DOI shared a draft of its referral with the BOE and the Office of the Comptroller, allowing each of the respective agencies to provide remarks.

DOI received a response from the Office of the Comptroller, which is appended below. The Office of the Comptroller advised that they have accepted and implemented DOI's recommendation.

DOI received a response from the Board of Elections, which is appended below. The Board of Elections advised in its response, that "The Board will appropriately reply to any recommendations upon formal issuance of the report."

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CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
BRAD LANDER

JUSTINA K. RIVERA
GENERAL COUNSEL AND DEPUTY
COMPTROLLER FOR LEGAL AFFAIRS

OFFICE OF THE GENERAL COUNSEL

January 25, 2024

Eleonora B. Rivkin
Senior Inspector General
NYC Department of Investigation
180 Maiden Lane
New York, NY 10038

Dear Ms. Rivkin:

This letter is in response to the Department of Investigation's (DOI) January 11, 2024 referral regarding former NYC Board of Elections employee Steven Richman, which included a recommendation to the Office of the New York City Comptroller (OOC).

It is the general practice of the OOC to request supporting documentation for any inconsistencies discovered during the audit of Managerial Lump Sum (MLS) cases and to use the citywide Payroll Management System (PMS) to verify information where applicable.

As the Department of Investigation's (DOI) investigation confirmed, OOC reached out to the New York City Board of Elections (BOE) to request supporting documentation when our audit revealed payments were made to Steven Richman after his last day physically worked. In response, we received written confirmation from BOE that Mr. Richman was out on "non-sick leave" and that the Executive Committee of BOE had approved a 23-day paid leave of absence. Although there are personnel guidelines for all employees, there are circumstances, specifically with granting of leave, that allows for agency discretion. As such, we accepted the submission provided.

OOC had no knowledge of a suspension until we received a copy of the draft DOI referral with details of their investigations and findings. BOE neither disclosed this information nor recorded it in the PMS, where it would have been available for our review and factored into our determination.

OOC accepts DOI's recommendation and will continue to look for opportunities to strengthen our audit of the agency submissions. Effective Monday, January 22, 2024, the OOC now requires an official approval on agency letterhead (authorized by agency HR Commissioner or designee) to support any anomalies found during the vetting of an MLS case.

Sincerely,

DocuSigned by:

4F47FC01123468
Justina K. Rivera, Esq.

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February 13, 2024

Via E-mail Only
ERivkin@doi.nyc.gov

Eleonora Rivkin
Senior Inspector General
The City of New York
Department of Investigations
180 Maiden Lane
New York, NY 10038

**Re: Your Draft Report
Steven H. Richman
Use of Time and Leave**

Dear SIG Rivkin:

Your proposed report regarding Steven H. Richman's use of annual and sick leave upon his suspension with pay on August 24, 2020, as General Counsel of the Board of Elections in the City of New York (Board) has been reviewed personally and by staff.

The Board removed Mr. Richman from its offices at the specific request of The Offices of the District Attorney of New York County, as communicated by NYC DOI Deputy Commissioner Dan Cort. The Board was not provided any evidence of wrongdoing and/or information indicating the anticipated duration of Mr. Richman's removal.

In the absence of evidence of misconduct, the Commissioners of Elections directed that Mr. Richman be suspended with pay; however, such suspension would include Mr. Richman remaining on "leave with pay" rather than an outright suspension with pay. In order to effectuate same, it appears that the Board's payroll department processed a grant of time in August 2020.

The draft report states my account of the circumstances in this regard (that I advised DOI that the Commissioners specifically voted to approve 23 days of leave for Mr. Richman) "is contradicted by an internal BOE email which states that Richman will use his accrued annual leave during his period of leave and does not indicate that he was granted additional annual leave days". (Findings Page 4 of 6, Paragraph 4)

This assertion does not accurately capture the sequence of events and/or my representation of same. Very simply, the Commissioners directed Mr. Richman's suspension and to simultaneously place him on "leave with pay". Once the Commissioners decided Mr. Richman was to remain on "leave with pay" it was impossible to accomplish same without sufficient available leave to use. Thereafter, the payroll department took the action necessary to comply with the Commissioners' directive.

The October 1, 2020, email referenced occurred five (5) weeks after Mr. Richman's suspension, wherein I reiterated to the payroll department that Mr. Richman was to remain suspended and any leave balances would be used.

The Board will appropriately reply to any recommendations upon formal issuance of the report.

Very Truly Yours,



Michael J. Ryan
Executive Director