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September 13, 2012

Christine Bailey  
Executive Director  
Board of Education Retirement System  
65 Court Street, 16<sup>th</sup> Floor  
Brooklyn, NY 11201

Re: **Resolution #12/24-BERS** Preliminary Determination Pursuant to the Audit of the Board of Education Retirement System (BERS) and its compliance with its Equal Employment Opportunity (EEO) Policy and Federal, State and City equal employment opportunity requirements for the period from January 1, 2009 to December 31, 2011.

Dear Ms. Bailey:

Pursuant to Chapter 36 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. (New York City Charter, Chapter 36, sections 831(d)(2) and(5).

The Chapter 36 Section 831 (a) of the New York City 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..." The Board of Education Retirement System is considered a city agency pursuant to Chapter 36, Section 831(a) of the New York City Charter.

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 programs for minority group members, women and other protected groups. This audit measures your office's compliance with its EEO Policy and Discrimination Complaint and Investigation Procedure as well as

Commission policies and EEO standards expressed in the Federal, State and City Human Rights Laws.

This letter contains the preliminary determinations of the EEPC staff pursuant to its audit. All recommendations for corrective actions are consistent with both the audit's findings, the parameters set forth in its EEO Policy and Discrimination Complaint and Investigation Procedures and the equal employment opportunity requirements of Federal, State, and City laws.

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

### **Description of the Board of Education Retirement System**

The Board of Education Retirement System of the City of New York (BERS) was founded in 1921 to provide a retirement system to New York City Department of Education employees other than those eligible to join the New York City Teachers' Retirement System. The Board of Education Retirement System's structure, procedures, and benefits are determined by administrative rules and regulations, and by law. BERS itself is governed by a Board of Trustees which is composed of thirteen Panel for Educational Policy members, eight of whom are appointed by the Mayor, the Schools Chancellor and two employee-members elected by the membership.

### **Scope and Methodology**

Given that the Board of Education Retirement System's (BERS) permanent headcount is 150 or less, this Commission considers it a small city agency. This Commission has established an audit methodology for small city agencies.

The audit methodology included an analysis of the BERS' responses to the *Document and Information Request Form for Audit of Small City Agency* and responses to the *Interview Questionnaire for Agency EEO Officer*. EEPC auditors also conducted a follow-up interview with the agency's EEO Officer and General Counsel.

In response to the EEPC's *Document and Information Request Form for Audit of Small City Agency*, for the agency's EEO Policies and agency head's EEO Policy statement, the BERS submitted the Department of Education's (DOE) Office of Equal Opportunity non-discrimination policy; sexual harassment prevention policy; and policy and procedures for individuals with disabilities. In addition, the BERS provided its last five job postings which included an EEO tag line that directed all inquiries regarding compliance with EEO to the DOE's Office of Equal Opportunity and Diversity Management. The *Interview Questionnaire for Agency EEO Officer* indicated that the EEO Officer works in conjunction with and reports any EEO findings to the DOE's Office of Equal Opportunity as a part of the responsibilities of the position.

The BERS representatives asserted that BERS is independent from the DOE; has its own budget for employment and recruitment; but has adopted the DOE's EEO Policies and relies on the DOE's Office of Equal Opportunity for complaint handling and agency-wide EEO training.

The EEPC contacted the DOE's Office of Equal Opportunity for clarification on the reporting relationship. The DOE submitted confirmation that BERS is an independent body and is not subject to DOE's EEO policies or Chancellor's Regulation A-830. Consequently, the BERS EEO representatives met with the DOE OEO and determined to develop and administer its own EEO program.

The following preliminary determinations indicate where the BERS has or has not complied, in whole or in part, with its EEO Policy and Discrimination Complaint and Investigation Procedures as well as the equal employment opportunity requirements of Federal, State, and City laws.

### **Personnel Activity during the Audit Period**

According to workforce data provided by the BERS, the number of employees remained at 80 from the beginning to the end of the audit period: 19 Caucasians, 33 African Americans, 9 Hispanics, 9 Asians and 10 employees were identified as "other". Forty-nine of these employees were female. (See Attachments 1, 1a, and 1b)

### **Discrimination Complaint Activity during the Audit Period**

No discrimination complaints were filed during the audit period.

### **Legal Issues**

There were no EEO judgments or settlements during the previous 5 years.

### **PRELIMINARY DETERMINATION**

Following are the preliminary determinations with the required corrective actions and recommendations.

### **Issuance, Distribution, and Posting of Equal Employment Opportunity Policy Statement**

The BERS is not in compliance with the following requirements:

1. The BERS did not issue an agency-specific EEO Policy, a policy against sexual harassment; uniform complaint and reasonable accommodation procedures that conform to federal, city and state laws\*\* prohibiting discrimination in employment; or adopt the *Citywide Equal Employment Opportunity Policy Standards and Procedures to be Utilized by City Agencies* (Citywide EEOP 2005). Corrective action is required.

Recommendation: The agency should establish its own EEO Policy or adopt and distribute the Citywide EEOP -- in paper or electronic copy -- to legal, human resources and EEO representatives, as well as managers and supervisors. At minimum, the agency's EEOP should

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\*\* Federal: EEOC. City and State: NYC and State Human Rights Laws.

include, or attach as addenda: a policy against sexual harassment; uniform complaint and reasonable accommodation procedures that conform to Federal, City and State laws regarding discrimination in employment; contact information for the EEO Professionals; an up-to-date list of protected classes under NYC and NYS Human Rights Laws; and current contact information for federal, state and local agencies that enforce laws against discrimination.

2. The BERS did not issue a statement from the agency head reiterating commitment to EEO and listing the name and phone number of the EEO Officer. Corrective action is required.

Recommendation: The agency should use the distribution of the EEO Policy as an opportunity to issue a general EEO Policy statement or memo reiterating her commitment to EEO, declaring the agency's position against discrimination on any protected basis, advising employees of the names and contact information of EEO Personnel, and providing employees pertinent electronic links to the EEO Policy/Handbook/Addenda.

### **Appointment and Training of EEO Officer**

The BERS is not in compliance with the following requirements:

1. Although the agency reported that the Director of Administration, Personnel and Security acts as the agency's EEO Officer - responsible for complaint intake/investigation - there was no formal notification to employees of the appointment. In addition, the agency's organizational chart did not include the EEO Officer title or reporting relationship. Corrective action is required.

Recommendation: Because the EEO Officer should report directly to the agency head (or to a direct report to the agency head), the agency should update its organizational chart to reflect this reporting relationship. (EEPC/Sec. 831, City Charter)

2. The EEO Officer did not complete Basic Training for EEO Representatives conducted by the Department of Citywide Administrative Services (DCAS) – Division of Citywide Diversity and Equal Employment Opportunity or training conducted by another appropriate agency or school. Corrective action is required.

Recommendation: Because EEO representatives should be trained in federal, state, and city EEO laws and procedures and know how to carry out their responsibilities under the agency's EEO Policy, the EEO Officer should attend the next available DCAS training session for EEO professionals or enroll in training conducted by another appropriate agency or school. The EEO Officer should obtain a certificate of completion.

### **Agency EEO Training**

The BERS is not in compliance with the following requirements:

The agency did not provide EEO training to its current and future employees during or after the audit period. Corrective action is required.

Recommendation: The agency should develop an EEO training plan to ensure that all individuals who work within the agency, including managers and supervisors, are trained concerning EEO-related policies, rights, and responsibilities.

### **Complaint Intake and Investigation**

The agency reported no complaints were filed during the audit period.

The BERS is not in compliance with the following requirements:

The agency did not designate, or secure per agreement between the agency and another City agency, an employee of each gender for complaint intake/investigation. Corrective action is required.

Recommendation: The agency head should appoint at least two EEO Representatives, who may not be of the same gender, to receive discrimination complaints and conduct investigations, or secure per agreement between the agency and another City agency, an employee of each gender for complaint intake/investigation.

### **Reasonable Accommodations and EEO for Persons with Disabilities**

The BERS is in compliance with the following requirements:

1. The agency provided 2 reasonable accommodations for orthopedic chairs during the audit period.
2. The agency's facility (65 Court Street, Brooklyn, NY 11201) has 79 employees and 86 workstations. Responses to the EEPC's *Accessibility for Employees/Applicants with Disabilities Checklist* indicated the agency's work location is accessible to employees/applicants for employment with disabilities. (i.e., the facility has a street accessible entrance, wheel chair accessible elevators, Braille in elevators, and bell in elevators).

The BERS is in partial compliance with the following requirement:

Although the agency's building entrance and elevators are accessible to employees/applicant for employment with disabilities, the facility's restrooms are not wheelchair accessible – there are no grab bars, wide stalls, or low sink or bathroom fixtures. Corrective action is required.

Recommendation: The agency should develop a plan to demonstrate it is accessible to and usable by employees/applicants for employment with physical disabilities. The plan should identify the accessibility status of its restrooms; identify barriers and the efforts the agency has taken to determine whether removal of barriers is readily achievable, and if so, to remove them; identify the agency responsible (if not the auditee) for rendering each non-accessible facility accessible; and state whether the agency has applied to the Commissioner of the Department of Buildings for a waiver of the requirements for the alteration of existing buildings to render each non-

accessible facility accessible for employees/applicants for employment with physical disabilities. The agency's plan will be reviewed during the compliance period. The agency should determine if its facilities are exempt from these requirements.

### **Posting of Job Vacancies**

The BERS is in compliance with the following requirements:

1. The BERS posted job vacancy notices internally and citywide. Advertisements were also posted on the BERS website (www.nycbers.org) and in local publications (i.e., *The Chief-Leader*, *Chinese World Journal*, *El Diario* and *Amsterdam News*).
2. The BERS included the EEO tag line in all job recruitment literature. Advertisements submitted to the EEPC (for Computer Specialist Software, Associate Retirement Benefits Examiner – Level 2, and Administrative Education Analyst) all included the tagline: *An Affirmative Action/Equal Opportunity Employer*.

### **SUMMARY OF RECOMMENDED CORRECTIVE ACTIONS:**

1. The agency should establish its own EEO Policy or adopt and distribute the Citywide EEOP -- in paper or electronic copy -- to legal, human resources and EEO representatives, as well as managers and supervisors. At minimum, the agency's EEOP should include, or attach as addenda: a policy against sexual harassment; uniform complaint and reasonable accommodation procedures that conform to Federal, City and State laws regarding discrimination in employment; contact information for the EEO Professionals; an up-to-date list of protected classes under NYC and NYS Human Rights Laws; and current contact information for federal, state and local agencies that enforce laws against discrimination.
2. The agency should use the distribution of the EEO Policy as an opportunity to issue a general EEO Policy statement or memo reiterating her commitment to EEO, declaring the agency's position against discrimination on any protected basis, advising employees of the names and contact information of EEO Personnel, and providing employees pertinent electronic links to the EEO Policy/Handbook/Addenda.
3. Because the EEO Officer should report directly to the agency head (or to a direct report to the agency head), the agency should update its organizational chart to reflect this reporting relationship. (EEPC/Sect. 831, City Charter)
4. Because EEO representatives should be trained in federal, state, and city EEO laws and procedures and know how to carry out their responsibilities under the agency's EEO Policy, the EEO Officer should attend the next available DCAS training session for EEO professionals or enroll in training conducted by another appropriate agency or school. The EEO Officer should obtain a certificate of completion.

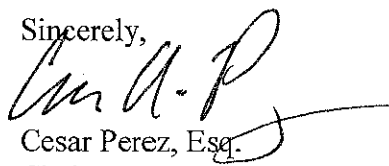
5. The agency should develop an EEO training plan to ensure that all individuals who work within the agency, including managers and supervisors, are trained concerning EEO-related policies, rights, and responsibilities.
6. The agency head should appoint at least two EEO Representatives, who may not be of the same gender, to receive discrimination complaints and conduct investigations, or secure per agreement between the agency and another City agency, an employee of each gender for complaint intake/investigation.
7. The agency should develop a plan to demonstrate it is accessible to and usable by employees/applicants for employment with physical disabilities. The plan should identify the accessibility status of its restrooms; identify barriers and the efforts the agency has taken to determine whether removal of barriers is readily achievable, and if so, to remove them; identify the agency responsible (if not the auditee) for rendering each non-accessible facility accessible; and state whether the agency has applied to the Commissioner of the Department of Buildings for a waiver of the requirements for the alteration of existing buildings to render each non-accessible facility accessible for employees/applicants for employment with physical disabilities. The agency's plan will be reviewed during the compliance period. The agency should determine if its facilities are exempt from these requirements.

## **Conclusion**

Pursuant to Chapter 36 of the New York City Charter and the previously cited preliminary determinations in relation to the EEPC's audit of compliance by the Board of Education Retirement System, we respectfully request your response. Your response should indicate how the Board of Education Retirement System will implement these recommendations. Please forward your response within thirty days of receipt of this letter.

In closing, we want to thank you and your staff for your cooperation.

Sincerely,



Cesar Perez, Esq.  
Chair

Attachment

c: Noro Healey, EEO Officer

## Attachment - 1

Statistical Profile of Agency Workforce  
Start and End of Audit Period

Agency: BOARD of Educational REFINEMENT  
SYSTEM (BERS)

# Employees	Start of Audit Period: <u>1-1-09</u>	End of Audit Period: <u>12-31-2011</u>
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Male	<u>32</u>	<u>31</u>
Female	<u>48</u>	<u>49</u>

Caucasian	<u>18</u>	<u>19</u>
African American	<u>31</u>	<u>33</u>
Hispanic	<u>9</u>	<u>9</u>
Asian	<u>8</u>	<u>9</u>
Native American	<u>0</u>	<u>0</u>
Unknown	<u>14</u>	<u>10</u>

Total # of Employees	<u>80</u>	<u>80</u>
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Workforce Composition by EEO Job Group

Agency: BHMS

Indicate EEO Job Group: (e.g. 001 Administrators)	Gender/Ethnicity					Total of Job Group	# of Females
	Caucasian	African Am.	Hisp.	Asian	<del>Native Am.</del> <sup>Other</sup>		
<u>001</u>	<u>1</u>	<u>3</u>	<u>—</u>	<u>—</u>	<u>—</u>	<u>4</u>	<u>1</u>
<u>002</u>	<u>2</u>	<u>—</u>	<u>1</u>	<u>—</u>	<u>—</u>	<u>3</u>	<u>1</u>
<u>003</u>	<u>2</u>	<u>3</u>	<u>—</u>	<u>1</u>	<u>—</u>	<u>6</u>	<u>2</u>
<u>004</u>	<u>—</u>	<u>2</u>	<u>—</u>	<u>—</u>	<u>1</u>	<u>3</u>	<u>0</u>
<u>009</u>	<u>—</u>	<u>1</u>	<u>—</u>	<u>—</u>	<u>—</u>	<u>1</u>	<u>1</u>
<u>010</u>	<u>2</u>	<u>—</u>	<u>—</u>	<u>—</u>	<u>—</u>	<u>2</u>	<u>0</u>
<u>012</u>	<u>1</u>	<u>1</u>	<u>—</u>	<u>1</u>	<u>—</u>	<u>3</u>	<u>1</u>
<u>013</u>	<u>11</u>	<u>23</u>	<u>8</u>	<u>7</u>	<u>9</u>	<u>58</u>	<u>43</u>
<u>—</u>	<u>—</u>	<u>—</u>	<u>—</u>	<u>—</u>	<u>—</u>	<u>—</u>	<u>—</u>
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<u>—</u>	<u>—</u>	<u>—</u>	<u>—</u>	<u>—</u>	<u>—</u>	<u>—</u>	<u>—</u>

Totals: 19 33 9 9 10 49 females

ATTACHMENT - 1b  
CITYWIDE EQUAL EMPLOYMENT OPPORTUNITY  
DATABASE SYSTEM (CEEDS) DESCRIPTION OF JOB  
GROUP CATEGORIES

- 001 **Administrators:** Occupations in which employees set broad policies and exercise overall responsibility for the execution of these policies. This category includes: Elected officials, commissioners, executive directors, deputy commissioners, chairpersons, general counsels, controllers, chiefs of department, inspector generals and kindred workers.
- 002 **Managers:** Occupations in which employees direct individual departments or special phases of the agency's operations, or provide specialized consultation on a regional, district or area basis. This category includes: Assistant commissioners, deputy directors, assistant directors, project managers, special assistants, superintendents, deputy counsels and kindred workers.
- 003 **Management Specialists:** Occupations which require specialized and theoretical knowledge of management, finance or personnel, which is usually acquired through college training or through work experience and other training which provides comparable knowledge. This category includes: Accountants, underwriters, financial analysts, personnel analysts, staff analysts, program analysts, buyers, purchasing specialists, inspectors, research analysts, program officers, project coordinators and kindred workers.
- 004 **Science Professionals:** Occupations which require specialized and theoretical knowledge of various scientific or mathematical fields, which is usually acquired through college training or through work experience and other training which provides comparable knowledge. This category includes: Architects, engineers (chemical, nuclear, civil, electrical, industrial, mechanical, marine), computer specialists, telecommunications specialists, actuaries, statisticians, physicists, chemists, geologists, biologists, foresters and kindred workers.
- 005 **Health Professionals:** Occupations which require specialized and theoretical knowledge of the medical or health fields, which is usually acquired through college training or through work experience and other training which provides comparable knowledge. This category includes: Physicians, dentists, veterinarians, optometrists, podiatrists, registered nurses, pharmacists, dietitians, occupational therapists, physical therapists, speech therapists, physician's assistants and kindred workers.
- 006 **Social Scientists:** Occupations which require specialized and theoretical knowledge of the social sciences, which is usually acquired through college training or through work experience and other training which provides comparable knowledge. This category includes: Librarians, archivists, economists, psychologists, sociologists, urban planners and kindred workers.
- 007 **Social Workers:** Occupations which require specialized and theoretical knowledge of social work, youth and family counseling, addiction treatment and casework, which is usually acquired through college or training or through work experience and other training which provides comparable knowledge. This category includes: Caseworkers, probation officers, correctional counselors, juvenile counselors, addiction treatment counselors, eligibility specialists, human rights specialists, community liaison workers, clergy and kindred workers.

- 008 **Lawyers:** Occupations which require specialized and theoretical knowledge of the law and the judicial process, which is usually acquired through college training. This category includes: Attorneys, assistant district attorneys, counsels, assistant counsels, deputy counsels, law judges, and kindred workers.
- 009 **Public Relations:** Occupations which require special knowledge or skills in public relations, journalism, modern language or the fine arts, which are usually acquired through college training, specialized post-secondary school education, or work experience or training which provides comparable knowledge. This category includes: Technical writers, graphic designers, musicians, actors, directors, announcers, painters, illustrators, photographers, artists, editors, press officers, public relations specialists, public relations advisors, interpreters, customer service specialists and kindred workers.
- 010 **Technicians:** Occupations which require a combination of basic scientific or technical knowledge and manual skill which can be obtained through specialized post-secondary school education or through equivalent on-the-job training. This category includes: Health technicians (clinical laboratory, dental hygienists, health records, radiologic and licensed practical nurses), electrical and electronic technicians, engineering technicians (electrical, electronic, industrial, and mechanical), drafting occupations, surveying and mapping technicians, science technicians, airline pilots and navigators, air traffic controllers, broadcast equipment operators, computer programmers, legal assistants, investigators, and kindred workers.
- 011 **Sales:** Not applicable.
- 012 **Clerical Supervisors:** Occupations in which employees are responsible for overseeing and supervising the duties of clerical staff. This category includes: Chief clerks, supervising clerks, principal administrative associates, supervising cashiers, telegraph superintendents, supervising stenographers and kindred workers.
- 013 **Clerical:** Occupations in which employees are responsible for internal and external communication, recording and retrieval of data and/or information and other paperwork required in an office. This category includes: Cashiers, computer operators, word processors, secretaries, stenographers, typists, ticket agents, receptionists, clerks (information, personnel, file, library, records), bookkeepers, office machine operators, telephone operators, messengers, dispatchers, stock clerks, meter readers, office aides, general office clerks, bank tellers and kindred workers.
- 014 **Household Services:** Not applicable.
- 015 **Police Supervisors:** Occupations in which uniformed employees with peace officers status set broad policies in the area of public safety and security, exercise overall responsibility for execution of policies, direct individual units or special phases of the agency's operations, or supervise on a regional, district or area basis. This category includes: Sergeants, captains, lieutenants, inspectors, captains (correction), wardens and kindred workers.

- 016 **Fire Supervisors:** Occupations in which uniformed employees set broad policies in the area of public safety and protection; exercise overall responsibility for execution of policies; direct individual units or special phases of the agency's operations; or supervise on a regional, district or area basis. This category includes: Lieutenants, captains, battalion chiefs, deputy chiefs, supervising fire marshals, supervising fire prevention inspectors and kindred workers.
- 017 **Firefighters:** Occupations in which uniformed employees are entrusted with public safety, security and protection from destructive forces. This category includes: Firefighters, marine engineers (uniformed), fire prevention inspectors, fire protection inspectors and kindred workers.
- 018 **Police and Detectives:** Occupations in which uniformed employees with peace officer status are entrusted with public safety, security and protection. This category includes: Police officer, detectives, correction officers, bridge and tunnel officers, sheriffs, special officers, enforcement agents (traffic, sanitation) and kindred workers.
- 019 **Guards:** Occupations in which employees are entrusted with public safety and security. This category includes: School crossing guards, housing guards, watch persons, lifeguards, park rangers, school guards and kindred workers.
- 020 **Food Preparation:** Occupations in which employees are responsible for the preparation and distribution of food, or management of food services, in City facilities (e.g. schools, correctional institutions, and concessions). This category includes: Cooks; school lunch helpers, school lunch managers, food service managers, commissary managers and kindred workers.
- 021 **Health Services:** Occupations in which employees are responsible for assisting health professionals in maintaining and promoting the health, hygiene and safety of the general public. This category includes: Dental assistants, dietary aides, public health assistants, nurse's aides, institutional aides, health aides, orderlies, and kindred workers.
- 022 **Building Services:** Occupations in which employees perform duties which result in or contribute to the upkeep and care of buildings and facilities. This category includes: Custodians, cleaners, caretakers, maintainers, elevator operators and starters, exterminators, pest control aides and kindred workers.
- 023 **Personal Services:** Occupations in which employees perform duties which result in or contribute to the comfort or convenience of the general public. This category includes: Housekeepers, barbers, attendants, railroad porters, homemakers, matrons and kindred workers.
- 024 **Farming:** Occupations in which employees perform duties which result in or contribute to the upkeep and care of agricultural/botanical/zoological facilities or grounds of public property. This category includes: Herbarium aides, aquarium technicians, botanical gardening aides, gardeners, groundskeepers, pruners, hostlers, menagerie keepers, horseshoers and kindred workers.

- 025 Craft:** Occupations in which employees perform duties which require special manual skill and a thorough and comprehensive knowledge of the processes involved in the work in which is acquired through on-the-job training and experience or through apprenticeship or other formal training programs. This category includes: Mechanics, equipment repairers, telephone line installers, small instrument repairers, brick masons, carpenters, electricians, plumbers, mining occupations, tool and die makers, sheet metal workers, tailors, butchers, bakers, machine operators, locksmiths, precision handworking occupations and kindred workers.
- 026 Operators:** Occupations in which employees perform duties which require specialized machine skills which are required through on-the-job training and experience or through apprenticeship or other formal training programs. This category includes: Printing press operators, high pressure boiler operators, laundry workers and kindred workers.
- 027 Transportation:** Occupations in which employees perform duties which require motor vehicle, bus, train, or other transportation operation skills which are acquired through on-the-job training and experience or through other formal training programs. This category includes: Bus drivers, chauffeurs, motor vehicle operators, trainmasters, ferry terminal supervisors and kindred workers.
- 028 Laborers:** Occupations in which employees perform duties which result in or contribute to the comfort, convenience, hygiene or safety of the general public, or which contribute to the upkeep and care of buildings and facilities. There are no job qualification requirements for titles in this category. This category includes: Skilled craft helpers and apprentices, construction laborers, stock handlers, garage and service station related occupations, car cleaners, seasonal park helpers, track workers, assistant highway repairers and kindred workers.
- 029 Sanitation Workers:** Occupations in which employees perform duties which result in or contribute to the cleanliness, hygiene and safety of the public domain. Qualification requirements, which include civil service examinations, exist for titles in this category. This category includes: Sanitation workers, debris removers and kindred workers.
- 030 Teachers:** Occupations which require specialized and theoretical knowledge of education and instructional methods, which is usually acquired through college training or through work experience and other training which provides comparable knowledge. This category includes: Teachers, instructors, professors, lecturers, fitness instructors, graduate assistants, fellows, adjunct professors, substitute teachers, trade instructors, education/ vocational counselors, education analysts, education officers, institutional instructors and kindred workers.
- 031 Paraprofessionals:** Occupations in which employees perform some of the duties of a professional or technician in a supportive role, which usually requires less formal training and/or experience normally required for professional or technical status. Such positions may fall within an identified pattern of staff development and promotion. This category includes: Administrative assistants, project associates, coordinators, community associates and assistants, community service aides, research associates, welfare service workers, child care workers and kindred workers.

# EQUAL EMPLOYMENT PRACTICES COMMISSION CITY OF NEW YORK

**RESOLUTION #12/24-BERS:** Preliminary Determination Pursuant to the Audit of The Board of Education Retirement System (BERS) and its compliance with its Equal Employment Opportunity (EEO) Policy and Federal, State and City equal employment opportunity requirements for the period from January 1, 2009 to December 31, 2011.

**Whereas,** pursuant to Chapter 36, Section 831(d)(2) of the New York City Charter, the Equal Employment Practices Commission (EEPC) is authorized to audit and evaluate the employment practices, programs, policies and procedures of city agencies and their efforts to insure fair and effective equal employment opportunity for minority group members and women and to make recommendations to city agencies to insure equal employment opportunity for minority group members and women; and

**Whereas,** 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 municipal government employees and job applicants, and, consistent with federal, state and local laws, identified other groups for protection from discrimination in employment; and

**Whereas,** the Equal Employment Practices Commission audited the BERS' Equal Employment Opportunity Program; and

**Whereas,** in accordance with Chapter 36, Section 832(c) of the City Charter, the EEPC may make a preliminary determination pursuant to Section 831(d) that any plan, program, procedure, approach, measure or standard adopted or utilized by any city agency does not provide equal employment opportunity. Now, Therefore,

**Be It Resolved,** that pursuant to the audit of the BERS' compliance with its Equal Employment Opportunity Policy, as well as Commission policies and EEO standards expressed in City guidelines, the Equal Employment Practices Commission hereby affirms and adopts the following preliminary finding:

1. The BERS did not issue an agency-specific EEO Policy, a policy against sexual harassment; uniform complaint and reasonable accommodation procedures that conform to federal, city and state laws\*\* prohibiting discrimination in employment; or adopt the *Citywide Equal Employment Opportunity Policy Standards and Procedures to be Utilized by City Agencies* (Citywide EEOP 2005).
2. The BERS did not issue a statement from the agency head reiterating commitment to EEO and listing the name and phone number of the EEO Officer.

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\*\* Federal: EEOC. City and State: NYC and State Human Rights Laws.

3. Although the agency reported that the Director of Administration, Personnel and Security acts as the agency's EEO Officer - responsible for complaint intake/investigation - there was no formal notification to employees of the appointment. In addition, the agency's organizational chart did not include the EEO Officer title or reporting relationship.
4. The EEO Officer did not complete Basic Training for EEO Representatives conducted by the Department of Citywide Administrative Services (DCAS) – Division of Citywide Diversity and Equal Employment Opportunity or training conducted by another appropriate agency or school.
5. The agency did not provide EEO training to its current and future employees during or after the audit period.
6. The agency did not designate, or secure per agreement between the agency and another City agency, an employee of each gender for complaint intake/investigation.
7. Although the agency's building entrance and elevators are accessible to employees/applicant for employment with disabilities, the facility's restrooms are not wheelchair accessible – there are no grab bars, wide stalls, or low sink or bathroom fixtures.

**Be It Finally Resolved,**

that the Commission authorizes the Chair, Cesar A. Perez, Esq., to forward a letter to Executive Director Christine Bailey formally informing her of the findings with appropriate explanations and recommendations and requesting, pursuant to Chapter 36 of the City Charter, a response to these findings within thirty days of receipt of the letter indicating what corrective actions the BERS will take to bring it into compliance with the aforementioned policies and standards on equal employment opportunity.

Approved unanimously on September 13, 2012.

**Malini Cadambi Daniel**  
Commissioner

**Angela Cabrera**  
Commissioner

  
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Cesar A. Perez, Esq.  
Chair