



Cesar A. Perez, Esq.
Chair

Angela Cabrera
Malini Cadambi Daniel
Elaine S. Reiss, Esq.
Arva R. Rice
Commissioners

Charise L. Hendricks, PHR
Executive Director

Judith Garcia Quiñonez, Esq.
Deputy Director/Agency Counsel

253 Broadway
Suite 602
New York, NY 10007

212. 615. 8939 tel
212. 615. 8931 fax

September 18, 2014

Bill Chong
Commissioner
Department of Youth and Community Development
156 William Street
New York, NY 10038

Re: Resolution #2014/261C-26 Determination: Audit, Evaluation and Monitoring of the Department of Youth and Community Development *Discrimination Complaint and Investigation Procedures* from January 1, 2012 to December 31, 2013.

Dear Commissioner Chong:

On behalf of the members of the Equal Employment Practices Commission (Commission or EEPC), thank you and your agency for the cooperation extended to our staff during the course of this audit and evaluation. This letter contains the Commission's findings and determinations pertaining to the period covering January 1, 2012 to December 31, 2013.

Chapter 36, Section 831(d)(5) of the New York City Charter empowers this Commission to audit and evaluate the employment practices and procedures of city agencies and their efforts to ensure fair and effective equal employment opportunity for women and minority employees and applicants seeking employment. Sections 831(d)(2) and 832(c) authorize this Commission to make a determination that any agency's plan, program, procedure, approach, measure or standard does not provide equal employment opportunity, require appropriate corrective action and monitor the implementation of the corrective action it prescribes.

The Department of Youth and Community Development, which may herein be referred to as "the agency," falls within the Commission's purview under Chapter 36, Section 831(a) of the New York City Charter, which delineates 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 Commission has adopted *Uniform Standards for EEPC Audits*¹ and *Minimum Equal Employment Opportunity Standards for Community Boards* to assess agencies' practices and policies. These standards are founded upon and consistent with federal, state and local laws, regulations, procedures and policies including, but not limited to, the Citywide Equal Employment Opportunity Policy - Standards and Procedures to be Utilized by City Agencies; the New York City Human Rights Law (NYC Administrative Code, §§8-107(1)(a) and (d), 8-107.13, and 8-107.1); the Equal Employment Opportunity Commission's Instructions to Federal Agencies for EEO, Management Directive 715; the Americans with Disabilities Act and its Accessibility Guidelines; and the equal employment opportunity requirements of the New York City Charter. Prescribed corrective actions are consistent with the aforementioned parameters.

Since this Commission is empowered to review and recommend actions which each agency should consider including in its annual plan of measures and programs to provide equal employment opportunity (Annual EEO Plan), the audited agency should incorporate required corrective actions in its current EEO Program and prospective Annual EEO Plans.

Scope and Methodology

This Commission's audit methodology includes collection and analysis of the documents, records and data the agency provides in response to the EEPC preliminary interview questionnaires and document/information requests, which are sent to EEO professionals and others involved in EEO program administration. EEO professionals (including, but not limited to, past or current EEO Officers, Deputy or Co-EEO Officers, EEO Counselors, EEO Trainers, EEO Investigators, Disability Rights Coordinators,) and others involved in EEO program administration such as the General Counsel are given a two-week deadline to complete and return their individual questionnaires and requested documents. Applicable information from the agency's *Annual EEO Plans and Quarterly EEO Reports* are also reviewed.

The Commission's EEO Program Analysts also conduct additional research, follow-up discussions, and/or interviews with EEO professionals, when appropriate.

Description of the Agency

The Department of Youth and Community Development (DYCD) develops, coordinates and implements youth programs and activities, and is the designated Community Action Agency of the federal Community Services Block Grant Program in New York City. DYCD also performs the following: stimulates interest in the needs and priorities of youth and communities; oversees all youth employment programming and administers Workforce

¹ Corresponding audit/analysis standards are numbered throughout the document.



Investment Act funded youth employment services; awards contracts to a broad network of community-based organizations that provide programs and services that support youth and community development; and is the lead agency for the Interagency Coordinating Council on Youth.

DETERMINATIONS AFTER AUDIT AND ANALYSIS

Following are the corresponding audit standards for each subject area along with the EEPC's findings and required corrective actions, where appropriate:

I. ISSUANCE, DISTRIBUTION AND POSTING OF EEO POLICIES:

Determination: The agency is in compliance with the standards for this subject area.

1. Issue a general EEO Policy statement or memo reiterating commitment to EEO, declaring the agency's position against discrimination on any protected basis, advising employees of the names and contact information of EEO professionals, and attaching, or providing employees pertinent electronic links to, an EEO Policy/Handbook.
 - ✓ The Commissioner issued a policy memo entitled, *Commissioner's EEO Policy Statement* in January 2013, which reiterated commitment to EEO; declared the agency's position against discrimination on any protected basis; and advised employees of the names, titles, and contact information of EEO Professionals. The policy memo, issued via email, contained a link to the *Equal Employment Opportunity Policy, Standards and Procedures to Be Utilized by City Agencies* and addenda.
2. Distribute/Post a paper or electronic copy of the *Equal Employment Opportunity Policy, Standards and Procedures to Be Utilized by City Agencies* – or an agency EEO Policy that conforms to city, state and federal laws – for use by managers, supervisors, and legal, human resources and EEO professionals. Include, or attach as addenda: a policy against sexual harassment; uniform and responsive procedures for investigating discrimination complaints and providing reasonable accommodations; an up-to-date list of protected classes under NYC and NYS Human Rights Laws; and current contact information for the agency's EEO professionals, as well as federal, state and local agencies that enforce laws against discrimination.
 - ✓ The *Commissioner's EEO Policy Statement* memo – which included a link to the *Equal Employment Opportunity Policy, Standards and Procedures to Be Utilized by City Agencies* – was distributed via email, at EEO training sessions, and at new employee orientation sessions. The *Sexual Harassment Prevention Policy Statement* was distributed via email in July 2013. Current contact information for the agency's EEO Professionals was distributed via the *Commissioner's EEO Policy Statement* and the *Sexual Harassment Prevention Policy Statement*. In addition, the *Guidelines for Implementation of the City of New York's Discrimination Complaint Procedures* were posted on the agency's website and intranet.

II. TRAINING-DISCRIMINATION COMPLAINT AND INVESTIGATION PROCEDURE:

Determination: The agency is in compliance with the standards for this subject area.

1. Establish and implement an EEO training plan for new and existing employees to ensure that all individuals who work within the agency, including managers and supervisors, receive training on unlawful discriminatory practices under local, state and federal EEO laws; EEO rights and/or responsibilities; discrimination complaint and investigation procedures; prevention of sexual harassment; and reasonable accommodation procedures.
 - ✓ The agency established an EEO training program to educate new and existing employees about unlawful discriminatory practices under local, state, and federal laws. Fiscal Year 2012's training included *EEO Training for New Employees*; *Structured Interviewing Training* for managers and supervisors; *Sexual Harassment Prevention Training* for managers, supervisors, and line employees; and the Department of Citywide Administrative Services *Citywide Diversity and EEO Computer Based Training* for managers, supervisors, and line employees. The agency ensured each new and current employee received opportunities to attend biennial *EEO Diversity and Inclusion Training* of a minimum of one hour's duration, which included a discussion of the City's EEO Policy, the discrimination complaint procedures, reasonable accommodation procedures, ways to prevent a hostile work environment, retaliation, sexual harassment, and legal developments. The agency required new managers and supervisors to complete the Department of Citywide Administrative Services *Citywide Diversity and EEO Computer Based Training* within one month of their assuming supervisory or managerial responsibilities. As documented in Fiscal Year 2013's First Quarter report, eighty percent of employees received training.

III. DISCRIMINATION COMPLAINT AND INVESTIGATION PROCEDURES:

Summary of Complaint Activity: The Department of Youth and Community Development reported two external complaints were filed during the audit period (NOTE: The first complaint was filed on September 28, 2012 with the New York State Division of Human Rights. The Division determined that there was no probable cause. The second complaint was filed on May 25, 2012 in the U.S. District Court Southern District of New York (Case Number 12CV04114) and settled upon agreement of the parties on December 16, 2013). Because no internal complaints were filed, the Commission could not conduct a robust analysis of the agency's internal complaint and investigation procedures based on information and forms submitted, but concluded the following based on the information and forms submitted:

Determination: The agency is in compliance with the standards for this subject area.



**Equal Employment
Practices Commission**

1. Include in the complaint file a *Discrimination Complaint Form* or a complaint that captures the facts (including pertinent dates) that identify the respondent(s) with reasonable specificity and provide the essence of the circumstances which gave rise to the alleged discrimination.
 - ✓ Although no internal complaints were filed during the audit period, the agency's *Complaint of Discrimination* form allowed investigators to capture facts which would identify the respondent(s) with reasonable specificity, and provide the essence of the circumstances which gave rise to the alleged discrimination.
2. Serve the respondent with a notice of the complaint that includes the respondent's right to respond to the allegations, and right to be accompanied by a representative of his/her choice. Maintain in the complaint file documentation regarding the service of notice on the respondent.
 - ✓ The agency's *Content of Notice of Discrimination Complaint* form indicated the respondent's right to respond to the allegations and the right to be accompanied by a representative of his/her choice.
3. Issue and maintain written confirmation when a complaint is withdrawn or resolved by agreement of the parties.
 - ✓ The agency followed the *Guidelines for the Implementation of City of New York's Discrimination Complaint Procedures* which required that the principal EEO Professional notify the respondent in writing if the complainant withdrew the complaint and whether the investigation was terminated or continuing.
4. Take thorough notes, of words spoken and facts provided, during each interview. Include these notes in each complaint file. Word processed notes are preferred.
 - ✓ The agency followed the *Guidelines for the Implementation of City of New York's Discrimination Complaint Procedures* which required that the interviewer take thorough notes, as close to verbatim as possible, during each interview and review with witnesses (at the conclusion of the interview) the points contained in the notes to confirm accuracy and determined whether the interviewee had anything else to add.
5. Issue a Confidential Written Report within 90 days of the date the discrimination complaint was filed, although the investigation shall be commenced immediately.
 - ✓ The agency used the *Guidelines for the Implementation of City of New York's Discrimination Complaint Procedures* which required a confidential written report be issued less than ninety days of the date a discrimination complaint is filed. If, based upon the investigation, it is determined that an act of unlawful discrimination

occurred, a recommendation will be made to the agency head that appropriate corrective action be taken (which may include disciplinary action).

6. In rare circumstances where a complaint investigation cannot commence immediately, or where a confidential report cannot be issued within 90 days, a note shall be made in the complaint file explaining the reason for the delay and projecting a time frame for completion of the report. The complainant and respondent shall be notified of the delay in writing.

NOTE: Since no internal complaints were filed during the audit period, the Commission did not conduct further analysis in this area.

7. Generate a report labeled "Confidential" consisting of Facts, Analysis, Conclusion, Recommendation, and Agency Head's Review at the conclusion of each complaint investigation.

✓ The agency followed the *Guidelines for the Implementation of City of New York's Discrimination Complaint Procedures*, which required that the principal EEO Professional prepare a confidential written report as the result of an investigation and submit the report to the agency head for review.

8. The agency head reviews the EEO professional's report; promptly issues a written/electronic determination adopting, rejecting, or modifying the recommended action; and signs each final determination (via writing or electronically) to indicate it has been reviewed and adopted.

✓ The agency followed the *Guidelines for the Implementation of City of New York's Discrimination Complaint Procedures* which required the agency head to review the confidential report. In the case where an internal complaint is filed, the agency head is required to promptly issue a written/electronic determination adopting, rejecting, or modifying the recommendation action; and sign each final determination (via writing or electronically) to indicate it has been received and adopted.

9. In order for the agency to demonstrate it has a responsive procedure for investigating discrimination complaints, in accordance with the City Human Rights Law, the complaint procedure requires written communication informing the complainant and respondent of the conclusion and outcome of a complaint investigation

✓ The agency reported that no internal complaints were filed during the audit period, therefore no further analysis was conducted in this area.

10. Internal discrimination complaint files contain written indication of their outcomes and corrective action(s) taken as a result of the determination.



- ✓ During the audit period, no internal complaints were filed. The agency followed the *Guidelines for the Implementation of City of New York's Discrimination Complaint Procedures* which required that complaint files contain written indication of their outcomes and corrective action(s) taken as a result of the determination.

11. Notify the complainant and respondent in writing when the investigation by the EEO professional has been transferred because of the filing of an external complaint.

- ✓ The agency followed the *Equal Employment Opportunity Policy, Standards and Procedures to Be Utilized by City Agencies* which required that the principal EEO Professional notify the complainant and the parties who are subject of the complaint in writing that the investigation by the principal EEO Professional has been transferred because of the filing of the external complaint.

12. Establish a complaint tracking and monitoring system that permits the agency to identify the location, status, and length of time elapsed in the EEO complaint process, the issues and the bases of the complaints, the aggrieved individuals, and other information necessary to analyze complaint activity to identify trends.

NOTE: Since no internal complaints were filed during the audit period, the Commission did not conduct further analysis in this area.

13. Maintain EEO-related files in a secure area to ensure confidentiality.

- ✓ The agency verified that its EEO-related files are marked confidential and stored in a locked file cabinet in a private office.

14. Establish a procedure where the EEO professional, HR professional (or personnel responsible for employee discipline), and General Counsel review an employee's record for prior incidents of discriminatory conduct as part of the external complaint process.

- ✓ The General Counsel worked with the principal EEO Professional, ensuring that disciplinary referrals were managed and implemented. The General Counsel was also tasked with the responsibility for ensuring corrective actions resulting from EEO investigations were appropriately implemented as needed.

**IV. EEO AND REASONABLE ACCOMMODATIONS FOR EMPLOYEES/
APPLICANTS FOR EMPLOYMENT WITH DISABILITIES:**

Determination: The agency is in compliance with the standards for this subject area.

1. Ensure that information regarding employee rights and obligations, and the complaint, investigation and reasonable accommodation procedures are made available in appropriate alternative formats (i.e., large print, audio tape and/or Braille) upon request to employees and applicants for employment with disabilities.
 - ✓ Employees are informed during training sessions that accommodations are available, including alternative formats of the agency's policies. When alternative formats are requested, policies are modified to meet the needs of the employee or applicant (for example, the agency will enlarge the font of text to meet the needs of the visually impaired, or if requested, the person can be assigned a reader).
2. Document reasonable accommodation requests and their outcomes.
 - ✓ The agency documented reasonable accommodations requests and their outcomes via the *Request for Reasonable Accommodation Form*. Reasonable accommodations were provided to those with disabilities, for religious observances and practices, and for victims of domestic violence. Thirty-one reasonable accommodation requests were granted during the audit period including twenty-seven disability requests, three religious observance requests, and one domestic violence requests.

**V. RESPONSIBILITY FOR IMPLEMENTATION OF COMPLAINT INVESTIGATION PROCEDURES -
EEO PROFESSIONALS:**

Determination: The agency is in compliance with the standards for this subject area.

1. Appoint a principal EEO Professional to implement EEO policies and standards within the agency. The principal EEO Professional is trained and knowledgeable regarding city, federal and state EEO laws; the requirements of the agency's EEO policies, standards and procedures; and the prevention, investigation, and resolution of discrimination complaints.
 - ✓ The agency appointed a trained principal EEO Professional to implement EEO policies and standards within the agency. The principal EEO Professional received certificates of completion for attending the following training: Cornell University's School of Labor Relations: *EEO Studies* and *EEO Complaint Handling*, 2005 and 2007, respectively; *Effective Complaint Investigations* and *How to Handle Challenging Situations* from the Department of Citywide Administrative Services in May, 2012. The principal EEO Professional also attended the Equal Employment



Opportunity Commission's *EEOC New York Seminar* in June 2013 conducted by the U.S. Department of Labor's Job Accommodation Network.

2. Appoint at least one EEO professional of each gender to receive discrimination complaints and conduct investigations.
 - ✓ The agency appointed at least one EEO Professional of each gender (one female *EEO Officer* and one male *EEO Counselor/Senior Community Liaison*) to receive discrimination complaints and conduct investigations.
3. The principal EEO Professional works cooperatively and closely with the General Counsel in the implementation of the EEO policies and related procedures.
 - ✓ Although no internal complaints were filed during the audit period, the principal EEO Professional worked cooperatively and closely with the General Counsel in the development of EEO plans, reviewing the Citywide Equal Employment Database System (CEEDS) report, disciplinary matters, and managerial training initiatives.
4. The principal EEO Professional ensures that employees receive EEO training; supervises the EEO-related activities of other EEO professionals; ensures that EEO policies and complaint procedures are posted at each site where the agency conducts business; ensures that EEO policies and procedures are available in alternative formats (i.e., large print, audio tape and/or Braille); and provides guidance and assistance to agency managers, supervisors and human resource professionals in addressing issues relating to equal employment opportunity.
 - ✓ The principal EEO Professional's responsibilities included ensuring annual *EEO Diversity and Inclusion* training sessions were held, ensuring the agency was in compliance with EEO laws and policies, conducting discriminatory investigations as they arise, recommending corrective measures when appropriate, disseminating the agency head's EEO Policy memo and informing staff of their rights and responsibilities, ensuring posting and availability in alternative formats of EEO policies and complaint forms, serving as an advisor to senior management and staff on EEO-related issues, and preparing the *Annual EEO Plan and Quarterly Reports*.
5. The principal EEO Professional will monitor, analyze and report significant trends in the nature and disposition of discrimination complaint activity to provide the agency insight into the extent to which the agency is meeting its obligations under city, state and federal anti-discrimination laws and regulations.

NOTE: Since no internal complaints were file during the audit period, no further analysis was conducted in this area.



6. The principal EEO Professional reports directly to the agency head (or an approved direct report other than the General Counsel) in order to exercise the necessary authority and independent judgment to fulfill EEO responsibilities.
 - ✓ The principal EEO Professional reported to the Commissioner. This reporting relationship was indicated in the agency's organizational chart.

VI. RESPONSIBILITY FOR IMPLEMENTATION OF COMPLIANT INVESTIGATION PROCEDURES – GENERAL COUNSEL:

Determination: The agency is in compliance with the standards for this subject area.

1. The General Counsel assists the agency head in identifying and determining appropriate responses to EEO issues; and is responsible for the investigation of, and response to, external EEO complaints.
 - ✓ The General Counsel worked with the agency head to identify and determine appropriate responses to EEO issues. The agency's Office of Legal Affairs investigated external complaints.
2. The General Counsel works with the principal EEO Professional in the implementation of the agency's EEO policies and related procedures; is available to consult on internal EEO investigations; and informs the principal EEO Professional when external complaints or litigation involving EEO matters are brought against the agency.
 - ✓ The General Counsel's responsibilities included working with the principal EEO Professional in the implementation of the *Equal Employment Opportunity Policy Standards and Procedures to be Utilized by City Agencies* and related procedures, informing the EEO Officer when external complaints or litigation involving EEO matters were brought against the agency, and consulting on internal EEO investigations as they arise. The General Counsel developed and implemented a supervisory training program where employees were informed of their roles and responsibilities regarding EEO, human resources, and disciplinary matters; ensured that the principal EEO Professional was involved in discussions regarding personnel matters; and provided the principal EEO Professional with the dispositions of external cases for inclusion in the complaint tracking system.
3. The General Counsel reviews the agency's annual number of EEO complaints and the agency's obligations as a result of corrective actions required under court decrees and/or governmental audits on an annual basis.

NOTE: No court decrees/government audits were conducted during the audit period in review, therefore no further analysis was conducted in this area.

4. The General Counsel tracks dispositions of external complaints and reports trends, issues and problems to agency leadership for appropriate action.



- ✓ A discussion was held between the General Counsel and the principal EEO Professional to determine if an increase in the amount of discrimination complaints occurred as well as to document trends in the type of complaints received. Cases and dispositions were given to the principal EEO Professional to be recorded in the Complaint Tracking System. The Office of Legal Affairs handled all external EEO complaints and maintained files on external EEO complaints and litigations.

VII. FINAL ACTION FOR AGENCY HEAD:

After implementation of the EEPC's corrective actions, if any:

1. The agency head distributes a memorandum informing employees of the changes implemented in the EEO program pursuant to the EEPC's audit/analysis and re-emphasizing the agency head's commitment to the EEO program.
Final Action: Distribute a memorandum signed by the agency head informing employees of the changes implemented in the EEO program pursuant to the EEPC's audit/analysis and re-emphasizing the agency head's commitment to the EEO program.

Conclusion

The agency's Discrimination Complaint and Investigation Procedures adhered to the standards required to establish compliance; therefore, no corrective action is required at this time.

Pursuant to Chapter 36 of the New York City Charter, your agency has the *option* to respond to this *preliminary determination*, but must respond to our Final Determination, if corrective action is required.

Optional Response to preliminary determination: If submitted, your optional response should indicate, with attached documentation, what steps your agency has taken or will take to implement the prescribed corrective actions, and must be received in our office within 14 days from the date of this letter. No extensions will be granted for the *option* to respond to the *preliminary determination*.

(Optional Conference) During the Optional Conference, we will discuss the immediate steps your agency should take and address questions regarding your agency's implementation of the prescribed corrective action(s).

(No Response Option) If your agency does not respond to this preliminary determination within 14 days, it will become the EEPC's Final Determination.

Mandatory Response to Final Determination: Following this preliminary determination, the EEPC will mail a Final Determination where we may modify or eliminate the corrective actions based on verified information; identify remaining action which requires further monitoring in order to ensure implementation; and assign a mandatory compliance-



monitoring period of up to 6 months for this purpose. Pursuant to Chapter 36 of the New York City Charter your agency must respond to our Final Determination within 30 days. Your response to the Final Determination will initiate the compliance monitoring period.

In closing, we want to thank you and your staff for the cooperation extended to the Equal Employment Practices Commission's EEO Program Analysts during the course of our audit and analysis.

Respectfully Submitted by,

A handwritten signature in black ink, reading "Ciera T. Hearn". The signature is written in a cursive style with a horizontal line underneath.

Ciera T. Hearn, EEO Research Specialist

Approved by,

A handwritten signature in black ink, reading "Charise L. Hendricks". The signature is written in a cursive style with a horizontal line underneath.

Charise L. Hendricks, PHR
Executive Director

cc: Lisa Thornton, Principal EEO Professional