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July 25, 2014

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Charise L. Hendricks, PHR
Executive Director

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Deputy Director/Agency Counsel

Re: Preliminary Determination: Audit, Evaluation and Monitoring of the Department of Health and Mental Hygiene's *Discrimination Complaint and Investigation Procedures* from January 1, 2012 to December 31, 2013.

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Dear Commissioner Bassett:

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 preliminary 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 Health and Mental Hygiene, 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



**Equal Employment
Practices Commission**

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

Pursuant to the provisions of Chapter 22 of the New York City Charter as amended in 2001, the agency was created via the merger of the New York City Department of Health and the Department of Mental Health, Mental Retardation, and Alcoholism Services.

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



**Equal Employment
Practices Commission**

The Department of Health and Mental Hygiene's (DoHMH) mission is to preserve and promote the physical health and mental health of all New Yorkers, and to promote the realization of full potential of those with disabling conditions. The Division of Mental Hygiene is responsible under the City Charter and the State Mental Hygiene law for the planning, contracting, monitoring, and evaluation of all local mental health, mental retardation and alcoholism services in New York City as well as the Early Intervention Program. The DoHMH administers over 1,600 programs through more than 400 contracts with over 300 voluntary agencies, and 14 municipal hospitals.

DoHMH's Board consists of nine members other than the Chairperson and the Chairperson of the Mental Hygiene advisory board.

PRELIMINARY 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 an agency EEO Policy statement or memo from the agency head to all employees 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 providing employees pertinent electronic links to the EEO Policy/Handbook/Addenda.
 - ✓ The agency head issued an EEO Policy statement to all employees reiterating commitment to EEO; a nondiscrimination for persons with disabilities policy statement declaring the agency's position against discrimination on any protected basis; a sexual harassment policy statement; and a derogatory remarks policy statement. Each statement provided employees with the names and contact information of EEO professionals, and provided electronic links to the EEO Policy, handbook, and addenda.
2. Distribute the Citywide or an agency EEO Policy – in paper or electronic copy – to legal, human resources and EEO professionals, as well as managers and supervisors. At minimum, include, or attach as addenda: a policy against Sexual Harassment; uniform and responsive procedures for investigating discrimination complaints and providing reasonable accommodations that conform to city, state and federal laws; 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.



**Equal Employment
Practices Commission**

- ✓ In July, 2013 the agency distributed, via email, to human resources and EEO professionals, as well as managers and supervisors, the *Addendum to the Citywide EEO Policy* which included a link to the Citywide EEO Policy and attached policy against Sexual Harassment; uniform and responsive procedures for investigating discrimination complaints and providing reasonable accommodations; 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 .
3. Post – on electronic bulletin boards, intranet sites, and at each facility – the EEO policies and complaint procedures. Post the agency head’s EEO Policy Statement wherever the EEO policy and addenda or the EEO handbook is posted.
- ✓ The agency posted its *Equal Employment Opportunity Policy Handbook and Discrimination Complaint Procedures Guidelines* on its intranet site *SharePoint*, and on bulletin boards at each location where it conducted business. The *Equal Employment Opportunity Policy and Discrimination Complaint Procedures Guidelines* included the Commissioner’s EEO Policy Statements.

II. TRAINING-DISCRIMINATION COMPLAINT AND INVESTIGATION PROCEDURE:

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

1. Establish a program to educate employees about unlawful discriminatory practices, under local, state and federal laws; employee rights; complaint procedures; prevention of sexual harassment; and reasonable accommodation procedures.
- ✓ The agency established a program to educate employees about unlawful discriminatory practices, under local, state and federal laws; employee rights; complaint procedures; prevention of sexual harassment; and reasonable accommodation procedures. Training was provided to newly hired employees as part of mandatory orientation sessions upon hire. Every employee was required to complete the *DCAS Computer Based Training* bi-annually for every year of the audit period. In 2012, 6,174 employees, including 1,058 Supervisors/ Managers received EEO training conducted by the agency’s EEO Trainer. In 2013, 5,185 employees, including 803 Supervisors/Managers, received EEO training or participated in an *EEO Talk Session* hosted by the agency.

III. DISCRIMINATION COMPLAINT AND INVESTIGATION PROCEDURES:

The agency reported that there were a total of 57 complaints filed during the audit period: 26 received no probable cause/unsubstantiated determinations, 2 received probable cause/substantiated determinations, 5 were withdrawn, 2 were resolved with mediation, 14



were administratively closed, 5 were closed due to filing of an external complaint and 3 were pending at the time of this analysis.

There were a total of 37 external complaints filed against the agency during the audit period: 27 received no probable cause/unsubstantiated determinations, 3 received probable cause determinations, 1 was resolved with mediation, 2 were administratively closed and 4 were pending at the time of this analysis. (A breakdown is included in Appendix 1)

In response to the EEPC's request, the agency submitted the final ten internal complaint files for the audit period: 131001, 131101, 131102, 131201, 131203, 131204, 131205, 131206, 131207, and 131208. File 131203 did not fall within the purview of the EEPC audit, therefore; the following findings are based on the examination of remaining nine discrimination complaint files.

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

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.
 - ✓ The agency's *Complaint of Discrimination* form allowed the investigator to capture the facts; pertinent dates, the identity of the respondent(s), and provided 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 served each respondent with a *Notice of Complaint* that included the respondent's right to respond to the allegations, and right to be accompanied by a representative of his/her choice. The notification also explained the complaint process and timetable, and provided an electronic link to the Agency's EEO procedures. The notification also included statements on confidentiality, anti-retaliation.
3. Issue and maintain written confirmation when a complaint is withdrawn or resolved by agreement of the parties.
 - Although, the agency's *EEO Complaint and Investigation Procedures* required the EEO Office to notify the respondent in writing when the complainant had withdrawn



**Equal Employment
Practices Commission**

the complaint and maintain a copy of this notice in the complaint file; file 131101, which was withdrawn, did not contain such notification. Corrective action is required.

Corrective Action: Issue and maintain written confirmation when a complaint is withdrawn or resolved by agreement of the parties.

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.
 - ✓ Each complaint file included word processed notes, referred to as the *Investigator's Report*, which captured the details of the complaint.
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 *Investigator's Reports* were completed within 90 days of the date the Discrimination Complaint form was completed.
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.
 - ✓ The agency reported no delays or backlog of complaint investigations during the audit period. The investigation of each complaint commenced immediately and the *Investigator's Reports* completed promptly following the conclusion of the investigations.
7. Generate a report labeled "Confidential" consisting of Facts, Analysis, Conclusion, Recommendation, and Agency Head's Review at the conclusion of each complaint investigation.
 - ✓ At the conclusion of each complaint investigation, the investigator produced an *Investigator's Report* which included five sections; *Introduction*, *History of Investigation* (recorded chronologically), *Statement of Allegations and Responses*, *Investigator's Notes* and *Conclusion and Recommendation*. The EEO Officer used the *Investigator's Reports* as a basis to produce the *Final Agency Decision (FAD)* reports which were signed by the Deputy Commissioner of Administration.
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 *Final Agency Decisions* were signed by the Deputy Commissioner of Administration, a direct report to the agency head, to indicate it had been reviewed 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.
- ✓ For each complaint, the *Final Agency Decision*, which included the conclusion and outcome of the complaint investigation, was sent via certified mail to the complainant; the respondent received a copy in person from the EEO office.
10. Internal discrimination complaint files contain written indication of their outcomes and corrective action(s) taken as a result of the determination.
- ✓ Each internal discrimination complaint file contained a copy of the *Investigator's Report* and *Final Agency Decision*.
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.
- ✓ None of the files submitted were transferred because of the filing of an external complaint, therefore; no further analysis was conducted in this area.
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.
- ✓ The agency established an electronic complaint tracking system that identified the status, length of time elapsed in the EEO complaint process, bases for the complaint, and the name(s) of the aggrieved individual(s). All EEO complaint files were maintained in the sole EEO Office; therefore the complaint tracking system did not indicate the location of the file.
13. Maintain EEO-related files in a secure area to ensure confidentiality.
- ✓ All EEO- related files were maintained in the EEO Office at the agency headquarter. The files were located behind two locked doors, in file cabinets that were secured with a lock and key, only accessible to EEO staff, the General Counsel, and other appropriate staff as identified by the agency head.



**Equal Employment
Practices Commission**

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.

- ✓ All external complaint investigations were handled by the General Counsel's office. The General Counsel's office searched the electronic EEO complaint tracking database to review employees' records for prior incidents of discriminatory conduct as part of the external complaint process.

**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.

- ✓ Although there were no requests for alternate formats, the agency's *EEO Complaint and Investigation Procedures* held the EEO Officer responsible to provide, upon request, large-print computer display programs, or materials in alternative formats, including Braille, audio tape or enlarged print to employees and applicants for employment with a disabilities.

2. Document reasonable accommodation requests and their outcomes.

- ✓ Reasonable accommodation requests are made using the *Reasonable Accommodation Request* form. The request form documented the outcome of each request. All requests were maintained in a confidential file within the EEO Office.

**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 principal EEO Professional to implement EEO policies and standards within the agency. The EEO Director received a *Basic Training for EEO*



**Equal Employment
Practices Commission**

Representatives Certificate of from the Department of Citywide Administrative Services in 2009; attended an EEO Counselor Refresher Training conducted by the Equal Employment Opportunity Commission in 2005; and received EEO Alternative Dispute Resolution Training Certificate from the United States Postal Service in 2005, and Federal Dispute Resolution Training, in 2006.

NOTE: Since the audit period, the agency has appointed a new Chief Diversity & EEO Officer who reports to the First Deputy Commissioner. The Chief Diversity & EEO Officer has a J.D. Degree from Rutgers School of Law and worked as an Assistant Corporation Counsel in the Labor and Employment Law Division of the New York City Law Department. The Chief Diversity & EEO Officer will liaise with the Office of Citywide Diversity and EEO to assist with workforce planning and diversity management, including strategies for recruitment, training and staff development at the Department of Health; oversee the investigation of internal EEO Complaints and provide recommendations for corrective action to agency head.

2. Appoint at least one EEO professional of each gender to receive discrimination complaints and conduct investigations.
 - ✓ The agency appointed one male EEO Officer, one male EEO Counselor, and two female EEO Counselors 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.
 - ✓ The principal EEO Professional and General Counsel worked cooperatively to implement EEO related procedures by meeting in instances when the principal EEO Professional prepared findings of discrimination.
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 ensured that employees received training and EEO policies and complaint procedures were posted at each site where the agency conducted business and on the agency intranet; supervised EEO related activities of other EEO professionals; and was responsible to provide, upon request, EEO policies and procedures in alternate formats. The EEO Professional also provided guidance



**Equal Employment
Practices Commission**

and assistance to agency managers, supervisors and human resource professionals in addressing issues relating to EEO.

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.
 - ✓ The principal EEO Professional monitored all case activity and trends, and routinely shared pertinent information with the EEO Team. The Principal EEO Professional discussed case activity, timeliness, trends, and proactive approaches to prevent and resolve problems with other members of the EEO Office.
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 reports directly to the agency head, this reporting relationship is reflected in the agency's organization 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's office was responsible for the investigation of all external complaint investigations. The General Counsel met with the agency head to debrief on litigations and cases as needed.
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 was available to consult on internal EEO complaint investigations and informed the principal EEO Professional when external complaints of litigation involving EEO matters were brought against the agency.



**Equal Employment
Practices Commission**

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.
 - ✓ The agency reported no court decrees were in effect during the audit period. The *Discrimination Complaint Procedures Guidelines* required that when determining the appropriate disciplinary action, the agency's General Counsel should be consulted. The Office of the General Counsel prepared reports on the annual number of EEO complaints and submitted them to the EEO Office for inclusion in the agency's quarterly reports on EEO Activity.
4. The General Counsel tracks dispositions of external complaints and reports trends, issues and problems to agency leadership for appropriate action.
 - ✓ The General Counsel worked with, and was advised by, the Law Department on settlements and verdicts. The General Counsel reported the status of external cases quarterly to the EEO office.

VII. FINAL ACTION FOR AGENCY HEAD: After implementation of the EEPC's corrective actions:

1. 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.

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

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.

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).



**Equal Employment
Practices Commission**

(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,

Ilacia N. Zuell, EEO Program Analyst

Approved by,

Charise L. Hendricks, PHR
Executive Director

c: James Hallman, Principal EEO Professional

Appendix – 1
Summary of Complaint Activity
(Fiscal years: 2012 and 2013)

Department of Health and Mental Hygiene

Employment Action complained of for internal and external complaints filed during FY 2012.

Agency: DOHMH

	INTERNAL COMPLAINTS (#)	EXTERNAL COMPLAINTS (#)
TOTAL NUMBER OF COMPLAINTS	37	18
Recruitment	1	
Testing		
Hiring	1	
Work Assignments	6	4
Transfer		1
Salary	4	1
Benefits	1	
Leave		
Performance Evaluation	3	1
Promotion	4	
Demotion	3	2
Training Opportunities		
Transfer		
Discipline	3	1
Discharge		7
Working Conditions	10	4
Others: (Specify) Sexual Harassment	2	

F. Total Number of Reasonable Accommodation Request Received during FY 2012.

Disability 53 Religion 2
 Status as Victim of Domestic Violence, Sex Offense or stalking 0

Employment Action complained of for internal and external complaints filed during FY 2013.

Agency Name: DOHMH

	INTERNAL COMPLAINTS (#)	EXTERNAL COMPLAINTS (#)
TOTAL NUMBER OF COMPLAINTS	20	19
Recruitment		
Testing		
Hiring		
Work Assignments	3	4
Transfer		
Salary	4	
Benefits		
Leave		1
Performance Evaluation	2	
Promotion		1
Demotion		1
Training Opportunities		
Transfer	5	
Discipline		3
Discharge		5
Working Conditions	6	4
Others: (Specify) Sexual Harassment	4	2

F. Total Number of Reasonable Accommodation Request Received during FY 2013.

Disability 72 Religion 4
Status as Victim of Domestic Violence, Sex Offense or stalking _____