



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

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Susan Panepento  
Acting Director  
Office of Collective Bargaining  
100 Gold Street, 4th Floor  
New York, New York 10038

Re: Preliminary Determination: Audit, Evaluation and Monitoring of the Office of Collective Bargaining's *Discrimination Complaint and Investigation Procedures* from January 1, 2012 to December 31, 2013.

Dear Director Panepento:

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 Office of Collective Bargaining, 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,



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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*<sup>1</sup> 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 New York City Office of Collective Bargaining ("OCB") is an independent, impartial agency authorized, through the Board of Collective Bargaining and the Board of Certifications, to resolve questions concerning union representation, issues concerning the collective bargaining process (including contract mediations and impasses), claims of improper labor

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



practices (including discrimination based on union activity, refusal to bargain, and breach of the duty of fair representation), and the administration of the parties' contractual arbitration process.

## PRELIMINARY DETERMINATION 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 partial 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.
- ✓ In 2011, the agency head issued via email an EEO Policy entitled *Office of Collective Bargaining's Equal Employment Opportunity policy*, in lieu of an EEO policy statement. It reiterated the agency's commitment to fair employment practices for employees; declared that "everyone who works at OCB is protected by federal, state, and local employment laws"; and advised employees of the names and contact information of the EEO Officers.
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.
- ✓ A copy of the *Office of Collective Bargaining's Equal Employment Opportunity policy* was distributed via email for use by managers, supervisors, and legal, human resources and EEO professionals, and a copy was also posted on the agency's bulletin board in its facilities. It included sections entitled, *General Anti-Discrimination Protections*, which contained an up-to-date list of protected classes under NYC and NYS Human Rights Laws, *Sexual Harassment, Disabilities, Religion, 55-a Program*, and provided employees with the current contact information for the agency's EEO professionals. In addition, the agency distributed to all employees a memorandum entitled, *Statement From the Director Regarding the Office of Collective Bargaining's Reasonable Accommodation*



Policy and a memorandum entitled, *Statement From the Director Regarding the Office of Collective Bargaining's EEO Complaint and Investigation Procedure*.

- The agency's Equal Employment Opportunity Policy did not include current contact information of federal, state and local agencies that enforce laws against discrimination. **Corrective Action Required**.

**Corrective Action #1:** Include in the agency's EEO Policy current contact information for federal, state and local agencies that enforce laws against discrimination.

## **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 implemented an EEO training plan to ensure that all employees received training on unlawful discriminatory practices. New and existing employees completed mandated *Citywide Diversity and Equal Employment Opportunity Computer Based Training* offered by the Department of Citywide Administration Services every two years, which included training on EEO rights and responsibilities, discrimination complaint and investigation procedures, prevention of sexual harassment, and reasonable accommodation procedures.

## **III. DISCRIMINATION COMPLAINT AND INVESTIGATION PROCEDURES:**

**Summary of Complaint Activity:** The Office of Collective Bargaining reported that no internal or external discrimination complaints were filed during the audit period. The following findings were concluded based on the information and forms submitted.

**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.



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✓ The agency's *Complaint Intake Questionnaire* requested the basis and the circumstances which gave rise to the discrimination complaint, the identity of the complainant, and the date the alleged discrimination occurred.

➤ The agency's *Complaint Intake Questionnaire* did not request the identity of the respondent. **Corrective Action Required.**

**Corrective Action #2:** 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.

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 *EEO Complaint and Investigation Procedures* did not include a requirement to serve the respondent with a notice of the complaint that included the respondent's right to respond to the allegations, and right to be accompanied by a representative of his/her choice. **Corrective Action Required.**

**Corrective Action #3:** Include in the agency's complaint and investigation procedures a requirement to 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.

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

➤ The agency's *EEO Complaint and Investigation Procedures* did not require the issuance or maintenance of written confirmation when a complaint is withdrawn or resolved by agreement of the parties. **Corrective Action Required.**

**Corrective Action #4:** Include in the agency's complaint and investigation procedures a requirement to 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.

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

5. Issue a Confidential Written Report within 90 days of the date the discrimination complaint was filed, although the investigation shall be commenced immediately.

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

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 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's *EEO Complaint and Investigation Procedures* did not require an EEO Professional to generate a confidential report consisting of Facts, Analysis, Conclusion, Recommendation, and Agency Head's Review at the conclusion of each complaint investigation. **Corrective Action Required.**

**Corrective Action #6:** Include in the agency's complaint and investigative procedure a requirement that the EEO Professional generates a confidential written report consisting of Facts, Analysis, Conclusion, and Recommendation for the agency head's review at the conclusion of each complaint investigation.

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's *EEO Complaint and Investigation Procedures* did not require the agency head to review the EEO professional's report; promptly issue a written/electronic determination adopting, rejecting, or modifying the recommended action; or sign each final determination to indicate it had been reviewed and adopted. **Corrective Action Required.**

**Corrective Action #7:** Include in the agency's complaint and investigation procedures a requirement that 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.

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's *EEO Complaint and Investigation Procedures* did not require written communication informing the complainant and respondent of the conclusion and outcome of a complaint investigation. **Corrective Action Required.**

**Corrective Action #8:** Include in the agency's complaint and investigation procedures a requirement that communication informing the complainant and respondent of the conclusion and outcome of a complaint investigation be in writing.

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

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

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's *EEO Complaint and Investigation Procedures* did not require written notification to the complainant and respondent when the investigation by the EEO professional had been transferred because of the filing of an external complaint. **Corrective Action Required.**

**Corrective Action #9:** Include in the agency's complaint and investigation procedures a requirement to 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.

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 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.

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

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.

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

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

Determination: The agency is in partial 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.

- The agency did not demonstrate that information regarding employee rights and obligations, and the complaint, investigation and reasonable accommodation procedures were made available in appropriate alternative formats upon request to employees and applicants for employment with disabilities. Corrective Action Required.

Corrective Action #10: Ensure that information regarding employee rights and obligations, and the complaint, investigation and reasonable accommodation procedures is 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.

2. Document reasonable accommodation requests and their outcomes.

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

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

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





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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 the Executive Assistant as principal EEO Professional responsible for the implementation of EEO policies and standards within the agency. The principal EEO Professional received certification for the completion of: *Five-Week Training for Equal Employment Opportunity Professionals* in 2003, and *Citywide Diversity & Inclusion Training "Everybody Matters"* in 2013, both administered by the Department of Citywide Administrative Services.
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 (i.e. a female *principal EEO Professional*, and a male *EEO Counselor/Investigator*) 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 was responsible for working with the General Counsel, in investigating complaints and incidents, researching the applicable policies and law, and reviewing and deciding the findings.
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 head, managers, supervisors and human resource professionals in addressing issues relating to equal employment opportunity.
  - ✓ The principal EEO Professional ensured that all employees completed mandated *Citywide Diversity and EEO Computer Based Training* every two years; ensured that EEO policies and complaint procedures were posted on the agency's bulletin board; provided guidance to the agency head in addressing issues relating to equal employment opportunity; and responded to reasonable accommodation requests. (See Section IV.1., for information regarding the availability of policies in alternative format.)
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 complaints were filed during the audit period, the Commission did not conduct further analysis 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 directly to the agency head regarding EEO responsibilities, discrimination complaints, and requests for reasonable accommodation. In addition, the agency's EEO Policy stated that the principal EEO Professional had the authority to recommend to the Office of Collective Bargaining that appropriate action be taken against any person who has engaged in discriminatory behavior.
  - The organizational chart did not indicate a direct reporting relationship between the principal EEO Professional and the agency head (or an approved direct report other than the General Counsel). **Corrective Action Required.**

**Corrective Action #11:** Indicate the reporting relationship between the principal EEO Professional and agency head (or a direct report other than the General Counsel) in the agency's organizational chart, EEO Policy and Annual EEO Plan.

**VI. RESPONSIBILITY FOR IMPLEMENTATION OF COMPLAINT 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 was responsible for providing the agency head direction in identifying the appropriate resources to respond to EEO issues; and receiving and reviewing external EEO complaints, and directing them to the Law Department.
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 responsible for working with the principal EEO Professional in reviewing EEO issues, analyzing relevant policies and deciding on a course of action, and reviewing internal EEO complaints.



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: The agency reported no discrimination complaints were filed internally or externally and no corrective actions under court decrees were in effect during the period in review. Therefore, the Commission did not conduct further analysis in this area.

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

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

#### **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**

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).

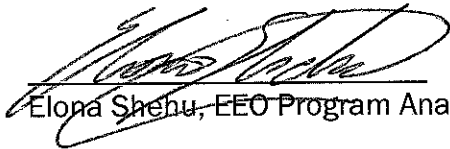
*(No Response Option)* If your agency does not respond to this preliminary determination within 14 days, it will become the EEPC's Final Determination.



*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,



Elona Shehu, EEO Program Analyst

Approved by,



Charise L. Hendricks, PHR  
Executive Director

c: Amy Villafane, Principal EEO Professional