

NYC
**Equal Employment
Practices Commission**

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November 27, 2012

Christine Bailey
Executive Director
Board of Education Retirement System
65 Court Street, 16th Floor
Brooklyn, NY 11201-4965

RE: Final Determination Pursuant to the Audit of the Board of Education Retirement System's (BERS) Equal Employment Opportunity Program from January 1, 2009 to December 31, 2011

Dear Ms. Bailey:

On behalf of the Equal Employment Practices Commission (EEPC), I want to thank you for your October 16, 2012 response to our September 13, 2012 Letter of Preliminary Determination regarding the referenced audit.

As we indicated in our Preliminary Determination Letter, our findings and recommendations are based on: 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.

After reviewing your response, our Final Determination is as follows:

Agree

We agree with your responses to the following EEPC recommendations, pending documentation that can be attached to your reply or provided during the compliance period:

Recommendation #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.

Your Response:

The Board of Education Retirement System (BERS), will be setting up a meeting with the Department of Education's (DOE), Office of Equal Opportunity in November 2012 to establish an EEO Policy specifically for BERS, which essentially will mirror that of the DOE's. Addenda will be included to address sexual harassment, uniform complaints and reasonable accommodation procedures that conform to Federal, City and State laws regarding discrimination in employment.

Recommendation #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.

Your Response:

BERS will be issuing a statement from the agency head reiterating commitment to EEO and will list the name and contact information of the EEO Officer. BERS will also post EEO information online, which will be available to every staff member.

Recommendation #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.

Your Response:

The agency organizational chart will reflect the direct reporting of the EEO Officer to the Executive Director.

Recommendation #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.

Your Response:

The EEO Officer will be scheduling training sessions with DCAS in regard to federal, state and city EEO laws and procedures and will obtain a certificate of completion.

Recommendation #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.

Your Response:

BERS will be developing an EEO training plan to ensure that all individuals who work for the agency will be trained concerning EEO-related policies, rights and responsibilities.

Recommendation #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.

Your Response:

BERS will be approaching its Board of Trustees to extend its head count in order to hire at least two EEO Representatives as suggested.

EEPC Note:

We agree with the agency's intention to address the recommendation. For clarity, the agency may designate BERS employees, of each gender, for complaint intake/investigation or partner with another agency in order to address this recommendation.

Disagree

For the following reason, hereafter identified as EEPC rationale, we disagree with your response to the following EEPC recommendation:

Recommendation #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.

Your Response

Access to the building is not within our control; the building is managed by TEMPCO and controlled by the DOE. The DOE should be contacted in regard to compliance with accessibility to the building and use of bathroom facilities to persons with disabilities, so they can have proper access to these areas. Moreover, the DOE is the responsible agency to develop a plan to

demonstrate in satisfaction of your recommendation. Lastly, the DOE is the agency to respond to whether a request for waiver of the requirements for the alteration of the existing building is necessary.

EEPC Rationale

Since agencies are responsible for ensuring compliance with all federal, state, and local laws pertaining to persons with disabilities, the BERS is responsible for developing a plan to demonstrate accessibility for its facilities.

Conclusion

Pursuant to section 832 of the New York City Charter, this Commission will initiate a compliance monitoring period of up to six months. However, you may respond to the aforementioned determinations prior to the initiation of audit compliance.

Please issue a written response within thirty days. Consistent with §815(a)(19), this Commission requires that the written response is signed by the agency head. EEPC Counsel and Director of Compliance, Judith Garcia Quiñonez, Esq., or her designee will then meet with your agency's EEO Officer to establish and initiate an audit compliance monitoring period.

In closing, we want to thank you and your staff for your cooperation during the audit process. We look forward to a mutually satisfactory compliance monitoring period.

Sincerely,


Charise L. Hendricks, PHR
Interim Executive Director

CC: Noro Healey, EEO Officer, BERS