



Department of
Homeless Services

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Robert V. Hess
Commissioner

33 Beaver Street
17th Floor
New York, NY 10004

212.361.8000 tel
212.361.8001 tty
212.361.7977 fax

June 10, 2008

Ernest F. Hart
Chairman
Equal Employment Practices Commission
40 Rector Street, 14th Floor
New York, NY 10006

Re: Resolution #08/01-071/Preliminary Determination Pursuant to the Audit of the Department of Homeless Services (DHS) and its Compliance with the City's Equal Employment Opportunity Policy from January 1, 2005 through June 30, 2006

Dear Chairman Hart:

I am writing regarding the Preliminary Determination to the Audit of the Department of Homeless Services (DHS) dated March 20, 2008. Thank you for this opportunity to respond.

I share your commitment to ensuring equal opportunity for all DHS employees and applicants, and to strict adherence to the Citywide EEO Policy. Ensuring a workplace free from unlawful bias is integral to our ability to carry out our mission of reducing homelessness. Bigotry of any kind is not only wrong; it reduces our efficiency and distracts us from our mission.

In keeping with that commitment, since the end of the audit period, the agency has made programmatic changes to the functioning of its Equal Opportunity Affairs) Office (the "EOA Office" or "EOA") and has changed the reporting relationship of its EEO Officer consistent with our commitment to EEO principles. We address these changes in detail below.

In this response, I discuss the recommendations of the Commission that the agency is in compliance with; our efforts to adopt other of its recommendations; and the few recommendations where DHS differs with the position expressed by the Equal Employment Practices Commission.

Of the Commission's 17 recommendations, DHS is compliant with six, has plans to implement an additional eight, and disagrees with three.

Recommendations with which DHS Is Compliant

Recommendation No. 5

- All relevant complaint files should include copies of letters to the complainants and respondents regarding the EEO office's determinations.

Response

Upon completing all EEO investigations, letters are sent to the complainants and respondents informing them of the EOA's determinations. The Preliminary Determination letter lists six cases (file Nos. 06042, 06046, 06044, 06047, 06037 and 06043) that did not include written notices of the EOA's determinations.

However, the complete and original files maintained in the EOA for Case Nos. 06042, 06046, 06047, 06037 and 06043 all include determination letters. Copies of these letters are attached to this response as ~~Appendix 1~~. With respect to Case No. 06044, the respondent passed away and the complainant withdrew her complaint. Accordingly, determination letters were not warranted.

Recommendations Nos. 9 and 10

- At the conclusion of a discrimination complaint investigation, the EEO professional should prepare a confidential written report in accordance with the Discrimination Complaint Procedure Implementation Guidelines.
- The agency head should sign each confidential report to indicate that it has been reviewed and whether the recommendation, if any, is approved and adopted.

Response

At the conclusion of every internal investigation, a written confidential report is prepared detailing the complainant's allegations, the investigation conducted, the determination of the EOA and recommended actions regarding that determination. That confidential report is submitted to the Commissioner for his review and signature.

In conjunction with this audit, the agency submitted ten case files. With the exception of Case No. 06044 where the respondent passed away, in each case a written confidential report was reviewed and signed by the Commissioner. Copies of these signed reports are attached to this response as ~~Appendix 3~~.

Recommendations Implemented Since the End of the Audit Period

Recommendation No. 13

It is the Commission's position that appropriate documentation of meetings and other communications between the EEO officer and the direct report to the agency head regarding EEO program operational decisions be maintained.

of the audit period, I have instituted monthly meetings with the Executive
regarding EEO program operational decisions. For these meetings, type-
follow-up item reports are prepared and maintained.

Recommendation No. 14

- The EEO officer must report directly to the agency head, or if approved by DCAS, to a direct report to the agency head on all EEO matters.

Response

Since the end of the audit period, the reporting structure of the EOA Office has changed. The EOA Officer now reports directly to me on all EEO matters and reports to the Chief-of Staff on day-to-day operational matters. This reporting structure has been approved by DCAS.

Recommendation No. 15

- To ensure fair employment practices, the agency head should direct the human resources department to include the EEO officer in the development of recruitment strategies and the selection of recruitment media.

Response

Since the end of the audit period, the Agency's hiring and recruiting process has changed. All Personnel Action Requests are now reviewed by the EOA Officer. Further, with respect to open leadership positions within the agency, the personnel liaisons consult with the EOA Officer regarding the use of appropriate recruiting sources.

Recommendation that DHS is Taking Actions to Implement

Recommendation No. 4

- The DHS should ensure that EEO policies and procedures are available in alternate formats (i.e., large print, audio tape and/or Braille).

Response

DHS has produced large print versions of the Citywide EEO Policy and will make them available to employees and applicants.

Recommendation No. 6

- All relevant complaint files should include word processed notes of the discrimination investigation interviews.

Response

The EOA does more than maintain notes of discrimination investigation interviews. The current practice is to tape record all discrimination investigation interviews and to summarize them in word processed memoranda that become part of the investigation files. Tape recordings of interviews are maintained only during the course of an investigation and, accordingly, do not become part of the permanent investigation file.

Recommendation No. 7

- Whenever possible, the investigation of complaints should be completed within 90 days of the receipt of the complaint.

Response

For each complaint filed with the EOA Office, every effort is made to complete the investigation within 90 days. To ensure the prompt completion of all investigations, the EOA Office will endeavor to maintain an appropriate number of investigators and EOA staff.

Recommendation No. 8

- In circumstances where the investigation cannot be completed within the 90-day timeframe, a notification delay letter, stating the reason for the delay, should be sent to the parties of the investigation.

Response

Whenever an investigation is not completed within 90 days, letters are sent to the complainants and respondents informing them of the reason for the delay. The Preliminary Determination lists four cases (file No. 06029, 06030, 06031, 06038) that did not include 90-day notification letters.

However, the complete and original files maintained in the EOA office for Case # 06031 include 90-day letters. Copies of these letters are attached to this response as ~~Appendix 2~~.

Cases Nos. 06029, 06030, and 06038 were resolved in 116, 118, and 117 days respectively, and in these instances, 90-day letters were not issued. In the future, special care will be taken to ensure that 90-day letters are sent to the parties in every case not resolved within 90 days.

Recommendation No. 11

- The DHS should secure the necessary training, either from DCAS or another appropriate source, to assess the manner in which candidates are selected for employment, to determine whether there is any adverse impact upon any particular racial, ethnic, disability or gender group.

Response

The EOA Officer has not received from DCAS the training necessary to perform an appropriate adverse impact analysis. We understand that the EEPC is currently working with DCAS to ensure that this training is available in the future.

Recommendation No. 12

- The DHS should include a rating on EEO in the managerial evaluation form or use the managerial performance evaluation designed by the DCAS, which contains a rating for EEO.

Response

A rating for EEO, similar to the one created by DCAS, will be added to the managerial performance evaluation form no later than the second quarter of FY 09.

Recommendations No. 16

- It is the Commission's position that meetings between managers/supervisors and staff where they affirm their managerial commitment to the Citywide EEOP should be documented.

Response

The Quarterly Staff Review form will be amended to include a section for memorializing managers'/supervisors' managerial commitment to the Citywide EEO Policy no later than the second quarter of FY 09.

Recommendation No. 17

- The DHS personnel officer should notify all employees in writing of the name, location, and telephone number/email address of the Career Counselor.

Response

The agency Career Counselor is responsible for conducting all new employee orientations, and during each orientation, introduces herself to new employees. Further, on the Commissioner's EEO Memoranda posted on every floor of DHS' headquarters at 33 Beaver Street, the agency Career Counselor is identified by name. Finally, to ensure that current employees are familiar with the agency's Career Counselor, she will be profiled in an upcoming issue of the agency's *Staff Matters* newsletter.

Recommendations Where DHS Differs with the Commission's Determination

Recommendations Nos. 1 and 2

- To comply with the Citywide EEO Policy and to ensure a uniform internal distribution process, the new hire package should include the Citywide EEO policy and the EEO Policy Handbook.
- To ensure that all employees are made aware of the Program, the Section 55-A Program pamphlets issued by the DCAS should be included in the new hire packet.

Response

All new DHS employees receive orientation trainings within four weeks of their hire. The orientation training includes an EEO briefing during which new employees receive a copy of the Citywide EEO Policy, the EEO Policy Handbook, and the DCAS Section 55-A Program pamphlet. We believe that distributing these documents in conjunction with a discussion of employee rights and responsibilities regarding equal opportunity affairs is far more effective than including them in the new hire packets. We intend to continue our current practice. A copy of the DHS EEO orientation packet is attached as Appendix 4.

Recommendation No. 3

- The DHS should ensure that all its facilities are completely accessible to persons with disabilities.

Response

DHS is committed to ensuring that all employees, clients, and applicants for employment or services, irrespective of disability, have equal access to DHS programs and facilities. We believe that our facilities and shelter system, as currently configured, are accessible to disabled individuals in keeping with the letter and spirit of applicable Federal, State, and City disability rights laws.

Employees

With respect to disabled employees and job applicants, the Americans with Disabilities Act ("ADA") and the State and City Human Rights Laws ("NYSHRA" and "NYCHRA") require us to make reasonable accommodations to address or remove architectural obstacles. As required by these statutes, DHS is required only to make a reasonable accommodation determination on an individualized, case-specific basis, taking into account whether a proposed accommodation places an undue burden on the agency. Wernick v. Federal Reserve Bank, 91 F.3d 379, 385 (2d Cir. 1996). "[E]nsur[ing] that all facilities are completely accessible" (Preliminary Determination at 9) is not consistent with the ADA's "principal focus . . . [on] the protection of the individual employee" and is unduly burdensome on the agency. Connecticut v. Teal, 457 U.S. 440, 453-54; 73 L. Ed. 2d 130, 141; 102 S. Ct. 2525, 2534 (1982).

Clients

With respect to clients and applicants for DHS services, Title II of the ADA requires that we provide "program accessibility," and that individuals with disabilities have "an equally effective opportunity to participate in or benefit" from our services. Section II-3.3000 of the ADA Title II Technical Assistance Manual.

"Program accessibility" is addressed directly in Section II-5.000 which specifically states that "[a] public entity's services, programs, or activities, when viewed in their entirety, must be readily accessible to and usable by individuals with disabilities. . . . Public entities; however, are not necessarily required to make each of their existing facilities accessible." Section II-5.2000. Accordingly, the law is clear that we are not required to provide physical access to all parts of all facilities.

An example is provided in Section II-3.4200, outlining that a school system need only provide wheelchair access at schools dispersed throughout its service area so that children using wheelchairs can attend school at locations comparable in convenience to those available to other children. This example can be clearly analogized to the current state of our shelter system.

The NYSHRA generally requires the removal of structural barriers where their removal is "readily achievable." Here, the burden imposed by the addition of elevators and the making of other capital improvements to our shelter system is unduly burdensome and, as a result, not readily achievable.

On the other hand, when structural changes are not readily achievable, a public accommodation may comply with NYSHRL by making DHS "privileges, advantages, or accommodations available through alternative methods." NY CLS Exec § 296. That is exactly the case here, as DHS has 23 facilities with accessible ramps, elevators, restrooms and dorms dispersed throughout the five boroughs, affording the full range of DHS services and programs.

Finally, as required by the ADA, the NYSHRL and NYCRHL, DHS makes reasonable accommodations to individual disabled clients on a case-by-case basis. It is DHS policy that all DHS and Facility Staff responsible for placing or providing services to DHS clients must routinely take into account the requirements of each client, including the special needs of clients with physical and/or mental impairments. Whenever a client's disability affects his or her ability to access services, DHS engages in an interactive process to address the client's special needs.

Conclusion

I would like to thank you again for this opportunity to respond and for your continued commitment to equal opportunity. I look forward to working with you as we work to ensure that DHS complies with the EEO standards expressed in the Citywide EEO Policy.

Sincerely,



Robert V. Hess

cc: Michele M. Ovesey, Esq.
Michael King
Douglas C. James, Esq.