



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

Charise L. Terry, PHR  
Executive Director

Judith Garcia Quiñonez, Esq.  
Executive Agency Counsel/  
Deputy Director

253 Broadway  
Suite 602  
New York, NY 10007

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

**VIA MAIL AND EMAIL**

June 14, 2017

Sanford Rich  
Executive Director  
Board of Education Retirement System  
65 Court Street - Room 1602E  
Brooklyn, NY 11201

Re: Preliminary Determination for Audit: Review, Evaluation and Monitoring of the Board of Education Retirement System's Employment Practices and Procedures from July 1, 2014 to December 31, 2016.

Dear Executive Director Rich:

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. This letter contains the Commission's findings and preliminary determinations pursuant to our audit and analysis of your agency's Employment Practices and Procedures for the period covering July 1, 2014 to December 31, 2016.

The New York City Charter, Chapter 36, Section 831(d)(5), empowers this Commission to audit and evaluate city agencies' employment practices, programs, policies and procedures, and their efforts to ensure fair and effective equal employment opportunity for employees and applicants seeking employment with city agencies. Section 832.c provides that this Commission may, pursuant to an audit, make a preliminary determination that any plan, program or procedure utilized by any city agency does not provide equal employment opportunity and recommend all necessary and appropriate procedures, approaches, measures, standards and programs to be utilized by agencies in these efforts.

The Board of Education Retirement System, 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..."



The purpose of this audit and analysis is to evaluate the agency's employment practices and procedures, not to issue findings of discrimination pursuant to the New York City Human Rights Law. This Commission has adopted *Uniform Standards for EEPC Audits*<sup>1</sup> and *Minimum Equal Employment Opportunity Standards for Community Boards* to assess agencies' EEO programs and policies for compliance with federal, state and local laws, regulations, policies and procedures which are designed to increase equality of opportunity for municipal government employees and job applicants. 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 New York State Civil Service Law §55-a; the Uniform Guidelines on Employee Selection Procedures (29 CFR §§1607.3 - 1607.7); 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 Document and Information Request Form*; responses to the *EEPC Interview Questionnaires* for EEO professionals and others involved in EEO program administration; and, if applicable, review of the agency's *Annual EEO Plans* and *Quarterly EEO Reports* and analysis of workforce and utilization data from the *Citywide Equal Employment Database System* (CEEDS).

This Commission reviews the workforce statistics and utilization analysis information available via CEEDS to understand the concentrations of race and gender groups within an agency's workforce. (CEEDS may be unavailable for certain non-mayoral agencies. In such cases, the EEPC requests that the agency submit similar statistics and analysis.) EEO Program Analysts examine imbalances between the number of employees in a particular job category and the number that would reasonably be expected when compared to their availability in the relevant labor market. Personnel transactions are reviewed in order to ascertain the agency's employment practices. Where underutilization is revealed within an agency's workforce, EEO Program Analysts assess whether the agency has undertaken reasonable measures to address it.

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, Career Counselors, 55-a Program Coordinators) and others involved in EEO program administration such as the Principal Human Resources Professional are given a two-week deadline to complete and return their individual questionnaires. The Commission's EEO Program Analysts also conduct

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



additional research and follow-up discussions or interviews with EEO professionals, when appropriate.

### **Description of the Agency**

The Board of Education Retirement System of the City of New York (BERS) was founded in 1921 to provide a retirement system to New York City Department of Education employees other than those eligible to join the New York City Teachers' Retirement System. The Board of Education Retirement System's structure, procedures, and benefits are determined by administrative rules and regulations, and by law. BERS itself is governed by a Board of Trustees which is composed of thirteen Panel for Educational Policy members, eight of whom are appointed by the Mayor, the Schools Chancellor and two employee-members elected by the membership.

BERS had 77 employees at the end of the period in review. See workforce composition, attached as Appendix 1.

## **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 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.

- The agency did not issue an EEO policy statement or memo reiterating commitment to EEO, declaring the agency's position against discrimination on any protected basis, and advising employees of the names and contact information of EEO professionals. **Corrective action required.**

**Corrective Action #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.

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 agency established the *Anti-Discrimination Policy and Procedures for Filing Internal Complaints of Discrimination (2014)*, for use by managers, supervisors, and legal, human resources and EEO professionals. The EEO policy included a section on sexual harassment, as well as uniform and responsive procedures for investigating discrimination complaints. The agency reported that the EEO policy was posted on the agency's website, which was accessible to all employees.
  - The agency's EEO policy did not include uniform and responsive procedures for providing reasonable accommodations, an up-to-date list of protected classes under NYC and NYS Human Rights Laws; current contact information for the agency's EEO professionals, or the contact information for federal, state and local agencies that enforce laws against discrimination. **Corrective action required.**

**Corrective Action #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: uniform and responsive procedures for 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, and federal, state and local agencies that enforce laws against discrimination.

## II. **EEO TRAINING FOR AGENCY:**

**Determination:** The agency is **not in compliance** with the standards for this subject area.

3. 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 did not 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. **Corrective action required.**

**Corrective Action #3:** 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.

**III. EMPLOYMENT PRACTICES (Recruitment, Hiring & Promotion):**

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

4. Assess recruitment efforts to determine whether such efforts adversely impact any particular group. To the extent that adverse impact is discovered, at a minimum, identify relevant professional and community organizations serving women, minorities, and other protected groups throughout the City, review and update listings of recruitment outreach sources, and contact these organizations when provisional positions become available or where the agency may otherwise use discretion in hiring.

- The agency did not assess recruitment efforts to determine whether such efforts adversely impacted any particular group. **Corrective action required.**

**Corrective Action #4:** Assess recruitment efforts to determine whether such efforts adversely impact any particular group. To the extent that adverse impact is discovered, at a minimum, identify relevant professional and community organizations serving women, minorities, and other protected groups throughout the City, review and update listings of recruitment outreach sources, and contact these organizations when provisional positions become available or where the agency may otherwise use discretion in hiring.

5. The principal EEO Professional, HR Professional, and General Counsel review the agency's statistical information (i.e. workforce, hires, promotions, and separations by race/ethnicity and gender), the annual number of EEO complaints, and the agency's employment practices, policies and programs on an annual basis to identify whether there are barriers to equal opportunity within the agency and determine what, if any, corrective actions are required to correct deficiencies.

- The agency did not demonstrate that statistical information (i.e. workforce, hires, promotions, and separations by race/ethnicity and gender), the annual number of EEO complaints, and the agency's employment practices, policies and programs was maintained, or that this information was reviewed on an annual basis to identify whether there are barriers to equal opportunity within the agency and determine what, if any, corrective actions are required to correct deficiencies. **Corrective action required.**

**Corrective Action #5:** Ensure that the principal EEO Professional, HR Professional and General Counsel, review the agency's statistical information (i.e. workforce, hires, promotions, and separations by race/ethnicity and gender), the annual number of EEO complaints, and the agency's employment practices, policies and programs on an annual basis to identify whether there are barriers to equal opportunity within the agency and determine what, if any, corrective actions are required in order to correct deficiencies (e.g. underutilization or adverse impact). If necessary, consult with the Law Department, Division of Citywide Diversity and EEO, or another resource for guidance.

6. 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. To the extent that adverse impact is discovered, determine whether the selection criteria being utilized are job-related. Discontinue using criteria that are not job-related, and adopt methods which diminish adverse impact.

- The agency did not assess the manner in which candidates were selected for employment to determine whether such efforts adversely impacted any particular group. **Corrective action required.**

**Corrective Action #6:** 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. To the extent that adverse impact is discovered, determine whether the selection criteria being utilized are job-related. Discontinue using criteria that are not job-related, and adopt methods which diminish adverse impact.

7. If women, minorities, or other protected groups are underrepresented in titles where there is discretion in hiring, advertise in minority- or female-oriented publications; contact organizations serving women, minorities, and other protected groups; participate in career fairs/open houses; or use internships to attract interested persons and to develop and hire interested and qualified candidates.

- The agency did not conduct analysis of underutilization data to determine whether underrepresentation existed in titles wherein the agency had discretion in hiring, or whether recruitment efforts were sufficient (see §III.5). **Corrective action required.**

**Corrective Action #7:** If women, minorities, or other protected groups are underrepresented in titles where there is discretion in hiring, advertise in minority- or female-oriented publications; contact organizations serving women, minorities, and other protected groups; participate in career fairs/open houses; or use internships to attract interested persons and to develop and hire interested and qualified candidates.

8. If women, minorities, or other protected groups are underrepresented in *civil service* (list) titles, review the competencies, skills and abilities required (as presented in job vacancy notices and notices of examination) for available positions to ensure that these standards are updated, job-related and required by business necessity. (This includes working with DCAS or the Civil Service Commission if applicable.) Then advertise in minority- or female-oriented publications, contact organizations serving women, minorities, and other protected groups; participate in career fairs or open houses; or use internships to attract interested persons and to develop and hire interested and qualified candidates.

- The agency did not conduct an utilization analysis to determine whether underrepresentation existed in *civil service* (list) titles, and that standards and recruitment efforts were sufficient. **Corrective Action Required.**

**Corrective Action #8:** If women, minorities, or other protected groups are underrepresented in *civil service* (list) titles, review the competencies, skills and abilities required (as presented in job vacancy notices and notices of examination) for available positions to ensure that these standards are updated, job-related and required by business necessity. (This includes working with DCAS or the Civil Service Commission if applicable). Then advertise in minority- or female-oriented publications, contact organizations serving women, minorities, and other protected groups; participate in career fairs or open houses; or use internships to attract interested persons and to develop and hire interested and qualified candidates.

9. Ensure that human resources professionals, managers, supervisors, and other personnel involved in recruiting and hiring are trained to consider EEO laws/policies and use uniform, job-related techniques to identify, interview and select the most capable candidates (e.g. structured interview training or guide).

- The agency did not demonstrate that the personnel involved in hiring and recruiting were trained to consider EEO laws/policies and use uniform, job-related techniques to identify, interview and select the most capable candidates. Additionally, the agency did not demonstrate that it used a structured interview guide to conduct interviews. **Corrective action required.**

**Corrective Action #9:** Ensure that human resources professionals, managers, supervisors, and other personnel involved in recruiting and hiring are trained to consider EEO laws/policies and use uniform, job-related techniques to identify, interview and select the most capable candidates (e.g. structured interview training or guide).

10. Promote employees' awareness of opportunities for advancement and transfer within the agency by: administering incentive programs; publicizing promotions, including promotions into, or changes in, the managerial ranks; and/or using other methods to communicate internal opportunities.

- The agency did not demonstrate that, during the period in review, it promoted employees awareness of opportunities for advancement and transfer within the agency, or that it administered incentive programs; publicized promotions, or used other methods to communicate internal opportunities. **Corrective action required.**

**Corrective Action #10:** Promote employees' awareness of opportunities for advancement and transfer within the agency by: administering incentive programs; publicizing promotions, including promotions into, or changes in, the managerial ranks; and/or using other methods to communicate internal opportunities.

11. Ensure that employees are considered internally for career enhancement, development opportunities and transfer by: providing and encouraging training, development or mentorship programs to improve their performance and skills; establishing internal talent pools via cross-training, cross divisional assignments, job transfers, and/or job rotation; and identifying internal successors with applicable knowledge/skills/abilities.

- The agency did not demonstrate that employees were considered internally for career enhancement, development opportunities, and transfer.

**Corrective Action #11:** Ensure that employees are considered internally for career enhancement, development opportunities and transfer by: providing and encouraging training, development or mentorship programs to improve their performance and skills; establishing internal talent pools via cross-training, cross divisional assignments, job transfers, and/or job rotation; and identifying internal successors with applicable knowledge/skills/abilities.

12. At minimum, indicate the agency is an equal opportunity employer in recruitment literature.

- ✓ During the period in review, the agency advertised for the several vacant positions including: *Agency Attorney, Administrative Officer and Policy Advisor, Computer Systems Manager, Deputy Director, Director of Compliance, and Director of Fiscal Operations*. Each job posting contained an EEO tagline stating that the agency is “An Equal Opportunity Employer”.

13. Use and maintain an applicant/candidate log or tracking system which, at minimum, includes the *position, applicants'/candidates' names, identification number, ethnicity, gender, disability or veteran status, interview date, interviewers' names, result, reason selected/not selected (or disposition)* of each applicant, and *recruitment source*. Ensure that the process avoids the appearance of bias by delegating the responsibility for recording and maintaining this information to an individual other than the hiring manager.

- The agency did not maintain an applicant/candidate log or tracking system. **Corrective action required.**

**Corrective Action #12:** Use and maintain an applicant/candidate log or tracking system which, at minimum, includes the *position, applicants'/candidates' names, identification number, ethnicity, gender, disability or veteran status, interview date, interviewers' names, result, reason selected/not selected (or disposition)* of each applicant, and *recruitment source*. Ensure that the process avoids the appearance of bias by delegating the responsibility for recording and maintaining this information to an individual other than the hiring manager.

#### IV. CAREER COUNSELING:

**Determination:** The agency is not in compliance with the standards for this subject area.

14. Designate a professional (may be referred to as the Career Counselor) with appropriate training, knowledge and familiarity with career opportunities in City government to provide career counseling to employees upon request. Remind employees of the identity/type of guidance available from the Career Counselor at least once each year.

- The agency did not designate a professional to provide career counseling to employees upon request. **Corrective action required.**

**Corrective Action #12:** Designate a professional (may be referred to as the Career Counselor) with appropriate training, knowledge and familiarity with career opportunities in City



government to provide career counseling to employees upon request. Remind employees of the identity/type of guidance available from the Career Counselor at least once each year.

15. The Human Resources Professional distributes the identity of the agency Career Counselor and ensures that all employees have access to information regarding job responsibilities, performance evaluation standards, examinations, training opportunities and job postings; ensures that all new employees are advised of the EEO policies, their rights and responsibilities under such policies and the discrimination complaint procedures; informs the principal EEO Professional of the number of 55-a program participants and efforts the agency has made to employ, promote or accommodate qualified individuals with disabilities; involves the principal EEO Professional in EEO-related matters; and promptly consults with the principal EEO Professional if informed of, or suspects that a violation of the EEO Policy has occurred.
- ✓ The agency reported that, upon hire, all new employees were advised of the EEO policy, their rights and responsibilities under the policy, and the discrimination complaint procedures. Additionally, the agency reported that a copy of the EEO policy was available on the agency's website.
- The agency did not demonstrate that employees had access to information regarding job responsibilities, performance evaluation standards, examinations, training opportunities, or job postings. **Corrective action required.**

Note: During the period in review the agency's principal EEO Professional also functioned as the as the principal HR Professional.

**Corrective Action #13:** Ensure that employees have access to information regarding job responsibilities, performance evaluation standards, examinations, training opportunities, and job postings.

**V. 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.

16. 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.
- The agency did not demonstrate it established a procedure to ensure the availability of information regarding employee rights and obligations, and the complaint, investigation and reasonable accommodation procedures in appropriate alternative formats. **Corrective action required.**

**Corrective Action #14:** 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.

17. Document reasonable accommodation requests and their outcomes.

- ✓ The agency provided its reasonable accommodation request form, which was to be used to document any reasonable accommodation requests. Although there were no requests during the period in review, the agency reported that it was the responsibility of the principal EEO Professional to process reasonable accommodation requests.

**VI. RESPONSIBILITY FOR EEO PLAN IMPLEMENTATION - EEO PROFESSIONALS:**

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

18. Appoint a principal EEO Professional to implement EEO policies and standards within the agency. The principal EEO Professional is trained and knowledgeable regarding city, state, and federal EEO laws; the requirements of the agency's EEO policies, standards and procedures; and the prevention, investigation, and resolution of discrimination complaints.

- ✓ The agency designated the *Director of Administration and Policy* as the principal EEO Professional.

- The agency did not demonstrate that the principal EEO Professional was trained and knowledgeable regarding city, state, and federal EEO laws; the requirements of the agency's EEO policies, standards and procedures; and the prevention, investigation, and resolution of discrimination complaints. Additionally, the agency did not demonstrate the employees were informed of the name and contact information of the principal EEO Professional. **Corrective action required.**

**Corrective Action #15** Appoint a principal EEO Professional to implement EEO policies and standards within the agency. The principal EEO Professional is trained and knowledgeable regarding city, state, and federal EEO laws; the requirements of the agency's EEO policies, standards and procedures; and the prevention, investigation, and resolution of discrimination complaints.

19. Ensure that EEO professionals are trained in EEO laws and procedures and know how to carry out their responsibilities under the EEO Policy.

**NOTE:** The principal EEO Professional was the sole EEO professional during the period in review. (See §VI.18.)

20. 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 Executive Director in order to exercise the necessary authority and independent judgment to fulfill EEO responsibilities. This reporting relationship was reflected in the agency's organizational chart.
21. To ensure the integrity and continuity of the EEO Program, maintain appropriate documentation of meetings and other communications between the agency head (or a direct report other than the General Counsel) and the principal EEO Professional regarding decisions that impact the administration and operation of the EEO program.
- ✓ The agency reported that the Human Resources Director/principal EEO Professional, General Counsel, and Executive Director met to discuss HR and EEO related issues.
    - The agency did not maintain appropriate documentation of meetings or other communications regarding decisions made during the aforementioned meetings which impacted the administration and operation of the EEO program. **Corrective action required.**

**Corrective Action #16:** Maintain appropriate documentation of meetings and other communications between the agency head (or a direct report other than the General Counsel) and the principal EEO Professional regarding decisions that impact the administration and operation of the EEO program.

**VII. RESPONSIBILITY FOR EEO PLAN IMPLEMENTATION – SUPERVISORS/MANAGERS:**

**Determination: The agency is in not in compliance with the standards for this subject area.**

22. Establish and administer an annual managerial/non-managerial performance evaluation program to be used for probationary periods, promotions, assignments, incentives and training.
- The agency did not establish and administered an annual performance evaluation program for managerial and non-managerial employees. **Corrective action required.**
- Corrective Action #17:** Establish and administer an annual managerial/non-managerial performance evaluation program to be used for probationary periods, promotions, assignments, incentives and training.
23. The managerial performance evaluation form contains a rating for EEO (which covers responsibilities and processes for assuring their ability to make employment decisions based on merit and equal consideration, or treat others in an equitable and impartial manner).
- The agency did not administer a managerial performance evaluation program, or create a managerial evaluation form to rate managers on their EEO-related responsibilities. **Corrective action required.**

**Corrective Action #18:** Ensure that the managerial performance evaluation form contains a rating for EEO (which covers responsibilities and processes for assuring their ability to make



employment decisions based on merit and equal consideration, or treat others in an equitable and impartial manner).

**VIII. REPORTING STANDARD FOR AGENCY HEAD:**

**Determination:** The agency is not in compliance with the standards for this subject area.

24. Submit to the EEPC an Annual Plan of measures and programs to provide equal employment opportunity, and quarterly reports<sup>2</sup> (up to 30 days following each quarter) on efforts to implement the plan.

- The agency did not submit to the EEPC Annual Plans of measures and programs to provide equal employment opportunity of measures and programs to provide equal employment opportunity or quarterly reports for the years in the period in review. **Corrective action required.**

**Corrective Action #19:** Submit to the EEPC an Annual Plan of measures and programs to provide equal employment opportunity, and quarterly reports (up to 30 days following each quarter) on efforts to implement the plan.

**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 has 19 required corrective action(s) 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

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<sup>2</sup>Submission of *Quarterly Reports on EEO Activity* is optional for non-Mayoral agencies.



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 issue 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 blue ink, appearing to read "Nathan P. Conway".

Nathan P. Conway, EEO Program Analyst

Approved by,

A handwritten signature in blue ink, appearing to read "Charise L. Terry".

Charise L. Terry, PHR  
Executive Director

c: Sohn Michael, Principal EEO/HR Professional/Director Administration and Policy

**Appendix-1**  
Board of Education Retirement Systems  
Workforce Composition Summary  
(End of Audit Period)

**Attachment 13: Statistical Profile of Agency Workforce**  
**Beginning and End of Audit Period**

Agency: BERS

<b># Employees</b>	<b>Beginning of Audit Period <u>06/01/2014</u></b>	<b>End of Audit Period <u>12/31/2016</u></b>
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<b>Male</b>	<b>31</b>	<b>38</b>
<b>Female</b>	<b>40</b>	<b>39</b>

<b>White</b>	<b>15</b>	<b>15</b>
<b>Black</b>	<b>26</b>	<b>28</b>
<b>Hispanic</b>	<b>6</b>	<b>9</b>
<b>Asian</b>	<b>17</b>	<b>21</b>
<b>Native American</b>	<b>0</b>	<b>0</b>
<b>Unknown</b>	<b>7</b>	<b>4</b>

<b>Total # of Employees</b>	<b>71</b>	<b>77</b>
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\*As reported by the agency



Angela Cabrera  
Malini Cadambi Daniel  
Elaine S. Reiss, Esq.  
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253 Broadway  
Suite 602  
New York, NY 10007

212. 615. 8939 tel.  
212. 676.2724 fax

BY MAIL AND EMAIL

July 6, 2017

Sanford Rich  
Executive Director  
Board of Education Retirement System  
65 Court Street - Room 1602E  
Brooklyn, NY 11201

RE: Audit Resolution #2017/212-521: Final Determination Pursuant to the Review, Evaluation and Monitoring of Board of Education Retirement System's Employment Practices and Procedures from July 1, 2014 to December 31, 2016.

Dear Executive Director Rich:

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.

As the EEPC did not receive the Board of Education Retirement System's response to its June 14, 2017 Preliminary Determination within 14 days from the date of its issuance, and consistent with the audit protocol referenced therein, the attached Determination is now Final.

As indicated in our Preliminary Determination, this Commission has adopted uniform standards<sup>1</sup> to assess agencies' employment practices and programs for compliance with federal, state and local laws, regulations, policies and procedures which are designed to increase equality of opportunity for municipal government employees and job applicants. The attached Determination contains the Commission's findings and required corrective actions pertaining to the referenced review, evaluation and monitoring of your agency's employment practices and procedures.

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<sup>1</sup> 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; New York City Human Rights Law (NYC Administrative Code, §§8-107.1(a) and 8-107.13(d)); New York State Civil Service Law §55-a; Uniform Guidelines on Employee Selection Procedures (29 CFR §§1607.3 - 1607.7) and the equal employment opportunity requirements of the New York City Charter.





Chapter 36, Section 832.c of the New York City Charter requires that: 1) the EEPC assign a 6-month compliance period to monitor your agency's efforts to eliminate remaining required corrective actions; and 2) the agency provides a written response within 30 days from the date of this letter indicating corrective action taken.

The assigned compliance-monitoring period is: August 2017 to January 2018.

**If corrective actions remain:** Your agency's response should indicate what steps your agency has taken, or will take, to implement the corrective actions during the designated period. Documentation which supports the implementation of each corrective action shall be uploaded to TeamCentral, the EEPC's Automated Compliance-Monitoring System. Your agency will be monitored monthly until all corrective actions have been implemented. Instruction on how to access and navigate TeamCentral is attached. Upon your agency's completion of the final corrective action, this Commission requires that your agency upload a final memorandum signed by the agency head which informs employees of the changes implemented pursuant to our audit and re-emphasizes commitment to the EEO program. Upon receipt of the final memorandum, the EEPC will issue a *Determination of Compliance*.

**If no corrective actions remain:** Your agency is exempt from the aforementioned monitoring period. However, this Commission requires a final memorandum signed by the agency head which informs employees of the changes implemented pursuant to our audit and re-emphasizes commitment to the EEO program. This will be considered your agency's final action. Upon receipt of the memo, a *Determination of Compliance* will be issued.

If there are further questions regarding this Final Determination or the compliance-monitoring process, please have the Principal EEO Professional call Janet P. Ford, Esq., Agency Counsel/Director of Compliance at 212-615-8942.

Thank you and your staff for your continued cooperation.

Sincerely,

A handwritten signature in blue ink that reads "Charise L. Terry".

Charise L. Terry, PHR  
Executive Director

c: Michael Sohn, Principal EEO/HR Professional/Director Administration and Policy



# Final Determination 07/06/2017

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

Charise L. Terry, PHR  
Executive Director

Judith Garcia Quiñonez, Esq.  
Executive Agency Counsel/  
Deputy Director

253 Broadway  
Suite 602  
New York, NY 10007

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

## VIA MAIL AND EMAIL

June 14, 2017

Sanford Rich  
Executive Director  
Board of Education Retirement System  
65 Court Street - Room 1602E  
Brooklyn, NY 11201

Re: Preliminary Determination for Audit: Review, Evaluation and Monitoring of the Board of Education Retirement System's Employment Practices and Procedures from July 1, 2014 to December 31, 2016.

Dear Executive Director Rich:

On behalf of the members of the Equal Employment Practices Commission (Commission or EEPCC), thank you and your agency for the cooperation extended to our staff during the course of this audit. This letter contains the Commission's findings and preliminary determinations pursuant to our audit and analysis of your agency's Employment Practices and Procedures for the period covering July 1, 2014 to December 31, 2016.

The New York City Charter, Chapter 36, Section 831(d)(5), empowers this Commission to audit and evaluate city agencies' employment practices, programs, policies and procedures, and their efforts to ensure fair and effective equal employment opportunity for employees and applicants seeking employment with city agencies. Section 832.c provides that this Commission may, pursuant to an audit, make a preliminary determination that any plan, program or procedure utilized by any city agency does not provide equal employment opportunity and recommend all necessary and appropriate procedures, approaches, measures, standards and programs to be utilized by agencies in these efforts.

The Board of Education Retirement System, 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..."

The purpose of this audit and analysis is to evaluate the agency's employment practices and procedures, not to issue findings of discrimination pursuant to the New York City Human Rights Law. This Commission has adopted *Uniform Standards for EEPC Audits*<sup>1</sup> and *Minimum Equal Employment Opportunity Standards for Community Boards* to assess agencies' EEO programs and policies for compliance with federal, state and local laws, regulations, policies and procedures which are designed to increase equality of opportunity for municipal government employees and job applicants. 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 New York State Civil Service Law §55-a; the Uniform Guidelines on Employee Selection Procedures (29 CFR §§1607.3 - 1607.7); 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 Document and Information Request Form*; responses to the *EEPC Interview Questionnaires* for EEO professionals and others involved in EEO program administration; and, if applicable, review of the agency's *Annual EEO Plans* and *Quarterly EEO Reports* and analysis of workforce and utilization data from the *Citywide Equal Employment Database System* (CEEDS).

This Commission reviews the workforce statistics and utilization analysis information available via CEEDS to understand the concentrations of race and gender groups within an agency's workforce. (CEEDS may be unavailable for certain non-mayoral agencies. In such cases, the EEPC requests that the agency submit similar statistics and analysis.) EEO Program Analysts examine imbalances between the number of employees in a particular job category and the number that would reasonably be expected when compared to their availability in the relevant labor market. Personnel transactions are reviewed in order to ascertain the agency's employment practices. Where underutilization is revealed within an agency's workforce, EEO Program Analysts assess whether the agency has undertaken reasonable measures to address it.

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, Career Counselors, 55-a Program Coordinators) and others involved in EEO program administration such as the Principal Human Resources Professional are given a two-week deadline to complete and return their individual questionnaires. The Commission's EEO Program Analysts also conduct

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

additional research and follow-up discussions or interviews with EEO professionals, when appropriate.

### Description of the Agency

The Board of Education Retirement System of the City of New York (BERS) was founded in 1921 to provide a retirement system to New York City Department of Education employees other than those eligible to join the New York City Teachers' Retirement System. The Board of Education Retirement System's structure, procedures, and benefits are determined by administrative rules and regulations, and by law. BERS itself is governed by a Board of Trustees which is composed of thirteen Panel for Educational Policy members, eight of whom are appointed by the Mayor, the Schools Chancellor and two employee-members elected by the membership.

BERS had 77 employees at the end of the period in review. See workforce composition, attached as Appendix 1.

### 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 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.

- The agency did not issue an EEO policy statement or memo reiterating commitment to EEO, declaring the agency's position against discrimination on any protected basis, and advising employees of the names and contact information of EEO professionals. **Corrective action required.**

**Corrective Action #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.

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 agency established the *Anti-Discrimination Policy and Procedures for Filing Internal Complaints of Discrimination (2014)*, for use by managers, supervisors, and legal, human resources and EEO professionals. The EEO policy included a section on sexual harassment, as well as uniform and responsive procedures for investigating discrimination complaints. The agency reported that the EEO policy was posted on the agency's website, which was accessible to all employees.
  - The agency's EEO policy did not include uniform and responsive procedures for providing reasonable accommodations, an up-to-date list of protected classes under NYC and NYS Human Rights Laws; current contact information for the agency's EEO professionals, or the contact information for federal, state and local agencies that enforce laws against discrimination. **Corrective action required.**

**Corrective Action #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: uniform and responsive procedures for 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, and federal, state and local agencies that enforce laws against discrimination.

## II. **EEO TRAINING FOR AGENCY:**

**Determination:** The agency is **not in compliance** with the standards for this subject area.

3. 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 did not 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. **Corrective action required.**

**Corrective Action #3:** 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.

**III. EMPLOYMENT PRACTICES (Recruitment, Hiring & Promotion):**

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

4. Assess recruitment efforts to determine whether such efforts adversely impact any particular group. To the extent that adverse impact is discovered, at a minimum, identify relevant professional and community organizations serving women, minorities, and other protected groups throughout the City, review and update listings of recruitment outreach sources, and contact these organizations when provisional positions become available or where the agency may otherwise use discretion in hiring.

- The agency did not assess recruitment efforts to determine whether such efforts adversely impacted any particular group. **Corrective action required.**

**Corrective Action #4:** Assess recruitment efforts to determine whether such efforts adversely impact any particular group. To the extent that adverse impact is discovered, at a minimum, identify relevant professional and community organizations serving women, minorities, and other protected groups throughout the City, review and update listings of recruitment outreach sources, and contact these organizations when provisional positions become available or where the agency may otherwise use discretion in hiring.

5. The principal EEO Professional, HR Professional, and General Counsel review the agency's statistical information (i.e. workforce, hires, promotions, and separations by race/ethnicity and gender), the annual number of EEO complaints, and the agency's employment practices, policies and programs on an annual basis to identify whether there are barriers to equal opportunity within the agency and determine what, if any, corrective actions are required to correct deficiencies.

- The agency did not demonstrate that statistical information (i.e. workforce, hires, promotions, and separations by race/ethnicity and gender), the annual number of EEO complaints, and the agency's employment practices, policies and programs was maintained, or that this information was reviewed on an annual basis to identify whether there are barriers to equal opportunity within the agency and determine what, if any, corrective actions are required to correct deficiencies. **Corrective action required.**

**Corrective Action #5:** Ensure that the principal EEO Professional, HR Professional and General Counsel, review the agency's statistical information (i.e. workforce, hires, promotions, and separations by race/ethnicity and gender), the annual number of EEO complaints, and the agency's employment practices, policies and programs on an annual basis to identify whether there are barriers to equal opportunity within the agency and determine what, if any, corrective actions are required in order to correct deficiencies (e.g. underutilization or adverse impact). If necessary, consult with the Law Department, Division of Citywide Diversity and EEO, or another resource for guidance.

6. 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. To the extent that adverse impact is discovered, determine whether the selection criteria being utilized are job-related. Discontinue using criteria that are not job-related, and adopt methods which diminish adverse impact.
- The agency did not assess the manner in which candidates were selected for employment to determine whether such efforts adversely impacted any particular group. **Corrective action required.**

**Corrective Action #6:** 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. To the extent that adverse impact is discovered, determine whether the selection criteria being utilized are job-related. Discontinue using criteria that are not job-related, and adopt methods which diminish adverse impact.

7. If women, minorities, or other protected groups are underrepresented in titles where there is discretion in hiring, advertise in minority- or female-oriented publications; contact organizations serving women, minorities, and other protected groups; participate in career fairs/open houses; or use internships to attract interested persons and to develop and hire interested and qualified candidates.
- The agency did not conduct analysis of underutilization data to determine whether underrepresentation existed in titles wherein the agency had discretion in hiring, or whether recruitment efforts were sufficient (see §III.5). **Corrective action required.**

**Corrective Action #7:** If women, minorities, or other protected groups are underrepresented in titles where there is discretion in hiring, advertise in minority- or female-oriented publications; contact organizations serving women, minorities, and other protected groups; participate in career fairs/open houses; or use internships to attract interested persons and to develop and hire interested and qualified candidates.

8. If women, minorities, or other protected groups are underrepresented in *civil service* (list) titles, review the competencies, skills and abilities required (as presented in job vacancy notices and notices of examination) for available positions to ensure that these standards are updated, job-related and required by business necessity. (This includes working with DCAS or the Civil Service Commission if applicable.) Then advertise in minority- or female-oriented publications, contact organizations serving women, minorities, and other protected groups; participate in career fairs or open houses; or use internships to attract interested persons and to develop and hire interested and qualified candidates.
- The agency did not conduct an utilization analysis to determine whether underrepresentation existed in *civil service* (list) titles, and that standards and recruitment efforts were sufficient. **Corrective Action Required.**

**Corrective Action #8:** If women, minorities, or other protected groups are underrepresented in *civil service* (list) titles, review the competencies, skills and abilities required (as presented in job vacancy notices and notices of examination) for available positions to ensure that these standards are updated, job-related and required by business necessity. (This includes working with DCAS or the Civil Service Commission if applicable). Then advertise in minority- or female-oriented publications, contact organizations serving women, minorities, and other protected groups; participate in career fairs or open houses; or use internships to attract interested persons and to develop and hire interested and qualified candidates.

9. Ensure that human resources professionals, managers, supervisors, and other personnel involved in recruiting and hiring are trained to consider EEO laws/policies and use uniform, job-related techniques to identify, interview and select the most capable candidates (e.g. structured interview training or guide).

- The agency did not demonstrate that the personnel involved in hiring and recruiting were trained to consider EEO laws/policies and use uniform, job-related techniques to identify, interview and select the most capable candidates. Additionally, the agency did not demonstrate that it used a structured interview guide to conduct interviews. **Corrective action required.**

**Corrective Action #9:** Ensure that human resources professionals, managers, supervisors, and other personnel involved in recruiting and hiring are trained to consider EEO laws/policies and use uniform, job-related techniques to identify, interview and select the most capable candidates (e.g. structured interview training or guide).

10. Promote employees' awareness of opportunities for advancement and transfer within the agency by: administering incentive programs; publicizing promotions, including promotions into, or changes in, the managerial ranks; and/or using other methods to communicate internal opportunities.

- The agency did not demonstrate that, during the period in review, it promoted employees awareness of opportunities for advancement and transfer within the agency, or that it administered incentive programs; publicized promotions, or used other methods to communicate internal opportunities. **Corrective action required.**

**Corrective Action #10:** Promote employees' awareness of opportunities for advancement and transfer within the agency by: administering incentive programs; publicizing promotions, including promotions into, or changes in, the managerial ranks; and/or using other methods to communicate internal opportunities.

11. Ensure that employees are considered internally for career enhancement, development opportunities and transfer by: providing and encouraging training, development or mentorship programs to improve their performance and skills; establishing internal talent pools via cross-training, cross divisional assignments, job transfers, and/or job rotation; and identifying internal successors with applicable knowledge/skills/abilities.



- The agency did not demonstrate that employees were considered internally for career enhancement, development opportunities, and transfer.

**Corrective Action #11:** Ensure that employees are considered internally for career enhancement, development opportunities and transfer by: providing and encouraging training, development or mentorship programs to improve their performance and skills; establishing internal talent pools via cross-training, cross divisional assignments, job transfers, and/or job rotation; and identifying internal successors with applicable knowledge/skills/abilities.

12. At minimum, indicate the agency is an equal opportunity employer in recruitment literature.

- ✓ During the period in review, the agency advertised for the several vacant positions including: *Agency Attorney, Administrative Officer and Policy Advisor, Computer Systems Manager, Deputy Director, Director of Compliance, and Director of Fiscal Operations*. Each job posting contained an EEO tagline stating that the agency is “An Equal Opportunity Employer”.

13. Use and maintain an applicant/candidate log or tracking system which, at minimum, includes the *position, applicants'/candidates' names, identification number, ethnicity, gender, disability or veteran status, interview date, interviewers' names, result, reason selected/not selected (or disposition)* of each applicant, and *recruitment source*. Ensure that the process avoids the appearance of bias by delegating the responsibility for recording and maintaining this information to an individual other than the hiring manager.

- The agency did not maintain an applicant/candidate log or tracking system. **Corrective action required.**

**Corrective Action #12:** Use and maintain an applicant/candidate log or tracking system which, at minimum, includes the *position, applicants'/candidates' names, identification number, ethnicity, gender, disability or veteran status, interview date, interviewers' names, result, reason selected/not selected (or disposition)* of each applicant, and *recruitment source*. Ensure that the process avoids the appearance of bias by delegating the responsibility for recording and maintaining this information to an individual other than the hiring manager.

#### IV. CAREER COUNSELING:

**Determination:** The agency is not in compliance with the standards for this subject area.

14. Designate a professional (may be referred to as the Career Counselor) with appropriate training, knowledge and familiarity with career opportunities in City government to provide career counseling to employees upon request. Remind employees of the identity/type of guidance available from the Career Counselor at least once each year.

- The agency did not designate a professional to provide career counseling to employees upon request. **Corrective action required.**

**Corrective Action #12:** Designate a professional (may be referred to as the Career Counselor) with appropriate training, knowledge and familiarity with career opportunities in City

government to provide career counseling to employees upon request. Remind employees of the identity/type of guidance available from the Career Counselor at least once each year.

15. The Human Resources Professional distributes the identity of the agency Career Counselor and ensures that all employees have access to information regarding job responsibilities, performance evaluation standards, examinations, training opportunities and job postings; ensures that all new employees are advised of the EEO policies, their rights and responsibilities under such policies and the discrimination complaint procedures; informs the principal EEO Professional of the number of 55-a program participants and efforts the agency has made to employ, promote or accommodate qualified individuals with disabilities; involves the principal EEO Professional in EEO-related matters; and promptly consults with the principal EEO Professional if informed of, or suspects that a violation of the EEO Policy has occurred.
- ✓ The agency reported that, upon hire, all new employees were advised of the EEO policy, their rights and responsibilities under the policy, and the discrimination complaint procedures. Additionally, the agency reported that a copy of the EEO policy was available on the agency's website.
- The agency did not demonstrate that employees had access to information regarding job responsibilities, performance evaluation standards, examinations, training opportunities, or job postings. **Corrective action required.**

Note: During the period in review the agency's principal EEO Professional also functioned as the as the principal HR Professional.

**Corrective Action #13:** Ensure that employees have access to information regarding job responsibilities, performance evaluation standards, examinations, training opportunities, and job postings.

**V. 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.

16. 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.
- The agency did not demonstrate it established a procedure to ensure the availability of information regarding employee rights and obligations, and the complaint, investigation and reasonable accommodation procedures in appropriate alternative formats. **Corrective action required.**

**Corrective Action #14:** 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.

17. Document reasonable accommodation requests and their outcomes.

- ✓ The agency provided its reasonable accommodation request form, which was to be used to document any reasonable accommodation requests. Although there were no requests during the period in review, the agency reported that it was the responsibility of the principal EEO Professional to process reasonable accommodation requests.

**VI. RESPONSIBILITY FOR EEO PLAN IMPLEMENTATION - EEO PROFESSIONALS:**

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

18. Appoint a principal EEO Professional to implement EEO policies and standards within the agency. The principal EEO Professional is trained and knowledgeable regarding city, state, and federal EEO laws; the requirements of the agency's EEO policies, standards and procedures; and the prevention, investigation, and resolution of discrimination complaints.

- ✓ The agency designated the *Director of Administration and Policy* as the principal EEO Professional.
  - The agency did not demonstrate that the principal EEO Professional was trained and knowledgeable regarding city, state, and federal EEO laws; the requirements of the agency's EEO policies, standards and procedures; and the prevention, investigation, and resolution of discrimination complaints. Additionally, the agency did not demonstrate the employees were informed of the name and contact information of the principal EEO Professional. **Corrective action required.**

**Corrective Action #15** Appoint a principal EEO Professional to implement EEO policies and standards within the agency. The principal EEO Professional is trained and knowledgeable regarding city, state, and federal EEO laws; the requirements of the agency's EEO policies, standards and procedures; and the prevention, investigation, and resolution of discrimination complaints.

19. Ensure that EEO professionals are trained in EEO laws and procedures and know how to carry out their responsibilities under the EEO Policy.

**NOTE:** The principal EEO Professional was the sole EEO professional during the period in review. (See §VI.18.)

20. 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 Executive Director in order to exercise the necessary authority and independent judgment to fulfill EEO responsibilities. This reporting relationship was reflected in the agency's organizational chart.

21. To ensure the integrity and continuity of the EEO Program, maintain appropriate documentation of meetings and other communications between the agency head (or a direct report other than the General Counsel) and the principal EEO Professional regarding decisions that impact the administration and operation of the EEO program.

✓ The agency reported that the Human Resources Director/principal EEO Professional, General Counsel, and Executive Director met to discuss HR and EEO related issues.

- The agency did not maintain appropriate documentation of meetings or other communications regarding decisions made during the aforementioned meetings which impacted the administration and operation of the EEO program. **Corrective action required.**

**Corrective Action #16:** Maintain appropriate documentation of meetings and other communications between the agency head (or a direct report other than the General Counsel) and the principal EEO Professional regarding decisions that impact the administration and operation of the EEO program.

**VII. RESPONSIBILITY FOR EEO PLAN IMPLEMENTATION – SUPERVISORS/MANAGERS:**

**Determination: The agency is in not in compliance with the standards for this subject area.**

22. Establish and administer an annual managerial/non-managerial performance evaluation program to be used for probationary periods, promotions, assignments, incentives and training.

- The agency did not establish and administered an annual performance evaluation program for managerial and non-managerial employees. **Corrective action required.**

**Corrective Action #17:** Establish and administer an annual managerial/non-managerial performance evaluation program to be used for probationary periods, promotions, assignments, incentives and training.

23. The managerial performance evaluation form contains a rating for EEO (which covers responsibilities and processes for assuring their ability to make employment decisions based on merit and equal consideration, or treat others in an equitable and impartial manner).

- The agency did not administer a managerial performance evaluation program, or create a managerial evaluation form to rate managers on their EEO-related responsibilities. **Corrective action required.**

**Corrective Action #18:** Ensure that the managerial performance evaluation form contains a rating for EEO (which covers responsibilities and processes for assuring their ability to make

employment decisions based on merit and equal consideration, or treat others in an equitable and impartial manner).

**VIII. REPORTING STANDARD FOR AGENCY HEAD:**

**Determination:** The agency is not in compliance with the standards for this subject area.

24. Submit to the EEPC an Annual Plan of measures and programs to provide equal employment opportunity, and quarterly reports<sup>2</sup> (up to 30 days following each quarter) on efforts to implement the plan.

- The agency did not submit to the EEPC Annual Plans of measures and programs to provide equal employment opportunity of measures and programs to provide equal employment opportunity or quarterly reports for the years in the period in review. **Corrective action required.**

**Corrective Action #19:** Submit to the EEPC an Annual Plan of measures and programs to provide equal employment opportunity, and quarterly reports (up to 30 days following each quarter) on efforts to implement the plan.

**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 has 19 required corrective action(s) 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

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<sup>2</sup>Submission of *Quarterly Reports on EEO Activity* is optional for non-Mayoral agencies.



## Final Determination 07/06/2017

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 issue 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 blue ink, appearing to read "Nathan P. Conway".

Nathan P. Conway, EEO Program Analyst

Approved by,

A handwritten signature in blue ink, appearing to read "Charise L. Terry".

Charise L. Terry, PHR  
Executive Director

c: Sohn Michael, Principal EEO/HR Professional/Director Administration and Policy

Final Determination  
07/06/2017

**Appendix-1**  
Board of Education Retirement Systems  
Workforce Composition Summary  
(End of Audit Period)

Final Determination

Attachment 13: Statistical Profile of Agency Workforce  
Beginning and End of Audit Period 07/06/2017

Agency: BERS

# Employees	Beginning of Audit Period <u>06/01/2014</u>	End of Audit Period <u>12/31/2016</u>
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Male	31	38
Female	40	39

White	15	15
Black	26	28
Hispanic	6	9
Asian	17	21
Native American	0	0
Unknown	7	4

Total # of Employees	71	77
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\*As reported by the agency



**EQUAL EMPLOYMENT PRACTICES COMMISSION  
CITY OF NEW YORK**

**RESOLUTION #2017/212-521:** Final Determination pursuant to the Audit: Review, Evaluation and Monitoring of the Board of Education Retirement System's Employment Practices and Procedures from July 1, 2014 to December 31, 2016.

**Whereas**, pursuant to Chapter 36, Section 831(d)(2) and (5) of the New York City Charter, the Equal Employment Practices Commission is authorized to audit and evaluate the employment practices, programs, policies, and procedures of city agencies and their efforts to ensure fair and effective equal employment opportunity for minority group members and women, and to make recommendations to city agencies to insure equal employment opportunity for minority group members and women; and

**Whereas**, pursuant to Chapter 36, Section 831(d)(2), this Commission has adopted *Uniform Standards for EEPC Audits and Minimum Equal Employment Opportunity Standards for Community Boards* to assess agencies' EEO programs and policies for compliance with federal, state and local laws, regulations, policies and procedures which are designed to increase equality of opportunity for women, minorities, and other employees and job applicants identified for protection from discrimination in employment within municipal government; and

**Whereas**, pursuant to its audit of the Board of Education Retirement System's (BERS) Employment Practices and Procedures, the Equal Employment Practices Commission (EEPC) issued a Preliminary Determination letter, dated June 14<sup>th</sup>, 2017, setting forth findings and the following required corrective actions:

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.
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: uniform and responsive procedures for 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, and federal, state and local agencies that enforce laws against discrimination.
3. 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.

4. Assess recruitment efforts to determine whether such efforts adversely impact any particular group. To the extent that adverse impact is discovered, at a minimum, identify relevant professional and community organizations serving women, minorities, and other protected groups throughout the City, review and update listings of recruitment outreach sources, and contact these organizations when provisional positions become available or where the agency may otherwise use discretion in hiring.
5. Ensure that the principal EEO Professional, HR Professional and General Counsel, review the agency's statistical information (i.e. workforce, hires, promotions, and separations by race/ethnicity and gender), the annual number of EEO complaints, and the agency's employment practices, policies and programs on an annual basis to identify whether there are barriers to equal opportunity within the agency and determine what, if any, corrective actions are required in order to correct deficiencies (e.g. underutilization or adverse impact). If necessary, consult with the Law Department, Division of Citywide Diversity and EEO, or another resource for guidance.
6. 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. To the extent that adverse impact is discovered, determine whether the selection criteria being utilized are job-related. Discontinue using criteria that are not job-related, and adopt methods which diminish adverse impact.
7. If women, minorities, or other protected groups are underrepresented in titles where there is discretion in hiring, advertise in minority- or female-oriented publications; contact organizations serving women, minorities, and other protected groups; participate in career fairs/open houses; or use internships to attract interested persons and to develop and hire interested and qualified candidates.
8. If women, minorities, or other protected groups are underrepresented in civil service (list) titles, review the competencies, skills and abilities required (as presented in job vacancy notices and notices of examination) for available positions to ensure that these standards are updated, job-related and required by business necessity. (This includes working with DCAS or the Civil Service Commission if applicable.) Then advertise in minority- or female-oriented publications, contact organizations serving women, minorities, and other protected groups; participate in career fairs or open houses; or use internships to attract interested persons and to develop and hire interested and qualified candidates.
9. Ensure that human resources professionals, managers, supervisors, and other personnel involved in recruiting and hiring are trained to consider EEO laws/policies and use uniform, job-related techniques to identify, interview and select the most capable candidates (e.g. structured interview training or guide).
10. Promote employees' awareness of opportunities for advancement and transfer within the agency by: administering incentive programs; publicizing promotions, including promotions into, or changes in, the managerial ranks; and/or using other methods to communicate internal opportunities.

11. Ensure that employees are considered internally for career enhancement, development opportunities and transfer by: providing and encouraging training, development or mentorship programs to improve their performance and skills; establishing internal talent pools via cross-training, cross divisional assignments, job transfers, and/or job rotation; and identifying internal successors with applicable knowledge/skills/abilities.
12. Use and maintain a candidate log or tracking system which, at minimum, includes the position, applicants'/candidates' names, identification number, ethnicity, gender, disability or veteran status, interview date, interviewers' names, result, reason selected/not selected (or disposition) of each applicant, and recruitment source. Ensure that the process avoids the appearance of bias by delegating the responsibility for recording and maintaining this information to an individual other than the hiring manager.
13. Designate a professional (may be referred to as the Career Counselor) with appropriate training, knowledge and familiarity with career opportunities in City government to provide career counseling to employees upon request. Remind employees of the identity/type of guidance available from the Career Counselor at least once each year.
14. Ensure that employees have access to information regarding job responsibilities, performance evaluation standards, examinations, training opportunities, and job postings.
15. 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.
16. Appoint a principal EEO Professional to implement EEO policies and standards within the agency. The principal EEO Professional is trained and knowledgeable regarding city, state, and federal EEO laws; the requirements of the agency's EEO policies, standards and procedures; and the prevention, investigation, and resolution of discrimination complaints.
17. Maintain appropriate documentation of meetings and other communications between the agency head (or a direct report other than the General Counsel) and the principal EEO Professional regarding decisions that impact the administration and operation of the EEO program.
18. Establish and administer an annual managerial/non-managerial performance evaluation program to be used for probationary periods, promotions, assignments, incentives and training.
19. Ensure that the managerial performance evaluation form contains a rating for EEO (which covers responsibilities and processes for assuring their ability to make employment decisions based on merit and equal consideration, or treat others in an equitable and impartial manner).

20. Submit to the EEPC an Annual Plan of measures and programs to provide equal employment opportunity, and quarterly reports (up to 30 days following each quarter) on efforts to implement the plan.

**Whereas**, the agency did not submit a response to the EEPC's Preliminary Determination letter within 14 days from the date of its issuance, and consistent with the audit protocol referenced therein, the Preliminary Determination became Final; and

**Whereas**, in accordance with Chapter 36, Section 832(c) of the New York City Charter, the EEPC issued the Final Determination on July 6, 2017, which indicated that corrective actions nos. 1 through 20 require compliance monitoring; and


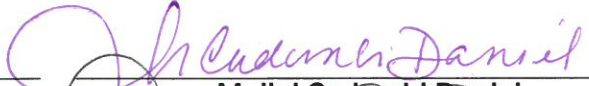
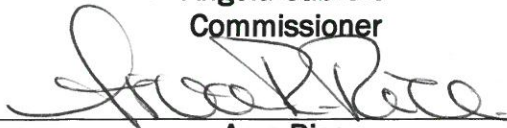
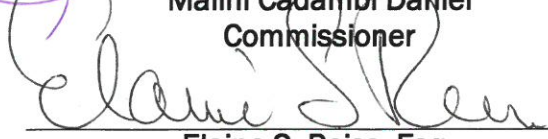
**Whereas**, in accordance with Chapter 36, Section 832 (c) of the City Charter, the EEPC is required to monitor the agency for a period not to exceed six months, from August, 2017 through January, 2018, to determine whether it implemented remaining required corrective actions; and

**Whereas**, in accordance with Chapter 36, Section 832 (c) of the City Charter, the agency is required to respond in 30 days and make monthly reports thereafter to the Commission on the progress of implementation of such corrective actions; and

**Whereas**, all of the EEPC's corrective actions are required by, or are consistent with, federal, state and local laws, regulations, policies and procedures which are designed to increase equality of opportunity for women, minorities, and other employees and job applicants identified for protection from discrimination in employment within municipal government; Now Therefore,

**Be It Resolved**, that the Commission approves issuance of this Final Determination to Sanford Rich, Executive Director, of the Board of Education Retirement System.

Approved unanimously on August 17<sup>th</sup> 2017.

 _____ <b>Angela Cabrera</b> Commissioner	 _____ <b>Malini Cadambi Daniel</b> Commissioner
 _____ <b>Arva Rice</b> Commissioner	 _____ <b>Elaine S. Reiss, Esq.</b> Commissioner



**SANFORD R. RICH**  
EXECUTIVE DIRECTOR  
**DANIEL D. MILLER**  
DEPUTY EXECUTIVE DIRECTOR

**BOARD OF EDUCATION RETIREMENT SYSTEM**  
**OF THE CITY OF NEW YORK**  
65 COURT STREET - ROOM 1603  
BROOKLYN, NEW YORK 11201- 4965

929-305-3800  
OUTSIDE NEW YORK STATE  
1-800-843-5575

August 11, 2017

Charise L. Terry, PHR  
Executive Director  
Equal Employment Practices Commission  
253 Broadway, Suite 602  
New York, NY 10007

Dear Ms. Terry:

Please find attached the Board of Education Retirement System's (BERS), response to the Final Determination Pursuant to the Review, Evaluation and Monitoring of Board of Education Retirement System's Employment Practices and Procedures from July 1, 2014 to December 31, 2016. We are working to comply with each corrective action outlined in the Final Determination.

Sincerely,

A handwritten signature in blue ink, appearing to read "Sanford R. Rich".

Sanford R. Rich  
Executive Director

## **Board of Education Retirement System (BERS) Responses to Corrective Actions in Final Determination**

August 11, 2017

### Response to Corrective Action #1

Action taken: An e-mail was sent on 7/3/2017 to staff from Sanford Rich reiterating BERS commitment to being an Equal Employment Opportunity Employer. Attached to this e-mail were copies of BERS EEO Policy Statement and the City of New York's Equal Employment Opportunity Policy and 2016 addendum. This e-mail also provided a link to additional information on our website.

### Response to Corrective Action #2

Action taken: An e-mail was sent on 7/3/2017 to staff from Sanford Rich reiterating BERS commitment to being an Equal Employment Opportunity Employer. Attached to this e-mail were copies of BERS EEO Policy Statement and the City of New York's Equal Employment Opportunity Policy and 2016 addendum. This e-mail also provided a link to additional information on our website.

### Response to Corrective Action #3

Action taken: We are working to schedule training for our staff in coordination with the Department of Education's Office of Equal Opportunity.

### Response to Corrective Action #4

Action taken: We are reviewing the recruitment efforts for our job posting for Associate Retirement Benefits Examiner that closed on 6/1/6/2017.

### Response to Corrective Action #5

Action taken: We will schedule an annual meeting with the Principal EEO professional, Human Resources professional and general counsel to review agency statistical information.

### Response to Corrective Action #6

Action taken: We have implemented usage of scoring sheets for the Associate Retirement Benefits Examiner posting referenced in the response to Corrective Action #4. We will review the criteria on those scoring sheets to determine if they adversely impact any group.

### Response to Corrective Action #7

Action taken: Based on our demographics, we do not believe that there are any groups underrepresented in titles where there is discretion in hiring. We will be attending career fairs this fall at Baruch College and American University. In addition, we will continue our relationship with St. Francis College from which we've hired qualified interns.

#### Response to Corrective Action #8

Action taken: Based on our demographics, we do not believe that there are any groups underrepresented in civil service titles. We will be attending career fairs this fall at Baruch College and American University. In addition, we will continue our relationship with St. Francis College from which we've hired qualified interns.

#### Response to Corrective Action #9

Action taken: We are working to schedule training for our staff in coordination with the Department of Education's Office of Equal Opportunity.

#### Response to Corrective Action #10

Action taken: We are sending e-mails to staff informing them of promotions, unit changes and internal job opportunities.

#### Response to Corrective Action #11

Action taken: We have transferred several employees to different units to provide cross-training opportunities as well as to expose them to different aspect of BERS operations. In addition, we will be offering staff training opportunities outside of the DCAS Citywide Training Center.

#### **Please note there were two Corrective Action #12's, so we've designated one as #12a and the other #12b**

#### Response to Corrective Action #12a

Action taken: We have created a log to track all relevant information.

#### Response to Corrective Action #12b

Action taken: An e-mail was sent on 8/10/2017 to staff by Sanford Rich designating Michael Sohn as BERS Career Counselor.

#### Response to Corrective Action #13

Action taken: E-mails have been sent to staff regarding upcoming civil service exams, training opportunities and job postings.

#### Response to Corrective Action #14

Action taken: This has not been addressed yet, but we are working on creating a process to allow employees to request information in alternative formats.

#### Response to Corrective Action #15

Action taken: Karen Wong has been appointed EEO Officer and Michael Sohn has been appointed EEO Counselor.

Response to Corrective Action #16

Action taken: We will maintain minutes of any meetings between the Executive Director and the Principal EEO Professional regarding decisions that impact the administration and operations of the EEO program.

Response to Corrective Action #17

Action taken: We are looking to develop a performance evaluation process.

Response to Corrective Action #18

Action taken: We are looking to develop a managerial performance evaluation process that contains an EEO rating.

Response to Corrective Action #19

Action taken: We will provide quarterly reports to the EEPC on progress made in addressing Corrective Actions that have not been completed as of the date of this response.





**BOARD OF EDUCATION RETIREMENT SYSTEM  
OF THE CITY OF NEW YORK  
65 COURT STREET  
BROOKLYN, NEW YORK 11201- 4965**

SANFORD R. RICH  
EXECUTIVE DIRECTOR

929-305-3800  
OUTSIDE NEW YORK STATE  
1-800-843-5575

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**MEMORANDUM**

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**DATE:** 5/1/2018  
**TO:** STAFF  
**FROM:** SANDY RICH, EXECUTIVE DIRECTOR  
**RE:** EEPC REVIEW OF BERS

A handwritten signature in black ink, appearing to read "Sandy Rich", written over the "FROM:" line of the memorandum.

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This memo is intended to share information with you regarding the results of a review of BERS employment practices and procedures by the Equal Employment Practices Commission (EEPC). Throughout their review, EEPC set forth corrective actions and improvements that have either already been implemented, or will be implemented in Fiscal Year 2019 including:

- Providing staff with access to relevant EEO rules/regulations as well as job descriptions for their positions. The location of this information has already been communicated to you.
- Implementing on-going annual EEO training for all BERS staff. Initial sessions should occur during the month(s) of May and June and in each subsequent fiscal year.
- Developing and implementing a formal, written performance evaluation plan for all BERS staff which includes specific work-related criteria to assess and enhance employee performance. These evaluations will be initiated during FY 2019 and in each following year.

With the implementation of these actions, BERS has been deemed in compliance with relevant EEO policies and best practices. This organization is committed to providing equal opportunity for all employees and applicants for employment in our employment decisions.

## EQUAL EMPLOYMENT PRACTICES COMMISSION CITY OF NEW YORK

**RESOLUTION #2017AP/220-521-(2018)C10:** Determination of **Compliance** (Monitoring Period Required) by the New York City Board of Education Retirement System with the Equal Employment Practices Commission's required corrective actions pursuant to the Review, Evaluation and Monitoring of the Employment Practices and Procedures from July 1, 2014 to December 31, 2016.

**Whereas**, pursuant to Chapter 36, Section 831(d)(2) and (5) of the New York City Charter, the Equal Employment Practices Commission is authorized to audit and evaluate the employment practices, programs, policies, and procedures of city agencies and their efforts to ensure fair and effective equal employment opportunity for minority group members and women, and to make recommendations to city agencies to insure equal employment opportunity for minority group members and women; and

**Whereas**, pursuant to Chapter 36, Section 831(d)(2), this Commission has adopted *Uniform Standards for EEPCC Audits* and *Minimum Equal Employment Opportunity Standards for Community Boards* to assess agencies' EEO programs and policies for compliance with federal, state and local laws, regulations, policies and procedures which are designed to increase equality of opportunity for women, minorities, and other employees and job applicants identified for protection from discrimination in employment within municipal government; and

**Whereas**, pursuant to its audit and analysis of the New York City Board of Education Retirement System's (BERS) Employment Practices and Procedures, the Equal Employment Practices Commission (EEPC) issued a Preliminary Determination letter, dated June 14, 2017, setting forth findings and the following required corrective actions:

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.
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: uniform and responsive procedures for 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, and federal, state and local agencies that enforce laws against discrimination.
3. 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.
4. Assess recruitment efforts to determine whether such efforts adversely impact any particular group. To the extent that adverse impact is discovered, at a minimum, identify relevant professional and community organizations serving women, minorities, and other protected groups throughout the City, review and update listings of recruitment outreach sources, and contact these organizations when provisional positions become available or where the agency may otherwise use discretion in hiring.
5. Ensure that the principal EEO Professional, HR Professional and General Counsel, review the agency's statistical information (i.e. workforce, hires, promotions, and separations by race/ethnicity and gender), the annual number of EEO complaints, and the agency's employment practices, policies and programs on an annual basis to identify whether there are barriers to equal opportunity within the agency and

determine what, if any, corrective actions are required in order to correct deficiencies (e.g. underutilization or adverse impact). If necessary, consult with the Law Department, Division of Citywide Diversity and EEO, or another resource for guidance.

6. 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. To the extent that adverse impact is discovered, determine whether the selection criteria being utilized are job-related. Discontinue using criteria that are not job-related, and adopt methods which diminish adverse impact.
7. If women, minorities, or other protected groups are underrepresented in titles where there is discretion in hiring, advertise in minority- or female-oriented publications; contact organizations serving women, minorities, and other protected groups; participate in career fairs/open houses; or use internships to attract interested persons and to develop and hire interested and qualified candidates.
8. If women, minorities, or other protected groups are underrepresented in civil service (list) titles, review the competencies, skills and abilities required (as presented in job vacancy notices and notices of examination) for available positions to ensure that these standards are updated, job-related and required by business necessity. (This includes working with DCAS or the Civil Service Commission if applicable.) Then advertise in minority- or female-oriented publications, contact organizations serving women, minorities, and other protected groups; participate in career fairs or open houses; or use internships to attract interested persons and to develop and hire interested and qualified candidates.
9. Ensure that human resources professionals, managers, supervisors, and other personnel involved in recruiting and hiring are trained to consider EEO laws/policies and use uniform, job-related techniques to identify, interview and select the most capable candidates (e.g. structured interview training or guide).
10. Promote employees' awareness of opportunities for advancement and transfer within the agency by: administering incentive programs; publicizing promotions, including promotions into, or changes in, the managerial ranks; and/or using other methods to communicate internal opportunities.
11. Ensure that employees are considered internally for career enhancement, development opportunities and transfer by: providing and encouraging training, development or mentorship programs to improve their performance and skills; establishing internal talent pools via cross-training, cross divisional assignments, job transfers, and/or job rotation; and identifying internal successors with applicable knowledge/skills/abilities.
12. Use and maintain a candidate log or tracking system which, at minimum, includes the position, applicants'/candidates' names, identification number, ethnicity, gender, disability or veteran status, interview date, interviewers' names, result, reason selected/not selected (or disposition) of each applicant, and recruitment source. Ensure that the process avoids the appearance of bias by delegating the responsibility for recording and maintaining this information to an individual other than the hiring manager.
13. Designate a professional (may be referred to as the Career Counselor) with appropriate training, knowledge and familiarity with career opportunities in City government to provide career counseling to employees upon request. Remind employees of the identity/type of guidance available from the Career Counselor at least once each year.
14. Ensure that employees have access to information regarding job responsibilities, performance evaluation standards, examinations, training opportunities, and job postings.
15. 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.

16. Appoint a principal EEO Professional to implement EEO policies and standards within the agency. The principal EEO Professional is trained and knowledgeable regarding city, state, and federal EEO laws; the requirements of the agency's EEO policies, standards and procedures; and the prevention, investigation, and resolution of discrimination complaints.
17. Maintain appropriate documentation of meetings and other communications between the agency head (or a direct report other than the General Counsel) and the principal EEO Professional regarding decisions that impact the administration and operation of the EEO program.
18. Establish and administer an annual managerial/non-managerial performance evaluation program to be used for probationary periods, promotions, assignments, incentives and training.
19. Ensure that the managerial performance evaluation form contains a rating for EEO (which covers responsibilities and processes for assuring their ability to make employment decisions based on merit and equal consideration, or treat others in an equitable and impartial manner).
20. Submit to the EEPC an Annual Plan of measures and programs to provide equal employment opportunity, and quarterly reports (up to 30 days following each quarter) on efforts to implement the plan.

**Whereas**, the BERS did not submit a response to the EEPC's Preliminary Determination letter within 14 days from the date of its issuance, and, consistent with the audit protocol referenced therein, the Preliminary Determination became Final; and

**Whereas**, in accordance with Chapter 36, Section 832(c) of the New York City Charter, the EEPC issued a Final Determination on July 6, 2017 which indicated that corrective action nos. 1 - 20 required compliance monitoring; and

**Whereas**, the BERS submitted its response to the EEPC's Final Determination letter, on August 11, 2017; and

**Whereas**, in accordance with Chapter 36, Section 832(c) of the New York City Charter, the EEPC monitored the agency's implementation of the corrective actions from July 2017 - January 2018, with an extension of the monitoring period to April 20, 2018; and

**Whereas**, at the EEPC's request pursuant to Section 815.a.(15) of the New York City Charter, the BERS submitted a copy of the agency head's memorandum to staff dated May 1, 2018, which outlined the corrective actions implemented in response to the EEPC's audit and reiterated commitment to the agency's EEO Program; and


**Whereas**, all of the EEPC's corrective actions are required by, or are consistent with, federal, state and local laws, regulations, policies and procedures which are designed to increase equality of opportunity for women, minorities, and other employees and job applicants identified for protection from discrimination in employment within municipal government; Now Therefore,

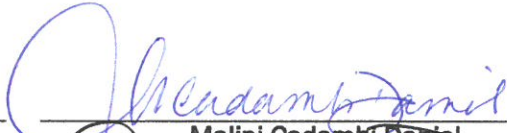
**Be It Resolved**, that the New York City Board of Education Retirement System has implemented the required corrective actions deemed necessary to ensure compliance with the equal employment opportunity standards of this Commission and requirements of Chapters 35 and 36 of the City Charter.

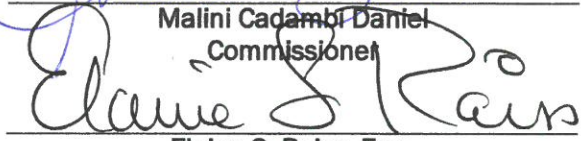
**Be It Resolved**, that the Commission approves issuance of this Determination of Compliance to Executive Director Sanford Rich of the New York City Board of Education Retirement System.

Approved unanimously on May 10, 2018.

  
\_\_\_\_\_  
Angela Cabrera  
Commissioner

  
\_\_\_\_\_  
Arva Rice  
Commissioner

  
\_\_\_\_\_  
Malini Cadambi Daniel  
Commissioner

  
\_\_\_\_\_  
Elaine S. Reiss, Esq.  
Commissioner



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

Charise L. Terry, PHR  
Executive Director

Judith Garcia Quiñonez, Esq.  
Executive Agency Counsel

253 Broadway  
Suite 602  
New York, NY 10007

212. 615. 8939 tel.  
212. 676. 2724 fax

**BY MAIL AND EMAIL**

May 10, 2018

Sanford Rich  
Executive Director  
Board of Education Retirement System  
65 Court Street - Room 1602E  
Brooklyn, NY 11201

Re: Resolution #2017AP/220-521-(2018)C10: Determination of Agency Compliance

Dear Executive Director Rich:

On behalf of the members of the Equal Employment Practices Commission (EEPC or Commission), I want to inform you that the Commission has issued the attached Determination of Compliance to the New York City Board of Education Retirement System. This Commission has determined that the New York City Board of Education Retirement System has implemented the required corrective actions deemed necessary by this Commission for ensuring a fair and effective affirmative employment program of equal opportunity as required by the equal employment opportunity standards of this Commission and Chapters 35 and 36 of the New York City Charter.

On behalf of this Commission, I want to thank you and Principal EEO Professional Karen Wong for the cooperation extended to the EEPC during the compliance-monitoring period.

Sincerely,

A handwritten signature in black ink, appearing to read "Arva Rice". The signature is fluid and cursive.

Arva Rice  
Commissioner

c: Karen Wong, Principal EEO Professional, New York City Board of Education Retirement System

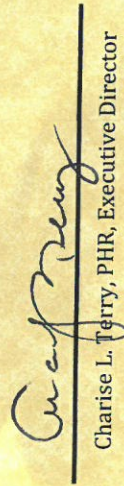
This  
*Determination of Compliance*  
is issued to

New York City Board of Education Retirement System

*for successfully implementing 20 of 20 required corrective actions pursuant to the Equal Employment Practices Commission's Employment Practices and Procedures Audit From July 1, 2014 to this date.*

On this 10<sup>th</sup> day of May in the year 2018,

  
Arva Rice, Commissioner

  
Charise L. Terry, PHR, Executive Director

*In care of Executive Director Sanford Rich, and  
Principal EEO Professional Karen Wong.*