



**Equal Employment
Practices Commission**

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Meenakshi Srinivasan
Chair
Board of Standards and Appeals
250 Broadway, 29th Floor
New York, NY 10007

Re: Preliminary Determination: Audit, Evaluation and Monitoring of the Board of Standards and Appeals' *Discrimination Complaint and Investigation Procedures* from January 1, 2012 to December 31, 2013.

Dear Chair Srinivasan:

On behalf of the members of the Equal Employment Practices Commission (Commission or EEPC), thank you and your agency for the cooperation extended to our staff during the course of this audit and evaluation. This letter contains the Commission's findings and preliminary determinations pertaining to the period covering January 1, 2012 to December 31, 2013.

Chapter 36, Section 831(d)(5) of the New York City Charter empowers this Commission to audit and evaluate the employment practices and procedures of city agencies and their efforts to ensure fair and effective equal employment opportunity for women and minority employees and applicants seeking employment. Sections 831(d)(2) and 832(c) authorize this Commission to make a determination that any agency's plan, program, procedure, approach, measure or standard does not provide equal employment opportunity, require appropriate corrective action and monitor the implementation of the corrective action it prescribes.

The Board of Standards and Appeals, 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



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appointed by the mayor or serve by virtue of being city officers or the expenses of which are paid in whole or in part from the city treasury...”

This Commission has adopted *Uniform Standards for EEPC Audits*¹ and *Minimum Equal Employment Opportunity Standards for Community Boards* to assess agencies’ practices and policies. These standards are founded upon and consistent with federal, state and local laws, regulations, procedures and policies including, but not limited to, the Citywide Equal Employment Opportunity Policy - Standards and Procedures to be Utilized by City Agencies; the New York City Human Rights Law (NYC Administrative Code, §§8-107(1)(a) and (d), 8-107.13, and 8-107.1); the Equal Employment Opportunity Commission’s Instructions to Federal Agencies for EEO, Management Directive 715; the Americans with Disabilities Act and its Accessibility Guidelines; and the equal employment opportunity requirements of the New York City Charter. Prescribed corrective actions are consistent with the aforementioned parameters.

Since this Commission is empowered to review and recommend actions which each agency should consider including in its annual plan of measures and programs to provide equal employment opportunity (Annual EEO Plan), the audited agency should incorporate required corrective actions in its current EEO Program and prospective Annual EEO Plans.

Scope and Methodology

This Commission’s audit methodology includes collection and analysis of the documents, records and data the agency provides in response to the EEPC preliminary interview questionnaires and document/information requests, which are sent to EEO professionals and others involved in EEO program administration. EEO professionals (including, but not limited to, past or current EEO Officers, Deputy or Co-EEO Officers, EEO Counselors, EEO Trainers, EEO Investigators, Disability Rights Coordinators,) and others involved in EEO program administration such as the General Counsel are given a two-week deadline to complete and return their individual questionnaires and requested documents. Applicable information from the agency’s *Annual EEO Plans and Quarterly EEO Reports* are also reviewed.

The Commission’s EEO Program Analysts also conduct additional research, follow-up discussions, and/or interviews with EEO professionals, when appropriate.

Description of the Agency

The Board of Standards and Appeals, which is comprised of five full-time, Mayoral-appointed commissioners, is empowered by the City Charter to interpret the meaning or applicability of the Zoning Resolution, Building and Fire Codes, Multiple Dwelling Law, and Labor Law. This power includes the ability to vary in certain instances the provisions of these regulations.

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



PRELIMINARY DETERMINATIONS AFTER AUDIT AND ANALYSIS

Following are the corresponding audit standards for each subject area along with the EEP's findings and required corrective actions, where appropriate:

I. ISSUANCE, DISTRIBUTION AND POSTING OF EEO POLICIES:

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

1. Issue an agency EEO Policy statement or memo from the agency head to all employees reiterating commitment to EEO, declaring the agency's position against discrimination on any protected basis, advising employees of the names and contact information of EEO professionals, and providing employees pertinent electronic links to the EEO Policy/Handbook/Addenda.
 - ✓ The agency issued an EEO Policy memo from the agency head to all employees reiterating commitment to EEO, declaring the agency's position against discrimination on any protected basis, and advising employees of the names of EEO professionals. The EEO Policy handbook, *About EEO: What You May Not Know* was attached to the policy memo.
2. Distribute the Citywide or an agency EEO Policy – in paper or electronic copy – to legal, human resources and EEO professionals, as well as managers and supervisors. At minimum, include, or attach as addenda: a policy against Sexual Harassment; uniform and responsive procedures for investigating discrimination complaints and providing reasonable accommodations that conform to city, state and federal laws; contact information for the EEO professionals; an up-to-date list of protected classes under NYC and NYS Human Rights Laws; and current contact information for federal, state and local agencies that enforce laws against discrimination.
 - The agency did not demonstrate that it distributed the Citywide EEO Policy – in paper or electronic copy – to legal, human resources and EEO professionals, as well as managers and supervisors during the audit period.

NOTE: Although the agency did not demonstrate that the Citywide EEO Policy was distributed – in paper or electronic copy – to legal, human resources and EEO professionals, as well as managers and supervisors during the audit period, subsequently on April 17, 2014 a memo was distributed electronically to all staff reiterating the agency's commitment to EEO. The memo included a link to the Citywide EEO Policy.

3. Post – on electronic bulletin boards, intranet sites, and at each facility – the EEO policies and complaint procedures. Post the agency head's EEO Policy Statement wherever the EEO policy and addenda or the EEO handbook is posted.



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- ✓ The agency posted the agency head's EEO Policy Statement, a copy of *about EEO: What You May Not Know*, and the City of New York's *EEO Policy* on the central bulletin board of its main office.

II. TRAINING-DISCRIMINATION COMPLAINT AND INVESTIGATION PROCEDURE:

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

1. Establish a program to educate employees, agents and persons employed as independent contractors about unlawful discriminatory practices, under local, state and federal laws, employee rights, complaint procedures, preventing sexual harassment, and reasonable accommodation procedures.

- ✓ The agency established a program to educate employees, about unlawful discriminatory practices. Each new employee was required to attend DCAS EEO training as part of the orientation process upon hire. Supervisors/ Managers were kept abreast of EEO policy updates via handouts from the principal EEO Professional, as they were made available from DCAS. The agency also held a Right-To-Know training session on October 2, 2012 which was attended by all staff.

III. DISCRIMINATION COMPLAINT AND INVRESTIGATION PROCEDURES:

Summary of Complaint Activity: The Board of Standards and Appeals reported no employment discrimination complaints were filed during the audit period. As a result, this Commission could not conduct a robust analysis of the agency's complaint and investigation procedures, but concluded the following based on the BSA's *Discrimination Complaint Procedures Guidelines* and the forms submitted.

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

1. Include in the complaint file a *Discrimination Complaint Form* or a complaint that captures the facts (including pertinent dates) that identify the respondent(s) with reasonable specificity and provide the essence of the circumstances which gave rise to the alleged discrimination.

- ✓ The agency's *Complaint of Discrimination Based upon Anonymous/Oral Complaint* form allows an investigator to capture the facts, which identify the respondent(s) with reasonable specificity, and provide the essence of the circumstances which gave rise to the alleged discrimination.

2. Serve the respondent with a notice of the complaint that includes the respondent's right to respond to the allegations, and right to be accompanied by a representative of his/her



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choice. Maintain in the complaint file documentation regarding the service of notice on the respondent.

- ✓ The agency's *Notice of Complaint* form, included the respondent's right to respond to the allegations, and the right to be accompanied by a representative of his/her choice.
3. Issue and maintain written confirmation when a complaint is withdrawn or resolved by agreement of the parties.
- ✓ The agency used the *Guidelines for the Implementation of City of New York's Discrimination Complaint Procedure* which required that the principal EEO Professional notify the respondent in writing upon the complainant's withdrawal of the complaint and whether the investigation has been terminated or is continuing.
4. Take thorough notes, of words spoken and facts provided, during each interview. Include these notes in each complaint file. Word processed notes are preferred.
- ✓ The agency used the *Guidelines for the Implementation of City of New York's Discrimination Complaint Procedure* which required that the interviewer take thorough notes, as close to verbatim as possible, during each interview and review with witnesses (at the conclusion of the interview) the points contained in the notes to confirm their accuracy and determine whether the interviewee had anything to add.
5. Issue a Confidential Written Report within 90 days of the date the discrimination complaint was filed, although the investigation shall be commenced immediately.
- ✓ The agency used the *Guidelines for the Implementation of City of New York's Discrimination Complaint Procedures* which required that a confidential written report be issued within 30 days of the date a discrimination complaint is filed.
6. In rare circumstances where a complaint investigation cannot commence immediately, or where a confidential report cannot be issued within 90 days, a note shall be made in the complaint file explaining the reason for the delay and projecting a time frame for completion of the report. The complainant and respondent shall be notified of the delay in writing.

NOTE: Since no complaints were filed during the audit period, the Commission did not conduct further analysis in this area. The agency agreed to adhere to this standard in accordance with the *Guidelines for the Implementation of City of New York's Discrimination Complaint Procedures*.



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7. Generate a report labeled "Confidential" consisting of Facts, Analysis, Conclusion, Recommendation, and Agency Head's Review at the conclusion of each complaint investigation.
 - ✓ The agency used the *Guidelines for the Implementation of City of New York's Discrimination Complaint Procedures* which required that the Principal EEO Professional prepare a confidential written report as a result of an investigation and submit the report to the agency head for review.
8. The agency head reviews the EEO professional's report; promptly issues a written/electronic determination adopting, rejecting, or modifying the recommended action; and signs each final determination (via writing or electronically) to indicate it has been reviewed and adopted.
 - ✓ The agency used the *Guidelines for the Implementation of City of New York's Discrimination Complaint Procedures* which required that the agency head review the EEO Professional's report; promptly issue a written/electronic determination adopting, rejecting, or modifying the recommended action; and sign each determination (via writing or electronically) to indicate it has been reviewed and adopted.
9. In order for the agency to demonstrate it has a responsive procedure for investigating discrimination complaints, in accordance with the City Human Rights Law, the complaint procedure requires written communication informing the complainant and respondent of the conclusion and outcome of a complaint investigation
 - ✓ The agency used the *Guidelines for the Implementation of City of New York's Discrimination Complaint Procedures* which required written communication informing the complainant and respondent of the outcome of an investigation once it has concluded.
10. Internal discrimination complaint files contain written indication of their outcomes and corrective action(s) taken as a result of the determination.
 - ✓ The agency used the *Guidelines for the Implementation of City of New York's Discrimination Complaint Procedures* which required that complaint files contain written indication of their outcomes and corrective action(s) taken as a result of the determination. Where corrective action is recommended, the most appropriate action which might be taken in light of the facts and circumstances uncovered during the investigation should be determined.
11. Notify the complainant and respondent in writing when the investigation by the EEO professional has been transferred because of the filing of an external complaint.



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- ✓ The agency's *Equal Employment Opportunity Policy* required that the principal EEO Professional notify the complainant and the parties who are the subject of the complaint in writing that the investigation by the principal EEO Professional has been transferred because of the filing of the external complaint.

12. Establish a complaint tracking and monitoring system that permits the agency to identify the location, status, and length of time elapsed in the EEO complaint process, the issues and the bases of the complaints, the aggrieved individuals, and other information necessary to analyze complaint activity to identify trends.

NOTE: Since no complaints were filed during the audit period, the Commission did not conduct further analysis in this area. The agency will adhere to this procedure and use the *Quarterly Reports on EEO Activity* format set forth by Department of Citywide Administrative Services.

13. Maintain EEO-related files in a secure area to ensure confidentiality.

- ✓ EEO-related files are kept in an office file cabinet which is only accessible to EEO Personnel to ensure confidentiality.

14. Establish a procedure where the EEO professional, HR professional (or personnel responsible for employee discipline), and General Counsel review an employee's record for prior incidents of discriminatory conduct as part of the external complaint process.

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

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

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

1. Ensure that information regarding employee rights and obligations, and the complaint, investigation and reasonable accommodation procedures are made available in appropriate alternative formats (i.e., large print, audio tape and/or Braille) upon request to employees and applicants for employment with disabilities.

- ✓ No requests for alternative formats of the EEO policies were made during the audit period. The agency is prepared to provide information regarding employee rights and obligations and the complaint investigation and reasonable accommodation procedures in appropriate formats to employees and applicants for employment with disabilities upon request.



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2. Document reasonable accommodation requests and their outcomes.

- ✓ The agency reported no requests for reasonable accommodation were made during the audit period. The agency will adhere to the *City of New York's Reasonable Accommodation Policy and Procedure* which included a form to document all requests for accommodation and their outcomes.

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

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

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

- ✓ The agency appointed a principal EEO Professional to implement EEO policies and standards within the agency. The principal EEO Professional received *Diversity and Equal Employment Opportunity Basic Training* from the Department of Citywide Administrative Services in November, 2010.

2. Appoint at least one EEO professional of each gender to receive discrimination complaints and conduct investigations.

- ✓ The agency appointed one male EEO Officer and one female EEO Counselor to receive discrimination complaints and conduct investigations.

3. The principal EEO Professional works cooperatively and closely with the General Counsel in the implementation of the EEO policies and related procedures.

- ✓ Although no complaints of discrimination were filed during the audit period, the principal EEO Professional worked cooperatively and closely with the General Counsel in reviewing and approving Annual EEO plans and Quarterly Reports on EEO Activity.

4. The principal EEO Professional ensures that employees receive EEO training; supervises the EEO-related activities of other EEO professionals; ensures that EEO policies and complaint procedures are posted at each site where the agency conducts business; ensures that EEO policies and procedures are available in alternative formats (i.e., large print, audio tape and/or Braille); and provides guidance and assistance to agency managers, supervisors and human resource professionals in addressing issues relating to equal employment opportunity.

- ✓ The principal EEO Professional ensured that employees receive EEO training; eighteen employees including 2 managers and 1 supervisor attended *Right-To-Know* training in October, 2012. The principal EEO Professional also supervised EEO-related activities of other EEO professionals, provided guidance and assistance to other staff on EEO matters, and ensured that EEO policies and complaint procedures were posted at each site where the agency conducted business. (See section: IV. 1. for alternative format availability.)

5. The principal EEO Professional will monitor, analyze and report significant trends in the nature and disposition of discrimination complaint activity to provide the agency insight into the extent to which the agency is meeting its obligations under city, state and federal anti-discrimination laws and regulations.

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

6. The principal EEO Professional reports directly to the agency head (or an approved direct report other than the General Counsel) in order to exercise the necessary authority and independent judgment to fulfill EEO responsibilities.

- ✓ The principal EEO Professional, reports directly to the Executive Director of the BSA.

- Although the principal EEO Professional reports directly to the Executive Director in practice, the organization chart does not identify the principal EEO Professional's title. Corrective action is required.

Corrective Action: Indicate the reporting relationship between the *principal EEO Professional* and Agency Head by including the title in the agency's organizational chart, EEO Policy and Annual EEO Plan.

VI. RESPONSIBILITY FOR IMPLEMENTATION OF COMPLIANT INVESTIGATION PROCEDURES – GENERAL COUNSEL:

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

1. The General Counsel assists the agency head in identifying and determining appropriate responses to EEO issues; and is responsible for the investigation of, and response to, external EEO complaints.

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



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2. The General Counsel works with the principal EEO Professional in the implementation of the agency's EEO policies and related procedures; is available to consult on internal EEO investigations; and informs the principal EEO Professional when external complaints or litigation involving EEO matters are brought against the agency.
 - ✓ The General Counsel worked with the principal EEO Professional in the review and implementation of the agency's EEO policies and related procedures to ensure the agency's compliance; was available to consult on internal EEO investigations; and informed the principal EEO Professional when external complaints or litigation involving EEO matters are brought against the agency.
3. The General Counsel reviews the agency's annual number of EEO complaints and the agency's obligations as a result of corrective actions required under court decrees and/or governmental audits on an annual basis.
 - ✓ The agency reported no employment discrimination complaints were filed internally or externally and no court decrees were in effect during the audit period. However the *Discrimination Complaint Procedures Guidelines* required that when determining the appropriate disciplinary action, the agency's General Counsel should be consulted.
4. The General Counsel tracks dispositions of external complaints and reports trends, issues and problems to agency leadership for appropriate action.

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

VII. FINAL ACTION FOR AGENCY HEAD:

After implementation of the EEPC's corrective actions:

1. The agency head distributes a memorandum informing employees of the changes implemented in the EEO program pursuant to the EEPC's audit/analysis and re-emphasizing the agency head's commitment to the EEO program.

Final Action: Distribute a memorandum signed by the agency head informing employees of the changes implemented in the EEO program pursuant to the EEPC's audit/analysis and re-emphasizing the agency head's commitment to the EEO program.

Conclusion

Pursuant to Chapter 36 of the New York City Charter, your agency has the *option* to respond to this *preliminary determination*, but must respond to our Final Determination if corrective action is required.



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Optional Response to preliminary determination: If submitted, your optional response should indicate, with attached documentation, what steps your agency has taken or will take to implement the prescribed corrective actions, and must be received in our office within 14 days from the date of this letter. No extensions will be granted for the *option* to respond to the *preliminary determination*.

(Optional Conference) During the Optional Conference, we will discuss the immediate steps your agency should take and address questions regarding your agency's implementation of the prescribed corrective action(s).

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

Mandatory Response to Final Determination: Following this preliminary determination, the EEPC will mail a Final Determination where we may modify or eliminate the corrective actions based on verified information; identify remaining action which requires further monitoring in order to ensure implementation; and assign a mandatory compliance-monitoring period of up to 6 months for this purpose. Pursuant to Chapter 36 of the New York City Charter your agency must respond to our Final Determination within 30 days. Your response to the Final Determination will initiate the compliance monitoring period.

In closing, we want to thank you and your staff for the cooperation extended to the Equal Employment Practices Commission's EEO Program Analysts during the course of our audit and analysis.

Respectfully Submitted by,

Ilacia N. Zuell, EEO Program Analyst

Approved by,

Charise L. Hendricks, PHR
Executive Director

c: Jeff Mulligan, Executive Director
Rory Levy, Principal EEO Professional