

## **Department of Education**

- **Summary Compliance Report** **December 18, 2008**
- **Letter of Compliance Satisfaction** **December 18, 2008**



## EQUAL EMPLOYMENT PRACTICES COMMISSION SUMMARY COMPLIANCE REPORT

**Agency:** Department of Education

**Agency Head:** Joel Klein, Chancellor

**OEO Director/ EEO Officer:** Mecca E. Santana

**Audit period:** July 1, 2003 – June 30, 2005

Date of Preliminary Determination Letter:

*August 3, 2006*

Date of Response Letter:

*November 14, 2006*

Date of Final Determination Letter:

*December 14, 2006*

Date of Response Letter:

*January 24, 2007*

Compliance Initiated:

*January 2008*

Compliance Completed:

*November 2008*

Covering Months:

*February- July 2008*

**Date:** December 18, 2008

Pursuant to the findings and recommendations of the Equal Employment Practices Commission's (EEOC) Audit of Compliance by the Department of Education's Internal Discrimination Complaint Procedure for Non-Pedagogical Employees starting July 1, 2003 and ending June 30, 2005, the EEOC initiated Audit Compliance with the DOE in January 2008.

At the January 22, 2008 compliance initiation meeting, the DOE submitted a revised copy of the "Chancellor's Regulation A-830, Filing Internal Complaints of Unlawful Discrimination/Harassment", dated May 3, 2007, that includes the current list of protected classes, implementing required action #1.

On April 28, 2008, the DOE issued a newly revised "Chancellor's Regulation A-830, Filing Internal Complaints of Unlawful Discrimination/Harassment", without implementing all the required actions.

On May 20, 2008, the DOE submitted a Monthly Compliance Report, which it designated as its final report. The EEOC requested additional information and documentation, which were submitted on June 3, 2008 and September 16, 2008.

## Post Compliance Monitoring

On August 7, 2008, the EEPCC Chair, Executive Director, Deputy Director and Counsel met with the DOE OEO Director, General Counsel and Chief Deputy Counsel to discuss the EEPCC's proposal to issue a determination of partial compliance based upon its determination that the DOE did not implement all of the Commission's recommended corrective actions during the compliance-monitoring period. More specifically, the DOE did not implement the two required actions which are premised upon the agency head's accountability for the agency's EEO practices: the Deputy Chancellor's review and signature on final internal discrimination investigation reports; and the Director of OEO reporting to a direct report to the Chancellor.

As to the inclusion of language which delineates who signs off on final investigation determinations and the reporting structure between the Director of OEO and the Chancellor, the Chief Deputy Counsel stated that the DOE wants the employees to know that OEO is independent of the central administration because if they believe that the DOE central administration is involved, they will be unwilling to utilize OEO. However, the General Counsel agreed to consider revising the regulation's language, in response to our concerns.

The DOE revised its EEO program during the compliance period to eliminate the Local Equal Opportunity Coordinators (LEOC), whom the DOE had designated to provide information on EEO matters, receive, conciliate and investigate complaints of unlawful discrimination. The DOE representatives stated that the Office of Equal Opportunity is more effective since elimination of the LEOC system; and that the OEO's increased efforts in outreach, training for employees, and workshops for principals have resulted in significant increases in the number of complaints handled, investigated and closed. Documentation detailing and supporting these assertions was submitted in September 2008.

On November 17, 2008, the DOE issued a newly revised "Chancellor's Regulation A-830, Filing Internal Complaints of Unlawful Discrimination/Harassment" (attached), replacing the Chancellor's Regulation A-830 issued April 28, 2008.

Seven of eight required actions were implemented or accepted.

The following is a summary of the compliance reports:

1. **The DOE should follow up on its pledge and revise A-830 to include the current list of protected classes under the New York State and New York City Human Rights Laws.**

On May 3, 2007, the DOE revised Chancellor's Regulation A-830 to include the current list of protected classes under the New York State and New York City Human Rights laws. A copy of the revised A-830 was provided at the compliance initiation meeting.

The required action was implemented in January 2008.

2. **Consistent with the mandate of the Citywide EEO Policy, the Discrimination Complaint Procedures Implementation Guidelines issued by DCAS, and the unique size of the DOE, A-830 should be revised to require that the Chancellor, or a direct report to the Chancellor, sign off on all final internal discrimination reports to indicate that they have been reviewed and whether the recommendations, if any, have been approved and adopted. Such sign off may be in written or electronic form. (Sect. VB, Citywide EEO Policy, and Sect. 12b, DCPIG)**

The DOE agreed to establish a requirement that the Deputy Chancellor for Organizational Strategy, Human Capital, and External Affairs, a direct report to the Chancellor, reviews and signs off on final internal discrimination reports involving non-pedagogical employees. The newly revised A-830, issued in November 2008, section III.B.2 provides:

Following the investigation, the OEO will submit written recommended findings as to whether there has been a violation of this Regulation to the Chancellor/designee.<sup>1</sup> The Chancellor/designee will issue a written determination within 90 working days of receipt of the complaint, unless extenuating circumstances warrant extension of the time period. Complainant(s) and Respondent(s) will be informed in writing of the determination.

The footnote states:

The Chancellor's designee for complaints filed by or against pedagogical employees is the General Counsel. For complaints filed by or against non-pedagogical employees, the Chancellor's designee is a Deputy Chancellor.

Presently, the Deputy Chancellor for Organizational Strategy, Human Capital, and External Affairs is the Chancellor's designee to whom the OEO reports regarding non-pedagogical employees. However, the Director of OEO explained that the Regulation refers to "a Deputy Chancellor" rather than to a specific Deputy Chancellor, as a contingency measure, in the event of unforeseen circumstances, so that the OEO will report to a direct report to the Chancellor.

The DOE has three Deputy Chancellors, all of whom are direct reports to the Chancellor: Christopher D. Cerf, Deputy Chancellor of Organizational Strategy, Human Capital, and External Affairs; Kathleen Grimm, Deputy Chancellor of Finance and Administration; and Marcia V. Lyles, Deputy Chancellor of Teaching and Learning and Learning Support Organizations.

The required action was implemented in November 2008.

3. **The nine personnel managers serving as LEOCs should be replaced by employees who are not involved in directing personnel units.**

The nine personnel managers serving as LEOCs were replaced by employees who are not involved in directing personnel units. The newly appointed LEOCs acted in an administrative capacity. As of March 28, 2008, the DOE eliminated the LEOC system, thereby, eliminating the LEOC positions.

The required action is rendered moot by elimination of the LEOC system.

4. **To ensure adequate staffing of the OEO, the Department should follow-up on its pledge to hire a replacement complaint officer, a new EEO trainer, and another clerical worker.**

In December 2006, the DOE hired an EEO compliance assistant. In January 2007, the DOE hired a training specialist. In June 2007, the DOE hired an EEO compliance officer. A copy of the job vacancy notices for these positions were provided in the March compliance report.

In his September 16, 2008 letter to the EEPC, the General Counsel wrote upon filling a vacancy, the OEO will have a total of five EEO investigators.

The required action was accepted in December 2008.

5. **Consistent with the mandate of the Citywide EEO Policy, the EEO Officer should report to the Chancellor or a direct report, other than the General Counsel, to the Chancellor. (Sect. VB, Citywide EEOP)**

The DOE stated, in its response to the EEPC's Final Determination, "The OEO Director will report to the Deputy Chancellor for Organizational Strategy, Human Capital, and External Affairs [a direct report to the Chancellor] for matters involving non-pedagogical employees."

In his September 16, 2008 letter to the EEPC, the General Counsel attached an organizational chart showing the reporting structure between the Director of OEO and the Deputy Chancellor.

The required action was implemented in September 2008.

6. **After the OEO obtains additional staff, it should meet with the LEOCs at least at quarterly intervals to ensure that they are carrying out their EEO functions satisfactorily and are kept abreast of internal and external EEO developments. (sect. VC, Citywide EEOP)**

The DOE stated in its February compliance report that it was reconsidering the LEOC system. As of March 28, 2008, DOE eliminated the LEOC system. The OEO staff members have assumed the functions previously assigned to LEOCs. The Director of OEO provided documentation of monthly OEO staff meetings on June 3, 2008.

The required action was implemented in June 2008.

7. **The DOE should follow the A-830 and complete discrimination investigations within twenty working days. If additional time is required, OEO should formally extend the time period and notify all parties to the investigations of the extension. (DCPIG, April 2, 1996 Amendment)**

Chancellor's Regulation A-830, effective April 28, 2008, mandates that discrimination investigations "generally should not exceed 60 working days." The OEO will make every effort to complete investigations within the allotted time period. The OEO will keep all relevant parties apprised of the status of the investigation. A copy of the revised A-830 was provided in the monthly compliance report dated May 20, 2008.

Chancellor's Regulation A-830 dated November 17, 2008, Section III.B.2, extends the time frame for completing investigations to 90 working days. A copy of the revised A-830 is attached.

The required action was accepted in May 2008.

8. **The agency head should distribute an agency-wide memo informing staff of the changes that are being implemented in the agency's EEO program pursuant to the audit and re-emphasize his commitment to the agency's EEO program.**

The OEO distributed, via email, an agency-wide publication (attached) to every DOE employee, which included a "Message from the Chancellor" reaffirming "the Department's commitment to maintaining a work environment that promotes dignity, respect and fair employment practices for all employees and job applicants." OEO also published the document in the Principals' Weekly Newsletter. A copy of the Message was provided in with the April monthly compliance report. (Attached).

The required action was implemented in April 2008.

## **Recommendation**

We recommend that the Equal Employment Practices Commission issue a Letter of Satisfactory Compliance to Chancellor Joel I. Klein, informing him that the DOE has implemented six of the eight recommended corrective actions to the Commission's satisfaction (the elimination of the LEOC system rendered #3 moot). We also recommend that this Commission initiate a new audit of the DOE's Internal Discrimination Complaint Procedure for Non-Pedagogical Employees no later than 18 months from May 2008.

## **Rationale**

On April 28, 2008, during the Compliance process, the Department of Education (DOE) issued a newly revised "Chancellor's Regulation A-830, Filing Internal Complaints of Discrimination/Harassment." The revised A-830 excluded the DOE's commitment to revise its

review and reporting structure for the EEO Officer in cases that include complaints filed by or against non-pedagogues.

That revised A-830 eliminated the Local Equal Opportunity Coordinators (LEOCs). These employees were responsible for the intake and/or investigation of discrimination complaints. More important, these LEOCs were located throughout the five boroughs thus decentralizing the intake/investigation process. During the audit period (July 1, 2003 – June 30, 2005), 364 LEOCs were available to DOE employees who filed 155 internal complaints. In academic year 2005-2006, there were 332 LEOCs and 126 complaints were filed. In academic year 2006-2007, there were 181 LEOCs and 160 complaints were filed.

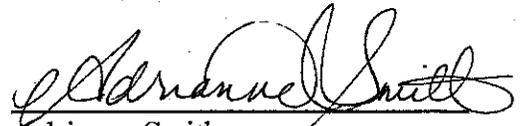
At the August 7, 2008 meeting, Ms. Santana informed the EEPC that there were only 40 verifiable LEOCs during the 2007-2008 academic year, who conducted 7 investigations. She also asserted that during academic year 2005-2006, the 332 LEOCs conducted only 17 investigations.

The DOE has approximately 143,000 employees. Under the revised A-830, the number of EEO staff persons available for intake/investigation of EEO complaints was reduced to four – an extremely significant reduction. By comparison, the New York City Police Department has 52,237 employees and 36 EEO personnel available for intake/investigation of EEO complaints.

In November the DOE revised its A-830 again. This revision increased the number of direct reports that can sign-off on final internal discrimination reports from one to three.

Because the DOE revised its EEO program twice during the compliance monitoring period, drastically reducing the number of personnel available to receive and investigate complaints, as well as changing the reporting structure, the EEPC is concerned about its effectiveness. We conclude that it would be appropriate for the Commission to audit the DOE's Internal Discrimination Complaint Procedure for Non-Pedagogical Employees no later than eighteen months from May 2008.

Respectfully Submitted,



Adrienne Smith  
EEO Auditor/Compliance Officer



Judith Garcia Quiñonez, Esq.  
Counsel/Compliance Director



Abraham May, Jr.  
Executive Director

Attachment



## EQUAL EMPLOYMENT PRACTICES COMMISSION

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December 18, 2008

Joel I. Klein

Chancellor

The NYC Department of Education

52 Chambers Street

New York, NY 10007

Re: Resolution #08/07-740C: Implementation of Corrective Actions Pursuant to the Audit of Compliance by the Department of Education's (DOE) Equal Employment Opportunity Program (EEOP) from July 1, 2003 to June 30, 2005.

Dear Chancellor Klein:

Pursuant to Section 832 of Chapter 36 of the New York City Charter, the Equal Employment Practices Commission (EEPC) was required to monitor audit compliance by the Department of Education (DOE) for a period not to exceed six months. The compliance period was February 1, 2008 through July 31, 2008. The DOE's Final Compliance Report was submitted on May 20, 2008. Additional documentation was submitted on November 17, 2008.

The goal of monitoring was to determine if the DOE implemented all recommended corrective actions pursuant to our audit of compliance by your agency with the City's Equal Employment Opportunity Policy from July 1, 2003 to June 30, 2005.

After completing its review of the Compliance Reports submitted by your agency, EEPC staff submitted a Compliance Summary Report for Commission review. This Commission has determined that the DOE has implemented seven of the eight recommended corrective actions as required by Chapter 35 and 36 of the New York City Charter to the Commission's satisfaction. The Department of Education is now in compliance with the requirements of the City's Equal Employment Opportunity Policy.

Recommendation number three requiring the DOE to replace the nine personnel managers serving as LEOCs with employees who are not involved in directing personnel units is rendered moot by elimination of the LEOC system.

On behalf of this Commission, I want to thank you and EEO Officer Mecca Santana for the cooperation extended to the EEPC Compliance Unit during the compliance-monitoring period.

Sincerely,

A handwritten signature in cursive script, appearing to read "Ernie Hart".

Ernest F. Hart, Esq.  
Chair

C: Mecca E. Santana, Director of OEO/EEO Officer