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September 24, 2020

Michael E. McMahon
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Audit Status:

Evaluation of Sexual Harassment Prevention and Response Practices for Audit
Period January 1, 2018 to December 31, 2019.

Determination: **PRELIMINARY**

Dear District Attorney McMahon:

On behalf of the members of the Equal Employment Practices Commission (EEPC), thank you and your agency for the cooperation extended to our staff thus far. This letter contains the EEPC's evaluation and preliminary determinations pursuant to the Office of the Richmond County District Attorney's Sexual Harassment Prevention and Response Practices for the period covering January 1, 2018 to December 31, 2019.

Purpose

Chapter 36, Sections 830(a) and 831(d)(2) and (5) of the New York City Charter (Charter) authorize the EEPC to audit, review, evaluate, and monitor the employment practices, procedures, and programs of city agencies and other municipal entities, hereinafter "entities," and their efforts to ensure fair and effective equal employment opportunity (EEO) for women and minority employees and applicants. Charter Sections 831(d)(2) and 832(c) authorize the EEPC to make a determination that any 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 prescribed.

The Office of the Richmond County District Attorney, hereinafter simply termed "agency" or "entity," falls within the EEPC's purview under Chapter 36, Sections 830(a) and 831(a) of the Charter, to review, evaluate, and monitor the coordination and implementation of affirmative employment programs of equal employment opportunity for 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 subject matter referenced, not to issue findings of discrimination pursuant to the New York City Human Rights Law.

Scope

The EEPC has adopted uniform standards for auditing municipal entities¹ and minimum standards for auditing Community Boards (collectively “Standards”) to review, evaluate, and monitor entities’ employment and EEO-related practices, procedures, approaches, measures, standards, and programs. These standards are founded upon, and consistent with federal, state, and local laws and regulations, and policies and procedures to increase equal opportunity for women, minorities, and other employees and job applicants identified for protection from discrimination. Corrective actions prescribed are consistent with the aforementioned parameters including, but not limited to, the City of New York’s *Equal Employment Opportunity Policy, Standards and Procedures to Be Utilized by City Agencies 2014*, as amended (Citywide EEO Policy); the New York City Human Rights Law (New York City Administrative Code Title 8); New York State Human Rights Law (New York Executive Law, Article 15); the New York State Civil Service Law §55-a; and the equal employment opportunity requirements of the New York City Charter.

Policy and Plan Requirements

The aforementioned Standards require, at minimum, that mayoral entities distribute the Citywide EEO Policy; non-mayoral entities establish or adopt a comprehensive EEO policy; and Community Boards, which are comprised of members appointed by the respective Borough Presidents, adopt and distribute the corresponding Borough President’s EEO Policy.

Because the EEPC is authorized to review and recommend actions that each entity should consider including in its annual plan of measures and programs to provide equal employment opportunity, or Annual EEO Plan, entities are also required to incorporate the EEPC’s corrective actions in prospective Annual EEO Plans and programs.

Methodology

The EEPC communicates with 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, and 55-a Program Coordinators) and other employees identified as having involvement in EEO program administration such as the Principal Human Resources Professional and relevant Counsel.

The EEPC’s audit methodology includes review of the agency’s Annual EEO Plans and Quarterly EEO Reports; analysis of workforce and utilization data; and the collection and analysis of documents, records, and data an entity and its representatives provide in response to the Sexual Harassment Prevention and Response Preliminary Interview Questionnaires (PIQs). All PIQs contain requests to attach supporting documentation for the answer options selected.

EEO Professionals designated for online interviews are assigned a three-week deadline to complete and return the PIQs. The EEPC’s PIQ(s)/requests were sent to the Office of the Richmond County District Attorney on January 3, 2020; the completed PIQ(s) were returned on January 24, 2020. Supporting documentation was attached. Additional requests were not necessary.

The following determination indicates where the Office of the Richmond County District Attorney has or has not complied, in whole or in part, with the established Standards.

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

Description of the Agency

District Attorneys are public law enforcement officers, under the New York State Constitution, Article 13, Section 13, elected every four (4) years in each county. New York County Law, Article 18, Section 700 vests the District Attorney with the powers and duties to prosecute all crimes and offenses in the county in which he or she is elected and to assist district attorneys of other counties in these endeavors. District Attorneys also provide services to crime victims, witnesses, and other persons involved in the criminal justice system, support crime prevention programs, and appoint or employ persons to positions within their offices for the performance of these duties.

District Attorneys of the five (5) New York City counties have the same general powers and duties as District Attorneys throughout the State, with provisions applicable to the five (5) New York City counties, including but not limited to Section 931 of Article 24, New York County Law, which confers on the New York City Mayor the authority to increase or decrease the positions, salaries and compensation of positions within the Office of the District Attorney with District Attorney's consent. The work of the District Attorney's Office is handled by two principal divisions: Investigations and Trial. Additional specialized legal bureaus and units, including those dealing with special victims, work alongside these divisions to advance the Office's objectives. (Source: The Green Book, 4/2019) At the end of the period in review, the CEEDS Report: *Work Force Composition Summary* for the Office of the Richmond County District Attorney (RCDA), attached as Appendix 1, showed that during the period in review, the agency head count was 175.

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 Policy Statement or memorandum reiterating commitment to the prevention of sexual harassment annually.

✓ On March 12 and March 22, 2019, the principal EEO Professional informed all legal, non-legal and managerial employees via email that changes were made to existing policies in the *RCDA Legal Employee Manual*, *RCDA Non-Legal Employee Manual* and *RCDA Managerial Employee Manual*. The *RCDA Legal Employee Manual* informed legal employees, "RCDA's EEO Policy also prohibits sexual harassment – that is, conduct or language of a sexual nature and harassment based on gender or any other protected characteristic."

➤ The entity did not demonstrate that it annually issued a Policy Statement or memorandum reiterating the entity's commitment to the prevention of sexual harassment, including to its non-legal and managerial employees. **Corrective Action Required.**

Corrective Action #1: Issue a Policy Statement or memorandum reiterating commitment to the prevention of sexual harassment annually.

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 Policy that conforms to city, state and federal laws against sexual harassment– for use by managers, supervisors, and legal, human resources and EEO professionals. Include, or attach as addenda: uniform and responsive procedures for investigating discrimination/sexual harassment complaints, and current contact information for the agency's EEO professionals as well as federal, state and local agencies that enforce laws against discrimination/sexual harassment.

✓ The entity's *Richmond County District Attorney, Equal Employment Opportunity Policy, 2020* (hereinafter referred to as the RCDA EEO Policy and attached as Appendix 2), included a description of sexual harassment, procedures for investigating discrimination complaints, and contained names and contact information (email address and telephone number) for the entity's EEO Professionals as well as electronic links and contact information (telephone number) for federal, state and local agencies that enforce laws against discrimination and sexual harassment. A representative document entitled *Acknowledgement of Receipt* demonstrated that new employees signed to confirm the viewing of the RCDA EEO Policy on the employee intranet within 10 days of appointment. On March 12 and March 22, 2019 the principal EEO Professional informed all legal, non-legal and managerial employees via email that changes were made to policies within the *RCDA Legal Employee Manual*, *RCDA Non-Legal Employee Manual* and *RCDA Managerial Employee Manual*; that the manuals were posted to the employee intranet; and would be available in hard copy. The *RCDA Legal Employee Manual* contained a section entitled *EEO (Equal Employment Opportunity)* and included the complete text of the RCDA EEO Policy.

Additionally, the entity's *Discrimination Complaint Procedures Guidelines*, attached as Appendix 3, stated "[t]hese guidelines are designed to further the goals of: [1] resolving complaints of discrimination within the Richmond County District Attorney's Office (RCDA) through a fair and prompt process of conciliation and/or investigation[.]" The *Discrimination Complaint Procedures Guidelines*² contained RCDA's uniform and responsive procedures for investigating discrimination/sexual harassment complaints.

➤ The entity did not demonstrate the distribution or availability of the RCDA EEO Policy to non-legal and managerial employees. The entity did not demonstrate that it distributed, or made electronically available, to all employees the *Discrimination Complaint Procedures Guidelines* document, which included uniform and responsive procedures for investigating discrimination/sexual harassment complaints. **Corrective Action Required.**

NOTE: While the entity provided the *RCDA Legal Employee Manual*, the entity did not provide the *RCDA Non-Legal Employee Manual* and *RCDA Managerial Employee Manual*. In addition, the *Applicability* section of the RCDA EEO Policy stated, "[a]ll employees must be trained in the requirements of this policy and must receive a copy of the EEO Policy Handbook, 'About EEO: What You May Not Know.'

² The *Discrimination Complaint Procedures Guidelines* identified a *Discrimination Complaint Form*, an *Anonymous/Oral Complaint Form*, and Appendix items D and E; however, none were attached.

RCDA should clarify whether it follows the Citywide EEO Policy or its own RCDA EEO Policy and *Discrimination Complaint Procedures Guidelines*.

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 Policy that conforms to city, state and federal laws against sexual harassment– for use by managers, supervisors, and legal, human resources and EEO professionals. Include, or attach as addenda: uniform and responsive procedures for investigating discrimination/sexual harassment complaints, and current contact information for the agency's EEO professionals as well as federal, state and local agencies that enforce laws against discrimination/sexual harassment.

II. Training for the Agency

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

3. Establish and implement a training plan for new and existing employees to ensure that all individuals who work within the agency, including managers and supervisors, receive training on the prevention of sexual harassment as well as discrimination complaint and investigation procedures.

✓ On September 12, 2019 the principal EEO Professional notified all staff via email that completion of the Department of Citywide Administrative Services (DCAS) training entitled *Sexual Harassment Prevention: What to Know About Unlawful and Inappropriate Behaviors in the Workplace* was mandatory, and a link to the training was provided. The course objective on DCAS' Human Capital website stated that the training, "...will facilitate awareness of the City's prohibition on sexual harassment in its workplaces under applicable laws and the City's Equal Employment Opportunity (EEO) Policy. Participants will learn the definitions of sexual harassment, relevant legislation, prevention techniques and a procedure for filing a complaint. This course will help participants to create an environment that is free from sexual harassment." The September 12, 2019 email provided training access instructions and detailed how to report a sexual harassment complaint. The entity provided a DCAS training report which showed that there were 155 completions (resulting in an 89% training rate) in 2018 and 171 completions (resulting in a 98% training rate) in 2019.

➤ Although the entity indicated employee training completion, it did not demonstrate establishment of a plan for new and existing employees to ensure that all individuals who work within the entity, including managers and supervisors, receive training on the prevention of sexual harassment as well as discrimination and complaint investigation procedures. **Corrective Action Required.**

Corrective Action #3: Establish and implement a training plan for new and existing employees to ensure that all individuals who work within the agency, including managers and supervisors, receive training on the prevention of sexual harassment as well as discrimination complaint and investigation procedures.

III. Complaint and Investigation Procedures

Summary of Complaint Activity: The agency reported 0 internal and 0 external complaints were filed during the period in review.

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

4. Include in the complaint file a completed Complaint Intake Form, or a written complaint that captures facts (including pertinent dates) that identify the respondent(s) with reasonable specificity and provide the essence of the circumstances which gave rise to the complaint.

✓ The entity reported that there were no complaints filed during the audit period in review; as a result, findings contained in this section reflect compliance of the *Discrimination Complaint Procedures Guidelines*. The *How To File A Complaint Of Discrimination* section of the *Discrimination Complaint Procedures Guidelines* stated, “[w]ritten complaints should be prepared on the *Discrimination Complaint Form*. The RCDA will take all appropriate steps to ensure that individuals desiring to use the complaint procedures are provided with the necessary assistance. The complaint should provide a statement of the facts, including pertinent dates, which constitutes the alleged discriminatory act(s). While the preference is for the complaint to be typed on the *Complaint Form*, any communication that is given to the EEO Officer or Counselor that identifies the respondent(s) with reasonable specificity and provides the essence of the circumstances which gave rise to the alleged discrimination may be deemed an acceptable complaint. The EEO Officer will determine whether the statement is an acceptable complaint of discrimination.”

5. Provide the option to file a complaint anonymously.

✓ The entity reported that there were no complaints filed during the audit period in review; as a result, findings contained in this section reflect compliance of the RCDA EEO Policy and the *Discrimination Complaint Procedures Guidelines*. The *Anonymous and Oral Complaints* section of the *Discrimination Complaint Procedures Guidelines* stated, “[a] person(s) who feels that (s)he has experienced unlawful discrimination and wishes to notify the EEO Officer or Counselor of the problem with or without revealing his/her identity is encouraged to do so by either telephoning or writing to the EEO Officer.” The document further stated, “[t]he EEO Officer or Counselor will complete an *Office Complaint of Discrimination Based on an Anonymous/Oral Complaint Form* and will commence the investigation in accordance with Section XII of these Guidelines.” Additionally, the *Reporting Violations* section of the RCDA EEO Policy stated, “[p]ersons who wish to discuss a possible violation of this policy without revealing their identity may do so by telephoning or writing the EEO Officer. In such cases, the EEO Officer or EEO Counselor will provide counseling and take such follow-up action as may be appropriate and possible, given the restraints of anonymity.”

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

✓ The entity reported that there were no complaints filed during the audit period in review; as a result, findings contained in this section reflect compliance of the *Discrimination Complaint Procedures Guidelines*. The section, *The Respondent: Service of Notice and Complaint*, of the entity's *Discrimination Complaint Procedures Guidelines* stated, "[a]fter interviewing the complainant, witnesses and other appropriate persons who might provide information in support of the complainant's allegations, the EEO Officer or Counselor shall serve the respondent with a notice of the complaint along with a copy of the complaint....After being served with the notice and copy of the complaint, the respondent has the right to respond in writing at any time after the service has occurred. The respondent's right to respond shall remain in effect until the investigation process has ended. Respondents are encouraged to submit their written response as soon as possible after service" and further stated, "[t]he EEO Officer should keep all receipts and log all information regarding the service of the notice of complaint and copy of the complaint on the respondent(s)." The *Meeting with the Respondent* section of the entity's *Discrimination Complaint Procedures Guidelines* stated, "[i]nform the respondent to his/her right to be accompanied by a representative of his/her choice."

7. Issue/maintain written confirmation when an internal complaint/mediation is terminated, withdrawn or resolved by agreement of the parties or EEO Office.

✓ The entity reported that there were no complaints filed during the audit period in review; as a result, findings contained in this section reflect compliance of the RCDA EEO Policy. The *Withdrawing Complaints* section of the RCDA EEO Policy stated, "[a] complaint of discrimination may be withdrawn at any time by the person who filed the complaint." The *Mediation* section of the RCDA EEO Policy stated, "[m]ediation may be requested by any party and may be declined by any party...The EEO Officer may choose to conduct the mediation internally within the RCDA Office or through the Center for Mediation Services (the "Center") at the City's Office of Administrative Trials and Hearings (OATH). If the Center is chosen, [and] If the parties agree to a resolution of the situation during mediation at the Center and any action needed to resolve the matter has received all necessary approvals, the Center will forward a copy of the resolution agreement to the EEO Officer." The *Mediation* section of the RCDA EEO Policy further stated, "[m]ediation may be terminated by any party to the mediation. If this occurs, the EEO Officer or the Center will inform the other party or parties in writing that the mediation has been terminated. In the event that mediation does not result in a resolution, the EEO Officer or the Center will provide the parties with a written statement informing the parties of the complainant's right to an investigation of the allegation. Where efforts to mediate complaints are unsuccessful, complaints will be investigated by the EEO Officer."

8. Take thorough notes, of words spoken and facts provided, during each interview. Include these notes in each complaint file.

✓ The entity reported that there were no complaints filed during the audit period in review; as a result, findings contained in this section reflect compliance of the *Discrimination Complaint Procedures Guidelines*. The *Fact Gathering* section of the *Discrimination Complaint Procedures Guidelines* stated, "[t]ake thorough notes, as close to verbatim as possible, during each interview. Report words spoken and facts provided. Do not add your subjective assessments in the notes. At the conclusion of the

interview, review with witnesses the points contained in your notes to confirm their accuracy and determine whether the interviewee has anything to add. Follow this process with all interviewees."

9. Issue a conclusive report within 90 days of the date the complaint was filed. Commence an investigation immediately if allegations raised sufficiently warrant an investigation.

✓ The entity reported that there were no complaints filed during the audit period in review; as a result, findings contained in this section reflect compliance of the *Discrimination Complaint Procedures Guidelines*. The *Confidential Written Report* section of the *Discrimination Complaint Procedures Guidelines* stated, "[t]he confidential written report shall be issued within 90 days of the date the discrimination complaint was filed, although the investigation shall be commenced immediately."

10. In rare circumstances where a complaint investigation cannot commence immediately, or where a conclusive report cannot be issued within 90 days, specify in the complaint file the reason for the delay and project a time frame for completion of the report. Notify the complainant and respondent of the delay.

✓ The entity reported that there were no complaints filed during the audit period in review; as a result, findings contained in this section reflect compliance of the *Discrimination Complaint Procedures Guidelines*. The *Confidential Written Report* section of the *Discrimination Complaint Procedures Guidelines* stated, "[i]n rare circumstances where the investigation cannot commence immediately, or where the 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, respondent and Citywide EEO [Office of Citywide Equity and Inclusion (OCEI)] shall be notified of the delay."

11. Generate at the end of each complaint investigation, a conclusive confidential report which includes a summary of the allegations and responses, a summary of the procedural history of the investigation, a statement of the relevant facts gathered, a determination, a recommendation and documentation of the Agency Head's Review.

✓ The entity reported that there were no complaints filed during the audit period in review; as a result, findings contained in this section reflect compliance of the *Discrimination Complaint Procedures Guidelines*. The *Preparing the Written Report* section of the *Discrimination Complaint Procedures Guidelines* stated, "[t]he Written report shall be divided into three sections and shall be labeled 'CONFIDENTIAL' in large, bold print. The District Attorney must sign each written report, whether or not disciplinary action is recommended. Section 1 shall be entitled 'Findings of Facts.' This section shall include all relevant facts gathered during the course of the investigation, including: the name(s) of each interview[ee,] date(s) of the interview; and the time of the interview. There should be a detailed account of each interviewee's statement...Section 2 shall be entitled, 'Discussion and Conclusion.' In this section, . . . [t]here should be a detailed assessment of the strengths and weaknesses of the case...Section 3 shall be entitled, 'Recommendation.' An appropriate recommendation, which may include corrective action, should be made to the District Attorney. The DA [District Attorney] must sign

each written report to indicate that it had been reviewed and whether the recommendation, if any, is approved and adopted.”

12. Maintain complaint files in a secure area and ensure that they can be located and reviewed by the agency head, agency general counsel, and other appropriate staff identified by the agency head.

✓ The entity indicated in its response to the PIQ, complaint files were located in the principal EEO Professional's office in a secured file cabinet.

13. Establish and implement a policy whereby the agency head (or an approved direct report other than the General Counsel) reviews the principal investigator's conclusive report; issues a written/electronic determination adopting, rejecting, or modifying the recommended action; and signs each determination, via writing or electronically, to indicate it has been reviewed and adopted.

✓ The entity reported that there were no complaints filed during the audit period in review; as a result, findings contained in this section reflect compliance of the RCDA EEO Policy. The *Concluding the Complaint Investigation* section of the RCDA EEO Policy stated, “[t]he District Attorney [entity head] will review the EEO Officer's report and promptly issue a determination adopting, rejecting or modifying the recommended action. Such determination shall be in writing and may be issued electronically.”

14. Inform each complainant and respondent of the conclusion and outcome of their complaint investigation in writing as part of the agency's complaint procedure.

✓ The entity reported that there were no complaints filed during the audit period in review; as a result, findings contained in this section reflect compliance of the RCDA EEO Policy. The *Concluding the Complaint Investigation* section of the RCDA EEO Policy stated, “[t]he EEO Officer will advise all parties in writing of the outcome of a complaint.”

15. Ensure each internal discrimination complaint file contains a written determination of its outcome and corrective action(s) taken as a result.

✓ The entity reported that there were no complaints filed during the audit period in review; as a result, findings contained in this section reflect compliance of the RCDA EEO Policy. The *Concluding the Complaint Investigation* section of the RCDA EEO Policy stated, “[t]he EEO Officer will advise all parties in writing of the outcome of a complaint. If the EEO Officer concludes that a violation of this policy has occurred, the EEO Officer will recommend appropriate corrective action. The District Attorney will review the EEO Officer's report and promptly issue a determination adopting, rejecting or modifying the recommended action. Such determination shall be in writing and may be issued electronically.”

16. 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.

✓ The entity reported that there were no complaints filed during the audit period in review; as a result, findings contained in this section reflect compliance of the RCDA EEO Policy. The *Other Places Where Complaints May Be Filed* section of the RCDA EEO Policy stated, “[w]here a person exercises his or her right to file a complaint with a federal, state or local administrative agency (known as an “external complaint”) based on or related to the same facts and circumstances of an internal complaint, the RCDA EEO Officer will transfer the matter to the Chief of Staff, who will be responsible for any further handling of the matter. The EEO Officer will notify the complainant and the parties who are the subject of the complaint, in writing, that the investigation by the EEO Officer has been transferred because of the filing of the external complaint.”

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

NOTE: The entity reported that there were no complaints filed during the audit period in review; as a result, compliance with this standard could not be assessed.

18. Ensure that the General Counsel assists the agency head in identifying and determining appropriate responses to sexual harassment; works with the principal EEO Professional in the implementation of the City’s policies and procedures pertaining to sexual harassment; informs the principal EEO Professional when external complaints or litigation involving sexual harassment is brought against the agency; is available to consult on internal sexual harassment complaint investigations; and is responsible for the investigation of, and response to, external sexual harassment complaints.

✓ The entity reported in response to the PIQ that it did not have a General Counsel job title, but the Chief of Staff served an equivalent role. Emails from February 15, 2018 to March 6, 2018 between the Chief of Staff and the principal EEO Professional demonstrated collaboration in the implementation of policies and procedures, including those that may pertain to sexual harassment, via updates to the RCDA’s policy manuals. (The *RCDA Legal Employee Manual* contained the text of the RCDA EEO Policy, contents of the *RCDA Non-Legal Employee Manual* and *RCDA Managerial Employee Manual* could not be confirmed.) A March 12, 2019 *Fraternization* memo to employees, from the principal EEO Professional and that copied the Chief of Staff and Agency Head, was reported to be an additional outcome of the collaboration between the Chief of Staff and principal EEO Professional. The *Fraternization Policy* reminded, “[e]mployees should always consider New York City and State Sexual Harassment and Conflict of Interest laws before getting into a relationship with a co-worker.”

NOTE: The entity reported that there were no complaints filed during the audit period in review; as a result, the following findings contained in this section reflect compliance of the RCDA EEO Policy and the *Discrimination Complaint Procedures Guidelines*. The General Counsel's responsibilities to inform the principal EEO Professional when external complaints or litigation involving sexual harassment were brought against the entity, and for the investigation of, and response to, external sexual harassment complaints, were established in the *Other Places Where Complaints May Be Filed* section of the RCDA EEO Policy, which stated, "[t]he Chief of Staff will be responsible for handling external complaints regardless of the timing of such complaints (whether filed before the internal complaint is filed, at the same time that the internal claim was filed, or after the internal complaint was filed, but prior to the completion of the office's internal EEO procedures). The transfer of the complaint to the Chief of Staff should in no way preclude the EEO Officer from cooperating with the Chief of Staff with respect to the ultimate resolution of the complaint." The General Counsel's availability to consult on internal sexual harassment complaint investigations was established in the *Confidential Written Report* section of the *Discrimination Complaint Procedures Guidelines* which stated, "EEO Officers are encouraged to, and should routinely consult with the RCDA's Chief of Staff when questions arise during the preparation of the written report or any other phase of the investigation."

IV. Annual Review of Practices, Policies and Programs

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

19. Ensure that the principal EEO Professional, HR Professional, and General Counsel, review the number of sexual harassment complaints, and the agency's employment practices, policies and programs on an annual basis to identify whether there are barriers to employment opportunities that may be related to sexual harassment and determine what, if any, actions are required to correct deficiencies.

✓ Emails between the Chief of Staff (the General Counsel equivalent) and the principal EEO Professional from February 15, 2018 to March 6, 2018 demonstrated a collaborative annual review of the entity's employment policies and programs, which included an update of the entity's policy manuals. The entity reported its *Fraternization Policy* was created as a result of the review which identified relationships among co-workers as a potential barrier to employment opportunities.

➤ The entity did not demonstrate that an annual review was conducted in 2019, that included a review of the number of sexual harassment complaints and the entity's employment practices, policies and programs to identify whether there are any barriers to employment opportunities that may be related to sexual harassment and determine what, if any, actions are required to correct deficiencies. **Corrective Action Required.**

Corrective Action #4: Ensure that the principal EEO Professional, HR Professional, and General Counsel, review the number of sexual harassment complaints, and the agency's employment practices, policies and programs on an annual basis to identify whether there are barriers to employment opportunities that may be related to sexual harassment and determine what, if any, actions are required to correct deficiencies.

V. Responsibility for Implementation - EEO Professionals

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

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

✓ A sample 2018 *Performance Evaluation* indicated the principal EEO Professional (also the Director of Human Capital) was appointed in 2017 and detailed that the principal EEO Professional's responsibilities included "[s]erve as EEO Officer and Diversity Officer to the agency, responsible for up keeping EEO policy, training, and best practices with Diversity and Inclusion." The *Places To File a Complaint* section of the RCDA EEO Policy listed the principal EEO Professional as "[t]he EEO Officer and Disabilities Rights Coordinator" and provided contact information (name, telephone number, email address and office location). A job description for the principal EEO Professional also listed the following responsibilities: "[a]ct as the agency Equal Employment Opportunity Officer; ensure agency compliance with applicable laws, and practices and the annual audit performed by the City's Equal Employment Practices Commission."

➤ The entity did not demonstrate that the principal EEO Professional was trained regarding city, state, federal EEO laws and the prevention, investigation and resolution of discrimination and sexual harassment complaints. **Corrective Action Required.**

Corrective Action #5: Appoint a principal EEO Professional to implement EEO policies and standards within the agency. Ensure the principal EEO Professional is trained regarding city, state, federal EEO laws; the requirements of the agency's EEO policies, standards and procedures; and the prevention, investigation, and resolution of discrimination and sexual harassment complaints.

21. Ensure that the responsibilities of the principal EEO Professional are competently discharged by providing adequate resources such as opportunities for continuing education and professional development, and/or support staff to meet EEO obligations.

✓ During the period in review, the principal EEO Professional was supported by an EEO Counselor to competently discharge their responsibilities and to meet EEO obligations.

22. Where the agency's organizational structure necessitates multiple EEO professionals, select such individuals from different office locations and, where possible, from a variety of levels within the organizational structure. Appoint EEO professionals who are trained in EEO laws and procedures, and their responsibilities under the EEO Policy.

✓ The entity had 175 employees at the end of the period in review, who were served by the principal EEO Professional and one EEO Counselor (also identified as the Chief of Staff/General Counsel equivalent). The contact information located within the RCDA EEO Policy and the provided organizational chart indicated that the EEO professionals were located across multiple levels within the entity. The *Discrimination Complaint Procedures Guidelines* indicated that the EEO Counselor's responsibilities included internal discrimination complaint intake and investigation. A *New York CLE Certificate of Attendance* demonstrated that the EEO Counselor completed *Diversity and EEO Basic Training* from October 19 to October 27 provided by the New York Law Department in 2016.

➤ The entity did not demonstrate whether the 2016 course sufficiently trained the EEO Counselor in their EEO responsibilities. **Corrective Action Required.**

NOTE: To avoid a conflict of interest, the entity should separate the internal and external complaint investigation responsibilities of the EEO Counselor/Chief of Staff (the General Counsel equivalent).

Corrective Action #6: Where the agency's organizational structure necessitates multiple EEO professionals, select such individuals from different office locations and, where possible, from a variety of levels within the organizational structure. Appoint EEO professionals who are trained in EEO laws and procedures, and their responsibilities under the EEO Policy.

23. Ensure that the principal EEO Professional works cooperatively and closely with the General Counsel in the implementation of policies and procedures concerning EEO and sexual harassment.

✓ Emails between the EEO Counselor/Chief of Staff (the General Counsel equivalent) and the principal EEO Professional from February 15, 2018 to March 6, 2018 demonstrated a collaborative annual review of the entity's employment policies and programs, which included an update of the entity's policy manuals and the creation of a *Fraternization Policy*.

24. Assign the principal EEO Professional (or EEO-related designee) the responsibility to supervise the activities of EEO professionals, and ensure that: the policies against sexual harassment and complaint procedures are distributed/posted at all agency locations; employees/managers receive sexual harassment prevention training; EEO-related policies are made available in alternative formats (i.e., large print, audio recording and/or Braille) upon request; managers, supervisors and human resource professionals receive guidance on issues pertaining to sexual harassment; and allegations of sexual harassment are promptly investigated.

✓ The principal EEO Professional emailed all employees on March 12, 2019 and March 22, 2019 informing them of changes/addendums to the new and existing policies within the *RCDA Legal Employee Manual*, *RCDA Non-Legal Employee Manual* and *RCDA Managerial Employee Manual*; and of the posting of the RCDA EEO Policy to the employee intranet and its availability in hard copy. On September 12, 2019 and October 3, 2019, the principal EEO Professional emailed all RCDA employees to inform them of their responsibility to complete mandatory sexual harassment training. The principal EEO Professional's performance evaluation listed assigned responsibilities of "[s]erve as EEO Officer

and Diversity Officer to the agency, responsible for up keeping EEO policy, training, and best practices with Diversity and Inclusion.” Additionally, the job description for the principal EEO Professional stated, “[a]ct as the agency Equal Employment Opportunity Officer; ensure agency compliance with applicable laws, and practices and the annual audit performed by the City’s Equal Employment Practices Commission.” The Investigation Process section of the Discrimination Complaint Procedures Guidelines established that investigations were to be prompt, and stated, “[t]he investigation begins immediately after the EEO Officer or Counselor: [1] receives either an oral or written complaint of discrimination and [2] determines that the allegations in the complaint are sufficient to establish a case of unlawful discrimination.”

- The entity did not demonstrate that the principal EEO Professional was assigned the responsibility of supervising the activities of EEO professionals, and ensuring that EEO-related policies were made available in alternative formats (i.e., large print, audio recording and/or Braille) upon request and managers, supervisors and human resource professionals receive guidance on issues pertaining to sexual harassment. **Corrective Action Required.**

Corrective Action #7: Assign the principal EEO Professional (or EEO-related designee) the responsibility to supervise the activities of EEO professionals, and ensure that: the policies against sexual harassment and complaint procedures are distributed/posted at all agency locations; employees/managers receive sexual harassment prevention training; EEO-related policies are made available in alternative formats (i.e., large print, audio recording and/or Braille) upon request; managers, supervisors and human resource professionals receive guidance on issues pertaining to sexual harassment; and allegations of sexual harassment are promptly investigated.

25. Ensure that the principal EEO Professional reports directly to the agency head (or a direct report other than the General Counsel) in order to exercise the necessary authority and independent judgment to fulfill EEO responsibilities.

- ✓ The entity provided an undated organizational chart which indicated that the principal EEO Professional reported directly to the District Attorney.
- Emails sent by the Chief of Staff on February 15, 2018, February 28, 2018, and September 24, 2019 issuing directives regarding updating policy documents suggest that the principal EEO Professional reported directly to the Chief of Staff (General Counsel equivalent) to fulfill their EEO responsibilities. **Corrective Action Required.**

Corrective Action #8: Ensure that the principal EEO Professional reports directly to the agency head (or a direct report other than the General Counsel) in order to exercise the necessary authority and independent judgment to fulfill EEO responsibilities.

26. Maintain documentation regarding directives or decisions between the agency head (or a direct report other than the General Counsel) and the principal EEO Professional that impact the administration and operation of programs, policies or procedures concerning sexual harassment.

- The entity did not demonstrate that during the period in review documentation was maintained regarding directives or decisions between the District Attorney (or a direct report other than the General Counsel equivalent (Chief of Staff)) and the principal EEO Professional that impacted the administration and operation of programs, policies or procedures concerning sexual harassment. **Corrective Action Required.**

Corrective Action #9: Maintain documentation regarding directives or decisions between the agency head (or a direct report other than the General Counsel) and the principal EEO Professional that impact the administration and operation of programs, policies or procedures concerning sexual harassment.

VI. Responsibility for Implementation – Supervisors/Managers

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

27. Ensure that managers and supervisors are held accountable for enforcing the agency's sexual harassment prevention policies and complaint procedures. Document this expectation and its implementation.

- ✓ The *Procedures* section of the RCDA EEO Policy stated, “[s]upervisors, managers, or human resources personnel who receive EEO complaints, or who otherwise become aware of any improper discrimination, must notify the EEO Officer. Supervisors and managers should also encourage individuals who believe that the RCDA's EEO Policy has been violated to consult with an EEO counselor.”

- The entity did not demonstrate the implementation of the expectation that managers and supervisors were accountable for enforcing the entity's sexual harassment policies and complaint procedures. **Corrective Action Required.**

Corrective Action #10: Ensure that managers and supervisors are held accountable for enforcing the agency's sexual harassment prevention policies and complaint procedures. Document this expectation and its implementation.

28. Ensure 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).

- A sample 2018 *Performance Evaluation* completed for a manager did not contain a rating for EEO that covered 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. **Corrective Action Required.**

Corrective Action #11: Ensure 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).

VII. Reporting Standard for Agency Head

Determination: The agency is required to comply with the standards for this subject area.

29. Submit to the EEPCC an Annual Plan of measures and programs to provide equal employment opportunity, and quarterly reports on efforts to implement the Plan within 30 days following each quarter. Include a breakout of sexual harassment complaint activity in each quarterly report.

- During the period in review, the entity did not submit its annual plan of measures and programs to provide equal employment opportunity, and quarterly reports on efforts to implement the plans within 30 days following each quarter. **Corrective Action Required.**

Corrective Action #12: Submit to the EEPCC an Annual Plan of measures and programs to provide equal employment opportunity, and quarterly reports on efforts to implement the Plan within 30 days following each quarter. Include a breakout of sexual harassment complaint activity in each quarterly report.

30. Upon the EEPCC's determination that the entity does not require further review or monitoring: Distribute a memorandum signed by the agency head that re-emphasizes the commitment of agency administrators to the EEO program, including the prevention of sexual harassment, and informs employees of any changes to the agency's employment practices as a result of the EEPCC's audit/monitoring. This final action is required to conclude the audit and monitoring process.

Final Action: Upon the EEPCC's determination that the entity does not require further review or monitoring: Distribute a memorandum signed by the agency head that re-emphasizes the commitment of agency administrators to the EEO program, including the prevention of sexual harassment, and informs employees of any changes to the agency's employment practices as a result of the EEPCC's audit/monitoring. This final action is required to conclude the audit and monitoring process.

Summary of Corrective Actions:

The Office of the Richmond County District Attorney has 13 required corrective action(s) at this time. This includes the aforementioned final action.

Conclusion

Pursuant to Charter Chapter 36, the Office of the Richmond County District Attorney has the *option* to respond to this Preliminary Determination, but must respond to our Final Determination if corrective action is required. **Any response must be signed by the agency head and submitted to the EEPC's Executive Director.**

Optional Response to Preliminary Determination: If submitted, the Office of the Richmond County District Attorney's optional response to the EEPC's Executive Director should indicate, with attached documentation, what steps have been or will be taken to correct outstanding areas of non-compliance, 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.

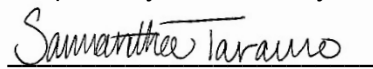
(Optional Conference) If requested, at the Optional Conference the EEPC will discuss the immediate steps that should be taken to correct outstanding areas of non-compliance and address questions regarding the Office of the Richmond County District Attorney's implementation of the prescribed corrective action(s).

(No Response Option) If the Office of the Richmond County District Attorney 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 action(s) based on verified information submitted as part of the response to the Preliminary Determination; identify remaining corrective action(s) that require further monitoring to ensure implementation; and assign a mandatory compliance-monitoring period of up to 6 months for this purpose. Pursuant to Charter Chapter 36, upon receipt, the Office of the Richmond County District Attorney must submit a response, signed by the agency head, 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,



Samantha Tarallo, EEO Program Analyst

Approved by,



Charise L. Terry
Executive Director



cc: Monique Jones, Principal EEO Professional, Office of the Richmond County District Attorney
William B. Peterson, Manager, Labor Relations Analysis and Audit, EEPC

Appendix – 1

Office of the Richmond County District Attorney
CEEDS Report: *Work Force Composition Summary*
2nd Quarter of Fiscal Year 2020
(End of Audit Period)

PAGE: 286
REPORT: EBEPR210

WORK FORCE COMPOSITION SUMMARY
AGENCY 905 DISTRICT ATTORNEY-RICHMOND COUNTY

[illegible]

RUN DATE: 01/03/20
RUN TIME: 13:44:07.0

NEW YORK CITY DEPARTMENT OF CITYWIDE ADMINISTRATIVE SERVICES
CITYWIDE EQUAL EMPLOYMENT DATABASE SYSTEM (CEEDS)
WORK FORCE COMPOSITION SUMMARY
QUARTER 2 YEAR 2020 AGENCY 905 DISTRICT ATTORNEY-RICHMOND COUNTY

PAGE: 287
REPORT: EBEPR210

AGENCY CODE : 905 DISTRICT ATTORNEY-RICHMOND COUNTY
EEO JOB GROUP : 010 TECHNICIANS

TITLE CODE	TITLE DESCRIPTION	MALE						FEMALE						OTHER	TOTAL EMP
		WHITE	BLACK	HISPN	ASIAN PACIS	AM IND ALASK	UN- KNOWN	WHITE	BLACK	HISPN	ASIAN PACIS	AM IND ALASK	UN- KNOWN		
30080	PARALEGAL AIDE	0	0	0	0	0	0	1	0	0	0	0	0	0	1
EEO JOB GROUP TOTAL.....:		0	0	0	0	0	0	1	0	0	0	0	0	0	1
		0.00	0.00	0.00	0.00	0.00	0.00	100.00	0.00	0.00	0.00	0.00	0.00	0.00	100.00

AGENCY CODE : 905 DISTRICT ATTORNEY-RICHMOND COUNTY
EEO JOB GROUP : 013 CLERICAL

TITLE CODE	TITLE DESCRIPTION	MALE						FEMALE						OTHER	TOTAL EMP
		WHITE	BLACK	HISPN	ASIAN PACIS	AM IND ALASK	UN- KNOWN	WHITE	BLACK	HISPN	ASIAN PACIS	AM IND ALASK	UN- KNOWN		
10212	REPORTER/STENOGRAPHER (DA)	0	0	0	0	0	0	4	0	1	0	0	0	0	5
10251	CLERICAL ASSOCIATE	0	0	0	0	0	0	4	0	1	0	0	0	0	5
10252	SECRETARY	0	0	0	0	0	0	1	0	0	0	0	0	0	1
EEO JOB GROUP TOTAL.....:		0	0	0	0	0	0	9	0	2	0	0	0	0	11
		0.00	0.00	0.00	0.00	0.00	0.00	81.82	0.00	18.18	0.00	0.00	0.00	0.00	100.00

AGENCY CODE : 905 DISTRICT ATTORNEY-RICHMOND COUNTY
EEO JOB GROUP : 018 POLICE

TITLE CODE	TITLE DESCRIPTION	MALE						FEMALE						OTHER	TOTAL EMP
		WHITE	BLACK	HISPN	ASIAN PACIS	AM IND ALASK	UN- KNOWN	WHITE	BLACK	HISPN	ASIAN PACIS	AM IND ALASK	UN- KNOWN		
30827	SENIOR DETECTIVE INVESTIGA	11	0	1	0	0	0	1	0	0	0	0	0	0	13
EEO JOB GROUP TOTAL.....:		11	0	1	0	0	0	1	0	0	0	0	0	0	13
		84.62	0.00	7.69	0.00	0.00	0.00	7.69	0.00	0.00	0.00	0.00	0.00	0.00	100.00

AGENCY CODE : 905 DISTRICT ATTORNEY-RICHMOND COUNTY
EEO JOB GROUP : 031 PARA PROFESSIONAL OCCUPATIONS

TITLE CODE	TITLE DESCRIPTION	MALE						FEMALE						OTHER	TOTAL EMP
		WHITE	BLACK	HISPN	ASIAN PACIS	AM IND ALASK	UN- KNOWN	WHITE	BLACK	HISPN	ASIAN PACIS	AM IND ALASK	UN- KNOWN		
56056	COMMUNITY ASSISTANT	0	0	0	0	0	1	1	0	1	0	0	1	0	4
56057	COMMUNITY ASSOCIATE	10	2	4	0	0	1	16	4	11	2	0	0	0	50
56058	COMMUNITY COORDINATOR	2	0	0	0	0	0	8	2	2	0	0	0	0	14
EEO JOB GROUP TOTAL.....:		12	2	4	0	0	2	25	6	14	2	0	1	0	68
		17.66	2.94	5.88	0.00	0.00	2.94	36.76	8.82	20.59	2.94	0.00	1.47	0.00	100.00

RUN DATE: 01/03/20
RUN TIME: 13:44:07.0

NEW YORK CITY DEPARTMENT OF CITYWIDE ADMINISTRATIVE SERVICES
CITYWIDE EQUAL EMPLOYMENT DATABASE SYSTEM (CEEDS)
WORK FORCE COMPOSITION SUMMARY
QUARTER 2 YEAR 2020 AGENCY 905 DISTRICT ATTORNEY-RICHMOND COUNTY

PAGE: 288
REPORT: EBEP210

AGENCY TOTAL.....:	63	5	10	0	0	3	57	8	18	5	0	6	0	175
	36.00	2.86	5.71	0.00	0.00	1.71	32.57	4.57	10.29	2.86	0.00	3.43	0.00	100.00

Appendix – 2

Office of the Richmond County District Attorney

Richmond County District Attorney, Equal Employment Opportunity Policy,
2020

EQUAL EMPLOYMENT OPPORTUNITY POLICY

MICHAEL E. McMAHON
DISTRICT ATTORNEY



2020

RICHMOND COUNTY DISTRICT ATTORNEY'S OFFICE EQUAL EMPLOYMENT OPPORTUNITY POLICY

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I. GENERAL ANTI-DISCRIMINATION PROTECTIONS

The Office of the Richmond County District Attorney (RCDA) is an equal employment opportunity employer committed to compliance with federal, state and local laws prohibiting employment discrimination. Employment decisions at RCDA will be made on the basis of merit, fitness and equality of opportunity and without discrimination based on

- | | |
|--|---|
| ❖ Age (18 years and over) | ❖ National Origin |
| ❖ Caregiver Status | ❖ Race |
| ❖ Citizenship Status | ❖ Pregnancy |
| ❖ Color | ❖ Religion |
| ❖ Consumer Credit History | ❖ Salary History |
| ❖ Creed | ❖ Sexual Harassment |
| ❖ Disability | ❖ Sexual Orientation |
| ❖ Family Status | ❖ Sexual Reproductive Health Decisions |
| ❖ Gender (including Gender Identity) | ❖ Status as a Victim or Witness of Domestic Violence, Sex Offenses, or Stalking |
| ❖ Predisposing Genetic Characteristics | ❖ Unemployment Status |
| ❖ Partnership Status | |
| ❖ Prior record of arrest or conviction | |
| ❖ Marital Status | |
| ❖ Military Status | |

In addition to providing protections on the basis of the above categories, federal, state, and local laws protect persons who are discriminated against because they are perceived to be in a protected class. Harassment based on a person's perceived protected status is also prohibited.

Anti-discrimination protections apply to all of the terms and conditions of employment, including, but not limited to:

- | | |
|--------------------------|--------------------------|
| ❖ Discharge | ❖ Salary and Benefits |
| ❖ Discipline | ❖ Training Opportunities |
| ❖ Hiring | ❖ Transfers |
| ❖ Performance Appraisals | ❖ Testing |
| ❖ Promotions | ❖ Work Assignments |
| ❖ Recruitment | ❖ Working Conditions |

II. EQUAL EMPLOYMENT OPPORTUNITY POLICY

The Office of the Richmond County District Attorney (RCDA) is an equal opportunity employer and prohibits discriminatory employment actions against and treatment of City employees and applicants for employment based on actual or perceived race, color, national origin, alienage or citizenship status, religion or creed, gender (including “gender identity” - which refers to a person's actual or perceived sex, and includes self-image, appearance, behavior or expression, whether or not different from that traditionally associated with the legal sex assigned to the person at birth), predisposing genetic characteristics, disability, age (18 years and over), prior record of arrest or conviction, family status, partnership status, marital status, military status, sexual harassment, sexual orientation, sexual reproductive health decisions, status as a victim or witness of domestic violence, sex offenses or stalking, pregnancy, marital status, consumer credit history, unemployment status or caregiver status.

A. Types of Prohibited Conduct

Decisions and practices based on an individual's protected status (e.g., race, religion, age and the other categories listed above) that unlawfully affect employment or the compensation, terms, conditions or privileges of an individual's employment or potential employment with the City of New York are prohibited by this policy. This includes unlawful decisions, actions and practices that occur in the course of recruitment, testing, hiring, work assignments, salary and benefits, working conditions, performance appraisals, promotions, training opportunities, career development and advancement, transfers, discipline, discharge or any other application or selection process relating to employment.

RCDA's EEO Policy also prohibits sexual harassment - that is, conduct or language of a sexual nature-and harassment based on gender or any other protected characteristic (such as race, religion, disability or sexual orientation). Forms of harassment may include, but are not limited to, the use of vulgar language, abusive acts or language, hostility, physical aggression, intimidation, or unequal treatment.

Harassment and/or retaliation against a person who opposes or complains about prohibited conduct or participates in any way in the complaint, investigation or reasonable accommodation processes are strictly prohibited.

This policy also prohibits the denial of reasonable accommodations (for disabilities; religious beliefs, observances and practices; or for victims of domestic violence, sex offenses or stalking) that do not create undue hardship.

Some offensive acts or remarks may violate this policy, even if they are not so severe that they violate federal, state or local discrimination laws. RCDA may discipline conduct that violates this policy even if the conduct does not violate a law prohibiting discrimination.

B. Applicability

Everyone who works within New York City government or its workplaces, or who seeks employment within City government, is covered by federal, state and local employment laws and this policy. This includes all current employees, managers (including executives and senior level staff members), supervisors, co-workers and job applicants.

This policy not only protects individuals from prohibited conduct because of their own protected status (such as their own actual or perceived race, religion, national origin or disability), but also protects individuals from conduct motivated by the actual or perceived race, religion, national origin or disability, etc., of other persons with whom they are associated. For example, this policy applies to individuals who are subjected to adverse actions because of their marriage to, or domestic partnership or association with, persons of a particular racial, religious or national origin group, or persons who have a disability. Moreover, discrimination based on an individual's name(s) or spouse's or domestic partner's name(s) that is associated with a particular racial, religious or national origin group is prohibited.

These protections apply to actions, whether or not intentionally offensive or directed at a particular person or group that violate this policy.

This policy extends to conduct which occurs at any location that could be reasonably regarded as an extension of the workplace, such as any field location, off-site business-related social function, City vehicle or facility where City government business is being conducted and discussed.

All RCDA employees are expected to be respectful of all of their co-workers and members of the public, and to be sensitive to the effects of their behavior on those around them. All employees must be trained in the requirements of this policy and must receive a copy of the EEO Policy Handbook, "*About EEO: What You May Not Know*."

III. SPECIFIC PROTECTIONS

The following sections are provided to enable individuals to understand the unique definitions, issues, rights and responsibilities under this policy pertaining to sexual harassment and discrimination based on disability, religion, retaliation and status as a victim of domestic violence, a sex offense or stalking.

A. Sexual Harassment

Sexual harassment is a form of employment discrimination which is prohibited by law. The federal government has created guidelines which define sexual harassment as "unwelcomed sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature . . . when: 1) submission to the conduct is made either explicitly or implicitly a term or condition of an individual's employment; 2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or 3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment."

Sexual harassment may involve individuals of the same or different gender(s). A broad range of behavior may be considered sexual harassment, including sexually suggestive remarks, pictures or gestures, verbal abuse or harassment of a sexual nature, subtle or direct propositions for sexual favors and any unnecessary touching, patting, or pinching.

B. Disabilities

Discrimination against a person based on that person's actual or perceived disability, record of disability, or relationship with a person with a disability will not be tolerated by the RCDA Office. For the purpose of this policy, a

disability is: 1) a physical, medical, mental or psychological impairment; 2) a history or record of such impairment; or 3) being regarded as having such impairment.

RCDA will take appropriate action to provide reasonable accommodations to qualified employees and applicants with disabilities, unless providing such accommodations creates an undue hardship. Reasonable accommodations include the provision of equipment, changes in workplace policies and practices and other forms of assistance that allow people with disabilities to apply for a position, to perform their jobs, or to enjoy equal benefits and privileges of employment as are enjoyed by other similarly situated employees without disabilities.

Whether an accommodation is reasonable will depend upon the circumstances of the particular request. Some examples of accommodations that may be reasonable include: making facilities physically accessible to, and usable by, persons with disabilities; job restructuring; modifying work schedules; providing or modifying equipment or devices; providing qualified readers, interpreters, auxiliary aides and/or other support services; and providing leave and/or arranging for transfer or reassignment to a vacant position, if such transfer or reassignment does not violate the Civil Service Law, Personnel Rules and Regulations or other applicable laws, regulations and/or collective bargaining agreements.

Undue hardship may exist when an accommodation is significantly difficult, unduly costly, extensive, substantial, or disruptive, or would change the nature or operation of this Office's business.

i. 55-a Program

Section 55-a of the New York State Civil Service Law permits municipalities to employ persons, who have been certified as physically or mentally disabled, in civil service positions on a non-competitive basis. This provision is implemented by the City of New York through the 55-a Program, which is administered by the New York City Department of Citywide Administrative Services. You must be certified as being physically or mentally disabled and qualified to perform the duties of the job.

C. Religion

The RCDA's EEO Policy prohibits adverse employment actions based on a person's religion. This includes discriminatory practices and decisions, harassment, hostility or other adverse actions because of a person's creed, religious affiliation, or religious beliefs, observances or practices. In addition, depending on the circumstances, RCDA will make reasonable accommodations to qualified employees and applicants with regard to religion, unless providing such accommodations would create undue hardship for the Office.

RCDA is not required to provide accommodations that are too costly or difficult to provide, that would be disruptive, or that would interfere with job performance.

D. Gender (including Gender Identity)

Discrimination against a person is prohibited by federal, state and local laws and will not be tolerated. Gender is defined in the City's Human Rights Law to include:

- Actual or perceived sex,
- Gender identity,
- Self-image,
- Appearance and
- Behavior or expression,

whether or not that gender identity, self-image, appearance, behavior or expression is different from that traditionally associated with the legal sex assigned to an individual at birth.

E. Predisposing Genetic Characteristics

"Predisposing Genetic Characteristics" shall mean any inherited gene and/or chromosome, or alteration thereof and determined by a genetic test or inferred from information derived from an individual or family member that is scientifically or medically believed to predispose an individual or the offspring of that individual to a disease or disability, or to be associated with a statistically significant increased risk of development of a physical or mental disease or disability.

F. Retaliation

It is a violation of this policy to retaliate against or harass any person who asserts his or her rights regarding employment discrimination by: 1) opposing discriminatory practices in the workplace; 2) complaining about prohibited conduct; or 3) participating in any way in the complaint, investigation or reasonable accommodation processes. It is also a violation of this policy to retaliate against or harass someone because of his or her association with such an individual.

Behaviors which may be considered retaliatory include, but are not limited to: threats, reprimands, negative evaluations, harassment, refusal to hire, denial of promotion or job benefits, demotion, suspension, discharge, negative references to prospective employers, or other actions affecting the terms, conditions or privileges of employment.

Examples of behavior that is protected against retaliation under this policy include, but are not limited to: expressing an intent to file a charge or complaint alleging prohibited conduct; participating as a witness in an EEO investigation, administrative proceeding, hearing or trial; and/ or seeking a reasonable accommodation.

G. Domestic Violence, Sex Offenses or Stalking

The New York City Human Rights Law prohibits employment discrimination against persons who are victims of domestic violence, or victims of sex offenses or stalking, as defined by that law and the New York State Penal Law. Agencies shall provide reasonable accommodations that do not create undue hardship and that enable such persons to satisfy the essential requisites of a job, provided that the status as a victim of domestic violence or victim of sex offenses or stalking is known, or should have been known, by the RCDA Office.

IV. PROCEDURES

A. Reporting Violations

Anyone who believes that he or she has been subjected to any action, decision or harassment in violation of this policy, or who witnesses others being subjected to improper conduct, is urged to promptly report the incident(s) to his or her supervisor or manager, to office personnel supervising the application, testing and interviewing process, or directly to an EEO representative at the office where the violation has actually occurred, or which is the employer of the individual who has purportedly committed the act(s) complained of. Supervisors, managers, or human resources personnel who receive EEO complaints, or who otherwise become aware of any improper discrimination, must notify the EEO Officer. Supervisors and managers should also encourage individuals who believe that the RCDA's EEO Policy has been violated to consult with an EEO counselor.

An individual who believes that this policy has been violated may report the incident orally or in writing. Where the complaint is taken orally, the manager, supervisor, or EEO representative shall document the complaint. The EEO Officer will assist any individual to determine whether the conduct or decision is appropriate for the complaint process. Where an individual chooses to file an internal complaint with the RCDA EEO Officer, that complaint must be filed within one year of the event which is the subject of the complaint.

Persons who wish to discuss a possible violation of this policy without revealing their identity may do so by telephoning or writing the EEO Officer. In such cases, the EEO Officer or EEO Counselor will provide counseling and take such follow-up action as may be appropriate and possible, given the restraints of anonymity.

If any employee knowingly makes a false accusation of discrimination or knowingly provides false information in the course of an investigation of a complaint, such conduct may be grounds for discipline. A complaint made in good faith, even if found to be unsubstantiated, will not be considered a false accusation.

B. Contact with the EEO Officer

An employee has a right to meet privately with the EEO representative. Such a meeting may take place either during or outside of office hours. If an employee makes a request to meet with the EEO Officer or counselor during office hours, the employee should obtain approval from a manager or supervisor in order to leave his or her work assignment. An employee need not disclose the purpose for or details of the meeting with the EEO Officer or counselor. Reasonable leave requests to meet with the EEO Officer or counselor during work hours cannot be denied by managers or supervisors. Managers and supervisors shall allow employees to meet with either the EEO Officer or counselor at the earliest practicable time consistent with the operational needs of the Bureau.

At the employee's request, arrangements may also be made to hold the meeting before or after office hours, or during the employee's lunch period. Should such a meeting take place entirely on the employee's own time, he or she need not advise a manager or supervisor of the meeting, or obtain the consent or approval of a manager or supervisor. The EEO Officer or counselor will arrange to meet with an employee at outside premises where appropriate and/ or necessary in order to ensure confidentiality. If necessary, the EEO Officer or counselor will make arrangements for sign language interpreters and other forms of effective communication with persons with disabilities to facilitate access to EEO services.

The EEO Officer or counselor will discuss and research appropriate options, including actions an individual could take on his or her own behalf, referrals to other offices and/ or agencies, mediation, investigation and/ or interim relief. The EEO Officer or counselor may also facilitate any further discussions with other office personnel. In appropriate cases, an EEO investigation may be conducted in conjunction with or by the Chief Assistant District Attorney/ General Counsel, the Law Department or DCAS.

Any person who is interviewed during the course of an EEO investigation has a right to be accompanied by a representative of his or her choice. This includes individuals who make complaints, persons against whom complaints are made or witnesses. It is preferable that the EEO Officer or counselor have advance notice that the person who is being interviewed will be bringing a representative.

Any person who is the subject of the complaint will have an opportunity to respond in writing.

All employees are expected to cooperate with EEO investigations. Failure to cooperate in an investigation may result in disciplinary action.

C. Withdrawing Complaints

A complaint of discrimination may be withdrawn at any time by the person who filed the complaint. In some instances, the EEO Officer will find it appropriate to end the investigation when the complaint is withdrawn. Prior to ending the investigation, the EEO Officer must determine whether the office should take corrective action to address inappropriate conduct. If the EEO Officer determines that corrective action is required, it may be necessary for the EEO Officer to continue the investigation or recommend action to remedy inappropriate behavior.

D. Mediation

Mediation is a voluntary, informal and confidential process that provides an opportunity for everyone involved in a complaint to come to a mutual agreement about how the complaint should be resolved. It is an alternative that may quickly resolve complaints without a full investigation.

All requests for mediation should be made to the EEO Officer. Mediation may be requested by any party involved and may be declined by any party.

The EEO Officer will determine whether the complaint is appropriate for mediation. The EEO Officer may choose to conduct the mediation internally within the RCDA Office or through the Center for Mediation Services (the "Center") at the City's Office of Administrative Trials and Hearings (OATH). If the Center is chosen, the EEO Officer will advise the Center of the names of the parties and their contact information. The Center will then arrange a date and time for the mediation with the parties. If the parties agree to a resolution of the situation during mediation at the Center and any action needed to resolve the matter has received all necessary approvals, the Center will forward a copy of the resolution agreement to the EEO Officer.

Mediation may be terminated by any party to the mediation. If this occurs, the EEO Officer or the Center will inform the other party or parties in writing that the mediation has been terminated. In the event that mediation does not result in a resolution, the EEO Officer or the Center will provide the parties with a written statement informing the parties of the complainant's right to an investigation of the allegation. Where efforts to mediate complaints are unsuccessful, complaints will be investigated by the EEO Officer.

E. Concluding the Complaint Investigation

The EEO Officer will advise all parties in writing of the outcome of a complaint. If the EEO Officer concludes that a violation of this policy has occurred, the EEO Officer will recommend appropriate corrective action. The District Attorney will review the EEO Officer's report and promptly issue a determination adopting, rejecting or modifying the recommended action. Such determination shall be in writing and may be issued electronically.

Any person found to have engaged in conduct or practices in violation of this policy may be subject to discipline which may include a reprimand, suspension, probation, demotion, transfer, termination, or any other measures permitted by law and/or collective bargaining agreements. In addition to implementing such disciplinary action, RCDA may take such steps as may be necessary to address the impact that any violation of this policy has had on the complainant or within this Office.

F. Other Places Where Complaints May Be Filed

The following federal, state and local agencies enforce laws against discrimination: The United States Equal Employment Opportunity Commission (the "EEOC") and the Department of Justice, New York State Division of Human Rights, and the New York City Commission on Human Rights. Information about how to contact these agencies is given below: EEOC website at <https://www.eeoc.gov> or 866-408-8075, NYS Division of Human Rights website at <http://www.dhr.ny.gov> or (888) 392-3644, NYC Commission on Human Rights website at <http://www.nyc.gov/html/cchr/html/home/home.shtml> or (718) 722-3131. Complaints may also be filed at the Office of Citywide Diversity and Equal Employment Opportunity, DCAS, 1 Centre Street, 17th Floor, New York,

NY 10007, (212) 386-0257. Please note that there are statutory deadlines for filing complaints with each of these agencies.

Where a person exercises his or her right to file a complaint with a federal, state or local administrative agency (known as an "external complaint") based on or related to the same facts and circumstances of an internal complaint, the RCDA EEO Officer will transfer the matter to the Chief of Staff, who will be responsible for any further handling of the matter. The EEO Officer will notify the complainant and the parties who are the subject of the complaint, in writing, that the investigation by the EEO Officer has been transferred because of the filing of the external complaint. The Chief of Staff will be responsible for handling external complaints regardless of the timing of such complaints (whether filed before the internal complaint is filed, at the same time that the internal claim was filed, or after the internal complaint was filed, but prior to the completion of the office's internal EEO procedures). The transfer of the complaint to the Chief of Staff should in no way preclude the EEO Officer from cooperating with the Chief of Staff with respect to the ultimate resolution of the complaint.

G. Requests For Reasonable Accommodations

RCDA will provide reasonable accommodations when requests are made in connection with disabilities, religion and/ or status as a victim or witness of domestic violence, sex offenses or stalking. The reasonable accommodation process is flexible and interactive, involving office representatives who are necessary to the reasonable accommodations process and the individual who is requesting a reasonable accommodation. In all instances, the EEO Officer should be notified of the request in order to facilitate discussions, research appropriate accommodations and assist in the resolution of the matter.

EEO representatives, office personnel supervising any phase of the application process, and/ or managers and supervisors involved in the process shall notify individuals who request reasonable accommodations whether the request has been granted. Where the specific accommodation requested is impracticable, office representatives will seek to implement an appropriate alternative reasonable accommodation.

All information, including a statement of the person requesting a reasonable accommodation or any other documentation, record, and the fact that the individual has requested or obtained a reasonable accommodation, shall be

retained in the strictest confidence by the RCDA Office, except to the extent that disclosure is requested or consented to in writing by the person requesting the reasonable accommodation, or is otherwise required by applicable federal, state or local law.

Where an employee or applicant has requested a reasonable accommodation consistent with these procedures and the office representative has not provided the reasonable accommodation, an appeal may be made to the Chief of Staff. Within 10 business days of receipt of an appeal, the Chief of Staff, or his or her designee, shall:

1. obtain the request for reasonable accommodation made by the employee or applicant and review all related documentation, standards, procedures and potential accommodations;
2. meet and/ or consult with the employee or applicant, the EEO Officer, and any office representative that the Chief of Staff deems necessary to the reasonable accommodation request;
3. evaluate the reasonableness of employee or applicant and supervisor preferences regarding the accommodation request, giving primary consideration to the employee's or applicant's preferences; and
4. consult with the Office of Citywide EEO or the Law Department.

Within 15 business days of receipt of the appeal, the Chief of Staff shall issue a written determination on the request for reasonable accommodation, specifying what accommodation shall be provided, if any, and, where necessary, directing the appropriate office representative to implement such accommodation promptly. The EEO Officer shall monitor implementation of the reasonable accommodation.

H. Confidentiality

All complaints, investigations, requests for accommodations and records will be handled, to the extent possible, in a manner that will protect the privacy interests of those involved. EEO matters may be discussed with other persons who may have information about a complaint or who are necessary to implement reasonable accommodations for disability, religion or based on status as a victim of domestic violence, a sex offense or stalking. Therefore,

it may be necessary to disclose information to persons with a legitimate need to know about the matter.

I. Anti-Retaliation Policy

It is unlawful to retaliate against or harass any person for filing an EEO complaint, seeking a reasonable accommodation, or for cooperating in the investigation of an EEO complaint. The office will not tolerate any such retaliation. Any person who believes that s/he is being retaliated against for having made a complaint or for cooperating in an investigation is urged to file a complaint of retaliation with the EEO Officer.

J. Documentation

All inquiries, complaints, requests, mediation efforts, investigations, requests for accommodation and their outcomes will be documented by the EEO Officer.

V. PLACES TO FILE A COMPLAINT

Any employee or applicant who believes that s/he has been discriminated against should contact RCDA's EEO Officer for consultation and/or to file a complaint. EEO Complaint Procedures and Reasonable Accommodations Procedures and Complaint Forms can be obtained from the EEO Officer. The EEO Officer and Disabilities Rights Coordinator, **Monique Jones** can be reached by telephone at (718) 556-7170 or by e-mail at monique.jones@rcda.nyc.gov. Her office is located at 130 Stuyvesant Place, Room 714, Staten Island, New York 10301. You may also contact the EEO Counselor, **Ashleigh Owens** by telephone at (718) 556-4065 or by e-mail at aowens@rcda.nyc.gov.

A. Other Places Where Complaints May Be Filed

The following federal, state, and local agencies enforce laws against discrimination:

- New York City Commission on Human Rights,
- New York State Division of Human Rights,

- United States Equal Employment Opportunity Commission (the “EEOC”)
- Department of Justice

Information about how to contact these agencies can be found:

- *About EEO: What You May Not Know* at http://www.nyc.gov/html/dcas/html/about/eeo_booklet.shtml
- DCAS website at <http://www.nyc.gov/html/dcas/html/about/eeo.shtml>
- DCAS, Office of Citywide Diversity and Equal Employment Opportunity, DCAS, 1 Centre Street, 17th Floor, New York, NY 10007, (212) 386-0257.

Please note that there are statutory deadlines for filing complaints with each of these agencies.

Appendix – 3

Office of the Richmond County District Attorney
Discrimination Complaint Procedures Guidelines,
January 1, 2020



OFFICE OF THE DISTRICT ATTORNEY RICHMOND COUNTY

MICHAEL E. McMAHON
DISTRICT ATTORNEY

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DISCRIMINATION COMPLAINT PROCEDURES GUIDELINES

I. PURPOSE

These guidelines are designed to further the goals of: [1] resolving complaints of discrimination within the Richmond County District Attorney's Office (RCDA) through a fair and prompt process of conciliation and/or investigation and [2] taking immediate and appropriate corrective action to remedy unlawful discrimination in the workplace.

II. DEFINITIONS

Complainant: A current or former employee, or an applicant for employment, who files or makes either a written or oral complaint of discrimination or a request for conciliation.

Respondent: A person and/or office, or any subdivision of an office, or independent contractor accused of committing an unlawful discriminatory act(s).

Note: An office may be liable for the unlawful discriminatory acts or practices committed by a person employed as an independent contractor to carry out work in furtherance of the office's business enterprise where such discriminatory conduct was committed in the course of such employment and the office had actual knowledge of and acquiesced in such conduct.

Parties: The complainant(s) and the respondent(s).

Complaint: A written or oral statement of facts, including pertinent dates, which describes the alleged discriminatory act(s) and identifies the respondent with specificity. If the complaint is written, it must be signed by the complainant(s), or a person authorized to act on behalf of the complainant(s), or, in an appropriate case, the EEO Officer on behalf of the RCDA.

When the EEO Officer or Counselor decides that (s)he must investigate an oral complaint, the complaint must be in writing in accordance with the procedures set out in Section X before the investigation can begin.

III. TIME PERIOD FOR FILING COMPLAINTS OF DISCRIMINATION

A complaint of discrimination based on age, alienage or citizenship, color, creed, disability, gender (including sexual harassment), marital status, national origin, prior record of arrest or conviction, race religion, and/or sexual orientation must be filed with the EEO Officer or Counselor within one year of the date the alleged discriminatory act(s) occurred.

IV. WHO CAN FILE A COMPLAINT OF DISCRIMINATION

Any current or former employee of the RCDA, or applicant for employment with the RCDA who feels that (s)he has been discriminated against on the basis of age, alienage or citizenship, color, creed, disability, gender (including sexual harassment), marital status, national origin, prior record of arrest or conviction, race, religion, and/or sexual orientation may file a complaint of discrimination.

V. HOW TO FILE A COMPLAINT OF DISCRIMINATION

A complaint may be filed with the EEO Officer or EEO Counselor in person or by mail or telephone. Written complaints should be prepared on the Discrimination Complaint Form. The RCDA will take all appropriate steps to ensure that individuals desiring to use the complaint procedures are provided with the necessary assistance.

The complaint should provide a statement of the facts, including pertinent dates, which constitutes the alleged discriminatory act(s). While the preference is for the complaint to be typed on the Complaint Form, any communication that is given to the EEO Officer or Counselor that identifies the respondent(s) with reasonable specificity and provides the essence of the circumstances which gave rise to the alleged discrimination may be deemed an acceptable complaint. The EEO Officer will determine whether the statement is an acceptable complaint of discrimination.

VI. ACCESSIBILITY

The RCDA will provide such assistance and aid as may be necessary to enable a complainant(s) to understand and participate in the complaint process.

VII. WHERE TO FILE A COMPLAINT OF DISCRIMINATION

A complaint may be filed with the EEO Officer or EEO Counselor.

VIII. RIGHT TO MEET WITH THE EEO OFFICER

When a person(s) feels that (s)he has experienced unlawful discrimination, (s)he has the right to meet privately with the EEO Officer or Counselor during office hours to discuss the complaint. An employee's request to meet with the EEO Officer or Counselor at a reasonable time during office hours must be cleared by the employee's supervisor; however, the supervisor cannot deny a reasonable request. An employee is not required to give his/her supervisor specific information about why (s)he wishes to meet with the EEO Officer or Counselor. An employee may bring a representative of his/her choice to the meeting. It may be appropriate, in certain circumstances, for the meeting between the employee and the EEO Officer or Counselor to be scheduled before or after office hours, or during the employee's lunch hour.

IX. COUNSELING

When the person(s) meets with the EEO Officer or Counselor, the EEO Officer or Counselor will interview the person(s) to elicit the details of the complaint. The EEO Officer or Counselor will make the necessary inquiries to determine whether the complaint is EEO-related and will discuss the options available to the person(s). These options include:

- a. further actions the person(s) could take on his or her own behalf, for example, bringing the matter to the attention of his/her supervisor;
- b. filing a complaint with the following: New York City Commission on Human Rights, New York State Division of Human Rights, United States Equal Employment Opportunity Commission, the United States Department of Labor, and the United States Department of Justice;
- c. conciliation by the EEO Officer;
- d. investigation by the EEO Officer; and/or
- e. referring the person(s) to appropriate personnel if the complaint is not EEO-related.

X. ANONYMOUS AND ORAL COMPLAINTS

A person(s) who feels that (s)he has experienced unlawful discrimination and wishes to notify the EEO Officer or Counselor of the problem with or without revealing his/her identity is encouraged to do so by either telephoning or writing to the EEO Officer.

A person(s) who anonymously or orally reports the discriminatory behavior to an EEO Officer or Counselor should be aware that it may be necessary for the EEO Officer or Counselor to investigate the alleged discriminatory behavior and take action, or recommend that action be taken to remedy the unlawful discriminatory behavior, notwithstanding the complainant's wish not to file a "formal" complaint or bring the matter to the attention of the respondent.

The EEO Officer or Counselor will evaluate the anonymous or oral complaint to determine whether an investigation is warranted. The EEO Officer or Counselor will conduct an investigation on behalf of the RCDA if, based upon the information contained in the complaint, the EEO Officer or Counselor determines that an investigation is warranted.

The EEO Officer or Counselor will complete an Office Complaint of Discrimination Based on an Anonymous/Oral Complaint Form and commence the investigation in accordance with Section XII of these guidelines. (See Appendix D)

Data in all anonymous complaints will be maintained by the EEO Officer.

XI. CONCILIATION AND MEDIATION

- A. Request for Conciliation: In order to begin the conciliation process, the complainant(s) must file a written request for conciliation. (See Appendix E) When the EEO Officer receives a written request for conciliation from the complainant(s), the procedures outlined in the section shall govern.
- B. Conciliation Process: The EEO Officer shall attempt to conciliate the dispute with the parties and to reach an informal resolution of the complaint within forty-five (45) working days of receipt of the request for conciliation. In conducting conciliations, the EEO Officer shall consult with the complainant(s), respondent(s) and other persons as appropriate.

Conciliation efforts to resolve the complaint shall not exceed forty-five (45) working days, unless this time period is extended by the EEO Officer.

- C. Termination of Conciliation: The EEO Officer must issue a written report confirming the termination of conciliation. Termination of conciliation efforts occurs when:
- the complaint is withdrawn;
 - resolution is agreed upon by all parties, and, if the terms of the resolution require RCDA action, the District Attorney or his designee; or
 - the EEO Officer deems conciliation efforts unproductive.

When a resolution is agreed upon, the terms of the resolution will be embodied in a written report that confirms the termination of conciliation. The report must be signed by the complainant(s) and respondent(s). Copies of the report will be given to all parties.

When a resolution is not agreed upon, and/or the EEO Officer determines that further conciliation efforts would be unproductive, the EEO Officer shall issue to the parties a written notice confirming termination of conciliation, which shall inform the complainant(s) of his/her right to request an investigation of the complaint discrimination.

XII.INVESTIGATION PROCESS

A. When Does the Investigation Process Begin?

- ⌚ The investigation begins immediately after the EEO Officer or Counselor: [1] receives either an oral or written complaint of discrimination and [2] determines that the allegations in the complaint are sufficient to establish a case of unlawful discrimination.
- ⌚ If the complaint is in writing but not prepared on the Discrimination Complaint Form, the EEO Officer or Counselor should ensure that the information required on the Form is captured either by having the complainant(s) or his/her agent amend the original complaint or file the complaint using the Discrimination Complaint Form.
- ⌚ The EEO Officer must indicate on the complaint form the date and time the complaint is filed. This information should be logged.
- ⌚ If the EEO Officer has initiated the investigation on his/her own, based upon an oral or anonymous complaint, the EEO Officer must complete the Complaint Discrimination Based on Anonymous/Oral Complaint Form and mark the date and time the complaint is files.

B. Recommendations for Conducting the Investigation

Fact Gathering

- ⌚ Learn all facts concerning the alleged incident by speaking to the complainant(s) and/or the person(s) who brought the matter to the EEO Officer or Counselor's attention.
- ⌚ Conduct a thorough interview with the complainant(s) and/or the person(s) who brought the matter to the EEO Officer or Counselor's attention in order to supplement and clarify information contained in the complaint.
- ⌚ All questions should be asked in a non-judgmental manner. Never give the impression that you do not believe the person speaking and do not express an opinion as to whether something inappropriate occurred.
- ⌚ If the complainant and the EEO Officer or Counselor are of the opposite sex, determinewhether the interview should be conducted by two individuals, at least one of whom is of the same sex as the complainant.
- ⌚ Determine precisely who was involved, what occurred, when and where it took place, the identity of all witnesses, whether this was an isolated incident or part of a pattern, what impact, if any, the alleged discriminatory conduct has had, the identities of all persons with whom the alleged discriminatory conduct has been discussed, and whether there are any relevant notes, recordings, photographs, physical evidence, or other documentation inexistence and available. Determine whether the complainant has missed any work days, incurred any non-reimbursable medical expenses or had any monetary losses as a result of the alleged discriminatory conduct.
- ⌚ Speak with other persons who may have witnessed the treatment or behavior or incident in question. Also speak with any persons identified as potentially having been subjected to similar conduct or who have information concerning any aspect of the alleged discriminatory conduct.
- ⌚ Take thorough notes, as close to verbatim as possible, during each interview. Report words spoken and facts provided. Do not add your subjective assessments in the notes. At the conclusion of the interview, review with witnesses the points contained in your notes to confirm their accuracy and determine whether the interviewee has anything to add. Follow this process with all interviewees.

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Some of the recommendations were taken with permission from the National Employment Law Institute (NELI) from material that appeared in the 1993 NELI Employment Law Briefing.

The Respondent: Service of Notice and Complaint

- ⌚ After interviewing the complainant, witnesses and other appropriate persons who might provide information in support of the complainant's allegations, the EEO Officer or Counselor shall serve with respondent with a notice of the complaint along with a copy of the complaint. The following information shall not be given to the respondent: the complainant's home address and telephone number, and the name(s), title(s), and division(s) of witnesses to the alleged discriminatory act(s). The Discrimination Complaint Form contains a separate sheet for capturing this information. This sheet shall not be served to the respondent.
- ⌚ After being served with the notice and copy of the complaint, the respondent has the right to respond in writing at any time after the service has occurred. The respondent's right to respond shall remain in effect until the investigation process has ended. Respondents are encouraged to submit their written response as soon as possible after service.
- ⌚ Whenever possible, the EEO Officer should hand-deliver the notice of complaint and copy of the complaint to the respondent(s). If hand-delivery is not possible, the respondent(s) should be served by sending the notice of complaint and the copy of the complaint to the respondent's home address via certified mail, return receipt requested. In any event, the respondent(s), or someone authorized to sign for the respondent(s) should sign the receipt indicating that the notice of complaint and copy of the complaint were received by the respondent(s) or his/her agent.
- ⌚ The EEO Officer should keep all receipts and log all information regarding the service of the notice of complaint and copy of the complaint on the respondent(s).
- ⌚ If the complainant(s) is employed, was employed, or seeks employment with the RCDA and the respondent(s) is employed at another office, the EEO Officer or Counselor should contact the EEO Officer at the office where the respondent(s) is employed to coordinate the investigation. EEO Officers and Counselors should work cooperatively with other Officers and Counselors in resolving complaints of discrimination.

Meeting with the Respondent

Schedule a meeting with the respondent after (s)he has been served with the notice of complaint filed against him/her. Inform the respondent to his/her right to be accompanied by a representative of his/her choice.

- ⌚ When interviewing the respondent, remind him/her of the RCDA's policy against unlawful discrimination and its policy forbidding retaliation against or harassment of any person filing and EEO complaint or for cooperating in the investigation of an EEO complaint.
- ⌚ Give the respondent an opportunity to explain his/her recollection of what took place, along with any other relevant information that the respondent may wish to provide.
- ⌚ Ask the respondent to list any persons who are likely to have relevant information about the incident and interview those persons.

Confidential Written Report

- ⌚ Once all the facts have been gathered as accurately as possible from the appropriate persons, the EEO Officer must prepare a confidential written report on the complaint and must submit the report to the District Attorney for review.
- ⌚ In preparing the written report, the EEO Officer should consider not only the evidence and the actual statements of the parties and witnesses, but also their motive, if any, to fabricate and other conduct as reported by eyewitnesses. EEO Officers are encouraged to, and should routinely consult with the RCDA's Chief of Staff when questions arise during the preparation of the written report or any other phase of the investigation.

- ⌚ If, based upon the facts, the EEO Officer determines that the respondent(s) engaged in unlawful discriminatory behaviors, (s)he must determine the most appropriate action to be taken in light of the facts and circumstances and make a written recommendation to the District Attorney.
- ⌚ The confidential written report shall be issued within 90 days of the date the discrimination complaint was filed, although the investigation shall be commenced immediately. In rare circumstances where the investigation cannot commence immediately, or where the 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, respondent and Citywide EEO shall be notified of the delay.

Preparing the Written Report

- ⌚ The Written report shall be divided into three sections and shall be labeled “CONFIDENTIAL” in large, bold print. The District Attorney must sign each written report, whether or not disciplinary action is recommended.
 - **Section 1** shall be entitled, “Findings of Facts.” This section shall include all relevant facts gathered during the course of the investigation, including: the name(s) of each interview date(s) of the interview; and the time of the interview. There should be a detailed account of each interviewee’s statement. **NOTE:** This section shall not contain the EEO Officer or Counselor’s impressions or assessments of the interviewee’s statements.
 - **Section 2** shall be entitled, “Discussion and Conclusion.” In this section, the EEO Officer or Counselor shall assess the significance and credibility of the statements of the interviewees. There should be a detailed assessment of the strengths and weaknesses of the case. If the action complained of was based on legitimate business interest, there should be a discussion of that business interest.
 - **Section 3** shall be entitled, “Recommendation.” An appropriate recommendation, which may include corrective action, should be made to the District Attorney.
- ⌚ The DA must sign each written report to indicate that it had been reviewed and whether the recommendation, if any, is approved and adopted. After review of the report by the District Attorney, the EEO Officer shall inform all parties in writing of the outcome of the investigation.

Corrective Action

- ⌚ Where corrective action is recommended, determine the most appropriate action which might be taken in light of the facts and circumstances uncovered during the investigation. Disciplinary action should be taken in accordance with applicable provisions of law, rules and regulations or any relevant collective bargaining agreement. Determining the appropriate disciplinary action is often a difficult and sensitive matter with potential legal consequences. Therefore, the Chief Administrative Assistant District Attorneys should be sought for advice.

Informing Parties of Outcome

- ⌚ Communicate the decision to the parties in writing in a discreet and confidential manner, indicating the conclusion reached, whether the misconduct alleged has been substantiated and the RCDA’s opposition to that kind of activity. If the results of the investigation are inconclusive, do not indicate that the office concludes that no discrimination occurred because that is tantamount to accusing the complainant of lying. However, if dishonesty on the part of the complainant has been established by clear and

convincing evidence, the RCDA must conclude and report to the parties that no discrimination occurred

REASONABLE ACCOMODATION POLICY & PROCEDURE

I. INTRODUCTION

The Richmond County District Attorney's Office (RCDA) will make a reasonable accommodation to qualified applicants and employees with disabilities to enable them to perform the essential functions of their jobs, or to enjoy the equal benefits and privileges of employment, unless providing such accommodation would impose an undue hardship. The requirement to provide reasonable accommodation applies to disabilities that are known, or should have been known, to the employer. The reasonable accommodation process, including a description of key terms, is set forth below and should be followed by applicants and employees requesting a reasonable accommodation, as well as by RCDA.

II. KEY TERMS

A qualified applicant or employee is an individual with a disability who satisfies the requisite skill, experience, education and other job-related requirements of a position and who, with reasonable accommodation (if needed), or without accommodation (if none is needed), can perform the essential functions of that position.

A disability is (1) a physical, medical, mental or psychological impairment, or (2) a history or record of such an impairment, or (3) being regarded as having such an impairment.

Essential functions are duties that are fundamental to a position including, among others, those for which the position exists, those that only a limited number of employees are available to perform, or those that cannot be delegated. Evidence of what constitutes an essential function may include, but is not limited to: the employer's judgment; written job descriptions, if any; the amount and/or proportion of time spent performing the function; the consequences of not requiring a function; the terms of a collective bargaining agreement; and the work experience of incumbents.

Undue hardship is action that is excessively costly, extensive, substantial, or disruptive, or that would fundamentally alter the nature or operation of an employer's business.

Reasonable accommodations, which are described more fully below, are modifications or adjustments to the application process, work environment, or to the manner or circumstances under which a position is customarily performed, that promote equal employment opportunity for an individual with a disability. Reasonable accommodation enables a qualified applicant or employee with a disability to be considered for a position or to perform its essential functions, or to enjoy benefits and privileges of employment that are equal to those enjoyed by similarly situated employees without disabilities. Accommodations are not reasonable if they impose an undue hardship on the employer.

III.EFFECTIVE COMMUNICATION & OTHER ASSISTANCE

The RCDA Disability Rights Coordinator (DRC) shall be responsible for ensuring effective communication between applicants or employees and Office staff at every stage of the application and reasonable accommodation process. Effective communication may require arranging for sign language interpreters, assistive listening equipment, alternative formats for people with visual impairments, or other approaches. The DRC shall also be responsible for providing such other reasonable assistance as is requested by applicants, employees and supervisors throughout the reasonable accommodation and appeals processes.

IV.CONFIDENTIALITY

Office personnel must respect employee confidentiality. All documentation and information concerning the medical condition or history of an employee requesting an accommodation must be collected on forms separate from other personnel-related forms and must be maintained by the Office DRC in separate medical files. The information shall be treated as confidential medical records, except to the extent that (1) supervisors and managers must be informed about work restrictions or reasonable accommodations; (2) first-aid and safety personnel need to be informed if the disability may require emergency treatment; and (3) government officials investigating compliance with law are required to be provided with relevant information upon request.

V. THE REASONABLE ACCOMODATION PROCESS STEP-BY-STEP

Overview

The reasonable accommodation process should be flexible and interactive, involving both the employer and the applicant or employee requesting reasonable accommodation. The process generally involves four steps.

Step 1, which triggers the reasonable accommodation process, is the **request** by an applicant or employee for reasonable accommodation. With respect to applicants, agencies must ensure that the application, interviewing and testing procedures are accessible by reasonably accommodating applicants with disabilities. Although agencies must not inquire whether an individual has a disability, they may inquire whether an accommodation is needed, particularly where a disability is apparent or suspected.

Step 2 consists of **analyzing** the job to determine its purpose and essential functions. In **Step 3**, the employer **consults** with the applicant or employee to determine job-related limitations (these may affect whether an individual is “qualified”) and how those limitations can be overcome by reasonable accommodation, to identify potential accommodations and to assess the effectiveness of potential accommodations. With respect to applicants, agencies may inquire or ask an applicant to demonstrate how he or she would accomplish essential tasks, with or without reasonable accommodation. In **Step 4**, the employer considers the applicant’s or employee’s preferences, and selects or **implements** an appropriate reasonable accommodation.

Although the process is described in terms of “steps”, it should always be interactive and flexible. It is characterized by close coordination and cooperation between an applicant or employee and the employer, primarily the immediate supervisor of the application process or the position. In some instances, an appropriate and reasonable accommodation might be provided or implemented without the applicant or employee and the employer proceeding in a step-by-step fashion. For example, if an employee who uses a wheelchair requests that his or her desk be elevated on blocks and the employee’s supervisor implements the accommodation, the reasonable accommodation

process has been accomplished without a formal analysis of the job's essential functions and the employee's job-related limitations. In more complex situations, however, the step-by-step approach will guide both the employee and the employer in determining the parties' respective rights and responsibilities with a common goal of moving the process forward within clearly defined time periods.

Procedure

Step 1: Applicant or Employee Requests Reasonable Accommodation; Initial Consultation

The employee or job candidate should complete a Reasonable Accommodation Request form, and submit it to his or her immediate supervisor or, if the employee prefers, to that supervisor's supervisor. (The form should be made available to applicants at the first possible opportunity in the application process.) If a request for reasonable accommodation is made by an applicant to facilitate the application process, the Office staff supervising the application procedures should assist applicants in completing the form where requested and, in conjunction with the Office DRC or EEO officer, process the request for accommodation. Supervisors shall assist employees in completing the form where requested. The Office staff receiving the request (in the case of applicants) or supervisor, in the case of employees, shall acknowledge each request by signing and dating the form in the space provided. One copy is to be returned to the applicant or employee and a second copy is to be filed with the Office DRC, who is responsible for monitoring the process and for noting its outcome on the form. The submission by an applicant or employee of a request for reasonable accommodation shall not preclude the submission of subsequent requests.

Generally, it is the responsibility of the individual with a disability to inform the Office of the need for an accommodation. Employers must reasonably accommodate disabilities that are known to them, or that should have been known to them, but need not accommodate other disabilities. Nevertheless, once an employer is aware of an individual's disability, it may have the responsibility to initiate discussions about reasonable accommodation and set these procedures in motion.

Where the need for a requested accommodation is not apparent, the DRC or the involved supervisor may ask an applicant or employee to provide documentation in support of the request. For example, if an applicant with dyslexia requests additional time within which to complete a timed, written entrance qualifying examination that applicant may be asked to provide documentation in support of that request. Similarly, if an employee with a mental disability requests a flexible schedule to enable the employee to attend psychotherapy during the work day, the employee may be asked to provide documentation from the treating professional in support of that request.

In limited circumstances, medical examinations or more detailed medical documentation may be required to determine whether an employee can perform the essential functions of the job and what accommodations may be appropriate. However, because the circumstances under which such examinations or documentation may be required in the context of a reasonable accommodation request are narrow and fact specific, Office officials must consult with the Office's DRC before requesting them. The DRC shall consult with the Mayor's Office for People with Disabilities (MOPD) prior to authorizing such requests.

After acknowledging a request for accommodation and providing copies to both the employee and the Office DRC, the supervisor should either (1) provide or implement the request and document the accommodation or (2) proceed to Step 2 of this procedure.

Step 2: Supervisor Analyzes Job to Determine its Purpose and Essential Functions

The reasonable accommodation process sometimes can be accomplished without a formal analysis of the job's essential functions and the employee's job-related limitations, as in the example provided above, where an employee's desk is elevated on blocks to permit access from a wheelchair. Other situations are more complex, however, and require structured analysis. In these instances, upon receipt of a request for reasonable accommodation, the employer should examine the position to determine its purpose and its essential functions. Identifying which job functions are essential is necessary to determine whether an employee with a disability is "qualified" for a position. With respect to applicants for employment, agencies must make the application, interview and testing process accessible, unless doing so would create an undue hardship.

Essential functions are the fundamental job duties of a position, excluding marginal functions. A job function can be deemed an essential function for a variety of reasons including, but not limited to, whether (1) the position exists to perform the function; (2) a limited number of employees are available to whom the function can be assigned; and/or (3) whether the function is so highly specialized that it must be held by an employee selected for the ability to perform that function.

Evidence of what constitutes the essential functions of a position includes the following:

- the employer's judgment;
- written job descriptions, if any;
- the amount and proportion of time spent performing a function;
- the consequences of not requiring the employee to perform a function;
- the terms of a collective bargaining agreement;
- work experience of prior employees in the same position;
- work experience of current employees in similar positions; and
- other relevant evidence.

The essential function inquiry, however, is not intended to second guess the employer Office's business judgment, or to lower performance standards.

Step 3: Consult with the Employee

After evaluating the position to determine its essential functions, the supervisor should consult with the applicant or employee requesting the accommodation to assess the limitations that the disability imposes on the performance of each essential function. If reasonable accommodation is requested for the application process itself, the Office staff supervising that process should consult with the applicant to determine how the process may reasonably be made accessible to the individual with a disability.

A "qualified" applicant or employee is an individual with a disability who satisfies the requisite skill, experience, education and other job-related requirements of a position and who, with reasonable accommodation (if needed), or without accommodation (if none is needed), can perform the essential functions of that position or can complete the application process.

Using a collaborative, open and flexible approach, the supervisor and employee or prospective employee (where a conditional offer of employment has been extended) should consider how any job-related limitations can be overcome, discuss possible reasonable accommodations, and assess the effectiveness of each. The employer must consider an applicant's or employee's preferences, along with what is reasonable under the circumstances of the work environment, in selecting accommodations. The Office is not required to provide an accommodation that imposes undue

hardship. The same type of open and collaborative approach also should be undertaken in identifying reasonable accommodations for the application process.

What Accommodations Are Reasonable?

Accommodations that are reasonable may include, but are not limited to, those listed below. The reasonableness of an accommodation will depend upon the circumstances of each case.

- Making facilities physically accessible to and usable by people with disabilities (*e.g.*, providing ramps, rest room grab bars, signage);
- Job restructuring (*e.g.*, reallocating non-essential typing, telephone or other clerical assignments among employees, assignment of non-essential tasks to others, eliminating non-essential tasks);
- Modifying work schedules (*e.g.*, permitting alternative starting and ending times to avoid standing and jostling on subways);
- Providing or modifying equipment, devices or materials (*e.g.*, raising a desk on boards for an employee who uses a wheelchair, providing flashing lights and volume controls on intercoms and telephones, installing text telephones [TTYs], providing large-print computer display programs, or materials in alternative formats, including Braille, audio tape or enlarged print);
- Providing qualified readers, interpreters, or other support services during the application, interview, testing processes, and during training and other employment and employment-related activities, including employment related social functions (*e.g.*, office parties, picnics).

Where more than one possible reasonable accommodation exists, the employer should give primary consideration to the employee's preference in determining what accommodation it will provide. However, the employer has the discretion to choose among various appropriate reasonable accommodations that would enable the individual to perform the essential functions of the job. For example, an employer may be able to provide a mechanical page turning device, rather than hire an assistant to turn pages for an employee who does not have use of his or her hands.

If the cost of a requested accommodation imposes an undue hardship on an employer, the employee with a disability should be given the option of providing the accommodation or paying that portion of the cost that creates the undue hardship. However, the employer may not shift the cost of providing accommodations to the employee to avoid an expenditure of funds that is reasonable for the employer to pay under the totality of the circumstances.

Accommodations may be unreasonable if they impose an undue administrative hardship. For example, shifting tasks among clerical employees may be reasonable where a sufficient number of employees exist among whom the tasks can be distributed; however, such an accommodation may be unreasonable in a very small office with few employees.

Reasonable accommodation may also include permitting an employee with a disability to use aids or services that the employer is not otherwise required to provide. For example, although an employer would not be required to provide a motorized scooter to an employee with mobility impairment, reasonable accommodation would include providing an area to stow such a mobility aid, if necessary.

Employers are not required to provide personal items to employees that are needed both on and off the job. Such items include hearing aids, prosthetic limbs, wheelchairs, or eyeglasses. However, such items may constitute reasonable accommodation where they are specifically designed to meet job-related rather than personal needs. For example, eyeglasses designed to enable an employee to

view a computer monitor, but which are not otherwise needed by the employee outside the office, may constitute a reasonable accommodation.

As noted above, some requests for reasonable accommodation can be granted and implemented immediately following their receipt, without formal evaluation, consistent with this procedure. Such may be the case where the employee identifies job-related limitations and any requested accommodation with specificity. For example, an employee who is deaf and who routinely uses a text telephone (TTY) can readily identify for the employer that job-related limitation concerning use of the telephone, as well as the accommodation needed, a TTY. Where it is obvious that providing the TTY will enable the employee to meet the job's essential functions, the TTY can be ordered, provided and documented without the more comprehensive analysis provided for in Steps 2 and 3. In these cases, the reasonable accommodation process is merely compressed; it is not eliminated.

What if Neither the Employer nor the Applicant or Employee Can Identify an Appropriate Reasonable Accommodation?

Sometimes, neither the supervisor nor the applicant or employee can identify possible reasonable accommodations. In those instances, the supervisor should consult with the Office's DRC. The DRC will seek to facilitate effective communication between the parties with the goal of identifying and implementing appropriate reasonable accommodation and, where a reasonable accommodation has been selected, shall monitor its implementation. Throughout the Step 3 consultation process, the employee, the supervisor or the DRC may seek technical assistance or clarification of each component of the reasonable accommodation process from MOPD.

Step 4: Select and Implement an Appropriate Reasonable Accommodation

Within 10 business days of an employee's submitting a request for reasonable accommodation, the supervisor to whom it was submitted shall either grant or deny the request in writing in the space designated for that purpose on the Request for Reasonable Accommodation form and, where an accommodation will be provided, shall have provided or begun to implement the accommodation. Where the provision or implementation of a reasonable accommodation will take longer than 10 business days, the steps taken to order, secure or carry out the accommodation shall be documented and discussed with the employee. In all instances, however, supervisors shall act as expeditiously as possible to provide reasonable accommodations. Employees may request the assistance of the Office DRC in expediting the process. Where further supporting documentation is sought from the employee, the grant or denial of a request for reasonable accommodation shall be rendered within 10 business days of the provision of the documentation requested, or within 10 business days of the applicant's or employee's objection to providing such documentation.

Where a supervisor determines to deny a request for accommodation or to provide an accommodation other than that for which the applicant or employee has expressed a preference, the supervisor shall first consult with the Office DRC. After such consultation, the supervisor shall inform the applicant or employee in writing on the Request for Reasonable Accommodation form of the accommodation, if any, that will be provided, or that the request has been denied. The need for a consultation between a supervisor and the Office DRC shall not delay a determination on a request for a reasonable accommodation beyond 10 business days of receipt of the request.

VI. APPEALS TO THE OFFICE HEAD

An applicant or employee may appeal to the District Attorney any supervisory action or failure to act pursuant to this procedure by which the applicant or employee believes he or she is aggrieved. Within 10 business days of receipt of the appeal, the District Attorney, or his or her designee, shall:

1. Obtain from the Office DRC and review all documentation relating to the request for reasonable accommodation;
2. Meet with the supervisor and the applicant or employee;
3. Consult with the Office DRC and the Office EEO officer (if different from the DRC);
4. Review the essential job functions, job-related limitations involving the applicant's or employee's disability, and potential accommodations;
5. Evaluate the reasonableness of applicant or employee and supervisor preferences in accommodations, giving primary consideration to the employee's preferences; and
6. Consult with MOPD and with the Department of Citywide Administrative Services.

Within 15 business days of receipt of the appeal, the District Attorney shall issue a written determination on the request for reasonable accommodation, specifying what accommodation shall be provided, if any, and directing the supervisor to implement such accommodation promptly. The DRC shall monitor implementation of the reasonable accommodation.

Discrimination Complaints

This reasonable accommodation procedure is intended to ensure equal employment opportunities for employees with disabilities, but shall not impede the right of any employee to file a complaint with the Office Equal Employment Opportunity Unit, an appropriate federal oversight Office under the Americans with Disabilities Act or the Rehabilitation Act of 1973, the State Division of Human Rights, the New York City Commission on Human Rights, or any other federal, state or local Office having jurisdiction over such matters, or in any court of competent jurisdiction.

For Further Guidance

Throughout the reasonable accommodation process, employees or Office officials may seek guidance from MOPD by calling (212) 788-2830 (voice) or (212) 788-2838 (TTY).

The Disability Rights Coordinator for RCDA is:

Monique Jones
130 Stuyvesant Place, Room 720
Staten Island, NY 10301
Phone: (718) 556-7170 Fax: (718) 442-3584

REQUEST FOR REASONABLE ACCOMMODATION

The Office of the Richmond County District Attorney (RCDA) will make reasonable accommodation to qualified applicants and employees with disabilities to enable them to perform the essential functions of their jobs, or to enjoy the equal benefits and privileges of employment and the employment process, unless providing such accommodation would impose an undue hardship. This form shall be made available to and used by all applicants and employees requesting reasonable accommodation, in conjunction with the RCDA's Reasonable Accommodation Policy & Procedure.

INSTRUCTIONS: Applicants should complete sections I and II and submit this form to the Office. Current employees should complete sections I and III and submit this form to their immediate supervisors. Supervisors receiving requests for reasonable accommodation should complete section IV, return one copy of the completed form to the applicant or employee requesting the accommodation, and immediately forward the second copy of the form to the DRC. The DRC should complete and update Section V as appropriate. The DRC shall assist applicants or employees in completing this form where requested.

Section I - This section should be completed by both applicants and current employees.

Name _____

Address _____

Phone _____

Accommodation Requested _____

Section II - Complete this section only if you are a job applicant.

Position/title applied for _____

Office or Bureau (if known) _____

Location of Position (if known) _____

Job Vacancy Notice Number (if known) _____

Part(s) of employment process for which an accommodation is requested (*e.g.*, application, examination, interview) _____

Office Contact Person (if known) _____

Date of Examination/Interview _____

(continue to next page)

Section III - Complete this section only if you are an employee (even if currently on leave).

Position/Title _____

Office/Bureau _____

Location _____

Supervisor _____

Section IV - To be completed by Office staff supervising the employment application process or supervising an employee requesting a reasonable accommodation.

Supervisor Name and Title _____

Office/Bureau _____

Location _____

Phone _____ Date Received _____

Supervisor's Signature _____

After completing this section, supervisors must return a copy of this form to the applicant or employee, immediately send a copy to the Office DRC, and take such further action as is required by the Reasonable Accommodation Policy & Procedure.

Section V -To be completed by the Office Disability Rights Coordinator.

Name _____

Location _____

Phone _____ Date Received _____

Disability Rights Coordinator Signature _____

DRC comments, with date (DRC should consult the Reasonable Accommodation Policy & Procedure for further guidance on documenting progress and monitoring implementation of any reasonable accommodation).



OFFICE OF THE DISTRICT ATTORNEY
RICHMOND COUNTY

MICHAEL E. MCMAHON
DISTRICT ATTORNEY

130 STUYVESANT PLACE
STATEN ISLAND, NEW YORK 10301

October 8, 2020

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

**Re: Preliminary Determination Evaluation of Sexual Harassment Prevention and Response Practices
for Audit Period January 1, 2018 to December 31, 2019**

Dear Director Terry:

We have reviewed the Equal Employment Practices Commission's (EEPC) evaluation and preliminary determinations pursuant to the audit of the Office of the Richmond County District Attorney's (RCDA) Sexual Harassment Prevention and Response Practices for the period of January 1, 2018-December 31, 2019. Please find our written comments to the report's preliminary determinations and each of the corrective actions and recommendations offered in the attached memorandum.

Should you have any questions regarding our comments or need any further information, please do not hesitate to reach out to my Chief of Staff, [REDACTED] at [REDACTED] or [REDACTED] [@rcda.nyc.gov](mailto:[REDACTED]@rcda.nyc.gov) or RCDA's Director of Operations, [REDACTED] at [REDACTED] or [REDACTED] [@rcda.nyc.gov](mailto:[REDACTED]@rcda.nyc.gov). Thank you.

Sincerely,

Michael E. McMahon

District Attorney

Response of the Richmond County District Attorney's Office

to the

Preliminary Evaluation of Sexual Harassment Prevention and Response Practices for Audit Period January 1, 2018 to December 31, 2019

October 8, 2020

Below please find a response to the preliminary findings of the audit report and each of the individual recommendations for the suggested corrective actions:

I. Issuance, Distribution and Posting Policies: Policy Statement

Corrective Action #1: The entity did not demonstrate that it annually issued a Policy Statement or memorandum reiterating the entity's commitment to the prevention of sexual harassment, to its non-legal and managerial employees.

Recommendation: Issue a Policy Statement or memorandum reiterating commitment to the prevention of sexual harassment annually.

RCDA Response to Corrective Action #1

RCDA's employee policy manual includes a statement from the District Attorney reiterating the agency's commitment to the prevention of sexual harassment, which is distributed annually to all staff. The manual with the DA's statement was sent to all employees in August 2019 and July 2018. See **Appendix A** for proof of this distribution. Going forward, RCDA will also issue a statement from the DA reiterating this policy and commitment as a standalone communication. See the most recent issuance for 2020 included as part of **Appendix B**.

Corrective Action #2: The entity did not demonstrate the distribution or availability of the RCDA EEO Policy to non-legal and managerial employees. The entity did not demonstrate that it distributed, or made electronically available, to all employees the Discrimination Complaint Procedures Guidelines document, which included uniform and responsive procedures for investigating discrimination/sexual harassment complaints. Note: While the entity provided the RCDA Legal Employee Manual, the entity did not provide the RCDA Non-Legal Employee Manual and RCDA Managerial Employee Manual. In addition, the Applicability section of the RCDA EEO Policy stated, "[all] employees must be trained in the requirements of this policy and must receive a copy of the EEO Policy Handbook, 'About EEO: What You May Not Know.' RCDA should clarify whether it follows the Citywide EEO Policy or its own RCDA EEO Policy and Discrimination Complaint Procedures Guidelines.

Recommendation: 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 Policy that confirms to city, state and federal laws against sexual harassment—for use by managers, supervisors, and legal, human resources and EEO Professionals. Include, or attach as addenda: uniform and responsive procedures for investigating discrimination/sexual harassment complaints, and current contact information for the agency's EEO professionals as

well as federal, state and local agencies that enforce laws against discrimination/sexual harassment.

RCDA Response to Corrective Action #2: RCDA did distribute copies of the Equal Employment Opportunity Policy, Standards and Procedures for RCDA to both legal and non-legal employees annually (we produced a separate manual for managerial employees for the first time in 2019). A copy of the EEO Policy Standards and Procedures is included in the Employee Policy Manual, which is distributed annually to all employees. See **Appendix A** for proof of this distribution. Furthermore, a copy of the agency's EEO Policy, Standards and Procedures as well as RCDA's Complaint Procedures are always available to all employees electronically on the agency's intranet. See **Appendix C** as proof of this availability.

II. Training for the Agency

Corrective Action #3: Although the entity indicated employee training completion, it did not demonstrate establishment of a plan for new and existing employees to ensure that all individuals who work within the entity, including managers and supervisors, receive training on the prevention of sexual harassment as well as discrimination and complaint investigation procedures. Corrective Action Required.

Recommendation for Corrective Action #3: Establish and implement a training plan for new and existing employees to ensure that all individuals who work within the agency, including managers and supervisors, receive training on the prevention of sexual harassment as well as discrimination complaint and investigation procedures.

RCDA Response to Corrective Action #3: RCDA already includes all citywide computer-based trainings, including the DCAS training on Sexual Harassment Prevention, in the onboarding process for new employees. All new employees must complete these computer-based trainings in the first month of their employment. See **Appendix D** for an example of an email sent to new employees regarding these trainings. Beyond the required annual online training, RCDA will develop a written plan to train all existing employees the prevention of sexual harassment as well as discrimination complaint and investigation procedures.

IV. Annual Review of Practices, Policies and Programs

Corrective Action #4: The entity did not demonstrate that an annual review was conducted in 2019, that included a review of the number of sexual harassment complaints and the entity's employment practices, policies and programs to identify whether there are any barriers to employment opportunities that may be related to sexual harassment and determine what, if any, actions are required to correct deficiencies.

Recommendation for Corrective Action #4: Ensure that the principal EEO Professional, HR Professional, and General Counsel, review the number of sexual harassment complaints, and the agency's employment practices, policies and programs on an annual basis to identify whether there are barriers to employment opportunities that may be related to sexual harassment and determine what, if any, actions are required to correct deficiencies.

RCDA Response to Corrective Action #4: Each year, the EEO Officer/HR professional and Chief of Staff review the number of sexual harassment complaints as well as the agency's employment practices, policies, and programs to identify areas where changes or improvements are needed. These recommendations and edits are then made to the employee manual or other policy document and submitted to the District Attorney/agency head to review. See **Appendix E** for a calendar memorialization of the annual policy review meeting with the Operations and Administrative team (which includes the EEO/HR professional) and **Appendix F** which includes an email with the DA regarding changes to the manual.

V. Responsibility for Implementation – EEO Professionals

Correction Action #5: The entity did not demonstrate that the principal EEO Professional was trained regarding city, state, federal EEO laws and the prevention, investigation and resolution of discrimination and sexual harassment complaints. Corrective Action Required.

RCDA Response to Corrective Action #5: The principal EEO Professional received training while employed at another City agency which maintains those records. We have reached out to DCAS to procure a copy of the principal EEO Officer's Diversity and EEO certificate of completion. The principal EEO professional was scheduled to attend the Conference Board's 2020 Diversity and Inclusion Conference but it was cancelled in June as a result of COVID. If this is rescheduled, she will participate. In addition, although due to COVID, DCAS courses related to EEO responsibilities have not resumed, when they do resume, the principal EEO professional will attend as a refresher course. The EEO Counselor did receive certification in 2016, which was previously submitted. We have attached the agenda from that course in **Appendix G**.

Corrective Action #6: The entity did not demonstrate whether the 2016 course sufficiently trained the EEO Counselor in their EEO responsibilities. Corrective Action Required. NOTE: To avoid a conflict of interest, the entity should separate the internal and external complaint investigation responsibilities of the EEO Counselor/Chief of Staff (the General Counsel equivalent).

Recommendation for Corrective Action #6: Where the agency's organizational structure necessitates multiple EEO professionals, select such individuals from different office locations and, where possible, from a variety of levels within the organizational structure. Appoint EEO professionals who are trained in EEO laws and procedures, and their responsibilities under the EEO Policy.

RCDA Response to Corrective Action #6: Attached in **Appendix G** please find an agenda of the EEO Course taken by the EEO Counselor for certification. In addition, RCDA hired the Director of Human Resources to supervise all EEO activities and to serve as the principal EEO Professional (see **Appendix H**). RCDA intends to appoint two additional EEO Counselors in the year ahead – the Chief Diversity Officer and the Executive ADA for Special Victims – but we are waiting upon the resumption of EEO courses by DCAS so that they can be certified.

Corrective Action #7: The entity did not demonstrate that the principal EEO Professional was assigned the responsibility of supervising the activities of EEO professionals and ensuring that EEO-related

policies were made available in alternative formats (i.e., large print, audio recording and/or Braille) upon request and managers, supervisors and human resource professionals receive guidance on issues pertaining to sexual harassment. Corrective Action Required.

Recommendation for Corrective Action #7: Assign the principal EEO Professional (or EEO-related designee) the responsibility to supervise the activities of EEO professionals, and ensure that: the policies against sexual harassment and complaint procedures are distributed/posted at all agency locations; employees/managers receive sexual harassment prevention training; EEO-related policies are made available in alternative formats (i.e., large print, audio recording and/or Braille) upon request; managers, supervisors and human resource professionals receive guidance on issues pertaining to sexual harassment; and allegations of sexual harassment are promptly investigated.

RCDA Response to Corrective Action #7: The principal EEO Professional does supervise and oversee all activities related to EEO. See **Appendix H** and **Appendix I** (principal EEO hiring posting and tasks and standards). Also see **Appendix J** which is the cover page of the organizational chart of the agency, which shows the EEO Professional reporting directly to the District Attorney (agency head) on EEO related matters. Although the Chief of Staff is in daily communication with the DA and is included on all emails; the EEO Officer does report directly to the DA on all EEO matters, including EEO content in the RCDA employee manual (see **Appendix F** for an example and proof of this). Moreover, in addition to distributing the EEO and sexual harassment policies in print and digital copy to all employees annually, the agency posts the manual to its Intranet page (See **Appendix C**), and posts large print versions of the sexual harassment posters in numerous common areas throughout our offices (see example **Appendix K**). Going forward, RCDA will include language in its employee policy manual that makes clear to employees that they may request this information in alternative formats, e.g. large print, audio recording, and/or Braille.

Corrective Action #8: Emails sent by the Chief of Staff on February 15, 2018, February 28, 2018, and September 24, 2019 issuing directives regarding updating policy documents suggest that the principal EEO Professional reported directly to the Chief of Staff (General Counsel equivalent) to fulfill their EEO responsibilities.

Recommendation for Corrective Action #8: Ensure that the principal EEO Professional reports directly to the agency head (or a direct report other than the General Counsel) in order to exercise the necessary authority and independent judgment to fulfill EEO responsibilities.

RCDA Response to Corrective Action #8: The principal EEO Professional does supervise and oversee all activities related to EEO. See **Appendix H** and **Appendix I** (principal EEO hiring posting and tasks and standards). Also see **Appendix J**, which is the cover page of the organizational chart of the agency, which shows the EEO Professional reporting directly to the District Attorney (agency head) on EEO related matters. Although the Chief of Staff is in daily communication with the DA and is included on all emails; the EEO Officer does report directly to the DA on all EEO matters, including EEO content in the RCDA employee manual (see **Appendix F** for an example and proof of this).

Corrective Action #9: The entity did not demonstrate that during the period in review documentation was maintained regarding directives or decisions between the District Attorney (or a direct report other

than the General Counsel equivalent (Chief of Staff)) and the principal EEO Professional that impacted the administration and operation of programs, policies or procedures concerning sexual harassment.

Recommendation for Corrective Action #9: Maintain documentation regarding directives or decisions between the agency head (or a direct report other than the General Counsel) and the principal EEO Professional that impact the administration and operation of programs, policies or procedures concerning sexual harassment.

RCDA Response for Corrective Action #9: The agency head and EEO Professional met regularly and discussed EEO related matters and reviewed decisions regarding policy and procedure. See **Appendix F** for an example of such communication. Also, see **Appendix L** for calendar meetings memorialized between the EEO Professional and DA to discuss policy and procedure, as well as all personnel related matters.

Responsibility for Implementation – Supervisors/Managers

Corrective Action #10: The entity did not demonstrate the implementation of the expectation that managers and supervisors were accountable for enforcing the entity's sexual harassment policies and complaint procedures. Corrective Action Required.

Recommendation for Corrective Action #10: Ensure that managers and supervisors are held accountable for enforcing the agency's sexual harassment prevention policies and complaint procedures. Document this expectation and its implementation.

RCDA Response to Corrective Action #10: RCDA requires all employees, including managers and supervisors to complete an annual Sexual Harassment Prevention training, and our policy for sexual harassment and EEO requires that all managers and supervisors report to the EEO professionals any incident that comes to their attention that may be a violation of these policies. This requirement and policy is reinforced not only in the annual distribution of the manual that states this policy, but all employees also attended a mandatory training in January 2018 where this policy was reviewed. Another mandatory training will be held in January 2021. Moreover, RCDA has not only implemented but enforced this policy on at least three occasions in the reporting period for managers who failed to report incidents where EEO violations occurred and it was brought to their attention. Redacted HR/EEO reports can be provided to reflect this enforcement if needed.

Corrective Action #11: A sample 2018 *Performance Evaluation* completed for a manager did not contain a rating for EEO that covered 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.

Recommendation for Corrective Action #11: Ensure 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).

RCDA Response to Corrective Action #11: RCDA managerial performance evaluations contain a rating and subject area for administrative performance, which includes adherence to and knowledge of all RCDA policies and procedures. If a manager or supervisor

neglected to adhere to RCDA EEO or sexual harassment policies or treated employees unfairly or in any way not based on merit or equal consideration, it would be reflected in that section of the evaluation. Going forward, however, we will amend the template for managerial evaluations to explicitly include a reference and section rating for EEO which will cover 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.

Corrective Action #12: During the period in review, the entity did not submit its annual plan of measures and programs to provide equal employment opportunity, and quarterly reports on efforts to implement the plans within 30 days following each quarter.

Recommendation for Corrective Action #12: Submit to the EEPC an Annual Plan of measures and programs to provide equal employment opportunity, and quarterly reports on efforts to implement the Plan within 30 days following each quarter. Include a breakout of sexual harassment complaint activity in each quarterly report.

Response to Corrective Action #12: RCDA is working to develop an annual plan of measures and programs to submit to EEPC. A Plan will be submitted for 2020 along with quarterly reports.



Sasha Neha Ahuja
Chair

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

Charise L. Terry
Executive Director

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BY EMAIL

October 19, 2020

Michael E. McMahon
District Attorney
Office of the Richmond County District Attorney
130 Stuyvesant Place
Staten Island, NY 10301

Audit Status:

Evaluation of Sexual Harassment Prevention and Response Practices for Audit
Period January 1, 2018 to December 31, 2019.

Determination: FINAL

Resolution #: 2020AP/243-905-(2020)

Dear District Attorney McMahon:

On behalf of the members of the Equal Employment Practices Commission (EEPC), thank you for the continued cooperation extended to our staff. This document serves as a follow-up evaluation and Final Determination to the following:

Preliminary Determination Issued on: September 24, 2020

Response Received: October 8, 2020

Purpose

Chapter 35, Sections 815(a)(15) and (19) of the New York City Charter (Charter) calls for agency heads to ensure and promote equal opportunity for all persons in appointment, payment of wages, development, and advancement, and to establish measures and programs to ensure a fair and effective affirmative employment plan to provide equal employment opportunity (EEO) for minority group members and women.

Charter Chapter 36, Sections 830(a) and 831(d)(2) and (5) authorize the EEPC to audit, review, evaluate, and monitor the employment practices, procedures, and programs of city agencies and other municipal entities, hereinafter "entities," and their efforts to ensure fair and effective EEO for women and minority employees and applicants. Charter Sections 831(d)(2) and 832(c) authorize the EEPC to make a determination that any 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 prescribed. The attachment contains the EEPC's final determination regarding the audit, review, and evaluation of the Office of the Richmond County District Attorney's Sexual Harassment Prevention and Response Practices.

As the Office of the Richmond County District Attorney falls within the EEPC's purview under Charter Chapter 36, Section 831(a), the EEPC is authorized to review, evaluate, and monitor the coordination and implementation of its affirmative employment programs of EEO and related practices. As indicated in our Preliminary Determination, the EEPC has adopted uniform standards¹ to this end. The purpose of this Final Determination, as authorized by Charter Chapter 36, Section 832(c), is to determine the sufficiency of the Office of the Richmond County District Attorney's actions taken or planned thus far to correct areas of non-compliance identified in the EEPC's Preliminary Determination. Further, Chapter 36, Section 832(c) requires that: (1) the EEPC assign a compliance-monitoring period of up to six (6) months to monitor efforts taken to eliminate areas of non-compliance, if any; and (2) the agency respond in thirty (30) days and submit a report each month during this period on the progress of efforts taken to correct outstanding areas of non-compliance.

Next Steps

The assigned compliance-monitoring period is: November 1, 2020 to April 30, 2021. Correcting all outstanding areas of non-compliance without delay is highly encouraged and will serve to shorten this period.

If corrective actions remain: Corrective actions will be listed under the *Monitoring Required* section of the attached Final Determination. The EEPC requires that the agency head submit a signed response to this Final Determination. The signed response should indicate what steps the Office of the Richmond County District Attorney has taken, or will take, to correct outstanding areas of non-compliance during the designated compliance-monitoring period. The Office of the Richmond County District Attorney will be monitored monthly until all outstanding areas of non-compliance have been sufficiently corrected. The Office of the Richmond County District Attorney is required to submit documentation that supports the implementation of each corrective action via TeamCentral, the EEPC's Automated Compliance-Monitoring System. Instruction on how to access and navigate TeamCentral is attached.

Final Memorandum: Upon the Office of the Richmond County District Attorney's implementation of the final corrective action, if any, the EEPC requires that the Office of the Richmond County District Attorney submit a final memorandum, signed by the agency head, that recognizes the EEPC's audit and reiterates commitment to equal employment practices. **Upon receipt of this final memorandum, the EEPC will issue a *Determination of Compliance*.**

If no corrective actions remain: In lieu of a response to this Final Determination, the Office of the Richmond County District Attorney must submit a final memorandum (See Next Steps, Final Memorandum). Upon the EEPC's receipt of the final memorandum, the Office of the Richmond County District Attorney will be exempt from the abovementioned compliance-monitoring period.

¹ The EEPC's uniform standards for auditing municipal entities and minimum standards for auditing community boards (collectively "Standards") are founded upon, and consistent with, federal, state, and local laws and regulations, and policies and procedures, including, but not limited to, the City of New York's *Equal Employment Opportunity Policy, Standards and Procedures to be Utilized by City Agencies 2014*; New York City Human Rights Law (NYC Administrative Code 8); New York State Human Rights Law (New York Executive Law, Article 15); New York State Civil Service Law §55-a; and the equal employment opportunity requirements of the New York City Charter.

Conclusion

This is the EEPC's Final Determination. Questions regarding next steps may be addressed to Jennifer Shaw, Esq., Executive Agency Counsel/Director of Compliance at jshaw@eepc.nyc.gov or 212-615-8942.

Thank you and your staff for your continued cooperation.

Sincerely,


Charise L. Terry
Executive Director

c: Monique Jones, Principal EEO Professional, Office of the Richmond County District Attorney

Enclosed: TeamCentral Agency Manual

FINAL DETERMINATION

A response indicating progress of Office of the Richmond County District Attorney's efforts to correct outstanding areas of non-compliance, with supporting documentation, is due within 30 days.

The Equal Employment Practices Commission's findings and corrective actions required to remedy areas of non-compliance are based on the audit methodology, which included collection and analysis of the documents, records, and data provided; the EEPC's *Preliminary Interview Questionnaires* (PIQs) for EEO professionals and others involved in EEO program administration; and, if applicable, the *EEPC Employee Survey*, the *EEPC Supervisor/Manager Survey*, the *Annual EEO Plans* and *Quarterly EEO Reports* of the audited entity; and workforce data from the *Citywide Equal Employment Database System*. Additional research and follow-up discussions or interviews were conducted as appropriate.

After reviewing the optional response² (if applicable) to the EEPC's Preliminary Determination, our Final Determination is as follows:

Agree

Regarding your responses to the following EEPC required corrective actions, we *Agree* based on documentation that is attached to your response.

Corrective Action #6: Where the agency's organizational structure necessitates multiple EEO professionals, select such individuals from different office locations and, where possible, from a variety of levels within the organizational structure. Appoint EEO professionals who are trained in EEO laws and procedures, and their responsibilities under the EEO Policy.

Agency Response:

"Attached in Appendix G please find an agenda of the EEO Course taken by the EEO Counselor for Certification. In addition, RCDA hired the Director of Human Resources to supervise all EEO activities and to serve as the principal EEO Professional (see Appendix H). RCDA intends to appoint two additional EEO Counselors in the year ahead – the Chief Diversity Officer and the Executive ADA for Special Victims – but we are waiting upon the resumption of EEO courses by DCAS so that they can be verified."

EEPC Response:

The EEPC accepts the entity's response and agendas provided as demonstration that corrective action #6 has been implemented. Training agendas from the October 2016 *Diversity and Equal Employment Opportunity Basic Training* completed by the EEO Counselor, identified EEO laws and procedures, including discrimination and complaint investigation procedures as training topics, and confirmed that the EEO Counselor was adequately trained for their position.

Corrective Action #8: Ensure that the principal EEO Professional reports directly to the agency head (or a direct report other than the General Counsel) in order to exercise the necessary authority and independent judgment to fulfill EEO responsibilities.

² Excerpts are italicized.

Agency Response:

"The principal EEO Professional does supervise and oversee all activities related to EEO. See Appendix H and Appendix I (principal EEO hiring posting and tasks and standards). Also see Appendix J, which is the cover page of the organizational chart of the agency, which shows the EEO Professional reporting directly to the District Attorney (agency head) on EEO related matters. Although the Chief of Staff is in daily communication with the DA and is included on all emails; the EEO Officer does report directly to the DA on all EEO matters, including EEO content in the RCDA employee manual (see Appendix F for an example and proof of this)."

EEPC Response:

The EEPC accepts the entity's response and documentation provided as demonstration that corrective action #8 has been implemented. The entity's organization chart and recommendations made by the principal EEO Professional to the District Attorney regarding the entity's EEO Policy demonstrated a direct reporting relationship between the principal EEO Professional and Agency Head regarding EEO matters.

Corrective Action #9: Maintain documentation regarding directives or decisions between the agency head (or a direct report other than the General Counsel) and the principal EEO Professional that impact the administration and operation of programs, policies or procedures concerning sexual harassment.

Agency Response:

"The agency head and EEO Professional me[t] regularly and discussed EEO related matters and reviewed decisions regarding policy and procedure. See Appendix F for an example of such communication. Also, see Appendix L for calendar meetings memorialized between the EEO Professional and DA to discuss policy and procedure, as well as all personnel related matters."

EEPC Response:

The EEPC accepts the entity's response and documentation provided as demonstration that corrective action #9 has been implemented. In a representative example email from December 2018, the principal EEO Professional and District Attorney discussed updates to the entity's employee manual including the addition of a *Fraternization* policy, which the entity reported was to address potential sexual harassment and conflicts of interest posed by workplace relationships. In March 2019, the *Fraternization* policy was issued by the principal EEO Professional to all RCDA employees demonstrating execution of the decisions made during the agency head and principal EEO Professional's December 2018 discussion.

Monitoring Required

The agency's implementation of the following required corrective actions will be monitored during the assigned compliance-monitoring period.

Corrective Action #1: Issue a Policy Statement or memorandum reiterating commitment to the prevention of sexual harassment annually.

Agency Response:

"RCDA's employee policy manual includes a statement from the District Attorney reiterating the agency's commitment to the prevention of sexual harassment, which is distributed annually to all staff. The manual with the DA's statement was sent to all employees in August 2019 and July 2018. See Appendix A for proof of this distribution. Going forward, RCDA will also issue a statement from the DA reiterating this policy and

commitment as a standalone communication. See the most recent issuance for 2020 included as part of Appendix B."

EEPC Response:

The EEPC acknowledges the entity's commitment to implement corrective action #1. The entity's *Equal Employment Opportunity Program* memorandum from the agency head, unsigned and dated October 8, 2020, stated "*I hereby declare my commitment as the Agency Head to support and enforce the rights and protections afforded by the New York City EEO Policy, the City and State Human Rights Law, and all other relevant laws, for all employees, applicants for employment, external contractors, consultants, and agency partners, and residents of the Borough of Staten Island.*" To demonstrate compliance, provide documentation to demonstrate the issuance of the memorandum issued by the agency head, which reiterates the agency head's commitment to the prevention of sexual harassment to all employees (or documentation that it was posted and employees were made aware of that posting). Implementation of this corrective action will be monitored during the assigned compliance-monitoring period.

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 Policy that conforms to city, state and federal laws against sexual harassment– for use by managers, supervisors, and legal, human resources and EEO professionals. Include, or attach as addenda: uniform and responsive procedures for investigating discrimination/sexual harassment complaints, and current contact information for the agency's EEO professionals as well as federal, state and local agencies that enforce laws against discrimination/sexual harassment.

Agency Response:

"RCDA did distribute copies of the Equal Employment Opportunity Policy, Standards and Procedures for RCDA to both legal and non-legal employees annually (we produced a separate manual for managerial employees for the first time in 2019). A copy of the EEO Policy Standards and Procedures is included in the Employee Policy Manual, which is distributed annually to all employees. See Appendix A for proof of this distribution. Furthermore, a copy of the agency's EEO Policy, Standards and Procedures as well as RCDA's Complaint Procedures are always available to all employees electronically on the agency's intranet. See Appendix C as proof of this availability."

EEPC Response:

The EEPC acknowledges the entity's commitment to implement corrective action #2. The EEPC recognizes the entity's response of 122 signed employee acknowledgements from 2018, confirming receipt of the *Equal Employment Opportunity Policy, Standards and Procedures for RCDA*, and screen shots of the posting of the EEO Policy to the entity's intranet as demonstration that the entity's EEO Policy was distributed to RCDA employees during the period in review. To demonstrate compliance, provide documentation that demonstrates all new and existing employees were made aware of the posting and availability of the *Equal Employment Opportunity Policy, Standards and Procedures for RCDA* and *Discrimination Complaint Procedures Guidelines* on the entity's intranet. Implementation of this corrective action will be monitored during the assigned compliance-monitoring period.

Corrective Action #3: Establish and implement a training plan for new and existing employees to ensure that all individuals who work within the agency, including managers and supervisors, receive training on the prevention of sexual harassment as well as discrimination complaint and investigation procedures.

Agency Response:

"RCDA already includes all citywide computer-based trainings, including the DCAS training on Sexual Harassment Prevention, in the onboarding process for new employees. All new employees must complete these computer-based trainings in the first month of their employment. See Appendix D for an example of an email sent to new employees regarding these trainings. Beyond the required annual online training, RCDA will develop a written plan to train all existing employees [in] the prevention of sexual harassment as well as discrimination complaint and investigation procedures."

EEPC Response:

The EEPC acknowledges the entity's commitment to the implementation of corrective action #3. The entity's representative February 2020 email to new employees suggests the entity has a training plan to ensure all new employees are trained on the prevention of sexual harassment as well as discrimination complaint and investigation procedures during onboarding. To demonstrate compliance, provide the entity's training plan for the above referenced required annual training (which must include a timetable) for all RCDA employees. Implementation of this corrective action will be monitored during the assigned compliance-monitoring period.

Corrective Action #4: Ensure that the principal EEO Professional, HR Professional, and General Counsel, review the number of sexual harassment complaints, and the agency's employment practices, policies and programs on an annual basis to identify whether there are barriers to employment opportunities that may be related to sexual harassment and determine what, if any, actions are required to correct deficiencies.

Agency Response:

"Each year, the EEO Officer/HR professional and Chief of Staff review the number of sexual harassment complaints as well as the agency's employment practices, policies, and programs to identify areas where changes or improvements are needed. These recommendations and edits are then made to the employee manual or other policy document and submitted to the District Attorney/agency head to review. See Appendix E for a calendar memorialization of the annual policy review meeting with the Operations and Administrative team (which includes the EEO/HR professional) and Appendix F which includes an email with the DA regarding changes to the manual."

EEPC Response:

The EEPC acknowledges the entity's commitment to the implementation of corrective action #4. The entity provided documentation that changes were made to the entity's employee manual in December 2018, which implies a review of policy was conducted that year. Additionally, the entity provided an invitation for an October 2019 meeting to be attended by the principal EEO Professional and Chief of Staff (General Counsel equivalent) with the subject *Hold: Annual Meeting for Operations and Administration*, which did not identify the topics to be discussed, specifically annual review of policies and complaint activity. To demonstrate compliance, provide documentation that demonstrates the principal EEO Professional, HR Professional, and Chief of Staff met at least annually to review the number of sexual harassment complaints, and the entity's employment practices, policies and programs. Also provide documentation that demonstrates the outcome of the review(s), including whether barriers to employment opportunities that may be related to sexual harassment were identified and what, if any, actions were required to correct deficiencies. Implementation of this corrective action will be monitored during the assigned compliance-monitoring period.

Corrective Action #5: Appoint a principal EEO Professional to implement EEO policies and standards within the agency. Ensure the principal EEO Professional is trained regarding city, state, federal EEO laws; the requirements of the agency's EEO policies, standards and procedures; and the prevention, investigation, and resolution of discrimination and sexual harassment complaints.

Agency Response:

"The principal EEO Professional received training while employed at another City agency which maintains those records. We have reached out to DCAS to procure a copy of the principal EEO Officer's Diversity and EEO certificate of completion. The principal EEO Professional was scheduled to attend the Conference Board's 2020 Diversity and Inclusion Conference but it was cancelled in June as a result of COVID. If this is rescheduled, she will participate. In addition, although due to COVID, DCAS courses related to EEO responsibilities have not resumed, when they do resume, the principal EEO [P]rofessional will attend as a refresher course. The EEO Counselor did receive certification in 2016, which was previously submitted. We have attached the agenda from that course in Appendix G."

EEPC Response:

The EEPC acknowledges the entity's commitment to the implementation of corrective action #5. To demonstrate compliance, provide documentation demonstrating the principal EEO Professional's training regarding city, state, federal EEO laws; the requirements of the agency's EEO policies, standards and procedures; and the prevention, investigation, and resolution of discrimination and sexual harassment complaints (e.g. certificates, training logs, etc.). Implementation of this corrective action will be monitored during the assigned compliance-monitoring period.

Corrective Action #7: Assign the principal EEO Professional (or EEO-related designee) the responsibility to supervise the activities of EEO professionals, and ensure that: the policies against sexual harassment and complaint procedures are distributed/posted at all agency locations; employees/managers receive sexual harassment prevention training; EEO-related policies are made available in alternative formats (i.e., large print, audio recording and/or Braille) upon request; managers, supervisors and human resource professionals receive guidance on issues pertaining to sexual harassment; and allegations of sexual harassment are promptly investigated.

Agency Response:

"The principal EEO Professional does supervise and oversee all activities related to EEO. See Appendix H and Appendix I (principal EEO hiring posting and tasks and standards). Also see Appendix J which is the cover page of the organizational chart of the agency, which shows the EEO Professional reporting directly to the District Attorney (agency head) on EEO related matters. Although the Chief of Staff is in daily communication with the DA and is included on all emails; the EEO Officer does report directly to the DA on all EEO matters, including EEO content in the RCDA employee manual (see Appendix F for an example and proof of this). Moreover, in addition to distributing the EEO and sexual harassment posters in print and digital copy to all employees annually, the agency posts the manual to its Intranet page (See Appendix C), and posts large print versions of the sexual harassment posters in numerous common areas throughout our offices (see example Appendix K). Going forward, RCDA will include language in its employee policy manual that makes clear to employees that they may request this information in alternative formats, e.g. large print, audio recording and/or Braille."

EEPC Response:

The EEPC acknowledges the entity's commitment to the implementation of corrective action #7. To demonstrate compliance, provide documentation that demonstrates the principal EEO Professional was assigned the responsibility of supervising the activities of EEO Counselors and other EEO Professionals, which is not reflected in the entity's organizational chart. Also provide documentation that the principal EEO Professional is responsible for providing EEO-related policies in alternative formats (e.g. documentation demonstrating the EEO Policy was updated to include the availability of EEO-related policies in alternative

formats (i.e., large print, audio recording and/or Braille) upon request). Implementation of this corrective action will be monitored during the assigned compliance-monitoring period.

Corrective Action #10: Ensure that managers and supervisors are held accountable for enforcing the agency's sexual harassment prevention policies and complaint procedures. Document this expectation and its implementation.

Agency Response:

"RCDA requires all employees, including managers and supervisors to complete an annual Sexual Harassment Prevention training, and our policy for sexual harassment and EEO requires that all managers and supervisors report to the EEO professionals any incident that comes to their attention that may be a violation of these policies. This requirement and policy is reinforced not only in the annual distribution of the manual that states this policy, but all employees also attended a mandatory training in January 2018 where this policy was reviewed. Another mandatory training will be held in January 2021. Moreover, RCDA has not only implemented but enforced this policy on at least three occasions in the reporting period for managers who failed to report incidents where EEO violations occurred and it was brought to their attention. Redacted HR/EEO reports can be provided to reflect this enforcement if needed."

EEPC Response:

The EEPC acknowledges the entity's commitment to the implementation of corrective action #10. To demonstrate compliance, provide documentation that demonstrates implementation of the expectation that supervisors are held accountable for enforcing the agency's sexual harassment policies and complaint procedures (e.g. sign-in sheets from meetings between supervisors and subordinates regarding EEO accountability, a current managerial evaluation form which contains a pertinent rating, the HR/EEO reports described, etc.). Implementation of this corrective action will be monitored during the assigned compliance-monitoring period.

Corrective Action #11: Ensure 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).

Agency Response:

"RCDA managerial performance evaluations contain a rating and subject area for administrative performance, which includes adherence to and knowledge of all RCDA policies and procedures. If a managers or supervisor neglected to adhere to RCDA EEO or sexual harassment policies or treated employees unfairly or in any way not based on merit or equal consideration, it would be reflected in that section of the evaluation. Going forward, however, we will amend the template for managerial evaluations to explicitly include a reference and section rating for EEO which will cover 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."

EEPC Response:

The EEPC acknowledges the entity's commitment to the implementation of corrective action #11. To demonstrate compliance, provide an updated managerial performance evaluation that contains a pertinent EEO rating, which includes 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. Implementation of this corrective action will be monitored during the assigned compliance-monitoring period.

Corrective Action #12: Submit to the EEPC an Annual Plan of measures and programs to provide equal employment opportunity, and quarterly reports on efforts to implement the Plan within 30 days following each quarter. Include a breakout of sexual harassment complaint activity in each quarterly report.

Agency Response:

"RCDA is working to develop an annual plan of measures and programs to submit to EEPC. A Plan will be submitted for 2020 along with quarterly reports."

EEPC Response:

The EEPC acknowledges the entity's commitment to the implementation of corrective action #12. To demonstrate compliance, upon the 2020 plan's finalization, and going forward, provide the entity's annual plans to provide EEO and quarterly reports on efforts to implement them. Include a breakout of sexual harassment complaint activity, or affirmation of no complaint activity, in each quarterly report. The annual plans and quarterly reports must also be submitted via *DiversityEEOPlansQuarterlyReports@eepc.nyc.gov*. Implementation of this corrective action will be monitored during the assigned compliance-monitoring period.

Final Action:

Upon the EEPC's determination that the entity does not require further review or monitoring: Distribute a memorandum signed by the agency head that re-emphasizes the commitment of agency administrators to the EEO program, including the prevention of sexual harassment, and informs employees of any changes to the agency's employment practices as a result of the EEPC's audit/monitoring. This final action is required to conclude the audit and monitoring process.

The EEPC thanks you and your staff for your continued cooperation.

RESOLUTION NO.
2020AP/243-905-(2020)
Office of the Richmond County District Attorney
District Attorney Michael E. McMahon
Sexual Harassment Prevention and Response Practices
DETERMINATION: FINAL

S Y N O P S I S

Corrective Action(s):	Total: 12		
Period Audit Covered:	January 1, 2018 to December 31, 2019		
Preliminary Determination Issued:	September 24, 2020	Response Received	October 8, 2020
Final Determination Issued:	October 19, 2020	Response Due	November 18, 2020
Compliance-Monitoring:	Required	November 1, 2020 to April 30, 2021	

Whereas, pursuant to Chapter 36, Sections 830(a) and 831(d)(2) and (5) of the New York City Charter (Charter), the Equal Employment Practices Commission (EEPC) is authorized to audit, review, evaluate, and monitor the employment procedures, practices and programs of city agencies and other municipal entities (hereinafter “entities”) and their efforts to ensure fair and effective equal employment opportunity (EEO) for minority group members and women who are employed or seek employment, and to recommend practices, procedures, approaches, measures, standards, and programs to be utilized by such entities in these efforts; and

Whereas, pursuant to Charter Chapter 36, Sections 830(a) and 831(d)(2) and (5), the EEPC has adopted uniform standards for auditing agencies and municipal entities, and minimum standards for auditing community boards, to review, evaluate, and monitor entities’ practices, procedures, approaches, measures, standards, and programs for compliance with federal, state, and local laws and regulations, and policies and procedures to increase equal opportunity for women, minorities, and other employees and job applicants identified for protection from discrimination; and

Whereas, in accordance with Charter Chapter 36, Section 832(c), the EEPC may make a determination pursuant to Charter Section 831(d) whether any plan, program, procedure, approach, measure, or standard adopted or utilized by any municipal entity does not provide equal employment opportunity, and the EEPC’s determinations of compliance or non-compliance and prescribed corrective action are required by, or consistent with federal, state, and local laws and regulations, and policies and procedures to increase equality of opportunity for women, minorities, and other employees and job applicants identified for protection from discrimination; and

Whereas, the EEPC conducted an audit, review, and evaluation of the Office of the Richmond County District Attorney’s Sexual Harassment Prevention and Response Practices; and

Whereas, pursuant to the audit, review, and evaluation of the Office of the Richmond County District Attorney’s Sexual Harassment Prevention and Response Practices, the EEPC issued a Preliminary Determination, dated September 24, 2020, setting forth findings and the following corrective actions required to remedy areas of non-compliance:

1. Issue a Policy Statement or memorandum reiterating commitment to the prevention of sexual harassment annually.
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 Policy that conforms to city, state and federal laws against sexual harassment-- for use by managers, supervisors, and legal, human resources and EEO professionals. Include, or attach as addenda: uniform and responsive procedures for investigating discrimination/sexual harassment complaints, and current contact information for the agency's EEO professionals as well as federal, state and local agencies that enforce laws against discrimination/sexual harassment.
3. Establish and implement a training plan for new and existing employees to ensure that all individuals who work within the agency, including managers and supervisors, receive training on the prevention of sexual harassment as well as discrimination complaint and investigation procedures.
4. Ensure that the principal EEO Professional, HR Professional, and General Counsel, review the number of sexual harassment complaints, and the agency's employment practices, policies and programs on an annual basis to identify whether there are barriers to employment opportunities that may be related to sexual harassment and determine what, if any, actions are required to correct deficiencies.
5. Appoint a principal EEO Professional to implement EEO policies and standards within the agency. Ensure the principal EEO Professional is trained regarding city, state, federal EEO laws; the requirements of the agency's EEO policies, standards and procedures; and the prevention, investigation, and resolution of discrimination and sexual harassment complaints.
6. Where the agency's organizational structure necessitates multiple EEO professionals, select such individuals from different office locations and, where possible, from a variety of levels within the organizational structure. Appoint EEO professionals who are trained in EEO laws and procedures, and their responsibilities under the EEO Policy.
7. Assign the principal EEO Professional (or EEO-related designee) the responsibility to supervise the activities of EEO professionals, and ensure that: the policies against sexual harassment and complaint procedures are distributed/posted at all agency locations; employees/managers receive sexual harassment prevention training; EEO-related policies are made available in alternative formats (i.e., large print, audio recording and/or Braille) upon request; managers, supervisors and human resource professionals receive guidance on issues pertaining to sexual harassment; and allegations of sexual harassment are promptly investigated.
8. Ensure that the principal EEO Professional reports directly to the agency head (or a direct report other than the General Counsel) in order to exercise the necessary authority and independent judgment to fulfill EEO responsibilities.
9. Maintain documentation regarding directives or decisions between the agency head (or a direct report other than the General Counsel) and the principal EEO Professional that impact the administration and operation of programs, policies or procedures concerning sexual harassment.

10. Ensure that managers and supervisors are held accountable for enforcing the agency's sexual harassment prevention policies and complaint procedures. Document this expectation and its implementation.
11. Ensure 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).
12. Submit to the EEPC an Annual Plan of measures and programs to provide equal employment opportunity, and quarterly reports on efforts to implement the Plan within 30 days following each quarter. Include a breakout of sexual harassment complaint activity in each quarterly report.

Whereas, within a two-week deadline following the EEPC's Preliminary Determination, the entity submitted a preliminary response; and

Whereas, in accordance with Charter Chapter 36, Section 832(c), after consideration, the EEPC issued a Final Determination on October 19, 2020, which indicated that the following areas required corrective action: no(s). 1, 2, 3, 4, 5, 7, 10, 11, and 12; and

Whereas, in accordance with Charter Chapter 36, Section 832(c), in the Final Determination, the EEPC assigned a monitoring period from November 1, 2020 to April 30, 2021, to determine whether the entity eliminated areas of non-compliance, if any; and

Whereas, in accordance with Charter Chapter 36, Section 832(c) the entity was required to respond in 30 days, and make monthly reports thereafter for a period not to exceed six months, on the progress of its efforts to correct outstanding areas of non-compliance; and

Whereas, in accordance with Charter Chapter 36, Section 832(c), on October 19, 2020, the entity was required to issue a response to the EEPC's Final Determination; Now Therefore,

Be It Resolved, that pursuant to Charter Chapter 35, Sections 815(a)(15) and (19), which requires agency heads to ensure and promote equal opportunity for all persons in appointment, payment of wages, development, and advancement, and to establish measures and programs to ensure a fair and effective affirmative employment plan to provide equal employment opportunity for minority group members and women, the EEPC approves the issuance of this Final Determination to District Attorney Michael E. McMahon to assign compliance-monitoring.

Approved unanimously on October 22, 2020.

/s/Sasha Neha Ahuja

Sasha Neha Ahuja
Chair

/s/Angela Cabrera

Angela Cabrera
Commissioner

/s/Arva R. Rice

Arva R. Rice
Commissioner

/s/Elaine S. Reiss

Elaine S. Reiss, Esq.
Commissioner

On behalf all Commissioners in attendance,



Charise L. Terry
Executive Director



OFFICE OF THE DISTRICT ATTORNEY
RICHMOND COUNTY

MICHAEL E. McMAHON
DISTRICT ATTORNEY

November 18, 2020

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

**Re: Final Determination Evaluation of Sexual Harassment Prevention and Response
Practices for Audit Period January 1, 2018 to December 31, 2019.**

Dear Director Terry:

We have reviewed the Equal Employment Practices Commission's (EEPC) evaluation and final determinations pursuant to the audit of the Office of the Richmond County District Attorney's (RCDA) Sexual Harassment Prevention and Response Practices for the period of January 1, 2018-December 31, 2019. Please find our written response on actions that have been taken or will be taken to the report's remaining corrective actions in the attached memorandum.

Throughout the assigned compliance-monitoring period: November 1, 2020 to April 30, 2021 we will continue to update the EEPC's automated compliance-monitoring system as we complete outstanding areas of non-compliance.

Should you have any questions regarding our comments or need any further information, please do not hesitate to reach out to my Chief of Staff, [REDACTED] at [REDACTED] or [REDACTED] [@rcda.nyc.gov](mailto:[REDACTED]@rcda.nyc.gov) or RCDA's Director of Operations, [REDACTED] at [REDACTED] or [REDACTED] [@rcda.nyc.gov](mailto:[REDACTED]@rcda.nyc.gov). Thank you.

Sincerely,

Michael E. McMahon
District Attorney

**Response of the Richmond County District Attorney's Office
to the
Evaluation of Sexual Harassment Prevention and Response Practices for Audit Period
January 1, 2018 to December 31, 2019
Determination: Final**

Below please find a response to the final determination of the audit report and each of the individual action taken or plan for the outstanding corrective actions:

Monitoring Required During Assigned Period: November 1, 2020 to April 30, 2021

Corrective Action #1: Issue a Policy Statement or memorandum reiterating commitment to the prevention of sexual harassment annually.

EEPC Response to Corrective Action #1:

The EEPC acknowledges the entity's commitment to implement corrective action #1. The entity's *Equal Employment Opportunity Program* memorandum from the agency head, unsigned and dated October 8, 2020, stated "*I hereby declare my commitment as the Agency Head to support and enforce the rights and protections afforded by the New York City EEO Policy, the City and State Human Rights Law, and all other relevant laws, for all employees, applicants for employment, external contractors, consultants, and agency partners, and residents of the Borough of Staten Island.*" To demonstrate compliance, provide documentation to demonstrate the issuance of the memorandum issued by the agency head, which reiterates the agency head's commitment to the prevention of sexual harassment to all employees (or documentation that it was posted and employees were made aware of that posting). Implementation of this corrective action will be monitored during the assigned compliance-monitoring period.

RCDA Response to Corrective Action #1:

In RCDA's response to the EEPC's preliminary evaluation we included a standalone memorandum addressed to the entire staff reiterating the agency head's commitment to the prevention of sexual harassment that was separate and apart from the statement and commitment listed in the RCDA employee manual. On October 8, 2020 the District Attorney issued that memorandum via email to all agency employees. See *Appendix A* for documented proof demonstrating the issuance of said email.

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 Policy that conforms to city, state and federal laws against sexual harassment-- for use by managers, supervisors, and legal, human resources and EEO professionals. Include, or attach as addenda: uniform and responsive procedures for investigating discrimination/sexual harassment complaints, and current contact information for the agency's EEO professionals as well as federal, state and local agencies that enforce laws against discrimination/sexual harassment.

EEPC Response to Corrective Action #2: The EEPC acknowledges the entity's commitment to implement corrective action #2. The EEPC recognizes the entity's response of 122 signed employee acknowledgements from 2018, confirming receipt of the Equal Employment Opportunity Policy, Standards and Procedures for RCDA, and screen shots of the posting of the EEO Policy to the entity's intranet as demonstration that the entity's EEO Policy was distributed to RCDA employees during the period in review. To demonstrate compliance, provide documentation that demonstrates all new and existing employees were made aware of the posting and availability of the Equal Employment Opportunity Policy, Standards and Procedures for RCDA and Discrimination Complaint Procedures

Guidelines on the entity's intranet. Implementation of this corrective action will be monitored during the assigned compliance-monitoring period.

RCDA Response to Corrective Action #2: See *Appendix B* for documentation of emails sent to both new employees and all current employees notifying them of the agency's EEO Policy, Standards, and Procedures. These emails also notify all employees (new and existing) that these documents are available for them to access at any time on the agency's Intranet and in alternative formats as requested (large print, braille, audio, etc).

Corrective Action #3: Establish and implement a training plan for new and existing employees to ensure that all individuals who work within the agency, including managers and supervisors, receive training on the prevention of sexual harassment as well as discrimination complaint and investigation procedures.

EEPC response to Corrective Action #3: The EEPC acknowledges the entity's commitment to the implementation of corrective action #3. The entity's representative February 2020 email to new employees suggests the entity has a training plan to ensure all new employees are trained on the prevention of sexual harassment as well as discrimination complaint and investigation procedures during onboarding. To demonstrate compliance, provide the entity's training plan for the above referenced required annual training (which must include a timetable) for all RCDA employees. Implementation of this corrective action will be monitored during the assigned compliance-monitoring period.

RCDA Response to Corrective Action #3: The agency has submitted the FY 2021 Diversity and EEO plan to the Office of Citywide Equity & Inclusion (OCEI) for approval which includes the schedule to train new hires and existing employees. All new hires will be trained within the first 30 days of employment and the agency will be trained annually. Once the agency receives approval, we will send to EEPC. – see *Appendix C* which shows OCEI's acknowledgment in receipt of the plan, an email sent to new employees with instructions for completing all required trainings, and notes from a recent meeting with the Chief of Staff and HR team that includes a draft outline of a plan for training for all staff members.

Corrective Action #4: Ensure that the principal EEO Professional, HR Professional, and General Counsel, review the number of sexual harassment complaints, and the agency's employment practices, policies and programs on an annual basis to identify whether there are barriers to employment opportunities that may be related to sexual harassment and determine what, if any, actions are required to correct deficiencies.

EEPC Response to Corrective Action #4: The EEPC acknowledges the entity's commitment to the implementation of corrective action #4. The entity provided documentation that changes were made to the entity's employee manual in December 2018, which implies a review of policy was conducted that year. Additionally, the entity provided an invitation for an October 2019 meeting to be attended by the principal EEO Professional and Chief of Staff (General Counsel equivalent) with the subject *Hold: Annual Meeting for Operations and Administration*, which did not identify the topics to be discussed, specifically annual review of policies and complaint activity. To demonstrate compliance, provide documentation that demonstrates the principal EEO Professional, HR Professional, and Chief of Staff met at least annually to review the number of sexual harassment complaints, and the entity's employment practices, policies and programs. Also provide documentation that demonstrates the outcome of the review(s), including whether barriers to employment opportunities that may be related to sexual harassment were identified and what, if any, actions were required to correct deficiencies. Implementation of this corrective action will be monitored during the assigned compliance-monitoring period.

RCDA Response to Corrective Action #4: In support of the October 2019 invitation that was submitted to illustrate that meetings to discuss current RCDA policy, best practices, and compliance to existing policies are held annually with the Chief of Staff (formerly the Chief Administrative Assistant District Attorney), see *Appendix D* as proof of meeting's agenda. The principal EEO professional, Chief of Staff, and Human Capital staff also met on Friday, November 6, 2020 to discuss the number of sexual harassment complaints, the entity's employment practices, policies and programs, as well as to review the policy manual and make suggested updates or changes for its publication in January 2021— see *Appendix E* for a full agenda of this meeting and notes reflecting the outcome of this review.

Correction Action #5: Appoint a principal EEO Professional to implement EEO policies and standards within the agency. Ensure the principal EEO Professional is trained regarding city, state, federal EEO laws; the requirements of the agency's EEO policies, standards and procedures; and the prevention, investigation, and resolution of discrimination and sexual harassment complaints.

EEPC Response to Corrective Action #5: The EEPC acknowledges the entity's commitment to the implementation of corrective action #5. To demonstrate compliance, provide documentation demonstrating the principal EEO Professional's training regarding city, state, federal EEO laws; the requirements of the agency's EEO policies, standards and procedures; and the prevention, investigation, and resolution of discrimination and sexual harassment complaints (*e.g.* certificates, training logs, etc.). Implementation of this corrective action will be monitored during the assigned compliance-monitoring period.

RCDA Response to Corrective Action #5: The EEO Officer has reached out to DCAS to procure a copy of the certificate of completion for the EEO and Diversity training that was received in 2015 as well as the certificate for the latest training the EEO Officer completed on October 23, 2020. DCAS's response is they are working on the requests and noted that if the certificates are needed for an EEPC audit, they will forward directly to EEPC – see *Appendix F* for proof of communication.

Corrective Action #7: Assign the principal EEO Professional (or EEO-related designee) the responsibility to supervise the activities of EEO professionals, and ensure that: the policies against sexual harassment and complaint procedures are distributed/posted at all agency locations; employees/managers receive sexual harassment prevention training; EEO-related policies are made available in alternative formats (*i.e.*, large print, audio recording and/or Braille) upon request; managers, supervisors and human resource professionals receive guidance on issues pertaining to sexual harassment; and allegations of sexual harassment are promptly investigated.

EEPC Response to Corrective Action #7: The EEPC acknowledges the entity's commitment to the implementation of corrective action #7. To demonstrate compliance, provide documentation that demonstrates the principal EEO Professional was assigned the responsibility of supervising the activities of EEO Counselors and other EEO Professionals, which is not reflected in the entity's organizational chart. Also provide documentation that the principal EEO Professional is responsible for providing EEO-related policies in alternative formats (*e.g.* documentation demonstrating the EEO Policy was updated to include the availability of EEO-related policies in alternative formats (*i.e.*, large print, audio recording and/or Braille) upon request). Implementation of this corrective action will be monitored during the assigned compliance-monitoring period.

RCDA Response to Corrective Action #7: In addition to the EEO Officer, there were two other RCDA staff who attended the October 23, 2020 EEO training and are now EEO Counselors. See *Appendix G* for the updated organizational chart, which illustrates the reporting structure of the EEO Officer and EEO Counselors. See *Appendix B* for an email sent to all

OFFICE OF THE DISTRICT ATTORNEY
RICHMOND COUNTY

MICHAEL McMAHON
DISTRICT ATTORNEY

130 STUYVESANT PLACE
STATEN ISLAND, NEW YORK 10301
TELEPHONE (718) 876-6300

MEMORANDUM

TO: All Employees

FROM: Michael McMahon

DATE: May 24, 2021

RE: **Audit: Review, Evaluation, and Monitoring of Sexual Harassment Prevention and Response Practices**

The New York City Charter requires the Equal Employment Practices Commission (EEPC) to conduct an audit once every four years to ensure each City agency or municipal entity (collectively "agency") complies with federal, state, and local laws and regulations, and policies and procedures that increase equal opportunity for employees and applicants.

The EEPC recently concluded an audit and evaluation of the Office of the Richmond County District Attorney's practices and procedures for compliance with city, state, and federal equal employment opportunity laws and regulations, and identified enhancement by means of the following:

- Issue a Policy Statement or memorandum reiterating commitment to the prevention of sexual harassment annually.
- 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 Policy that conforms to city, state and federal laws against sexual harassment-- for use by managers, supervisors, and legal, human resources and EEO professionals. Include, or attach as addenda: uniform and responsive procedures for investigating discrimination/sexual harassment complaints, and current contact information for the agency's EEO professionals as well as federal, state and local agencies that enforce laws against discrimination/sexual harassment.
- Establish and implement a training plan for new and existing employees to ensure that all individuals who work within the agency, including managers and supervisors, receive training on the prevention of sexual harassment as well as discrimination complaint and investigation procedures.
- Ensure that the principal EEO Professional, HR Professional, and General Counsel, review the number of sexual harassment complaints, and the agency's employment

practices, policies and programs on an annual basis to identify whether there are barriers to employment opportunities that may be related to sexual harassment and determine what, if any, actions are required to correct deficiencies.

- Appoint a principal EEO Professional to implement EEO policies and standards within the agency. Ensure the principal EEO Professional is trained regarding city, state, federal EEO laws; the requirements of the agency's EEO policies, standards and procedures; and the prevention, investigation, and resolution of discrimination and sexual harassment complaints.
- Where the agency's organizational structure necessitates multiple EEO professionals, select such individuals from different office locations and, where possible, from a variety of levels within the organizational structure. Appoint EEO professionals who are trained in EEO laws and procedures, and their responsibilities under the EEO Policy.
- Assign the principal EEO Professional (or EEO-related designee) the responsibility to supervise the activities of EEO professionals, and ensure that: the policies against sexual harassment and complaint procedures are distributed/posted at all agency locations; employees/managers receive sexual harassment prevention training; EEO-related policies are made available in alternative formats (i.e., large print, audio recording and/or Braille) upon request; managers, supervisors and human resource professionals receive guidance on issues pertaining to sexual harassment; and allegations of sexual harassment are promptly investigated.
- Ensure that the principal EEO Professional reports directly to the agency head (or a direct report other than the General Counsel) in order to exercise the necessary authority and independent judgment to fulfill EEO responsibilities.
- Maintain documentation regarding directives or decisions between the agency head (or a direct report other than the General Counsel) and the principal EEO Professional that impact the administration and operation of programs, policies or procedures concerning sexual harassment.
- Ensure that managers and supervisors are held accountable for enforcing the agency's sexual harassment prevention policies and complaint procedures. Document this expectation and its implementation.
- Ensure 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).

- Submit to the EEPC an Annual Plan of measures and programs to provide equal employment opportunity, and quarterly reports on efforts to implement the Plan within 30 days following each quarter. Include a breakout of sexual harassment complaint activity in each quarterly report.

Through successful completion of the EEPC's audit, evaluation, and monitoring processes and the aforementioned enhancements I am reaffirming the commitment to ensuring that the Office of the Richmond County District Attorney's employment practices encourage and maintain a workplace free from unlawful discrimination and sexual harassment, and that all employees are aware of their rights and obligations under the agency's equal employment opportunity policies.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael McMahon". The signature is fluid and cursive, with a large initial "M" and a stylized "M" at the end.

Michael McMahon,
District Attorney



Aldrin Rafael Bonilla
Chair

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

Jeanne M. Victor
Executive Director

Jennifer Shaw, Esq.
Executive Agency Counsel/
Director of Compliance

253 Broadway
Suite 602
New York, NY 10007

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

BY EMAIL

June 10, 2021

Michael E. McMahon
District Attorney
Office of the Richmond County District Attorney
130 Stuyvesant Place
Staten Island, NY 10301

Re: Resolution #2020AP/249-905-(2021)C34
DETERMINATION: Compliance

Dear District Attorney McMahon:

On behalf of the members of the Equal Employment Practices Commission (EEPC), I write to inform you that pursuant to New York City Charter Chapter 35, Sections 815(a)(15) and (19), which requires agency heads to ensure and promote equal opportunity for all persons in appointment, payment of wages, development, and advancement, and to establish measures and programs to ensure a fair and effective affirmative employment plan to provide equal employment opportunity (EEO) for minority group members and women, the EEPC's Board of Commissioners has approved the attached Determination.

Thank you and principal EEO Professional Monique Jones for the cooperation extended to the EEPC during the course of our review, evaluation, and monitoring of your agency's employment and EEO-related practices.

Sincerely,
A handwritten signature in black ink, appearing to read "Elaine S. Reiss". The signature is fluid and cursive.

Elaine S. Reiss, Esq.
Commissioner

c: Monique Jones, Principal EEO Professional, Office of the
Richmond County District Attorney

Monitoring of Sexual Harassment Prevention and Response Practices
RESOLUTION NO.

2020AP/249-905-(2021)C34

Office of the Richmond County District Attorney

District Attorney Michael E. McMahon

DETERMINATION: COMPLIANCE

S Y N O P S I S

Corrective Action(s):	Total: 12		
Period Audit Covered:	January 1, 2018 to December 31, 2019		
Preliminary Determination Issued:	September 24, 2020	Response Received	October 8, 2020
Final Determination Issued:	October 19, 2020	Response Received	November 18, 2020
Compliance-Monitoring:	Required	November 1, 2020 to April 30, 2021	without extension

Whereas, pursuant to Chapter 36, Sections 830(a) and 831(d)(2) and (5) of the New York City Charter (Charter), the Equal Employment Practices Commission (EEPC) is authorized to audit, review, evaluate, and monitor the employment procedures, practices and programs of city agencies and other municipal entities (hereinafter “entities”) and their efforts to ensure fair and effective equal employment opportunity (EEO) for minority group members and women who are employed or seek employment, and to recommend practices, procedures, approaches, measures, standards, and programs to be utilized by such entities in these efforts; and

Whereas, pursuant to Charter Chapter 36, Sections 830(a) and 831(d)(2) and (5), the EEPC has adopted uniform standards for auditing agencies and municipal entities, and minimum standards for auditing community boards, to review, evaluate, and monitor entities’ practices, procedures, approaches, measures, standards, and programs for compliance with federal, state, and local laws and regulations, and policies and procedures to increase equal opportunity for women, minorities, and other employees and job applicants identified for protection from discrimination; and

Whereas, in accordance with Charter Chapter 36, Section 832(c), the EEPC may make a determination pursuant to Charter Section 831(d) whether any plan, program, procedure, approach, measure, or standard adopted or utilized by any municipal entity does not provide equal employment opportunity, and the EEPC’s determinations of compliance or non-compliance and prescribed corrective action are required by, or consistent with federal, state, and local laws and regulations, and policies and procedures to increase equality of opportunity for women, minorities, and other employees and job applicants identified for protection from discrimination; and

Whereas, the EEPC conducted an audit, review, and evaluation of the Office of the Richmond County District Attorney’s Sexual Harassment Prevention and Response Practices; and

Whereas, pursuant to the audit, review, and evaluation of the Office of the Richmond County District Attorney’s Sexual Harassment Prevention and Response Practices, the EEPC issued a Preliminary Determination, dated September 24, 2020, setting forth findings and the following corrective actions required to remedy areas of non-compliance:

1. Issue a Policy Statement or memorandum reiterating commitment to the prevention of sexual harassment annually.
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 Policy that conforms to city, state and federal laws against sexual harassment– for use by managers, supervisors, and legal, human resources and EEO professionals. Include, or attach as addenda: uniform and responsive procedures for investigating discrimination/sexual harassment complaints, and current contact information for the agency's EEO professionals as well as federal, state and local agencies that enforce laws against discrimination/sexual harassment.
3. Establish and implement a training plan for new and existing employees to ensure that all individuals who work within the agency, including managers and supervisors, receive training on the prevention of sexual harassment as well as discrimination complaint and investigation procedures.
4. Ensure that the principal EEO Professional, HR Professional, and General Counsel, review the number of sexual harassment complaints, and the agency's employment practices, policies and programs on an annual basis to identify whether there are barriers to employment opportunities that may be related to sexual harassment and determine what, if any, actions are required to correct deficiencies.
5. Appoint a principal EEO Professional to implement EEO policies and standards within the agency. Ensure the principal EEO Professional is trained regarding city, state, federal EEO laws; the requirements of the agency's EEO policies, standards and procedures; and the prevention, investigation, and resolution of discrimination and sexual harassment complaints.
6. Where the agency's organizational structure necessitates multiple EEO professionals, select such individuals from different office locations and, where possible, from a variety of levels within the organizational structure. Appoint EEO professionals who are trained in EEO laws and procedures, and their responsibilities under the EEO Policy.
7. Assign the principal EEO Professional (or EEO-related designee) the responsibility to supervise the activities of EEO professionals, and ensure that: the policies against sexual harassment and complaint procedures are distributed/posted at all agency locations; employees/managers receive sexual harassment prevention training; EEO-related policies are made available in alternative formats (i.e., large print, audio recording and/or Braille) upon request; managers, supervisors and human resource professionals receive guidance on issues pertaining to sexual harassment; and allegations of sexual harassment are promptly investigated.
8. Ensure that the principal EEO Professional reports directly to the agency head (or a direct report other than the General Counsel) in order to exercise the necessary authority and independent judgment to fulfill EEO responsibilities.
9. Maintain documentation regarding directives or decisions between the agency head (or a direct report other than the General Counsel) and the principal EEO Professional that impact the administration and operation of programs, policies or procedures concerning sexual harassment.

10. Ensure that managers and supervisors are held accountable for enforcing the agency's sexual harassment prevention policies and complaint procedures. Document this expectation and its implementation.
11. Ensure 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).
12. Submit to the EEPD an Annual Plan of measures and programs to provide equal employment opportunity, and quarterly reports on efforts to implement the Plan within 30 days following each quarter. Include a breakout of sexual harassment complaint activity in each quarterly report.

Whereas, within a two-week deadline following the EEPD's Preliminary Determination, the entity submitted a preliminary response; and

Whereas, in accordance with Charter Chapter 36, Section 832(c), after consideration, the EEPD issued a Final Determination on October 19, 2020, which indicated that the following areas required corrective action: no(s). 1, 2, 3, 4, 5, 7, 10, 11, and 12; and

Whereas, in accordance with Charter Chapter 36, Section 832(c), in the Final Determination, the EEPD assigned a monitoring period from November 1, 2020 to April 30, 2021, to determine whether the entity eliminated areas of non-compliance, if any; and

Whereas, in accordance with Charter Chapter 36, Section 832(c) the entity was required to respond in 30 days, and make monthly reports thereafter for a period not to exceed six months, on the progress of its efforts to correct outstanding areas of non-compliance; and

Whereas, in accordance with Charter Chapter 36, Section 832(c), on November 18, 2020, the entity issued a response to the EEPD's Final Determination; and

Whereas, in accordance with Charter Chapter 36, Section 832(c), the Office of the Richmond County District Attorney was monitored until April 27, 2021; and

Whereas, pursuant to Charter Chapter 35, Sections 815(a)(15) and (19), which requires agency heads to ensure and promote equal opportunity for all persons in appointment, payment of wages, development, and advancement, and to establish measures and programs to ensure a fair and effective affirmative employment plan to provide equal employment opportunity for minority group members and women, the District Attorney submitted a copy of a memorandum to staff dated May 24, 2021, which recognized the EEPD's audit and reiterated commitment to the Office of the Richmond County District Attorney's equal employment practices; Now Therefore,

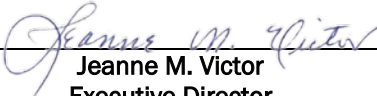
Be It Resolved, that the Office of the Richmond County District Attorney has satisfied the equal employment standards set by the EEPD pursuant to its authority under New York City Charter Chapters 35 and 36; and

Be It Resolved, that the EEPD's Board of Commissioners approves the issuance of this Determination of Compliance to District Attorney Michael E. McMahon of the Office of the Richmond County District Attorney.

Approved unanimously on June 10, 2021.

<hr/>	<hr/>
/s/ Angela Cabrera	/s/ Elaine S. Reiss
Angela Cabrera	Elaine S. Reiss, Esq.
Commissioner/Mayoral Appointee	Commissioner/Mayoral Appointee
<hr/>	<hr/>
/s/ Arva R. Rice	
Arva R. Rice	Vacant
Commissioner/City Council Appointee	Commissioner/City Council Appointee
<hr/>	
/s/ Aldrin Rafael Bonilla	
Aldrin Rafael Bonilla	
Chair/Commissioner/Joint Appointee	

On behalf of all Commissioners in attendance,



Jeanne M. Victor
Executive Director



This

Determination of Compliance

is hereby issued to

Office of the Richmond County District Attorney

for successful implementation of ~~12~~ of ~~12~~ required corrective action(s),
thereby achieving compliance with the Equal Employment Practices Commission's
Sexual Harassment Prevention and Response Practices
From January 1, 2018 to this date.

On this 10th day of June in the year 2021,

Jeanne M. Victor, Executive Director

In care of District Attorney Michael E. McMahon
and Principal EEO Professional Monique Jones