CALIFORNIA
STATE
PERSONNEL
BOARD

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Governor Edmund G. Brown Jr.

BOARD RESOLUTION ADOPTING THE COMPLIANCE REVIEW REPORT AND FINDINGS BY THE SPB COMPLIANCE REVIEW UNIT OF THE CALIFORNIA ARTS COUNCIL

WHEREAS, the State Personnel Board (SPB or Board) at its duly noticed meeting of March 3, 2014, carefully reviewed and considered the attached Compliance Review Report of the California Arts Council submitted by SPB's Compliance Review Unit.

WHEREAS, the Report was prepared following a baseline review of the California Arts Council's personnel practices. It details the background, scope, and methodology of the review, and the findings and recommendations.

NOW, THEREFORE, BE IT RESOLVED, that the Board hereby adopts the Report, including all findings and recommendations contained therein. A true copy of the Report shall be attached to this Board Resolution and the adoption of the Board Resolution shall be reflected in the record of the meeting and the Board's minutes.

SUZANNE M. AMBROSE
Executive Officer

STATE PERSONNEL BOARD

COMPLIANCE REVIEW REPORT
CALIFORNIA ARTS COUNCIL
FINDINGS AND RECOMMENDATIONS
MARCH 3, 2014

Examinations

During the period under review, May 1, 2011 through November 1, 2012, the California Arts Council (CAC) conducted two examinations. The SPB reviewed the examinations, which are listed below:

Classification	Examination Type	Examination Components	Examination Date
Supervising Arts Grants Administrator	Departmental Promotional	Qualifications Appraisal Panel	October 2012
Staff Services Manager I/Staff Services Manager II (Supervisory)	Departmental Promotional	Qualifications Appraisal Panel	February 2012

FINDING NO. 1 – The Equal Employment Opportunity (EEO) Questionnaire Was Attached to the State Applications

Examinations to establish an eligible list must be competitive and of such character as fairly to test and determine the qualifications, fitness, and ability of competitors to perform the duties of the class of position for which he or she seeks appointment. (Gov. Code, § 18930.) Examinations may be assembled or unassembled, written or oral, or in the form of a demonstration of skills, or any combination of those tests. (*Ibid.*) The Board establishes minimum qualifications for determining the fitness and qualifications of employees for each class of position and for applicants for examinations. (Gov. Code, § 18931.) Every applicant for examination shall file a formal signed application in the office of the department or a designated appointing power within a reasonable length of time before the date of examination. (Gov. Code, § 18934.) Generally, the final earned rating of each person competing in any examination is to be determined by the weighted average of the earned ratings on all phases of the examination. (Gov. Code, § 18936.) Each competitor shall be notified in writing of the results of the

examination when the employment list resulting from the examination is established. (Gov. Code, § 18938.5.)

California Code of Regulations, title 2, section 12940 states "It is an unlawful employment practice...(a) For an employer, because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, or sexual orientation of any person, to refuse to hire or employ the person..." Moreover, page five of the Standard Form 678 (STD 678) entitled "Equal Employment Opportunity" states "This questionnaire will be separated from the application prior to the examination and will not be used in any employment decisions."

The EEO questionnaire form was stapled to all five applications received in the examination file for the Supervising Arts Grants Administrator. The EEO questionnaire form was stapled to eight out of the ten applications received for the Staff Services Manager I & II examination.

It is thus recommended that within 60 days of the Board's Resolution adopting these findings and recommendations the CAC submit to the Board a written corrective action plan that addresses the corrections the department will implement to ensure EEO forms will not be kept with applications in the examination files. Any relevant documents should be attached to the report.

Appointments

During the compliance review period, the CAC made one appointment. The SPB reviewed the civil service appointment, which is listed below:

Classification	Appointment Type	Tenure and Time Base	Appointment Date
Staff Services Manager II (Supervisory)	Certification List	Permanent, Full Time	March 1, 2012

In all cases not excepted or exempted by Article VII of the California Constitution, the appointing power must fill positions by appointment, including cases of transfers, reinstatements, promotions, and demotions in strict accordance with the Civil Service Act and Board rules. (Gov. Code, § 19050.) Except as provided by law, appointments to vacant positions shall be made from employment lists. (*Ibid.*) Appointments made

from eligible lists, by way of transfer, or by way of reinstatement, must be made on the basis of merit and fitness, which requires consideration of each individual's job-related qualifications for a position, including his or her knowledge, skills, abilities, experience, and physical and mental fitness. (Cal. Code Regs., tit. 2, § 250, subd. (a).)

A promotion meets the definition of "promotion in place" as defined by California Code of Regulations, title 2, section 599.854.4(6), if there is no true vacant position there is no change of position or supervisory/subordinate relationship, and the reclassification/appointment will result in a promotion in place of the incumbent to the next highest level to which he or she can promote. Promotions in place are not subject to recruitment or the State Restriction of Appointment Program, which grants employees impacted by layoff preferential consideration over other types of appointments.

The one appointment the CAC made during the compliance review period was a reclassification of a current Staff Services Manager I position into a Staff Services Manager II (SSM II) position. The appointment was a promotion-in-place in order to conform to the new duties that were to be performed by the incumbent. The CAC provided the certification list, duty statement, incumbent's state application, Change in Established Positions form, Request for Personnel Action, and the Notice of Personnel Action. Since the appointment was a reclassification of a current position and not a true vacancy, the CAC was not required to perform recruitment for the appointment. The CAC provided the certification list showing that the incumbent was in rank three on the SSM II list at the time in which he was appointed.

Accordingly, CAC complied with civil service laws and Board rules as to the appointment made during the compliance review period.

Equal Employment Opportunity (EEO)

The SPB reviewed the CAC's EEO policies, procedures, and programs that were in effect during the compliance review period. In addition, the SPB communicated with appropriate CAC staff.

FINDING NO. 2 – CAC Does Not Have A Disability Advisory Committee (DAC)

The appointing power for each state agency has the major responsibility for monitoring the effectiveness of its EEO program. (Gov. Code, § 19794.) To that end, the appointing power must issue a policy statement committed to EEO; issue procedures

for filing, processing, and resolving discrimination complaints; issue procedures for providing equal upward mobility and promotional opportunities; and cooperate with CalHR by providing access to all required files, documents and data. (*Ibid.*) In addition, the appointing power must appoint, at the managerial level, an EEO officer, who shall report directly to, and be under the supervision of, the director of the department to develop, implement, coordinate, and monitor the department's EEO program. (Gov. Code, § 19795.)

Each state agency must establish a separate committee of employees who are individuals with a disability, or who have an interest in disability issues, to advise the head of the agency on issues of concern to employees with disabilities. (Gov. Code, § 19795, subd. (b)(1).) The department must invite all employees to serve on the committee and take appropriate steps to ensure that the final committee is comprised of members who have disabilities or who have an interest in disability issues. (Gov. Code, § 19795, subd. (b)(2).)

CAC's written EEO program provides employees with guidance on the EEO process, including instructions on how to file discrimination claims. The EEO program also outlines the roles and responsibilities of the EEO Officer, as well as those of the supervisors and managers. The EEO Officer, who is a manager, reports directly to the Director of CAC. While CAC does not have any incumbents in upward mobility classifications, CAC provided documentation of its efforts to promote equal employment opportunities in its hiring and employment practices and to increase its hiring of disabled persons. These components of CAC's EEO program comply with applicable civil service laws and rules.

CAC, however, does not have a DAC. Accordingly, the department must invite all employees to serve on a DAC and take appropriate steps to ensure that the final committee is comprised of members who have disabilities or who have an interest in disability issues.

It is therefore recommended that no later than 60 days after the Board's Resolution adopting these findings and recommendations, CAC must establish the DAC and submit to the SPB a written report of compliance.

DEPARTMENTAL RESPONSE

CAC was provided a copy of the draft compliance review report. CAC submitted a written response, which is attached to this report as Attachment No. 1.

SPB REPLY

Based upon CAC's written response, regarding Finding No. 1, CAC has implemented the removal of the EEO questionnaire from state applications received for examination and recruitment purposes. Regarding Finding No. 2, CAC has an active Americans with Disabilities Act (ADA) Coordinator who serves on the Statewide Disability Advisory Council. Because of the CAC's small size and their relationship with the California State Library (CSL), the CAC's ADA Coordinator will join the CSL's currently active DAC.

The SPB recommends that CAC comply with the afore-stated recommendations within 60 days of the Board's Resolution and submit to the SPB a written report of compliance.

The SPB appreciates the professionalism and cooperation of the CAC during this compliance review.

California Arts Council

CALIFORNIA ARTS COUNCIL

EDMUND G. BROWN, JR., GOVERNOR

ADVANCING CALIFORNIA THROUGH THE ARTS & CREATIVITY

CRAIG WATSON, DIRECTOR

December 3, 2013

James Murray
Chief, Compliance Review Division
State Personnel Board
801 Capitol Mall
Sacramento, CA 95814

Dear Mr. Murray,

Thank you for providing the California Arts Council (CAC) with an opportunity to respond to the State Personnel Board's Compliance Review Report. My staff and I have reviewed your findings and have the following response:

Finding No. 1 – The Equal Employment Opportunity (EEO) Questionnaire Was Attached to the State Applications.

The California State Library (CSL) provides Human Resources Services to the CAC through an Interagency Agreement and as such, provides examination and recruitment services for the CAC. The CSL has implemented the removal of the EEO Questionnaire from State Applications received to its examination and recruitment processes. Because the CAC acts as its own EEO Office, upon receipt, the questionnaires are forwarded to the CAC by the CSL for proper retention and research and statistical purposes under the provisions of Government Code Section 19705.

Finding No. 2 – CAC Does Not Have A Disability Advisory Committee (DAC).

The California Arts Council is a small agency (17.5 PYs) with a designated staff person who serves as the agency's ADA Coordinator. The ADA Coordinator serves as an advisor to the director, deputy director (who serves as the agency's Equal Employment Opportunity Officer) and other senior staff on issues affecting employees and clients of the Arts Council. The ADA Coordinator serves on California's Statewide Disability Advisory Council (SDAC), coordinates the agency's partnership with the National Art and Disability Center, and serves in an advisory capacity to the Targen Center at UCLA (A University Center for Excellence in Disabilities Education, Research and Service). The ADA Coordinator is routinely joined by other members of the staff to participate in activities promoting the agency's services and opportunities for persons with disabilities—the California Arts Council has an ongoing and unwavering commitment to making its services and programs open and accessible to all persons, with and without disabilities. Such activities have included participation in the California Department of

Water Resources' Disability Awareness & Resources Fair, and the ADA Coordinator's attendance at the Regional Accessibility Institute in Denver, Colorado.

The agency's commitment to inclusion is supported by its use of "Design for Accessibility: A Cultural Administrator's Handbook", a resource produced by the National Endowment for the Arts (NEA) and the National Assembly of State Arts Agencies (NASAA) designed to assist arts agencies in compliance with Section 504 and the Americans with Disabilities Act, and to assist in making access an integral part of a agency's planning, mission, programs, outreach, meetings, budget, and staffing.

In recognition of the agency's small size and its relationship to the California State Library, California Arts Council staff—in particular its ADA Coordinator—will join the Disability Advisory Committee at the State Library, bringing CAC staff expertise to the group and equally gaining from the experiences of a much larger and diverse department.

On behalf of the California Arts Council, we appreciate the assistance and guidance offered during the review process. If you have additional questions or concerns, please feel free to contact me by telephone at (916) 322-6376 or through email at Scott.Heckes@arts.ca.gov.

Sincerely,

Scott Heckes
Deputy Director