



COMPLIANCE REVIEW REPORT

DEPARTMENT OF DEVELOPMENTAL SERVICES

Compliance Review Unit
State Personnel Board
January 29, 2018

TABLE OF CONTENTS

Introduction	1
Executive Summary	1
Background	2
Scope and Methodology.....	2
Findings and Recommendations	3
Examinations	3
Appointments	8
Equal Employment Opportunity	14
Personal Services Contracts.....	15
Mandated Training	17
Departmental Response.....	20
SPB Reply	20

INTRODUCTION

Established by the California Constitution, the State Personnel Board (the SPB or Board) is charged with enforcing and administering the civil service statutes, prescribing probationary periods and classifications, adopting regulations, and reviewing disciplinary actions and merit-related appeals. The SPB oversees the merit-based recruitment and selection process for the hiring of over 200,000 state employees. These employees provide critical services to the people of California, including but not limited to, protecting life and property, managing emergency operations, providing education, promoting the public health, and preserving the environment. The SPB provides direction to departments through the Board's decisions, rules, policies, and consultation.

Pursuant to Government Code section 18661, the SPB's Compliance Review Unit (CRU) conducts compliance reviews of appointing authority's personnel practices in five areas: examinations, appointments, equal employment opportunity (EEO), personal services contracts (PSC's), and mandated training to ensure compliance with civil service laws and board regulations. The purpose of these reviews is to ensure state agencies are in compliance with merit-related laws, rules, and policies and to identify and share best practices identified during the reviews. The SPB conducts these reviews on a three-year cycle.

The CRU may also conduct special investigations in response to a specific request or when the SPB obtains information suggesting a potential merit-related violation.

EXECUTIVE SUMMARY

The CRU conducted a routine compliance review of Department of Developmental Services (DDS) personnel practices in the areas of examinations, appointments, EEO, and PSC's from May 2, 2016, through October 31, 2016, and mandated training from October 1, 2014, through October 31, 2016. The following table summarizes the compliance review findings.

Area	Finding	Severity
Examinations	Equal Employment Opportunity Questionnaires Were Not Separated from Applications	Very Serious
Appointments	Equal Employment Opportunity Questionnaires Were Not Separated from Applications	Very Serious

Area	Finding	Severity
Equal Employment Opportunity	Equal Employment Opportunity Officer Did Not Monitor the Composition of Oral Panels in Departmental Exams	Very Serious
Personal Services Contracts	Personal Services Contracts Complied with Procedural Requirements	In Compliance
Mandated Training	Supervisory Training Was Not Provided for All Supervisors	Very Serious
Mandated Training	Sexual Harassment Prevention Training Was Not Provided for All Supervisors	Very Serious
Mandated Training	Ethics Training Was Not Provided for All Filers	Very Serious

A color-coded system is used to identify the severity of the violations as follows:

- Red = Very Serious
- Orange = Serious
- Yellow = Non-serious or Technical
- Green = In Compliance

BACKGROUND

The DDS is one of 12 departments, boards, and offices comprising the California Health and Human Services Agency. The DDS serves individuals living in three state-operated residential facilities called developmental centers and one small community facility, and contracts with twenty-one nonprofit agencies called regional centers. The department provides services and supports through the regional centers for approximately 313,345 regional center consumers and 896 developmental center consumers. The DDS employs approximately 3,993 staff in about 320 classifications.

SCOPE AND METHODOLOGY

The scope of the compliance review was limited to reviewing the DDS examinations, appointments, EEO program, and PSC's from May 2, 2016, through October 31, 2016, and mandated training from October 1, 2014, through October 31, 2016. The primary objective of the review was to determine if DDS' personnel practices, policies, and procedures complied with state civil service laws and board regulations, and to recommend corrective action for those deficiencies identified.

A cross-section of the DDS' examinations and appointments were selected to ensure that various samples of examinations and appointment types, classifications, and levels were reviewed. The CRU examined the documentation that the DDS provided, which included examination plans, examination bulletins, job analyses, 511b's, scoring results, notice of personnel action (NOPA) forms, vacancy postings, application screening criteria, hiring interview rating criteria, certification lists, transfer movement worksheets, employment history records, correspondence, and probation reports.

The review of the DDS' EEO program included examining written EEO policies and procedures; the EEO Officer's role, duties, and reporting relationship; the internal discrimination complaint process; the upward mobility program; the reasonable accommodation program; the discrimination complaint process; and the Disability Advisory Committee.

DDS' PSC's were also reviewed.¹ It was beyond the scope of the compliance review to make conclusions as to whether the DDS' justifications for the contracts were legally sufficient. The review was limited to whether the DDS' practices, policies, and procedures relative to PSC's complied with procedural requirements.

In addition, the DDS mandated training was reviewed to ensure all employees required to file statements of economic interest were provided ethics training, and that all supervisors were provided supervisory and sexual harassment prevention training within statutory timelines.

On November 30, 2017, an exit conference was held with the DDS to explain and discuss the CRU's initial findings and recommendations. The CRU received and carefully reviewed the DDS written response on January 24, 2018, which is attached to this final compliance review report.

FINDINGS AND RECOMMENDATIONS

Examinations

Examinations to establish an eligible list must be competitive and of such character as to fairly test and determine the qualifications, fitness, and ability of competitors to

¹ If an employee organization requests the SPB to review any personal services contract during the SPB compliance review period or prior to the completion of the final compliance review report, the SPB will not audit the contract. Instead, the SPB will review the contract pursuant to its statutory and regulatory process. In this instance, none of the reviewed PSC's were challenged.

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.) Within a reasonable time before the scheduled date of the examination, the designated appointing power shall announce or advertise the examination for the establishment of eligible lists. (Gov. Code, § 18933, subd. (a).) The advertisement shall contain such information as the date and place of the examination and the nature of the minimum qualifications. (*Ibid.*) Every applicant for examination shall file an application in the office of the department or a designated appointing power as directed in the examination announcement. (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.)

During the period under review, the DDS conducted 84 examinations. The CRU reviewed 28 of those examinations, which are listed below:

Classification	Examination Type	Exam Components	Final File Date	No. of Apps
Assistant Coordinator of Nursing Services	Open	Qualification Appraisal Panel (QAP) ²	Continuous	2
Behavior Specialist	Open	QAP	Continuous	27
Career Executive Assignment (CEA) A, Assistant Deputy Director, Program Operations Development Centers Division	CEA	Statement of Qualifications (SOQ) ³	Until Filled	8

² The qualification appraisal panel (QAP) interview is the oral component of an examination whereby competitors appear before a panel of two or more evaluators. Candidates are rated and ranked against one another based on an assessment of their ability to perform in a job classification.

³ In a statement of qualifications (SOQ's) examination, applicants submit a written summary of their qualifications and experience related to a published list of desired qualifications. Raters, typically subject matter experts, evaluate the responses according to a predetermined rating scale designed to assess their ability to perform in a job classification, assign scores and rank the competitors in a list.

Classification	Examination Type	Exam Components	Final File Date	No. of Apps
CEA A, Branch Chief, Community Development and Housing Branch	CEA	SOQ	8/1/2016	4
CEA A, Branch Chief, Program & Policy Branch	CEA	SOQ	8/1/2016	5
CEA A, Program Manager, Self-Determination Program & Home & Community Based Service	CEA	SOQ	8/1/2016	6
Chief Engineer II	Open	QAP	Continuous	5
Clinical Psychology Intern	Open	Education & Experience ⁴	Continuous	4
Electrician Supervisor	Departmental Promotional	QAP	4/8/2016	1
Executive Secretary I	Departmental Promotional	QAP	4/13/2016	5
Fire Fighter	Open	QAP	Continuous	7
Food Service Technician II	Open	QAP	Continuous	14
Foster Grandparent/Senior Companion Project Coordinator	Open	QAP	3/22/2016	4
Health Record Technician III	Departmental Promotional	QAP	9/28/2016	1
Health Services Specialist	Open	QAP	7/20/2016	3
Licensed Vocational Nurse	Open	QAP	Continuous	7
Patient Benefit & Insurance Officer I	Open	QAP	7/26/2016	9

⁴ In an education and experience (E&E) examination, one or more raters reviews the applicants' Standard 678 application forms, and scores and ranks them according to a predetermined rating scale that may include years of relevant higher education, professional licenses or certifications, and/or years of relevant work experience.

Classification	Examination Type	Exam Components	Final File Date	No. of Apps
Peace Officer I	Open	Training and Experience ⁵	Continuous	13
Pest Control Technician	Open	QAP	7/13/2016	2
Pharmacist I, Department of Mental Health and Developmental Services	Open	QAP	Continuous	4
Program Director	Departmental Promotional	QAP	5/16/2016	8
Psychiatric Technician (Safety)	Open	QAP	Continuous	3
Psychologist	Open	QAP	Continuous	4
Rehabilitation Therapist	Open	QAP	Continuous	3
Respiratory Care Practitioner	Open	QAP	Continuous	14
Senior Psychiatric Technician (S)	Open	QAP	Continuous	2
Teacher	Open	QAP	Continuous	3
Vocational Instructor (Printing/Graphic Arts)	Open	QAP	Continuous	5

FINDING NO. 1 – Equal Employment Opportunity Questionnaires Were Not Separated From Applications

Summary: Out of 28 examinations reviewed, two examinations included applications where EEO questionnaires were not separated from the STD 678 employment application. Specifically, 12 of the 173 applications reviewed included EEO questionnaires that were not separated from the STD 678 employment application.

Criteria: Government Code section 19704 makes it unlawful for a hiring department to require or permit any notation or entry to be made on

⁵ The training and experience (T&E) examination is administered either online or in writing, and asks the applicant to answer multiple-choice questions about his or her level of training and/or experience performing certain tasks typically performed by those in this classification. Responses yield point values, which are totaled by the online system or a department exam analyst, and then assigned a percentage score.

any application indicating or in any way suggesting or pertaining to any protected category listed in Government Code section 12940, subdivision (a) (e.g., a person's race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status). Applicants for employment in state civil service are asked to provide voluntarily ethnic data about themselves where such data is determined by the California Department of Human Resources (CalHR) to be necessary to an assessment of the ethnic and sex fairness of the selection process and to the planning and monitoring of affirmative action efforts. (Gov. Code, § 19705.) The EEO questionnaire of the state application form (STD 678) states, "This questionnaire will be separated from the application prior to the examination and will not be used in any employment decisions."

Severity: Very Serious. The applicants' protected classes were visible, subjecting the agency to potential liability.

Cause: The DDS states that it was an oversight to not detach the EEO questionnaires from applications for examinations.

Action: It is recommended that within 60 days of the Executive Officer's approval of these findings and recommendations, the DDS submit to the CRU a written corrective action plan that the department will implement to ensure that EEO questionnaires are separated from all applications. Copies of any relevant documentation should be included with the plan.

Appointments

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.) 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).)

During the compliance review period, the DDS made 617 appointments. The CRU reviewed 96 of those appointments, which are listed below:

Classification	Appointment Type	Tenure	Time Base	No. of Appts
Administrative Assistant I	List Appointment	Permanent	Full Time	1
Associate Personnel Analyst	List Appointment	Permanent	Full Time	1
Behavior Specialist I	List Appointment	Permanent	Full Time	1
Community Program Specialist II	List Appointment	Permanent	Full Time	1
Custodian	List Appointment	Permanent	Full Time	6
Director of Dietetics	List Appointment	Permanent	Full Time	1
Electrician I	List Appointment	Permanent	Full Time	3
Fire Fighter	List Appointment	Limited Term	Full Time	1
Food Services Technician I	List Appointment	Permanent	Full Time	1
Foster Grandparent/Senior Companion Project Coordinator	List Appointment	Permanent	Full Time	1
Health Record Technician III	List Appointment	Permanent	Full Time	1
Health Record Technician III	List Appointment	Limited Term	Full Time	1
Labor Relations Analyst	List Appointment	Permanent	Full Time	1
Office Technician (Typing)	List Appointment	Permanent	Full Time	4
Office Technician (Typing)	List Appointment	Limited Term	Full Time	3
Peace Officer I (Developmental Center)	List Appointment	Permanent	Full Time	1
Program Director (Developmental Disabilities-Safety)	List Appointment	Permanent	Full Time	1
Psychiatric Technician (Safety)	List Appointment	Permanent	Full Time	1

Classification	Appointment Type	Tenure	Time Base	No. of Appts
Psychiatric Technician Assistant (Safety)	List Appointment	Limited Term	Full Time	6
Psychologist (Health Facility – Clinical), Department of Mental Health & Developmental Services	List Appointment	Permanent	Full Time	1
Public Health Nurse I, Departmental of Mental Health and Developmental Services	List Appointment	Permanent	Full Time	1
Senior Psychiatric Technician	List Appointment	Permanent	Full Time	2
Staff Information Systems Analyst (Supervisor)	List Appointment	Permanent	Full Time	1
Stationary Engineer	List Appointment	Permanent	Full Time	2
Stationary Engineer	List Appointment	Limited Term	Full Time	1
Supervising Registered Nurse	List Appointment	Permanent	Full Time	1
Supervising Special Investigator	List Appointment	Permanent	Full Time	1
Teacher, State Hospital (Adult Education)	List Appointment	Permanent	Part Time	1
Vocational Instructor (Culinary Arts)	List Appointment	Permanent	Full Time	1
Auditor I	Mandatory Reinstatement	Permanent	Full Time	1
Auto Equipment Operator I, Department of Mental Health and Developmental Services	Mandatory Reinstatement	Permanent	Full Time	1
Custodian Supervisor III	Mandatory Reinstatement	Permanent	Full Time	1
Management Services Technician	Mandatory Reinstatement	Permanent	Full Time	1
Office Technician (Typing)	Mandatory Reinstatement	Permanent	Full Time	3
Psychiatric Technician Assistant	Mandatory Reinstatement	Permanent	Full Time	1

Classification	Appointment Type	Tenure	Time Base	No. of Appts
Senior Account Clerk	Mandatory Reinstatement	Permanent	Full Time	1
Staff Services Manager I	Mandatory Reinstatement	Permanent	Full Time	1
Teaching Assistant, Department of Mental Health and Developmental Services	Mandatory Reinstatement	Permanent	Full Time	1
Medical Supply Technician	Permissive Reinstatement	Permanent	Full Time	1
Office Technician	Permissive Reinstatement	Permanent	Full Time	1
Psychiatric Technician Assistant	Permissive Reinstatement	Permanent	Full Time	1
Special Investigator Assistant	Permissive Reinstatement	Permanent	Full Time	1
Staff Services Analyst	Permissive Reinstatement	Permanent	Full Time	1
Teacher, State Hospital	Permissive Reinstatement	Permanent	Full Time	1
Associate Governmental Program Analyst	Retired Annuitant	Limited Term	Intermittent	1
Attorney III	Retired Annuitant	Limited Term	Intermittent	1
Investigator	Retired Annuitant	Limited Term	Intermittent	1
Nurse Practitioner, Department of Mental Health and Developmental Services	Retired Annuitant	Limited Term	Intermittent	1
Program Assistant	Retired Annuitant	Limited Term	Intermittent	1
Psychiatric Technician Assistant	Retired Annuitant	Limited Term	Intermittent	1
Registered Nurse	Retired Annuitant	Limited Term	Intermittent	1
Senior Personnel Specialist	Retired Annuitant	Limited Term	Intermittent	1

Classification	Appointment Type	Tenure	Time Base	No. of Appts
Staff Services Manager II	Retired Annuitant	Limited Term	Temporary	1
Supervising Special Investigator I	Retired Annuitant	Limited Term	Intermittent	1
Teacher, State Hospitals (Severely Handicapped, Developmentally Disabled)	Retired Annuitant	Limited Term	Temporary	1
Psychiatric Technician Assistant	Temporary Authorization Utilization (TAU) – LEAP	Temporary	Full Time	1
Skilled Trades Journeyman (Casual Employment) (Laborer)	TAU	Temporary	Intermittent	6
Associate Personnel Analyst	Transfer	Permanent	Full Time	1
Community Program Specialist II	Transfer	Permanent	Full Time	4
General Auditor III	Transfer	Permanent	Full Time	1
Laundry Worker	Transfer	Permanent	Full Time	1
Maintenance and Service Occupational Trainee	Transfer	Temporary	Full Time	1
Management Services Technician	Transfer	Permanent	Full Time	1
Psychiatric Technician	Transfer	Permanent	Full Time	1
Staff Information Systems Analyst (Specialist)	Transfer	Permanent	Full Time	1
Staff Services Analyst	Transfer	Permanent	Full Time	1
Staff Services Analyst	Transfer	Permanent	Full Time	1

For each of the 48 list appointments the DDS properly advertised the job vacancies, sent out contact letters, screened applications, interviewed candidates, and cleared the certification lists for SROA and reemployment, and conducted background and reference checks as appropriate.

The DDS made 11 appointments via mandatory reinstatement. A state agency is required to reinstate an employee to his or her former position if the employee is (1) terminated from a temporary or limited-term appointment by either the employee or the appointing power; (2) rejected during probation; or (3) demoted from a managerial position. (Gov. Code, § 19140.5.) The following conditions, however, must apply: the employee accepted the appointment without a break in continuity of service and the reinstatement is requested within ten working days after the effective date of the termination. (*Ibid.*) The DDS complied with the rules and laws governing mandatory reinstatements.

The CRU reviewed 11 retired annuitant appointments. The individuals submitted their applications and were eligible to be hired as retired annuitants, not to exceed 960 hours in a fiscal year.

The CRU reviewed seven TAU appointments. When there is no employment list from which a position maybe filled, the appointing power, with the consent of the department, may fill the position by temporary appointment. (Gov. Code, §19058.) No person may serve in one or more positions under temporary appointment longer than nine months in a 12 consecutive month period. The DDS complied with the rules and laws governing TAU appointments.

The CRU reviewed 13 DDS appointments made via transfer, and six appointments made via permissive reinstatement. A transfer of an employee from a position under one appointing power to a position under another appointing power may be made if the transfer is to a position in the same class or in another class with substantially the same salary range and designated as appropriate by the Executive Officer. (Cal. Code Reg., tit. 2, § 425.) The DDS verified the eligibility of each candidate to their appointed class.

However, the DDS failed to remove the EEO questionnaires from applications on 15 occasions as described in finding two.

FINDING NO. 2 – Equal Employment Opportunity Questionnaires Were Not Separated from Applications

Summary: Out of 96 appointments reviewed, seven appointment files included applications where EEO questionnaires were not separated from the STD 678 employment application. Specifically, 15 out of the 765 applications reviewed included EEO questionnaires that were not separated from their respective employment applications.

- Criteria:** Government Code section 19704 makes it unlawful for a hiring department to require or permit any notation or entry to be made on any application indicating or in any way suggesting or pertaining to any protected category listed in Government Code section 12940, subdivision (a) (e.g., a person's race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status). Applicants for employment in state civil service are asked to provide voluntarily ethnic data about themselves where such data is determined by the California Department of Human Resources (CalHR) to be necessary to an assessment of the ethnic and sex fairness of the selection process and to the planning and monitoring of affirmative action efforts. (Gov. Code, § 19705.) The EEO questionnaire of the state application form (STD. 678) states, "This questionnaire will be separated from the application prior to the examination and will not be used in any employment decisions."
- Severity:** Very Serious. The applicants' protected classes were visible, subjecting the agency to potential liability.
- Cause:** The DDS states that it was an oversight to not detach the EEO questionnaires from applications for appointments.
- Action:** It is recommended that within 60 days of the Executive Officer's approval of these findings and recommendations, the DDS submit to the CRU a written corrective action plan that the department will implement to ensure that EEO questionnaires are separated from all applications. Copies of any relevant documentation should be included with the plan.

Equal Employment Opportunity

Each state agency is responsible for an effective EEO program. (Gov. Code, § 19790.) 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 the California Department of Human Resources 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.)

Because the EEO Officer investigates and ensures proper handling of discrimination, sexual harassment and other employee complaints, the position requires separation from the regular chain of command, as well as regular and unencumbered access to the head of the organization.

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).)

The CRU reviewed the DDS EEO program that was in effect during the compliance review period.

FINDING NO. 3 – Equal Employment Opportunity Officer Did Not Monitor the Composition of Oral Panels in Departmental Exams

Summary: The DDS EEO Officer did not monitor the composition of the oral panels for departmental exams.

Criteria: The EEO Officer at each department must monitor the composition of oral panels in departmental examinations (Gov. Code, section 19795, subd. (a)).

Severity: Very Serious. Requiring the EEO Officer to monitor oral panels is intended to ensure protection against discrimination in the hiring process.

Cause: The DDS states that they did not have procedures in place for the EEO Officer to monitor the composition of oral interview panels in departmental exams.

Action: It is recommended that within 60 days of the Executive Officer’s approval of these findings and recommendations, the DDS submit to the CRU a written corrective action plan that addresses the corrections the department will implement to ensure conformity with the requirements of Government Code section 19795. Copies of any relevant documentation should be included in the plan.

Personal Services Contracts

A PSC includes any contract, requisition, or purchase order under which labor or personal services is a significant, separately identifiable element, and the business or person performing the services is an independent contractor that does not have status as an employee of the State. (Cal. Code Reg., tit. 2, § 547.59.) The California Constitution has an implied civil service mandate limiting the state’s authority to contract with private entities to perform services the state has historically or customarily performed. Government Code section 19130, subdivision (a), however, codifies exceptions to the civil service mandate where PSC’s achieve cost savings for the state. PSC’s that are of a type enumerated in subdivision (b) of Government Code section 19130 are also permissible. Subdivision (b) contracts include private contracts for a new state function, services that are not available within state service, services that are incidental to a contract for the purchase or lease of real or personal property, and services that are of an urgent, temporary, or occasional nature.

For cost-savings PSC’s a state agency is required to notify the SPB of its intent to execute such a contract. (Gov. Code, § 19131.) For subdivision (b) contracts, the SPB reviews the adequacy of the proposed or executed contract at the request of an employee organization representing state employees. (Gov. Code, § 19132.)

During the compliance review period, the DDS had 20 PSC’s that were in effect and subject to Department of General Services (DGS) approval, and thus our procedural review. The CRU reviewed 10 contracts, which are listed below:

Vendor	Services	Contract Dates	Contract Amount	Justification Identified
ACCO Engineered Systems, Inc.	Equipment Maintenance	7/2016 - 6/2018	\$200,134	Yes
Covington & Burling, LLP	Legal Litigation	5/2014 - 6/2017	\$1,985,000	Yes

Vendor	Services	Contract Dates	Contract Amount	Justification Identified
Disability Rights California	Client Rights Advocacy Services	7/2016 - 6/2021	\$31,005,995	Yes
H & W Independent Solutions, Inc.	Consulting Services	10/2015 - 10/2016	\$1,808,061	Yes
Hospice by the Bay	Hospice Services	7/2016 - 6/2018	\$227,760	Yes
Kern Community College District	Training for Psychiatric Technicians	7/2016 - 6/2017	\$242,398	Yes
Mediwaste Disposal, LLC	Hazardous Waste Disposal	10/2016 - 6/2018	\$92,100	Yes
Mission Analytics Group, Inc.	Risk Analysis	7/2016 - 6/2018	\$1,876,000	Yes
Valley of the Moon FPD	Ambulance Services	7/2016 - 6/2018	\$60,000	Yes
West Ed.	Consulting Services	7/2016 - 6/2019	\$5,160,000	Yes

FINDING NO. 4 – Personal Services Contracts Complied with Procedural Requirements

When a state agency requests approval from the DGS for a subdivision (b) contract, the agency must include with its contract transmittal a written justification that includes *specific and detailed factual information* that demonstrates how the contract meets one or more conditions specified in Government Code section 19131, subdivision (b). (Cal. Code Reg., tit. 2, § 547.60.)

The total dollar amount of all the PSC’s reviewed was \$42,657,448. It was beyond the scope of the review to make conclusions as to whether the DDS justifications for the contracts were legally sufficient. The DDS provided specific and detailed factual information in the written justifications as to how the contract met at least one condition set forth in Government Code section 19131, subdivision (b). Accordingly, the DDS PSC’s complied with civil service laws and board rules.

Mandated Training

Each member, officer, or designated employee of a state agency who is required to file a statement of economic interest (referred to as “filers”) because of the position he or she holds with the agency is required to take an orientation course on the relevant ethics statutes and regulations that govern the official conduct of state officials. (Gov. Code, §§ 11146 & 11146.1.) State agencies are required to offer filers the orientation course on a semi-annual basis. (Gov. Code, § 11146.1.) New filers must be trained within six months of appointment and at least once during each consecutive period of two calendar years, commencing on the first odd-numbered year thereafter. (Gov. Code, § 11146.3.)

Upon the initial appointment of any employee designated in a supervisory position, the employee shall be provided a minimum of 80 hours of training, as prescribed by the CalHR. (Gov. Code, § 19995.4, subd. (b).) The training addresses such topics as the role of the supervisor, techniques of supervision, performance standards, and sexual harassment and abusive conduct prevention. (Gov. Code, §§ 12950.1, subds. (a), (b), & (c), & 19995.4, subd. (b).) The training must be successfully completed within the term of the employee’s probationary period or within six months of the initial appointment, unless it is demonstrated that to do so creates additional costs or that the training cannot be completed during this time period due to limited availability of supervisory training courses. (Gov. Code, § 19995.4, subd. (c).) As to the sexual harassment and abusive-conduct prevention component, the training must thereafter be provided to supervisors once every two years. (Gov. Code, § 12950.1.)

Within 12 months of the initial appointment of an employee to a management or CEA position, the employee shall be provided leadership training and development, as prescribed by CalHR. (Gov. Code, § 19995.4, subds. (d) & (e).) For management employees the training must be a minimum of 40 hours and for CEAs the training must be a minimum of 20 hours. (*Ibid.*) Thereafter, for both categories of appointment, the employee must be provided a minimum of 20 hours of leadership training on a biannual basis. (*Ibid.*)

The Board may conduct reviews of any appointing power’s personnel practices to ensure compliance with civil service laws and Board regulations. (Gov. Code, § 18661, subd. (a).) In particular, the Board may audit personnel practices related to such matters as selection and examination procedures, appointments, promotions, the management of probationary periods, and any other area related to the operation of the merit principle in state civil service. (*Ibid.*) Accordingly, the CRU reviews documents and

records related to training that appointing powers are required by the afore-cited laws to provide its employees.

The CRU reviewed the DDS' mandated training program that was in effect during the compliance review period.

FINDING NO. 5 – Supervisory Training Was Not Provided for All Supervisors

Summary: The DDS did not provide basic supervisory training to 26 of 116 new supervisors within twelve months of appointment.

Criteria: Each department must provide its new supervisors a minimum of 80 hours of supervisory training within the probationary period. Upon completion of the initial training, supervisory employees shall receive a minimum 20 hours of leadership training biannually. (Gov. Code, § 19995.4, subd. (b) and (c).)

Upon initial appointment of an employee to a managerial position, each employee must receive 40 hours of leadership training within 12 months of appointment. Thereafter, the employee shall receive a minimum of 20 hours of leadership training biannually. (Gov. Code, § 19995.4, subd. (d).)

Upon initial appointment of an employee to a CEA position, each employee must receive 20 hours of leadership training within 12 months of appointment. Thereafter, the employee shall receive a minimum of 20 hours of leadership training biannually. (Gov. Code, § 19995.4, subd. (e).)

Severity: Very Serious. The department does not ensure its leaders are properly trained. Without proper training, leaders may not properly carry out their leadership roles, including managing employees.

Cause: The DDS states that they do not have a consistent process in place to follow up with managers to ensure new supervisors attend the scheduled training as mandated.

Action: The DDS must take appropriate steps to ensure that new supervisors are provided supervisory training within twelve months of appointment. It is therefore recommended that no later than 60

days after the SPB's Executive Officer's approval of these findings and recommendations, the DDS must submit a written corrective action plan to ensure compliance with basic supervisory training mandates. Copies of any relevant documentation should be included with the plan.

FINDING NO. 6 – Sexual Harassment Prevention Training Was Not Provided for All Supervisors

- Summary:** The DDS did not provide sexual harassment prevention training to three of 116 new supervisors within six months of their appointment. In addition, the DDS did not provide sexual harassment prevention training to six of 286 existing supervisors every two years.
- Criteria:** Each department must provide its supervisors two hours of sexual harassment prevention training every two years. New supervisors must be provided sexual harassment prevention training within six months of appointment. (Gov. Code, § 12950.1, subd. (a).)
- Severity:** Very Serious. The department does not ensure its new supervisors are properly trained to respond to sexual harassment or unwelcome sexual advances, requests for sexual favors, and other verbal or physical harassment of a sexual nature. This limits the department's ability to retain a quality workforce, impacts employee morale and productivity, and subjects the department to litigation.
- Cause:** The DDS states that they do not have a consistent process in place to follow up with managers to ensure supervisors attend the scheduled training as mandated.
- Action:** The DDS must take appropriate steps to ensure that its supervisors are provided sexual harassment prevention training within the time periods prescribed. It is therefore recommended that no later than 60 days after the SPB's Executive Officer's approval of these findings and recommendations, the DDS must submit a written corrective action plan to ensure compliance with sexual harassment prevention training mandates. Copies of any relevant documentation should be included with the plan.

FINDING NO. 7 – Ethics Training Was Not Provided for All Filers

- Summary:** The DDS did not provide ethics training to 32 of 139 existing filers. In addition, 11 of 40 new filers were not provided ethics training within six months of their appointment.
- Criteria:** New filers must be provided ethics training within six months of appointment. Existing filers must be trained at least once during each consecutive period of two calendar years commencing on the first odd-numbered year thereafter. (Gov. Code, § 11146.3, subd. (b).)
- Severity:** Very Serious. The department does not ensure that its filers are aware of prohibitions related to their official position and influence.
- Cause:** The DDS states that they track and remind filers of the requirements to complete Ethics training, however consistent enforcement of the policy was not administered.
- Action:** The DDS must take appropriate steps to ensure that filers are provided ethics training within the time periods prescribed. It is therefore recommended that no later than 60 days after the SPB's Executive Officer's approval of these findings and recommendations, the DDS must submit a written corrective action plan to ensure compliance with ethics training mandates. Copies of any relevant documentation should be included with the plan.

DEPARTMENTAL RESPONSE

The DDS' response is attached as Attachment 1.

SPB REPLY

Based upon the DDS written response, the DDS will comply with the CRU recommendations and findings and provide the CRU with a corrective action plan.

It is further recommended that the DDS comply with the afore-state recommendations within 60 days of the Executive Officer's approval and submit to the CRU a written report of compliance.

DEPARTMENT OF DEVELOPMENTAL SERVICES

1600 NINTH STREET
SACRAMENTO, CA 95814
TTY (916) 654-2054 (For the Hearing Impaired)
(916) 654-1897



January 19, 2018

Susan Ambrose, Executive Director
State Personnel Board
801 Capitol Mall
Sacramento, CA 95814

Dear Ms. Ambrose:

Response to Compliance Review Report

The Department of Developmental Services (DDS) received the State Personnel Board's (SPB) draft report dated November 13, 2017, which concludes the Compliance Review conducted at DDS. Please reference the enclosed Attachment A.

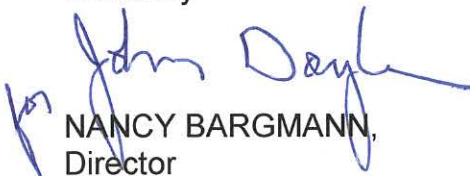
The draft report found that DDS is compliant in the area of Personal Services Contracts. However, DDS is not in compliance with personnel practices in the following areas:

- Examinations
- Appointments
- Equal Employment Opportunity
- Mandated Training requirements

DDS agrees with SPB's findings, and will take immediate steps to develop and submit a Corrective Action Plan within 60 days of the release of the report to address the deficiencies identified.

Thank you for the opportunity to respond to your draft report. If you have any questions, please contact Yolanda M. Alvarez, Chief of Human Resources, Personnel Services Section, at (916) 322-9297, or by email at Yolanda.Alvarez@dds.ca.gov.

Sincerely


NANCY BARGMANN,
Director

Enclosure

cc: John Doyle, DDS
Patti Mericantante, DDS
Yolanda Alvarez, DDS

Building Partnerships, Supporting Choices™

FINDING NO. 1 – Equal Employment Opportunity Questionnaires Were Not Separated From Applications for Examinations

Cause: It was an oversight to not detach the EEO Questionnaires from applications for examinations.

Department's Response: It is DDS' process to separate the EEO Questionnaires from applications for examinations.

FINDING NO. 2 – Equal Employment Opportunity Questionnaires Were Not Separated from Applications for Appointments

Cause: It was an oversight to not detach the EEO Questionnaires from the applications for appointments.

Department's Response: It is DDS' process to separate the EEO Questionnaires from the applications for appointments.

FINDING NO. 3 – Equal Employment Opportunity Officer Did Not Monitor the Composition of Oral Panels in Departmental Exams

Cause: DDS did not have procedures in place for the EEO Officer to monitor the composition of oral interview panels for departmental exams.

Department's Response: DDS' EEO Office, in collaboration with the Exam Unit, will establish procedures to monitor the composition of oral interview panels for departmental exams.

FINDING NO. 4 – Personal Services Contracts Complied with Procedural Requirements

Cause: None.

Department's Response: No adverse findings were reported during the Compliance Review.

FINDING NO. 5 – Supervisory Training Was Not Provided for All Supervisors

Cause: DDS requires supervisors to attend supervisory training, but does not have a consistent process in place to follow up with managers to ensure new supervisors attend the scheduled training as mandated.

Department's Response: DDS, in accordance with Government Code 19995.4, requires new supervisors and managers to attend 80 hours of basic supervision training within one year of appointment. Some supervisors failed to attend the training as

scheduled. Managers did not ensure the employees attended the training within one year of their appointment.

FINDING NO. 6 – Sexual Harassment Prevention Training Was Not Provided for All Supervisors

Cause: DDS requires supervisors to attend Sexual Harassment Prevention Training, but does not have a consistent process in place to ensure supervisors attend the scheduled training as mandated.

Department's Response: DDS, in accordance with Government Code section 12950.1, requires supervisors and managers to attend a sexual harassment prevention class within six months of appointment and every two years thereafter. Some supervisors and managers failed to attend the training as scheduled. Managers did not ensure the employees attended the training as required.

FINDING NO. 7 – Ethics Training Was Not Provided for All Filers

Cause: DDS tracks and reminds Filers of the requirements to complete the Ethics Training. However, consistent enforcement of the policy is not administered.

Department's Response: DDS requires all employees who are in Filer positions to complete the Ethics training bi-annually. Employees that recently joined the department, have changed their job classification to one that identifies them as a Filer, or that requires them to file a Statement of Economic Interest (Form 700), must take the Ethics course within six months of assuming the position. Some supervisors and managers failed to attend scheduled training as mandated.