



BOARD RESOLUTION ADOPTING THE COMPLIANCE REVIEW REPORT AND FINDINGS BY THE SPB COMPLIANCE REVIEW UNIT OF THE OFFICE OF THE STATE PUBLIC DEFENDER

WHEREAS, the State Personnel Board (SPB or Board) at its duly noticed meeting of March 20, 2014, carefully reviewed and considered the attached Compliance Review Report of the Office of the State Public Defender submitted by SPB's Compliance Review Unit.

WHEREAS, the Report was prepared following a baseline review of the Office of the State Public Defender 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

COMPLIANCE REVIEW REPORT OFFICE OF THE STATE PUBLIC DEFENDER FINDINGS AND RECOMMENDATIONS MARCH 20, 2014

Examinations

During the period under review, from May 1, 2011 through October 31, 2012, the Office of the State Public Defender (OSPD) conducted five examinations including one Career Executive Assignment (CEA) examination. The SPB reviewed each of those examinations, which are listed below:

Classification	Examination Type	Examination Components	Examination Date
Deputy State Public Defender	Open	Supplemental ¹	Continuous
Legal Counsel	Open	Supplemental	Continuous
Senior Legal Analyst	Promotional	Experience and Education ²	March 7, 2012
Staff Services Manager I	Promotional	Experience and Education	June 21, 2012
CEA, Chief Deputy State Public Defender	Open	Supplemental	February 2, 2012

FINDING NO. 1 – The OSPD Did Not Develop Job Analyses for the Civil Service Examinations That Were Given

¹ In a Supplemental application examination, applicants are not required to present themselves in person at a predetermined time and place. Supplemental applications are in addition to the regular application and must be completed in order to remain in the examination. Supplemental applications are also known as “rated” applications.

² 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.

The Merit Selection Manual (MSM), which is incorporated in California Code of Regulations, title 2, section 50, mandates the development and use of a job analysis for the examination process. A "[j]ob analysis shall serve as the primary basis for demonstrating and documenting the job-relatedness of examination processes conducted for the establishment of eligible lists within the State's civil service." (MSM (Oct. 2003), § 2200, p. 2.) The MSM requires that job analyses adhere to the legal and professional standards outlined in the job analysis section of the MSM, and that certain elements must be included in the job analysis studies. (*ibid.*) Those requirements include the following: (1) that the job analysis be performed for the job for which the subsequent selection procedure is developed and used; (2) the methodology utilized be described and documented; (3) the job analytic data be collected from a variety of current sources; (4) job tasks be specified in terms of importance or criticality, and their frequency of performance; (5) and job tasks must be sufficiently detailed to derive the requisite knowledge, skills, abilities (KSAs), and personal characteristics that are required to perform the essential tasks and functions of the job classification. (MSM, § 2200, pp. 2-3.)

While a job analysis was not required for the CEA examination that OSPD administered, a job analysis was required for each of the civil service examinations. OSPD, however, did not develop job analyses for those examinations. Without copies of the job analyses to review, the SPB is unable to determine if the civil service examinations were administered utilizing job-related examination procedures as required by the MSM.

Classification	List Active Date	Expiration Date	No. of Eligibles	Number of Vacant Positions as of 8/30/13
Deputy State Public Defender	10/29/12	Continuous	13	1
Legal Counsel	10/04/11	10/04/13	20	0
Senior Legal Analyst	3/07/12	3/07/13	3	2
Staff Services Manager I	06/21/12	06/21/13	2	.13

To correct this deficiency, OSPD must abolish the examination lists for the Deputy State Public Defender classifications. All other examination lists have expired.

Within 60 days of the Board's Resolution adopting these findings and recommendations, OSPD must submit to the SPB a written report of compliance verifying that the above-stated examination list has been abolished. Copies of any relevant documents should be included with the report. Prior to OSPD administering any future examinations for those classifications, OSPD should create and develop each examination based upon a job analysis that meets the requirements of the MSM.

Furthermore, the Compliance Review Division (CRD) finds the appointments that were made from the examinations that were administered without a Job Analysis were made in good faith, are over a year old and did not merit being voided.

The Board is aware of the complex nature of and amount of time required to develop and complete a job analysis. It is thus also recommended that within 60 days of the Board's Resolution adopting these findings and recommendations, the ABC submit to the SPB a written corrective action plan describing what steps will be taken to develop job analyses for any new examinations that ABC conducts in the future.

Appointments

During the compliance review period, the OSPD made 18 appointments. The SPB reviewed each of those appointments, which are listed below:

Classification	Appointment Type	Tenure/Time Base	No. of Appointments
Staff Services Manager I	Certification List	Permanent/Full Time	1
Office Technician (Typing)	Certification List	Permanent Full/ Time	1
Senior Legal Analyst	Certification List	Permanent/ Full Time	3
Senior State Public Defender	Certification List	Permanent/ Full Time	1
Staff Information Systems Analyst (Specialist)	Certification List	Permanent/ Full Time	1
Senior Deputy State Public Defender	Certification List	Permanent/ Full Time	7
Office Technician (Typing)	Transfer	Permanent/ Full Time	1

Senior Legal Typist	Transfer	Permanent/ Full Time	1
Legal Analyst	Transfer	Permanent/ Full Time	1
Supervising Deputy State Public Defender	Transfer	Permanent/ Full Time	1

FINDING NO. 2 – The OSPD Properly Complied with Civil Service Laws and Board Rules for All the Appointments Made During the Compliance Review Period

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).)

The OSPD measured each list and transfer applicant's ability to perform the duties of the job by conducting hiring interviews and selecting the best suited candidates. Regarding the transfer appointments, the OSPD verified the transfer eligibility of each candidate to the appointed class. The OSPD made appointments to Office Technician (Typing), Senior Legal Typist, Legal Analyst, and Supervising Deputy State Public Defender by transfer of employees from other agencies. The OSPD complied with civil service laws and Board rules in making these appointments.

For each of the 14 list appointments, the OSPD ordered a certification list of candidates ranked competitively. After properly clearing the SROA³ and reemployment list, the selected candidates were appointed based on eligibility attained by being reachable

³ The State Restriction of Appointments (SROA) Program is intended to prevent the layoff and separation of skilled and experienced employees from State service. The SROA Program assists in placing affected employees by temporarily restricting the methods of appointment available to appointing powers. Employees on SROA lists are granted preferential consideration over all other types of appointments except appointments from reemployment lists and mandatory reinstatements.

within the first three ranks of the certification list. Accordingly, as to those appointments, the OSPD complied with civil service laws and Board rules.

The SPB thus found that all the appointments OSPD made during the compliance review period satisfied civil service laws and Board rules.

Equal Employment Opportunity

The SPB reviewed the OSPD's EEO policies, procedures, and programs that were in effect during the compliance review period.

FINDING NO. 3 – OSPD Does Not Have an Effective EEO Program

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.) In pertinent part, the appointing power is required to do the following: (1) issue a policy statement committing to equal employment opportunity; (2) issue procedures for filing, processing, and resolving discrimination complaints within the state agency, consistent with state laws and rules, and for filing appeals from the agency's decision on a discrimination complaint; and (3) issue procedures for providing equal upward mobility and promotional opportunities to state employees. (*Ibid.*) In addition, each agency is required to establish in writing its own internal discrimination complaint process. (Cal. Code Reg., tit. 2, § 64.3.)

OSPD provided evidence of its efforts to offer upward mobility opportunities for its entry-level staff, which include Legal Secretary and Senior Legal Typist. While those efforts are noteworthy, OSPD did not (1) issue a policy statement committing to equal employment opportunity; (2) issue procedures for filing, processing, and resolving discrimination complaints within the state agency, consistent with state laws and rules, and for filing appeals from the agency's decision on a discrimination complaint.

Accordingly, OSPD must develop and implement an effective EEO program that includes providing employees with guidance on the EEO process and instructions on how to file discrimination claims. No later than 30 days after the Board's Resolution adopting these findings and recommendations, OSPD must develop an EEO program, and no later than 60 days after the Board's Resolution adopting these findings and recommendations, OSPD must implement the EEO program and submit to the SPB a

written report of compliance. Copies of relevant documents should be included with the report.

FINDING NO. 4 – The OSPD Does Not Have a Disability Advisory Committee (DAC)

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).)

OSPD does not have a DAC. Accordingly, OSPD 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. No later than 30 days after the Board's Resolution adopting these findings and recommendations, OSPD must invite all its employees to serve on the DAC, and no later than 60 days after the Board's Resolution adopting these findings and recommendations, OSPD must establish the DAC and submit to the SPB a written report of compliance. Copies of any relevant documents should be included with the report.

DEPARTMENTAL RESPONSE

OSPD was provided a copy of the initial report to review. A copy of OSPD's response is attached as Attachment 1.

SPB REPLY

Based upon OSPD's written response, OSPD will develop job analyses for future exams. In addition, OSPD will develop and implement a EEO program and establish a DAC.

It is recommended that OSPD comply with the afore-stated recommendation 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 OSPD during this compliance review.

OFFICE OF THE STATE PUBLIC DEFENDER

MICHAEL J. HERSEK
State Public Defender
1111 Broadway, Suite 1000
Oakland, CA 94607
Telephone: (510) 267-3300
Fax: (510) 452-8712
hersek@ospd.ca.gov



February 25, 2014

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

Dear Mr. Murray:

Thank you for the opportunity to provide comments on your Compliance Review Report for the Office of the State Public Defender (OSPD). We have reviewed your findings and have the following responses:

Finding No. 1 – The OSPD did not develop Job Analyses for the civil service examinations that were given.

Department Response: We are pleased that the Compliance Review Report recognizes that appointments made from the exams administered without Job Analysis were made in good faith. In fact, the Department has used the same method to administer its exams, make appointments, and promote for more than 20 years without issue. Nevertheless, within 60 days of the Board Resolution adopting the findings and recommendations, OSPD will submit to SPB a written corrective action plan, including a process to develop job analyses for future examinations.

Finding No. 2 – The OSPD properly complied with civil service laws and Board Rule for all the appointments made during the compliance review period.

Department Response: No action needed. OSPD will continue to comply with Civil Service Laws and Board Rule regarding all appointments.

Finding No. 3 – OSPD does not have an effective Equal Employment Opportunity (EEO) Program.

Department Response: OSPD is committed to complying with aspects of the State's EEO program and all issues relative to equal employment opportunities. For the past 20 years OSPD has made it clear to all its job applicants and employees that the Department follows and uses the State's EEO program. In this regard, OSPD will develop and implement a more robust EEO program of its own. We will implement a

Mr. James L. Murray, Chief
Compliance Review Division
February 25, 2014

new OSPD EEO Policy and Procedure and submit to SPB a written report of compliance.

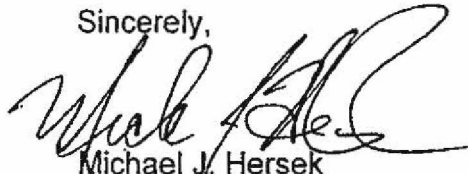
Finding No. 4 – OSPD does not have a Disability Advisory Committee (DAC).

Department Response: OSPD agrees that a DAC needs to be established. OSPD will adopt the SPB recommendation and establish the DAC in accordance with GC Sections 19795 subd.. (b)(1) and (b)(2).

We appreciate your input and feedback during this compliance review. It is through these exercises that we continue to learn and improve the organization and effectiveness of our human resources services.

If you have any further questions or need additional information, please contact my Chief Administrator, Mr. Louis Stanford at (916) 322-3399.

Sincerely,



Michael J. Hersek
State Public Defender