



COMPLIANCE REVIEW REPORT

**STATE COUNCIL ON DEVELOPMENTAL
DISABILITIES**

Compliance Review Unit
State Personnel Board
August 17, 2016

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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 State Council on Developmental Disabilities (SCDD) personnel practices in the areas of appointments, and EEO from February 1, 2015, through January 31, 2016, and mandated training from February 1, 2014, through January 31, 2016. The following table summarizes the compliance review findings.

Area	Finding	Severity
Appointments	Equal Employment Opportunity Questionnaires Were Not Separated from Applications	Very Serious
Equal Employment Opportunity	No Active Upward Mobility Program	Serious
Mandated Training	Ethics Training Was Not Provided for All Filers	Very Serious

Area	Finding	Severity
Mandated Training	Basic Supervisory Training Was Not Provided for All Supervisors	Very Serious
Mandated Training	Sexual Harassment Prevention Training Was Not Provided for All Supervisors	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 SCDD is an independent state agency mandated by federal and state law to pursue systemic change, capacity-building, and advocacy to promote a person-centered and family-based system of services and supports for people with intellectual and/or developmental disabilities.

The SCDD consists of 31 voting members, all of whom are appointed by the Governor. The SCDD headquarters and its 13 statewide regional offices help the SCDD fulfill the statutory mandates under the federal Developmental Disabilities Assistance and Bill of Rights Act (Title 42, USC, § 15001 et seq.) and the Lanterman Developmental Disabilities Act (Welf. & Inst. Code, § 4500 et seq.).

SCOPE AND METHODOLOGY

The scope of the compliance review was limited to reviewing SCDD appointments, and EEO program from February 1, 2015, through January 31, 2016, and mandated training from February 1, 2014, through January 31, 2016. The primary objective of the review was to determine if SCDD personnel practices, policies, and procedures complied with state civil service laws and board regulations, and to recommend corrective action where deficiencies were identified.

The SCDD did not conduct any examinations during the compliance review period. The SCDD also did not execute any PSC's during the compliance review period subject to the Department of General Services approval and thus our procedural review.¹

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

A cross-section of SCDD appointments were selected for review to ensure that samples of various appointment types, classifications, and levels were reviewed. The CRU examined the documentation that the SCDD provided, which included 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 SCDD 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 (DAC).

In addition, the SCDD's 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 July 15, 2016, an exit conference was held with the SCDD to explain and discuss the CRU's initial findings and recommendations. The CRU received and carefully reviewed the SCDD's written response on July 22, 2016, which is attached to this final compliance review report.

FINDINGS AND RECOMMENDATIONS

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).)

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.

During the compliance review period, the SCDD made 17 appointments. The CRU reviewed all of those appointments, which are listed below:

Classification	Appointment Type	Tenure	Time Base	No. of Appointments
Staff Services Manager II (Managerial)	Certification List	Permanent	Full Time	13
Staff Services Manager I	Reinstatement	Permanent	Full Time	1
Staff Services Manager I	Retired Annuitant	Temporary	Intermittent	1
Associate Governmental Program Analyst	Retired Annuitant	Temporary	Intermittent	1
Community Program Specialist II	Transfer	Permanent	Full Time	1

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

Summary: Out of 17 appointments reviewed, five appointment files included applications where EEO questionnaires were not separated from the STD 678 employment application. Specifically, 23 of the 288 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 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, age, or sexual orientation). 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 SCDD states that they lacked training related to the proper processing of EEO information.

Action: It is recommended that within 60 days of the Executive Officer’s approval of these findings and recommendations, the SCDD submit to the CRU a written corrective action plan that the department will implement to ensure conformity with in the future 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 (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.)

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. In a state agency with less than 500 employees, like the SCDD, the EEO Officer may be the Personnel Officer.

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 SCDD EEO program that was in effect during the compliance review period.

FINDING NO. 2 – No Active Upward Mobility Program

Summary: Although the department provided a partial upward mobility program plan (UMPP), there was no active upward mobility program in place during the compliance review period.

Criteria: Each appointing authority shall develop and maintain a written upward mobility plan as specified in the SPB “Guidelines for Administering Departmental Upward Mobility Employment Programs,” revised July 25, 2000.

The plan shall include: (a) A policy statement regarding the appointing authority's commitment to providing equal upward mobility opportunity for its employees in low-paying occupations. (b) A description of the components of its program consistent with Government Code section 19401, how employees may access the program, and where information about the program may be obtained. (c) The roles and responsibilities of the employee, the employee's supervisor, the coordinator, the personnel office, the training office, and the equal employment opportunity office regarding the mobility program. (d) Criteria for selecting employees in low-paying occupations to participate in the upward mobility efforts described in Government Code section 19401. (e) The number of employees in classifications in low-paying occupations used by the appointing authority; career ladders, bridging classes, and entry technical, professional, and administrative classes targeted for upward mobility; and planned upward mobility examinations. (Cal. Code Regs., tit. 2, § 599.983.)

Severity: Serious. The department did not have a complete plan to ensure it has an effective upward mobility program to develop and advance employees in low-paying occupations.

Cause: The SCDD states that the written upward mobility plan had been drafted but not finalized during the compliance review period.

Action: It is recommended that within 60 days of the Executive Officer's approval of these findings and recommendations, the SCDD 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 19401. Copies of any relevant documentation should be included with the plan.

Mandated Training

Each state agency shall offer at least semiannually to each of its filers an orientation course on the relevant ethics statutes and regulations that govern the official conduct of state officials. New filers must be trained within six months of appointment. (Gov. Code, § 11146.3.)

Each department must provide its new supervisors supervisory training within 12 months of appointment. (Gov. Code, § 19995.4, subd. (b) and (c).) The training must be a minimum of 80 hours, 40 of which must be structured and given by a qualified instructor. The other 40 hours may be done on the job by a higher-level supervisor or manager. (Gov. Code, § 19995.4, subd. (b).)

Additionally, 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).)

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

FINDING NO. 3 – Ethics Training Was Not Provided for All Filers

Summary: The SCDD did not provide ethics training to one of one existing filer. In addition, the SCDD did not provide ethics training to one of 19 new filers 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 SCDD states that there was a lack of administration notification.

Action: The SCDD 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 SCDD must establish a plan to ensure compliance with ethics training mandates and submit to the SPB a written report of compliance.

FINDING NO. 4 – Basic Supervisory Training Was Not Provided for All Supervisors

Summary: The SCDD did not provide basic supervisory training to three of 16 new supervisors within twelve months of appointment.

Criteria: Each department must provide its new supervisors supervisory training within twelve months of appointment. (Gov. Code, § 19995.4 subd. (b) and (c).) The training must be a minimum of 80 hours, 40 of which must be structured and given by a qualified instructor. The other 40 hours may be done on the job by a higher-level supervisor or manager. (Gov. Code, § 19995.4, subd. (b).)

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

Cause: The SCDD states that there was a lack of available state sponsored training sessions; staff was located in multiple locations throughout the state; and there were funding constraints.

Action: The SCDD must take appropriate steps to ensure that new supervisors are provided supervisory training within the twelve months.

It is therefore recommended that no later than 60 days after the SPB's Executive Officer's approval of these findings and recommendations, the SCDD must establish a plan to ensure compliance with supervisory training mandates and submit to the SPB a written report of compliance.

FINDING NO. 5 – Sexual Harassment Prevention Training Was Not Provided for All Supervisors

Summary: The SCDD did not provide sexual harassment prevention training to two of 16 new supervisors within six months of their appointment. In addition, the SCDD did not provide sexual harassment prevention training to one of one existing supervisor every two years.

Criteria: Each department must provide its supervisors two hours of sexual harassment 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 SCDD states that the department failed to collect and retain training certificates.

Action: The SCDD must take appropriate steps to ensure that its supervisors are provided sexual harassment 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 SCDD must establish a plan to ensure compliance with sexual harassment prevention training mandates and submit to the SPB a written report of compliance.

DEPARTMENTAL RESPONSE

The SCDD's response is attached as Attachment 1.

SPB REPLY

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

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

**STATE COUNCIL ON
DEVELOPMENTAL DISABILITIES**



MEMORANDUM

DATE: July 22, 2016
TO: State Personnel Board
FROM: Aaron Carruthers, Executive Director
SUBJECT: SCDD Compliance Review Report

We appreciate the State Personnel Board's (SPB) efforts toward oversight and good governance by conducting this regularly scheduled routine compliance review. We appreciate the SPB team's thoroughness and professionalism.

According to State definitions, the SCDD is considered as a small department with one position allocated for personnel. Additionally, the transactions work is contracted to another department. During the period being reviewed the SCDD saw the retirement of one personnel officer, had an interim retired annuitant personnel officer, and welcomed the permanent personnel officer. We are proud of what was accomplished during this time, including improvements in every area noted in the SPB's 2014 report. We also recognize areas for improvement.

Finding #1 Appointment: EEO Questionnaires

We understand that approximately 40% of state departments have a "very serious" finding in this area. Out of the 288 applications SCDD received during the review period, this area was met 265 times, which is a 92% compliance rate. We strive for 100% and are confident about SCDD's ability to meet this standard since the state is implementing a statewide solution to mitigate such a widespread issue.

Finding #2 Equal Employment Opportunity: Upward Mobility Program

As noted in the report, this item has already been addressed and remediated. The Upward Mobility Program is in place.

Finding #3 Mandated Training: Ethics

This item has already been addressed and remediated. All filers have completed the ethics training.

Finding #4 Mandated Training: Supervisory Training

SCDD acknowledges the importance of Supervisory Training. Due to the lack of available state sponsored training sessions, staff being located in multiple locations throughout the state, and funding constraints, the SCDD faced a number of challenges.

SCDD agrees that it was not able to provide the Supervisory Training to three of its employees within the required 12 months. The training will be provided.

Finding #5 Mandated Training: Sexual Harassment Prevention Training

SCDD takes this training seriously and provided it to its employees. One person received it 6 months and 21 days from appointment. The other two employees who received the training could not locate their certificates. SCDD will continue to ensure that its employees receive this training as defined by government code.