



# **COMPLIANCE REVIEW REPORT**

## **CALIFORNIA EDUCATIONAL FACILITIES AUTHORITY**

Compliance Review Unit  
State Personnel Board  
October 4, 2021

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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 authorities' 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.

Pursuant to Government Code section 18502, subdivision (c), the SPB and the California Department of Human Resources (CalHR) may "delegate, share, or transfer between them responsibilities for programs within their respective jurisdictions pursuant to an agreement." SPB and CalHR, by mutual agreement, expanded the scope of program areas to be audited to include more operational practices that have been delegated to departments and for which CalHR provides policy direction. Many of these delegated practices are cost drivers to the state and were not being monitored on a statewide basis.

As such, SPB also conducts compliance reviews of appointing authorities' personnel practices to ensure that state departments are appropriately managing the following non-merit-related personnel functions: compensation and pay, leave, and policy and processes. These reviews will help to avoid and prevent potential costly litigation related to improper personnel practices, and deter waste, fraud, and abuse.

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.

It should be noted that this report only contains findings from this hiring authority's compliance review. Other issues found in SPB appeals and special investigations as well as audit and review findings by other agencies such as the CalHR and the California State Auditor are reported elsewhere.

### **EXECUTIVE SUMMARY**

The CRU conducted a routine compliance review of the California Educational Facilities Authority (CEFA) personnel practices in the areas of EEO, PSC's, mandated training, leave, and policy and processes. The following table summarizes the compliance review findings.

| Area                         | Severity      | Finding   |
|------------------------------|---------------|---|
| Equal Employment Opportunity | In Compliance | Equal Employment Opportunity Program Complied with All Civil Service Laws and Board Rules                                     |
| Personal Services Contracts  | In Compliance | Personal Services Contract Complied with Procedural Requirements  |
| Mandated Training            | In Compliance | Mandated Training Complied with Statutory Requirements  |
| Leave                        | In Compliance | Administrative Time Off Authorization Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines     |
| Leave                        | In Compliance | Leave Auditing and Timekeeping Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines            |
| Policy                       | In Compliance | Nepotism Policy Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines                           |
| Policy                       | In Compliance | Workers' Compensation Process Complied with Civil Service Laws and Regulations and CalHR Policies and Guidelines              |
| Policy                       | In Compliance | Performance Appraisal Policy and Processes Complied with Civil Service Laws and Regulations and CalHR Policies and Guidelines |

## **BACKGROUND**

The CEFA, established in 1973, was created for the purpose of issuing revenue bonds to assist private non-profit institutions of higher learning in the expansion and construction of educational facilities. Because it is authorized to issue tax-exempt bonds, the CEFA may provide more favorable financing to private institutions than might otherwise be obtainable. The law specifically provides that bonds issued by CEFA shall not be a debt, liability, or claim on the faith, credit, or taxing power of the State of California, or any of its political subdivisions. The full faith and credit of the participating institution is normally pledged to the payment of the bonds.

The California State Treasurer's Office performs human resources operations for the CEFA.

## **SCOPE AND METHODOLOGY**

The scope of the compliance review was limited to reviewing the CEFA's examinations, appointments, EEO program, PSC's, mandated training, compensation and pay, leave, and policy and processes<sup>1</sup>. The primary objective of the review was to determine if the CEFA'S personnel practices, policies, and procedures complied with state civil service laws and Board regulations, Bargaining Unit Agreements, CalHR policies and guidelines, CalHR Delegation Agreements, and to recommend corrective action where deficiencies were identified.

The CEFA did not conduct any examinations, permanent withhold actions, unlawful appointment investigations, and did not make any appointments, including additional appointments, during the compliance review period. Furthermore, during the review period, the CEFA did not issue or authorize any hiring above the minimum requests, red circle rate requests, arduous pay, bilingual pay, monthly pay differentials, alternate range movements, or out-of-class assignments.

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

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<sup>1</sup> Timeframes of the compliance review varied depending on the area of review. Please refer to each section for specific compliance review timeframes.

The CEFA's PSC's were also reviewed.<sup>2</sup> It was beyond the scope of the compliance review to make conclusions as to whether the CEFA's justifications for the contracts were legally sufficient. The review was limited to whether the CEFA's practices, policies, and procedures relative to PSC's complied with procedural requirements.

The CEFA's mandated training program was reviewed to ensure all employees required to file statements of economic interest were provided ethics training, and that all supervisors, managers, and those in Career Executive Assignments (CEA) were provided sexual harassment prevention training within statutory timelines.

The CRU reviewed the CEFA's monthly internal audit process to verify all leave input into any leave accounting system was keyed accurately and timely and ensure the department certified that all leave records have been reviewed and corrected if necessary. The CRU selected a small cross-section of the CEFA's units in order to ensure they maintained accurate and timely leave accounting records. Part of this review also examined a cross-section of the CEFA's employees' employment and pay history, state service records, and leave accrual histories to ensure employees with non-qualifying pay periods did not receive vacation/sick leave and/or annual leave accruals or state service credit. Additionally, the CRU reviewed a selection of the CEFA employees who used Administrative Time Off (ATO) in order to ensure that ATO was appropriately administered.

During the compliance review period, the CEFA did not have any employees with non-qualifying pay period transactions. The CEFA also did not track any temporary intermittent employees by actual time worked during the compliance review period.

Moreover, the CRU reviewed the CEFA's policies and processes concerning nepotism, worker's compensation, and performance appraisals. The review was limited to whether the CEFA's policies and processes adhered to procedural requirements.

The CEFA declined to have an exit conference. The CEFA was found to be in compliance in all areas reviewed during the compliance review period. Therefore, no departmental response is required.

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<sup>2</sup>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.

## **FINDINGS AND RECOMMENDATIONS**

### **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; and cooperate with the CalHR, in accordance with Civil Code section 1798.24, subdivisions (o) and (p), by providing access to all required files, documents and data necessary to carry out these mandates. (*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, subd. (a).)

Pursuant to Government Code section 19795, subdivision (a), in a state agency with less than 500 employees, like the CEFA, 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).)

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|----------------------|----------------------|--|
| <b>IN COMPLIANCE</b> | <b>FINDING NO. 1</b> | <b>EQUAL EMPLOYMENT OPPORTUNITY PROGRAM<br/>COMPLIED WITH ALL CIVIL SERVICE LAWS AND BOARD<br/>RULES</b> |
|----------------------|----------------------|--|

After reviewing the policies, procedures, and programs necessary for compliance with the EEO program's role and responsibilities according to statutory and regulatory guidelines, the CRU determined that the CEFA's EEO program provided employees with information and guidance on the EEO process including instructions on how to file discrimination claims. Furthermore, the EEO program outlines the roles and responsibilities of the EEO Officer, as well as supervisors and managers. The EEO Officer, who is at a managerial level, reports directly to the State Treasurer and Chair of CEFA. The CEFA also provided evidence of its efforts to promote EEO in its hiring and employment practices and to increase its hiring of persons with a disability.

**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 Regs., 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, but are not limited to, 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 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 period under review, July 1, 2020, through June 30, 2021, the CEFA had one PSC that was in effect. The CRU reviewed that PSC, which is listed below:

| Vendor       | Services           | Contract Date  | Contract Amount | Justification Identified? | Union Notification? |
|--------------|--------------------|----------------|-----------------|---------------------------|---------------------|
| Gilbert CPAs | Legal Consultation | 7/1/19-6/30/22 | \$57,000        | Yes                       | Yes                 |

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|----------------------|---|
| <b>IN COMPLIANCE</b> | <b>FINDING NO. 2 PERSONAL SERVICES CONTRACT COMPLIED WITH PROCEDURAL REQUIREMENTS</b> |
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The total dollar amount of the PSC reviewed was \$57,000. It was beyond the scope of the review to make conclusions as to whether the CEFA’s justification for the contract was legally sufficient. For the PSC reviewed, the CEFA provided specific and detailed factual information in the written justification as to how the contract met at least one condition set forth in Government Code section 19130, subdivision (b). Additionally, the CEFA complied with proper notification to the organization that represented state



employees who perform the type or work contracted. Accordingly, the CEFA's PSC 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.)

Additionally, new supervisors must be provided sexual harassment prevention training within six months of appointment. Thereafter, each department must provide its supervisors two hours of sexual harassment prevention training every two years. (Gov. Code, § 12950.1, subds. (a) and (b); Gov. Code, § 19995.4.)

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 CEFA's mandated training program that was in effect during the compliance review period, July 1, 2019, through December 31, 2020.

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| <b>IN COMPLIANCE</b> | <b>FINDING NO. 3</b> | <b>MANDATED TRAINING COMPLIED WITH STATUTORY REQUIREMENTS</b> |
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The CEFA provided ethics training to its one existing filer, "at least once during each consecutive period of two calendar years, commencing on the first odd-numbered year thereafter." In addition, the CEFA provided sexual harassment prevention training to its one existing supervisor every two years. The CEFA did not employ any new filers to complete ethics training, nor any new supervisors to complete sexual harassment

prevention training within six months of appointment. Thus, the CEFA complied with mandated training requirements within statutory timelines.

**Leave**

**Administrative Time Off**

ATO is a form of paid administrative leave status initiated by appointing authorities for a variety of reasons. (Human Resources Manual Section 2121.) Most often, ATO is used when an employee cannot come to work because of a pending investigation, fitness for duty evaluation, or when work facilities are unavailable. (*Ibid.*) ATO can also be granted when employees need time off for reasons such as blood or organ donation, extreme weather preventing safe travel to work, states of emergency, voting, and when employees need time off to attend special events. (*Ibid.*)

During the period under review, April 1, 2020, through March 31, 2021, the CEFA placed one employee on ATO. The CRU reviewed that ATO appointment to ensure compliance with applicable laws, regulations, and CalHR policy and guidelines, which is listed below:

| Classification            | Time Frame        | Amount of Time on ATO |
|---------------------------|-------------------|-----------------------|
| Staff Services Manager II | 6/16/20 - 6/29/20 | 14 Days               |

|                      |  |
|----------------------|--|
| <b>IN COMPLIANCE</b> | <b>FINDING NO. 4 ADMINISTRATIVE TIME OFF AUTHORIZATION COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND/OR CALHR POLICIES AND GUIDELINES</b> |
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The CRU found no deficiencies in the ATO transaction reviewed during the compliance review period. The CEFA provided the proper documentation justifying the use of ATO and adhered to applicable laws, regulations and CalHR policy and guidelines.

**Leave Auditing and Timekeeping**

Departments must keep complete and accurate time and attendance records for each employee and officer employed within the agency over which it has jurisdiction. (Cal. Code Regs., tit. 2, § 599.665.)

Departments are directed to create a monthly internal audit process to verify all leave input into any leave accounting system is keyed accurately and timely. (Human

Resources Manual Section 2101.) Departments shall create an audit process to review and correct leave input errors on a monthly basis. The review of leave accounting records shall be completed by the pay period following the pay period in which the leave was keyed into the leave accounting system. *(Ibid.)* If an employee’s attendance record is determined to have errors or it is determined that the employee has insufficient balances for a leave type used, the attendance record must be amended. *(Ibid.)* Attendance records shall be corrected by the pay period following the pay period in which the error occurred. *(Ibid.)* Accurate and timely attendance reporting is required of all departments and is subject to audit. *(Ibid.)*

During the period under review, January 1, 2021, through March 31, 2021, the CEFA reported one unit comprised of three active employees. The pay periods and timesheets reviewed by the CRU are summarized below:

| Timesheet Leave Period | Unit Reviewed | Number of Employees | Number of Timesheets Reviewed | Number of Missing Timesheets |
|------------------------|---------------|---------------------|-------------------------------|------------------------------|
| January 2021           | 1             | 3                   | 3                             | 0                            |
| February 2021          | 1             | 3                   | 3                             | 0                            |
| March 2021             | 1             | 3                   | 3                             | 0                            |

|                      |   |
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| <b>IN COMPLIANCE</b> | <b>FINDING NO. 5 LEAVE AUDITING AND TIMEKEEPING COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND/OR CALHR POLICIES AND GUIDELINES</b> |
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The CRU reviewed employee leave records from three different leave periods to ensure compliance with applicable laws, regulations and CalHR policy and guidelines. Based on our review, the CRU found no deficiencies. The CEFA kept complete and accurate time and attendance records for each employee and officer employed within the department and utilized a monthly internal audit process to verify all leave input into any leave accounting system was keyed accurately and timely.

## **Policy and Processes**

### **Nepotism**

It is the policy of the State of California to recruit, hire and assign all employees on the basis of merit and fitness in accordance with civil service statutes, rules and regulations. (Human Resources Manual Section 1204.) Nepotism is expressly prohibited in the state workplace because it is antithetical to California's merit based civil service. (*Ibid.*) Nepotism is defined as the practice of an employee using his or her influence or power to aid or hinder another in the employment setting because of a personal relationship. (*Ibid.*) Personal relationships for this purpose include association by blood, adoption, marriage and/or cohabitation. (*Ibid.*) All department nepotism policies should emphasize that nepotism is antithetical to a merit-based personnel system and that the department is committed to the state policy of recruiting, hiring and assigning employees on the basis of merit. (*Ibid.*)

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| <b>IN COMPLIANCE</b> | <b>FINDING NO. 6 NEPOTISM POLICY COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND/OR CALHR POLICIES AND GUIDELINES</b> |
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The CRU verified that the policy was disseminated to all staff and emphasized the CEFA's commitment to the state policy of recruiting, hiring and assigning employees on the basis of merit. Additionally, the CEFA's nepotism policy was comprised of specific and sufficient components intended to prevent favoritism, or bias, based on a personal relationship from unduly influencing employment decisions.

### **Workers' Compensation**

Employers shall provide to every new employee, either at the time of hire or by the end of the first pay period, written notice concerning the rights, benefits, and obligations under workers' compensation law. (Cal. Code Regs., tit. 8, § 9880, subd. (a).) This notice shall include the right to predesignate their personal physician or medical group; a form that the employee may use as an optional method for notifying the employer of the name of employee's "personal physician," as defined by Labor Code section 4600. (Cal. Code Regs., tit. 8, § 9880, subd. (c)(7) & (8).) Additionally, within one working day of receiving notice or knowledge that the employee has suffered a work related injury or illness, employers shall provide a claim form and notice of potential eligibility for benefits to the injured employee. (Labor Code, § 5401, subd. (a).)

Public employers may choose to extend workers' compensation coverage to volunteers that perform services for the organization. (Human Resources Manual Section 1415.) Workers' compensation coverage is not mandatory for volunteers as it is for employees. (*Ibid.*) This is specific to the legally uninsured state departments participating in the Master Agreement. (*Ibid.*) Departments with an insurance policy for workers' compensation coverage should contact their State Compensation Insurance Fund (State Fund) office to discuss the status of volunteers. (*Ibid.*)

In this case, the CEFA did not employ volunteers during the compliance review period.

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| IN COMPLIANCE | <b>FINDING NO. 7 WORKERS' COMPENSATION PROCESS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND/OR CALHR POLICIES AND GUIDELINES</b> |
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The CRU verified that the CEFA provides notice to their employees to inform them of their rights and responsibilities under California's Workers' Compensation Law. The CEFA did not appoint any new employees, or report any work-related injuries during the compliance review period.

Performance Appraisals

According to Government Code section 19992.2, subdivision (a), appointing powers must "prepare performance reports." Furthermore, California Code of Regulations, title 2, section 599.798, directs supervisors to conduct written performance appraisals and discuss overall work performance with permanent employees at least once in each twelve calendar months after the completion of the employee's probationary period.

The CRU selected three permanent CEFA employees to ensure that the department was conducting performance appraisals on an annual basis in accordance with applicable laws, regulations, policies and guidelines.

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| IN COMPLIANCE | <b>FINDING NO. 8 PERFORMANCE APPRAISAL POLICY AND PROCESSES COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND CALHR POLICIES AND GUIDELINES</b> |
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The CRU found no deficiencies in the three performance appraisals selected for review. Accordingly, the CEFA performance appraisal policy and processes satisfied civil service laws, Board rules, policies and guidelines.

## **DEPARTMENTAL RESPONSE**

No departmental response was required since all areas reviewed were found to be in compliance.

## **SPB REPLY**

The CEFA found to be in compliance in all areas reviewed during the compliance review period. Therefore, no further action is required.