Special Investigation Report
California State Board of Equalization

Compliance Review Unit
State Personnel Board
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Table of Contents

INTRODUCTION 1

EXECUTIVE SUMMARY 1

BACKGROUND 3

Mission and Purpose of BOE 3

Allegations of Improper Personnel Practices, Including Nepotism 3

Objectives of the Special Investigation 4

Scope and Methodology 4

SUMMARY OF FINDINGS 4

I. BOE'S NEPOTISM POLICY 4

Finding 1: BOE's Nepotism Policy Was Not Timely Reviewed and Updated 6

Finding 2: BOE's Nepotism Policy Has Never Been Consistent with Statewide Policy 6

Finding 3: BOE Has a Large Number of Employees Who Have Personal Relationships With Other BOE Employees and Work in the Same Department or Division 7

Corrective Action: 9

II. BOE'S PERSONNEL PRACTICES 10

Finding 1: BOE Failed to Properly Apply Good Faith Rules to the December 31, 2012, Appointment of a Tax Technician I in the Sacramento District Office 10

Corrective Action 1: 12

Finding 2: The Appointment Of An Employee to the Associate Governmental Program Analyst In the Outreach Services Division of the Sacramento Office Was Unlawful and Made in Bad Faith 12

Corrective Action 2: 16

Finding 3: The Voluntary Demotion of an Employee from an Information Officer I in the Sacramento Office to an Office Technician in the New York Office Was Unlawful and Made in Bad Faith 16

Corrective Action 3: 20

Finding 4: The Appointment of an Employee to an Information Officer II Was Unlawful and Made in Bad Faith 20

Corrective Action 4: 22

Finding 5: The Evidence was Insufficient to Find that the Appointments of Two Employees to Office Assistants (General) were Unlawful 22

Finding 6: The Evidence Was Insufficient to Find That The Promotion of The Administration Deputy Director's Daughter Was Due to Nepotism 23

III. HRD RECOMMENDATIONS FOR TWO DISTRICT OFFICES 24

Finding 1: BOE Failed to Act On Recommendations to Correct Hiring Practices Stemming from Appointments Made in December 2012 24
Corrective Action 1: 25
Finding 2: BOE Failed to Act On Recommendations to Correct Hiring Practices in the Santa Clarita District Office 26
Corrective Action 2: 27
IV. OTHER OBSERVATIONS 27
V. RESPONSES 28
VI. SPB REPLY 28
APPENDIX 29
ORDER 40

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) may review selection and examination procedures, appointments, promotions, the management of probationary periods, personal services contracts, discipline and adverse actions, or any other area related to the operation of the merit principle in state civil service. In addition, when conducting a compliance review, the Board may inspect documents, policies, practices, and procedures of the appointing power relating to its personnel practices and interview appointing power staff and witnesses regarding the subject of the audit. The Board may also provide a report to the appointing power and the California Department of Human Resources (CalHR) identifying any deficiencies in the appointing power's personnel practices, policies, and procedures.

If the Board finds an appointing power deficient in personnel practices, policies, and procedures, the appointing power shall be subject to corrective action. The remedies ordered by the Board may include, but are not limited to, revocation or modification of the terms of a delegation agreement between the appointing power and CalHR, voiding examinations administered by the appointing power, or voiding appointments.

EXECUTIVE SUMMARY

This special investigation report presents the results of the investigation that the CRU conducted into allegations that the personnel practices of the California Board of Equalization (BOE)[1] included systemic problems with nepotism. During the course of the investigation, the Board received additional anonymous complaints regarding BOE's hiring practices.

The objectives of the special investigation were to determine the following: (1) Did BOE's nepotism policy comply with State policy?; (2) Did BOE engage in personnel practices that involved nepotism?; and (3) Did BOE fail to act on recommendations in investigation

[1] After the passage of the Taxpayer Transparency and Fairness Act of 2017, the state reorganized BOE into separate entities effective on July 1, 2017: California Department of Tax and Fee Administration (CDTFA), and BOE. In 2018 the Office of Tax Appeals (OTA) will be established. The instant special investigation focused on BOE's personnel practices prior to the reorganization.

reports prepared by the BOE Human Resources Division concerning hiring practices in December 2012 and the Santa Clarita district offices?

CRU's special investigation included reviewing BOE policies and procedures, relevant reports, emails, recruitment and hiring documents, employee history summaries, and other relevant material. In addition, eighteen BOE employees who had or were believed to have knowledge regarding the allegations of improper personnel practices were interviewed. The methodology used by CRU was systematic and involved reviewing and assessing relevant evidence and data to form fact based findings and reasonable conclusions upon which to base corrective action where appropriate.

CRU found that BOE's anti-nepotism policy was not timely updated as required by the California Department of Human Resources and had never complied with statewide policy. In addition, a survey conducted by BOE shows that there are a large number of BOE employees who have personal relationships with other BOE employees and who work in the same department or division of BOE.

There were also negative findings with regard to four appointments: (1) BOE failed to properly apply good faith rules to the December 31, 2012, appointment of a Tax Technician I in the Sacramento District Office; (2) The appointment of an employee to the Associate Governmental Program Analyst in the Outreach Services Division of the Sacramento Office was unlawful and made in bad faith; (3) The voluntary demotion of an employee from an Information Officer I in the Sacramento Office to an Office Technician in the New York office was unlawful and made in bad faith; and (4) The appointment of an employee to an Information Officer II was unlawful and made in bad faith. CRU recommends that all these appointments be voided.

Allegations as to the unlawfulness of two other appointments and a promotion were not substantiated, namely: (1) The evidence was insufficient to find that the appointments of two employees to Office Assistants (General) were unlawful; and (2) The evidence was insufficient to find that the promotion of an employee from a Business Taxes Representative to an Associate Governmental Program Analyst was unlawful.

Additional findings were that BOE failed to act on recommendations to correct hiring practices in the Santa Clarita District Office and hiring practices that stemmed from unlawful appointments made in December 2012. CRU recommends that BOE immediately implement the recommendations.

CRU also made other observations. CRU observed that executives and hiring managers tended to view HRD as an impediment rather than a valuable resource. CRU, therefore, recommends that executives and hiring managers work cooperatively and in collaboration with HRD to ensure lawful and effective hiring practices are used. In addition, CRU observed that a BOE mentoring program and leadership training would be valuable for CDTFA. Lastly, CRU observed that BOE and statewide training should be improved by including the requirements and benefits of the civil service merit system.

BACKGROUND

Mission and Purpose of BOE

BOE is composed of five members, four of whom are elected directly from constitutionally defined districts within the State. The fifth member is the State Controller who is elected at large and serves in an ex officio capacity. The Board, acting as a body, appoints an Executive Director.

Prior to July 1, 2017, BOE employed approximately 5,000 agency employees who carried out BOE's mission, goals, and directives.

The mission of BOE was to serve the public through fair, effective, and efficient tax administration. BOE administered more than 30 tax and fee programs, including sales and use taxes, fuel taxes, and alcohol and tobacco taxes; adopted rules and regulations to clarify tax laws; decided appeals of property, business, and income tax assessments; assessed and allocated property values of railroads and specified utilities; and oversaw the property tax assessment practices of all 58 county assessors.

BOE received over 30 percent of the state's revenues from more than one million taxpayers. In fiscal year 2015-2016, BOE received more than $61.9 billion in taxes and fees to support state and local government programs.

Allegations of Improper Personnel Practices, Including Nepotism

The Board received anonymous complaints alleging nepotism and favoritism at BOE. It was alleged that persons were hired based upon their family relations and friends. It was also alleged that these personnel practices were demoralizing to employees. Additionally, one of the complaints stated, "We call it the 3 f's for job requirements. You gotta be friends, family or friends of family to get hired." Another complaint set forth a list of employees who were allegedly relatives and friends of certain BOE managers.

During the course of the investigation, the Board received an anonymous letter claiming improper actions in 2014 and 2015 related to promotions, examinations, transfers, hiring, and reassignments.[2] The BOE's Human Resources Division (HRD) also provided CRU an anonymous note alleging nepotism and favoritism in the hiring of two employees in the mailroom.

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[2] The complaint also alleged circumstances that purportedly put state funds at risk and resulted in the loss of public funds. These allegations are not within the Board's jurisdiction, which concerns ensuring and enforcing the merit principle in state civil service and enforcing the civil service laws and rules. It should be noted that the audit report of BOE by the Department of Finance report was presented to the Joint Legislative Budget Committee/Senate Budget and Fiscal Review Committee on March 30, 2017.

In addition, during the course of interviewing employees, CRU came across additional allegations involving improper personnel practices, including nepotism and favoritism.

Objectives of the Special Investigation

The objectives of this special investigation were to determine the following:

1. Did BOE's nepotism policy comply with State policy?

2. Did BOE engage in personnel practices that involved nepotism?

3. Did BOE fail to act on recommendations of HRD to correct hiring practices that took place in December 2012 and in the Santa Clarita district office?

Scope and Methodology

The scope of the special investigation included reviewing BOE policies and procedures, relevant reports, emails, recruitment and hiring documents, employee history summaries, and other relevant material. In addition, eighteen BOE employees who had or were believed to have knowledge regarding the allegations of improper personnel practices were interviewed. The methodology of the investigation was systematic and involved reviewing and assessing relevant evidence and data to form fact based findings and reasonable conclusions upon which to base corrective action where appropriate.

SUMMARY OF FINDINGS

I. BOE'S NEPOTISM POLICY

On November 6, 1979, the SPB issued a memorandum to all state agencies and employee organizations, the subject of which was the State's policy regarding nepotism. The memorandum[3] was issued to clarify general confusion surrounding the subject of nepotism. The memorandum found that a standard policy for all departments was not feasible because of changing societal attitudes and mores and because departments, with their different programs and geographic dispersion, had differing needs. Therefore, the memorandum contained basic guidelines and issues that the SPB believed were important to consider when departments developed their own policies. Emphasized, however, was the need for care and judgment in developing nepotism policies that ensured merit principles were not abrogated.

The memorandum defined nepotism as "a practice of an employee using his/her personal power or influence to aid or hinder another in the employment setting because of a personal relationship." Personal relationships were defined to include but not be limited to "associations with individuals by blood, adoption, marriage, and/or

[3] These memoranda were known as "Pinkies" because they were issued on pink paper. Some Pinkies included "destroy after" dates. The 1979 nepotism Pinkie had a "destroy after" date of "Indefinite."

cohabitation." The memorandum set forth three situations where employees have personal relationships that departments should avoid or correct:

1. Work in a small unit in close association with each other.
2. Work for the same supervisor.
3. Have a direct or indirect supervisor/subordinate relationship.

The memorandum, however, acknowledged that many situations existed where two individuals who have a personal relationship may be appropriately allowed to work in the same program or activity; nonetheless, the Board sounded an alarm for departments:

> [B]e aware of potentially sensitive situations and assess them carefully to ensure that the following are not adversely affected:
>
> 1. The work production of the unit.
> 2. The safety and morale of the employees in the unit.
> 3. The fair and impartial supervision and evaluation of employees by supervisors in the unit.

In addition, the memorandum set forth specific "nepotism issues" departments should address. The Board cautioned that the definition of "relative" could be too simplistic and ignore relationships in which two people live with each other outside of marriage or personal friendships that often involve stronger personal commitments than family relationships. "The intent of a nepotism policy or rule certainly should be to prevent favoritism or bias from any such personal relationships." In addition, the memorandum stated that an anti-nepotism policy may have a narrow application extending only to immediate supervisor/subordinate relationships or it may have a broader application extending potentially to prohibitions of employment within the same department. Relying on an Attorney General opinion dated October 21, 1976, the memorandum points out that a policy prohibiting the employment of an individual who is related to an existing employee anywhere within the department may be "too restrictive."

The memorandum also quoted the Fair Employment Practice Commission (FEPC): "'For business reasons, supervision, safety, security or morale <u>which an employer must demonstrate in every instance,</u> an employer may refuse to place (a relative) under the direct supervision of another.' (emphasis added)" The memorandum stressed that in making decisions as to developing an anti-nepotism policy, "the guiding concept is that no employee should use his/her personal power or influence to aid or hinder another in part or wholly because of a nonjob-related personal relationship."

On May 6, 2015, CalHR issued a Personnel Management Liaisons memorandum (PML) concerning statewide guidance on nepotism policies that superseded the Board's 1979 memorandum. The 2015 PML stated, "All department 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." In addition, the PML set forth five considerations when anti-nepotism policies are being developed or revised:

1. Whether the policy will require current employees to notify their supervisor or other appropriate person when working assignments are in conflict with the nepotism policy.

2. Whether the policy will provide an exceptions provision and a corresponding procedure for an employee or supervisor to request an exception to the policy.

3. Whether the policy will include guidelines for addressing instances when a personal relationship arises during employment and how the department will address a personal relationship in violation of the policy (e.g., which employee will be transferred or reassigned and the process in carrying out that transfer or reassignment).

4. Whether the policy will require notification of employment candidates in the interview or in the job posting and whether new employees will be required to certify they do not currently have a personal relationship in violation of the policy.

5. Whether the policy includes guidelines for addressing nepotism complaints from employees such as who to report them to, who will investigate allegations, etc.

Further, the PML acknowledged that many departments already had policy statements on nepotism. Nonetheless, these departments "should review their policies to determine if there is any need to update their statements or make them more specific to the needs of their organizations. Those departments without a nepotism policy should develop one."

Finding 1: BOE's Nepotism Policy Was Not Timely Reviewed and Updated

The BOE nepotism policy is part of the BOE Administrative Manual and states:

> It is generally contrary to the best interests of the Board of Equalization (BOE) and state service for two or more people with a personal relationship to be employed in situations where they are supervised by the same supervisor, where one is in the chain of command of the other, or where one might be in a position to influence the promotion, work assignments, or granting of special privileges to the other. Personal relationships include, but are not limited to, associations with individuals by blood, adoption, marriage, registered domestic partnerships, or cohabitation. In reviewing the propriety of a work assignment involving personal relationships, the BOE may take such steps as necessary to preserve the interests of the BOE and the parties concerning supervision, safety, security, and morale issues.

The 2015 PML concerning nepotism superseded the 1979 Pinkie and instructed departments that they should update their nepotism policy or, if they did not have such a

policy, develop one. BOE's nepotism policy states that it is based on the 1979 Pinkie. Thus, BOE did not timely review and update its policy to ensure consistency with current statewide guidance on preventing nepotism. Corrective action is, therefore, warranted.

Finding 2: BOE's Nepotism Policy Has Never Been Consistent with Statewide Policy

While BOE's nepotism policy is based on the 1979 Pinkie, the policy is not consistent with that Pinkie. The 1979 Pinkie was clear that departments should ensure against nepotistic abuse by avoiding or correcting certain specified workplace situations, including where persons who have a personal relationship work in a small unit in close association with each other. This situation is absent from BOE's nepotism policy. The 1979 Pinkie also emphasized that care and judgment should be used in developing nepotism policies to ensure that merit principles were not abrogated. BOE's nepotism does not refer to merit principles. The 1979 Pinkie cautioned departments to ensure that work production not be adversely affected by nepotism. BOE's nepotism policy is silent on this subject. Additionally, the 1979 Pinkie used the term "ensure" several times with regard to developing a nepotism policy. BOE's nepotism policy is so brief and couched in such indecisive and vague terminology that it fails to ensure that nepotism will be avoided or corrected if discovered.

BOE's nepotism policy is also not consistent with current statewide policy. The 2015 PML is clear that all department policies should emphasize that nepotism is antithetical to a merit-based personnel system. BOE's nepotism policy does not make this important statement. The PML also provides that a department's nepotism policy should state that the department is committed to the state's policy of recruiting, hiring, and assigning employees based on merit. No such commitment is in BOE's nepotism policy. In addition, the PML states that the intent of a nepotism policy or rule, first and foremost, should be to prevent favoritism or bias due to personal relationships. BOE's nepotism policy is so strikingly cursory and incomplete it utterly fails to convey such intent. The 2015 PML also sets forth considerations for nepotism policies, depending on the department and its needs (e.g., guidelines for when personal relationships arise during employment and requiring new employees to certify they do not currently have a personal relationship in violation of the nepotism policy). Given the brevity of BOE's nepotism policy and the arguably high number of personal relationships that exist, it is evident these considerations were either inadvertently overlooked or purposely ignored.

In any event, BOE's nepotism policy was not and is not consistent with statewide policy. Accordingly, corrective action is warranted.

Finding 3: BOE Has a Large Number of Employees Who Have Personal Relationships With Other BOE Employees and Work in the Same Department or Division

The CRU requested that BOE provide a list of employees who have personal relationships with other BOE employees. Since BOE did not track personal relationships among its employees, BOE instructed its executive team to survey every division and unit in their area to identify all "family members" working at BOE, including where they worked. For purpose of identifying employees who had personal relationships with other employees, a blank spreadsheet, referred to as the report, was emailed to the executive

team. The report included the following instructions: “In order to determine the actual prevalence of familial relationships at BOE, the BOE must survey the entire department to identify all family members working at BOE, including where they work. In addition to this listing you must also provide organization charts for every division/unit within your area showcasing any familial relationships you identify.” The report defined “personal relationships” to “include but are not limited to: associations with individuals by blood, adoption, marriage, registered domestic partnerships, or cohabitation.”

The methodology for collecting the survey data is unclear. BOE’s Human Resources Division (HRD) explained that a majority of deputy directors surveyed each employee within their division/units; however, some deputy directors chose to simply identify employees they believed had a familial relationship with another BOE employee. BOE could not explain which employees were surveyed, and what, if any, instructions were provided to those employees. The report was emailed to the executive team on April 17, 2017, at 1:20 p.m. with instructions to submit the report and organization charts to HRD no later than the next day at close of business. Consequently, employees who were not in the office during that time period were presumably not included in the data.

At the time of the survey, BOE employed 4,767 employees. The survey data provided by BOE shows that 835 employees or 17.5% of the BOE workforce have personal relationships. The survey, however, did not capture the entire BOE workforce; therefore, the survey data is not an accurate reflection of the total number of BOE employees who may have personal relationships.

CRU also reviewed the organization charts for every division or unit within BOE and found that several family members work within the same division or unit. In several instances, family members report to the same supervisor. For example, the Administration Department has two Associate Governmental Program Analyst (AGPA)s, a father and daughter, who report to the same Staff Services Manager I (SSM I). Similarly, the External Affairs Department has a Systems Software Specialist (SSS I) and SSS II who are cousins related by marriage and who report to the same Business Taxes Administrator II (BTA II).

The Field Operations Department also has several sets of family members reporting to the same supervisor at various District Offices. For example, in the New York out-of-state District Office, a Business Taxes Specialist I (BTS I) and Supervising Tax Auditor II (STA II) are married and report to the same STA III. In the Riverside District Office, a Tax Technician III (TT III) is the daughter-in-law of a Business Taxes Representative (BTR) and both report to a BTA I. The Ventura District Office employs two sisters, a BTR and Business Taxes Compliance Specialist (BTCS), who report to the same BTA I.

In the Property Tax Department, a BTS II and BTA III are married and report to the Chief. Likewise, in the Technology Services Department, a Senior Programmer Analyst (Specialist) and Staff Programmer Analyst (Specialist) are cousins and report to the same Data Processing Manager II.

The CRU also found instances where related employees in the same department indirectly fell under the same chain of command. For example, in the Oakland District

Office, an Associate Tax Auditor is under the indirect chain of command of his/her uncle-in-law, a Supervising Tax Auditor III. In the San Jose District Office, a Business Taxes Specialist I, while not directly reporting to a family member, is under the chain of command of his/her cousin-in-law, a Business Taxes Administrator III, who manages the office.

Based on the survey data provided by BOE, the following chart shows the number and percentage of related employees in the same department or division:

BOE Departments or Divisions	Total Number of Employees	Number of Employees Related	Percentage of Employees Related
Administration Department	439	25	5.69%
Board Member Office	58	2	3.4%
Board Proceedings Division	30	2	6.6%
Business Tax and Fee Department	974	144	14.78%
External Affairs Department	184	2	1.08%
Internal Audit Department	12	0	0
Taxpayers' Rights Advocate Office	21	0	0
Field Operations Department	2248	219	9.74%
Legal Department	399	19	4.76%
Legislative & Research Division	24	0	0
Property Tax Department	142	4	2.8%
Technology Services Department	369	20	5.4%

Corrective Action:

Effective anti-nepotism policies, while they may differ, are vital for purposes of a strong civil service merit system, fair supervision, and positive employee morale. In order to effectively manage its workforce, it is recommended that BOE and CDTFA conduct a comprehensive review to identify all personal relationships among its employees and work with CalHR, pursuant to civil service rules, to address any organizational relationships that violate anti-nepotism principles. In order to prevent future nepotism, it is recommended that BOE and CDTFA take immediate action to update and implement new anti-nepotism policies that are consistent with CalHR's PML. Additionally, it is recommended that all BOE and CDTFA employees, including Board members and Executive staff, receive training on the new anti-nepotism policies within three months of the effective date of the policies and thereafter on a routine basis, not less than every two years. All new BOE and CDTFA employees and executives shall receive anti-nepotism training within 60 days from the date of appointment.

It is also recommended that any current delegation agreements between BOE and CalHR authorizing BOE to perform merit-related human resources functions be permanently revoked and future delegation agreements be permanently prohibited. Further, it is recommended that CDTFA coordinate, operate, and administer all BOE merit-related human resources planning and activities, including but not limited to, any civil service examinations and appointments. As to CDTFA, it is recommended that any current delegation agreements between CDTFA and CalHR authorizing CDTFA to conduct examinations and process appointments be revoked for at least one year, beginning the date of approval of these recommendations by the SPB Executive Officer. During the period of revocation, CDTFA must perform its merit-related human resources planning and activities under the supervision of CalHR, which includes, but is not limited to, seeking CalHR approval for any civil service examinations and appointments. At the end of the one-year period, CalHR shall assess CDTFA's progress in regaining delegated authority and report its assessment to SPB.

It is further recommended that, within 60 days of the SPB Executive Officer's approval of these findings, BOE and CDTFA submit to CRU a complete list and organizational location of all personal relationships among BOE and CDTFA current employees. BOE and CDTFA should submit documentation demonstrating their compliance with the Executive Officer's order, including updated anti-nepotism policies, training schedules and attendees, and training modules. Within six months of the SPB Executive Officer's approval of these recommendations, BOE and CDTFA should provide CRU with confirmation that the training has been completed by all BOE and CDTFA staff.

II. BOE'S PERSONNEL PRACTICES

Finding 1: BOE Failed to Properly Apply Good Faith Rules to the December 31, 2012, Appointment of a Tax Technician I in the Sacramento District Office

Based upon an anonymous letter forwarded to the BOE Internal Affairs Section (IAS) on September 3, 2015, IAS conducted an investigation into allegations that, in 2012, J.K. Sr., a Tax Consultant Expert II (TCE II) in Board Member George Runner's office, forced the Sacramento District Office to hire J.K. Jr., his son, as a Tax Technician I (TT I) before the new retirement requirements went into effect. IAS reviewed relevant hiring packages and interviewed several BOE employees including B.H., the Acting Chief, Outreach Services Division, and J.C., the Assistant Chief of Field Operations, Special Taxes and Fees Department.

The investigation, which was concluded on March 8, 2016, found that J.K. Sr. used his position of influence to encourage the hiring of his son. The investigation also found that other employees, including J.C., were involved in the illegal hire. On August 2, 2016, J.K. Jr. accepted employment as an Office Technician (OT) with the Victim's Compensation Board (VCB). On May 1, 2017, J.K. Jr. voluntary resigned from state service without fault.

A letter to J.K. Jr. from the BOE Human Resources Division (HRD) Chief dated January 9, 2017, states that the HRD in conjunction with IAS had completed its investigation into this matter, and it was determined that the appointment was "inconclusive." Additionally,

the letter states, “Since there is no evidence to support good or bad faith on your part, your appointment to the TT I will stand.”

All civil service appointments to be valid must be made and accepted in good faith. (Cal. Code Regs., tit. 2, § 249; formerly § 8.) In order for an appointing power to make an appointment in good faith, the appointing power must intend to observe the spirit and intent of the law; make a reasonable and serious attempt to determine how the law should be applied; assure that appointees have appropriate civil service appointment eligibility; and act in a manner that does not improperly diminish the rights and privileges of other persons affected by the appointment, including other eligibles. (Cal. Code Regs., tit. 2, § 249, subd. (a).) Employees are also required to act in good faith, e.g., provide the appointing power with complete, factual, and truthful information necessary for a proper appointment and make a reasonable attempt to seek correction of any aspects of the appointment that the employee knows are illegal. (Cal. Code Regs., tit. 2, § 249, subd. (b).)

In this case, BOE was delegated authority by CalHR to investigate and correct unlawful appointments. In or about March 2016, the BOE determined that the 2012 appointment of J.K. Jr. to the TT I was the result of preselection and hence unlawful. The report sets forth facts showing that employees acting on behalf of BOE acted in bad faith by not intending to observe the spirit and intent of civil service laws, including the merit principle, failing to make any reasonable and serious attempts to determine how the law should be applied, and acting in a manner that improperly diminished the rights and privileges of other persons affected by the TT I appointment, including other eligibles. One employee reported that she had several conversations with J.K. Sr. regarding the hiring of his son. He would call and say “are you going to make this work?” The witness further stated to IAS investigators that there was “a lot of pressure to make it work . . . They just wanted him to start so that he could get into the old PER[S] system.”[4]

Another BOE employee reported that he had also spoken with J.K. Sr. about the hiring of his son. J.K. Sr. said, “I need to get him in here at the BOE, and we need to really make it happen before the end of the year, because, you know, because the whole retirement thing is changing and all that kind of thing.” The employee also told investigators, “But you also know you work for them, on some kind of level, and they expect you to make it happen, and you want to be a good employee. And you still want to have a future. And, you know, and they always would throw it down at you like a challenge . . . .”

There is sufficient evidence to establish that BOE acted in other than good faith when appointing J.K. Jr. as a TT I. The finding that the appointment was unlawful occurred more than one year and less than five years after the appointment. Therefore, regardless of whether J.K. Jr. acted in good faith, BOE did not act in good faith. Accordingly, action to correct the appointment was not prohibited under section 266, subdivision (a).

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[4] CalPERS retirement benefits were changing the beginning of 2013.

BOE, however, failed to properly apply the good faith rules to the December 31, 2012, appointment and instead found that, because there was no evidence to support bad faith on the *employee's* part, the appointment to a TT I would stand. This was an erroneous conclusion, since the rule only prohibits corrective action where both the appointing power and employee acted in good faith. Since the BOE acted in bad faith, corrective action is warranted.

Corrective Action 1:

It is recommended that CDTFA take immediate action to void the appointment. Even though J.K. Jr. is no longer employed with the state, voiding the appointment will affect his State civil service reinstatement rights should he ever choose to re-enter State employment. Therefore, CDTFA shall afford him notice and the rights to respond and appeal, pursuant to Board rules 266.2 and 266.3. The action shall be taken no later than November 22, 2017. Within 60 days of the Executive Officer's approval of these findings, CDTFA must submit to CRU and the California Department of Human Resources (CalHR) written confirmation that the afore-stated corrective action has been taken. Copies of any relevant documentation should be included, including documentation showing that the appointment was voided.

It is also recommended that CalHR promptly inform VCB of this corrective action and, in consultation with VCB, determine what impact, if any, the voiding of J.K. Jr.'s appointment as a TT I will have on his OT appointment. Should there be findings that negatively impact the OT appointment, CalHR in coordination with VCB shall take any appropriate steps, including notification to J.K. Jr. CalHR must submit to CRU a memorandum setting forth the determination and any steps taken, within 60 days of their determination. Copies of any relevant documentation should be included.

Additionally, it is recommended that CDTFA provide training on the SPB's rules related to good faith and correction of appointments to HRD and IAS staff. Within 60 days of the Executive Officer's approval of these findings, CDTFA must submit to CRU written confirmation that the afore-stated corrective actions have been taken or, if not yet taken, the reasons and date by which these actions will be taken. Copies of any relevant documentation should be included.

Finding 2: The Appointment Of An Employee to the Associate Governmental Program Analyst In the Outreach Services Division of the Sacramento Office Was Unlawful and Made in Bad Faith

On January 23, 2015, a job announcement for an Associate Governmental Program Analyst (AGPA), position number 290-343-5393-028, in the BOE Outreach Services Division (OSD), Sacramento Office, was posted on VPOS, CalHR's former website that listed civil service job vacancies, with a final filing date of February 6, 2015. BOE provided CRU with copies of six applications that were submitted for the position. J.C. was one of those applications. The job application was signed and dated by J.C. on February 16, 2015, and her cover letter was dated February 13, 2015. The application was date stamped on February 18, 2015. A handwritten note on the cover letter reads,

“No. Late. Closed 2/10/15.” In addition, on the cover letter, job application, and resume there are pen marks circling errors related to punctuation and missing information.

T.L., the Hiring Manager, arranged for the interview of five candidates. J.C. was not included on the interview list. M.D., Staff Services Manager III (SSM III), working for B.H., Acting Chief,[5] emailed T.L. on March 3, 2015, telling him, in relevant part, that they needed to schedule J.C. for an interview. T.L. responded that he would not schedule J.C. for an interview until HRD told him there was “leeway” for an applicant who filed a late application. In an email to T.L. dated March 4, 2015, M.D. stated, in pertinent part, “As you know, the bulletin was re-posted as ‘until filled’ and pulled down on the 12th. It is completely within reason an applicant would see the bulletin on the 12th, see ‘until filled’ and apply. Her letter was dated February 13th. The facts support the justification to accept [J.C.]’s application.”[6]

T.L. emailed J.E., the HRD Interim Chief on March 4, 2015, and stated, in pertinent part, that the “until filled” date was closed on February 11, 2015, and J.C.’s application was signed on February 16, 2015, and date stamped by OSD on February 18, 2015. T.L. further stated that the submission date “well exceeds” the day or two grace period provided to applicants, which is what OSD used to track the position announcement and late applicants. Additionally, T.L. stated, “Not only is this applicant late, I do not feel her resume and statement of qualifications are at the level of others (sp) candidates OSD is currently interviewing. Please advise. Thank you.” J.E. responded, in relevant part, “You ask if you had to consider the application after your designated ‘close’ date. I informed you that you were not obligated to do so, and that it’s your discretion. Again, I will reiterate, it’s your discretion.”

T.L. emailed B.H., the Acting Chief, on March 4, 2015, and stated, in pertinent part, that he felt J.C.’s application was submitted too far past the due date and that J.C. was not as qualified as other candidates. Nonetheless, he also stated that he would defer to B.H.’s direction and be happy with whatever was directed.

Rather than B.H. responding to the email, M.D. emailed T.L. and stated there were a number of factors with the submission of J.C.’s application, “all of which you refused to consider.” Additionally, M.D. stated that J.C. had resubmitted her application when it could not be located in the stacks of other applications they had to review. Further, J.C. had contacted the Board Member’s office in El Segundo for assistance. For this reason, M.D. wrote, it seemed reasonable “to go the extra mile” and consider her application, “even though it appeared to be late.” Further, “Benefit of the doubt, no harm, no foul, but

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[5] B.H., a Business Tax Administrator (BTA) III, was assigned to the Outreach Services Division (OSD) as the Acting Chief to oversee T.L., the Hiring Manager. In his CRU interview, B.H. stated that the Hiring Manager was not working out.

[6] BOE did not provide any documents to CRU that showed that the bulletin had been reposted. Regardless, the date stamp of receipt, not the date of the cover letter, was of relevance for determining the timeliness of the application.

apps do get lost. There was never any expectation of hire, only that you consider." M.D. closed the email, "Yes, it is your discretion."

On March 11, 2015, B.H. sent an email to T.L. and stated that he had spoken with J.M., the Deputy Director, Sales and Use Tax Department, and D.G., Chief Deputy Director, and "we need to interview [J.C.] before we make the offer on the AGPA, it will move quickly after that." Sometime thereafter, T.L. and S.G., an Information Officer II (IO II), interviewed six candidates, including J.C., for the AGPA position. Standardized questions were asked, and each candidate was given a copy of the same bulletin, which advertised an event presented by Chairman Jerome E. Horton (Free Income Tax Preparation and Family Resource Fair). The candidates were instructed to circle and correct any errors on the bulletin. T.L. and S.G. rated the candidates from one to six, with one being the highest rating and six being the lowest rating. Both T.L. and S.G. rated the same candidates in the first and second ranks, respectively. They also both rated J.C. in the sixth rank. Their ratings for the remaining three candidates differed.

On March 18, 2015, T.L. emailed B.H. asking whether OSD had the green light to make a tentative offer to the top candidate. B.H. responded that same day, "[N]o we haven't got the green light." On March 24, 2015, T.L. again emailed B.H. and, in pertinent part, stated that he would like permission to appoint the top candidate to the vacant AGPA position. The next day, T.L. again emailed B.H. regarding the hiring and stated "please advise."

Besides these emails from T.L, B.H. was also contacted by Member Horton. Member Horton telephoned him and recommended J.C. Additionally, B.H. knew J.C.'s mother, who also worked for BOE. They had frequent dealings. Furthermore, B.H. knew that J.C.'s father was an assembly member. Board Member Horton's Chief of Staff, K.H., also called B.H. and recommended J.C.[7]

In his CRU interview, D.G., the Chief Deputy Director at the time, stated that K.H. had called him inquiring about the AGPA vacancy and J.C.'s status in the recruitment process, although he did not recall the date of the phone call. He also stated that he had spoken to B.H. about the AGPA recruitment and remembered telling him that Horton's Chief of Staff had been "bugging me" about this one. Further, D.G. stated that T.L. and Board Member Horton's office were not getting along and so he worried whether T.L. had been treating J.C. unfairly, because Horton's office had recommended her.[8]

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[7] Horton's Chief of Staff, K.H., explained in her CRU interview that J.C. had called her to talk about a position with OSD. K.H. denied knowing at the time that J.C.'s father was an assembly member. K.H. also explained that it was not unusual for her to talk to individuals who were interested in working for BOE, since she had worked for the state a number of years and knew the hiring process. Later, J.C. called her again because no one at BOE had been responsive to her job application. K.H. called B.H. to talk about the situation, because she thought T.L. was ignoring J.C.'s application and not treating her fairly. (See fn. 8.) K.H. also stated that this was a time period where she was relatively new to the Chief of Staff position.

[8] There was no evidence to suggest that T.L. was in any way biased against J.C. or treating her unfairly. T.L. was correct that her application had been submitted late, and there were errors on her cover letter and application. While she met minimum qualifications, her experience was primarily unrelated to the duties of

On June 4, 2015, 6:11 P.M., Horton's Chief of Staff emailed the Chief Deputy Director with the subject line, "Outreach agpa", and asking "What is the status?" At 6:23 P.M., the Chief Deputy Director forwarded the email to B.H. and said, "Didn't you say you needed to interview her? She hasn't been interviewed by anyone at BOE yet – correct?" Subsequently, at 6:35 P.M., the Chief Deputy Director responded to Horton's Chief of Staff's email saying that he was confirming with B.H. that an interview with the "AGPA candidate" was being scheduled. He further stated he was meeting with the new HRD Chief on a number of topics and wanted to make sure "we're on solid ground." He also stated that he had confirmed that no offer had been made in the initial round of interviews.

The next day, on June 5, 2015, B.H. responded to the Chief Deputy Director's June 4, 6:23 P.M., email and stated in relevant part that he was "going to interview her" with a manager. "Then make an offer, she will report to [this manager]." On this same date, an email shows that the Chief Deputy Director met with the HRD Chief. Also on the email is a handwritten note stating, "Recruitment # 2 Advise to start recruitment over."

A second job bulletin for the same AGPA position (Position No. 290-343-5393-028) was posted on June 11, 2015 with a final file date of June 25, 2015. Thirty-two applications were received. BOE provided CRU with two different applications submitted by J.C. One of the applications is signed and dated June 18, 2015, but has no date stamp. The other application is dated August 3, 2015, and date stamped September 30, 2015.

In an email dated September 30, 2015, an HRD Personnel Analyst told the secretary for B.H. that the final filing date for the second AGPA job posting was July 25, 2015, but J.C.'s application was signed and dated August 3, 2015. The secretary responded that B.H. told her that J.C. had submitted an application dated before the final filing date, and he would give it to her when he returned to the office on Monday.[9]

Three candidates, including J.C., were selected for interviews, however, one dropped out. For the second AGPA job posting, an entirely different interview panel was appointed, comprised of B.H. and S.B., an Information Officer II (IO II).[10] The two remaining selected candidates were interviewed. Standard questions were asked, but no rating criteria was applied. After the interviews, B.H. asked S.B. whom she liked best, and S.B. said she liked both equally. B.H. decided to hire J.C., effective on November 2, 2015.

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the vacant AGPA position. In addition, not only did he rate her below the other candidates, so too did the other interview panel member. It should also be noted that M.D., the SSM III who had sent emails to T.L. arguing for J.C. to be interviewed, did not work for Horton's office; rather, she worked for B.H.

[9] CRU was not provided a copy of this application. In his CRU interview, B.H. was "unsure" if J.C. had sent him the application directly. He said, though, that he remembered an "envelope."

[10] CRU found that S.B. had no knowledge that Member Horton or K.H. had recommended J.C.

The totality of these circumstances strongly suggest that the appointment of J.C. was not based on good faith on the part of BOE. For the first job posting, J.C.'s application was accepted late over the Hiring Manager's objections, she received the lowest rating for the interview by both interview panel members, and the Hiring Manager was prevented from hiring the top candidate. The job opening was then posted a second time. J.C.'s application was, again, accepted late. There was influence and involvement by the highest levels of the organization, including Board Member Horton, his Chief of Staff, and B.H., the Acting Chief of the Outreach Services Division. All of these factors, together with B.H.'s email stating that he would interview her, then make an offer, provide sufficient evidence upon which to find that the appointment was based upon preselection, favoritism, and the improper use of positions of influence, rather than on merit and fitness. The intent to observe the spirit and intent of civil service laws and to make a reasonable and serious attempt to determine how these laws should be applied are absent. Thus, in making this appointment, which was effective more than one year but less than five years ago, BOE did not act in good faith. Accordingly, corrective action is warranted.

Corrective Action 2:

The actions and conduct of BOE in securing this appointment violated the heart of the civil service merit system, which is founded on fair and equitable competition. In addition, BOE expended unnecessary and avoidable expense, time, and effort employing two recruitments for the vacant AGPA position, when the first had been proper and included qualified candidates. BOE also exploited the time, energy, and efforts of the five first round candidates. Moreover, the actions of BOE harmed the public trust requiring that civil servants perform their duties and functions according to applicable laws and policies, not for their own personal gain or relationships.

Therefore, it is recommended that CDTFA take immediate action to void the appointment. CDTFA shall afford the employee notice and the rights to respond and appeal pursuant to Board rules 266.2 and 266.3. Within 60 days of the Executive Officer's approval of these findings, CDTFA must submit to CRU written confirmation that that the afore-stated corrective action has been taken, and provide copies of any relevant documentation, including documentation showing that the appointment was voided.

Finding 3: The Voluntary Demotion of an Employee from an Information Officer I in the Sacramento Office to an Office Technician in the New York Office Was Unlawful and Made in Bad Faith

An employee, A.M., who worked for Member Diane Harkey as a legislative assistant when Member Harkey served in the California State Assembly, was appointed by BOE as an Information Officer I (Specialist) (IO I) in the Fourth District of BOE in January 2015. The Fourth District of BOE was Member Harkey's district. Sometime thereafter, A.M.'s wife, who worked in the private industry, was transferred by her company to work in New York. Harkey's Chief Deputy, R.L., approved A.M. to move to New York and continue working for the Fourth District as an IO I until a hardship transfer could be approved. In his interview with CRU, R.L. explained that once the hardship transfer was

approved they planned to have A.M. perform Information Officer duties for all of BOE's out-of-state offices.[11]

On August 24, 2015, a meeting was held between R.L. and D.G., the Chief Deputy Director. A copy of the agenda for the meeting contained a handwritten note by D.G., that states, "[A.M.] is a big deal (IO I)."

On August 28, 2015, D.L., the HRD Management Branch Chief, communicated via email with E.M., the Administration Deputy Director, saying that she had looked into hardship transfers, and, of relevance, a hardship transfer may be approved if a spouse took a "mandatory job transfer." In her email response, E.M. stated that she had received approval to move forward with "this," and she would like to meet with D.L. and A.M.[12]

In a September 3, 2015, email from L.K., Harkey's Senior Advisor, to T.D., the HRD Board Liaison, L.K. asked T.D. if she was in the loop regarding A.M.'s transfer. L.K. also stated that they were arranging a hardship transfer for him to the New York office. "I was told it's a clerical spot but because of the hardship designation he can keep his same pay." The email also indicates that A.M.'s last day in the Sacramento office was planned for September 4, 2015.[13]

Also on September 3, 2015, D.L. emailed M.A., a Staff Services Manager I (SSM I), in the Examination Unit, asking if there was a valid list for the Administrative Assistant II (AA II) examination and, if so, when would the list expire. That same day, D.L. sent a subsequent email at 5:19 p.m. to E.M. saying that a new bulletin for the examination would be released in October 2015 with a list anticipated for December 2015.

Sometime in September or October 2015, A.M. began working as an IO I for the Fourth District from his place of residence in New York. A.M. did not work from the BOE New

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[11] At that time, BOE had out-of-state offices in New York, Chicago, and Houston. Board Committee Meeting Minutes for June 23, 2015, show that there was a proposal to assign one out-of-state district office to each Board member: Western States/Sacramento Office to then-Chairman Horton, the Houston Office to Member George Runner, the New York Office to Member Fiona Ma, and the Chicago Office to Member Harkey. The minutes show that the proposal did not change the role of a Member but only created a first-level, point of contact if a taxpayer or constituent decided to contact a Member. The minutes further show that D.G., the Chief Deputy Director, believed the proposal facilitated communication and was supported by CalTax. There is no mention in the minutes of a plan for an IO I in the New York office to coordinate communications for all the out-of-state offices.

[12] An email dated May 18, 2015, with the subject line, "Classification & Pay Quick Tips", sets forth BOE's policy relative to requests for hardship transfers. The policy required that a hardship request be made in writing by the employee to the manager with verifiable documentation such as proof of job transfer for a spouse. In this instance, the policy was not followed. In fact, A.M. did not submit his hardship request until April 2016, approximately seven months after his last day in the BOE Sacramento office. The hardship transfer request was submitted to R.L., Harkey's Deputy Chief, who forwarded the request to W.M., the Chief of Field Operations.

[13] At that time, the only vacant position in the New York office was for an Office Technician (Typing) (OT). The incumbent in that position had resigned on August 26, 2015. There was no attempt to fill the OT position until the advertising in May 2016. The salary range for an OT (Typing) Range A is $2,921.00-$3,656.00. The salary range for an Information Officer I, Range A is $4,784.00 - $5,988.00.

York office. He wrote blog posts three times a week, newsletters, and summaries of events. Most days there were teleconferences with the Fourth District Office.[14]

A.M. was instructed to take the AA II examination, which he took in December 2015.[15] He placed in the second rank.

In a meeting on January 8, 2016, E.M. told S.M., the HRD Chief, that they needed to find A.M. a spot in the New York office at the same level of pay. E.M. indicated that this arrangement had been approved by D.G., the Executive Director, formerly the Chief Deputy Director. E.M. had approved the AA II position as appropriate.

Via an email dated January 11, 2016, S.M. informed E.M. and the Chief Deputy Director that there was a "big problem," because the AA II list could not be used for the New York office.[16] It was subsequently determined that there were three options: (1) Transfer A.M. to the vacant OT position in New York under the hardship transfer policy; (2) Allow him to continue working remotely while allowing him the option of seeking other employment opportunities (although this option would tie up a position in the Board Member's office);[17] and (3) Create an IO position and assign it to the New York office.[18] Options two and three were determined not to be viable. Consequently, in February 2016, A.M.'s options were changed to the following: (1) Request a hardship transfer to the vacant OT position; (2) Move back to Sacramento and remain working for the Board Member; or (3) Resign from state service.

On February 22, 2016, T.D. received an email from A.M. saying he would pursue the hardship transfer request. On April 27, 2016, D.G. sent an email to W.M., the Chief of

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[14] During his CRU interview, R.L. said that there were no additional costs for A.M. to work from his residence in New York. It should also be noted that the duty statement for A.M.'s IO I position included the essential job functions as planning and organizing taxpayer forums in the community, including handling meeting logistics, agenda, outreach, and notification to presenters and constituents; coordinating the outreach program schedule with various constituencies; providing staff support at Board Member various events in the Fourth District, which may include attending events, preparing background information and/or talking points. The duty statement was never revised to include whatever impact A.M.'s relocation to New York might have had on his duties; nor was there any evidence that there was a review to determine whether A.M. could perform the full scope of the IO I duties while residing in New York.

[15] The name of the person giving this instruction to A.M. was not established.

[16] In the email, S.M. also expresses concern regarding an assurance to A.M. that he would be relocated to New York. She explains that she had heard of this assurance for the first time at the previous Friday's meeting. She states that she wanted to know if HRD staff had provided this "misinformation." She also wanted to make sure that HRD had made no promises that a relocation would occur. CRU was not provided with any emails that responded to her concerns. Based on documents and CRU interviews, it was apparent that S.M. had not been involved or consulted regarding this situation until early January 2016.

[17] This option caused BOE staff to research what impact there would be on A.M.'s pay, benefits, direct deposit, and taxes.

[18] It should be noted that in a January 22, 2016, email from J.E., the HRD Assistant Chief, to E.M., the Administration Deputy Director, J.E. states that "CalHR has added location preferences for New York, Chicago, and Houston" for the IO I and IO II online examinations. These actions are more evidence showing the extent to which BOE went to find a position for the employee in New York.

Field Operations, informing him that R.L. would be requesting a hardship transfer for A.M. to the New York office as an OT. “Upon receipt we should consider timely.”

In a letter dated April 18, 2016, A.M. requested the hardship transfer and enclosed relevant documentation. It was determined, however, that the criteria for a hardship transfer was not met, because A.M.’s spouse had voluntarily transferred to New York.

On the agenda for a May 4, 2016, meeting with Member Harkey, D.G. wrote A.M.’s name and next to the name wrote: “Make sure – done.”

A May 17, 2016, email from W.M. to D.G., states, “Turns out ee’s spouse wasn’t mandatorily transferred for her job so technically not a hardship qualifying condition. We’re going through with advertising the job just to be safe and protect everyone in case this personnel transaction gets questioned.” D.G. responded that he met with Member Harkey that morning, and he hoped and trusted this matter would be resolved “as expeditiously as possible.”

On that same date, W.M. emailed A.M. and informed him that the advertising for the OT job opening had been posted with a final filing date of June 1, 2016. He closed with, “Thanks and best wishes to you.”

Four applicants applied for the position, including A.M. One of the candidates dropped out. A three-person panel, which included the Supervising Tax Auditor II in the New York office, conducted the interviews. The other two panelists flew to New York from Sacramento. They used standardized questions and scored each of the three candidates[19] based on his or her answers. A.M. scored the highest and was hired effective on July 5, 2016.

The evidence overwhelmingly supports a finding that A.M.’s appointment to the OT position in New York violated civil service merit principles and law. It is plainly evident that A.M. had been preselected for the OT position and that Member Harkey and her Deputy Director used their positions of authority to improperly influence, and arguably pressure, BOE Executives to ensure placement of A.M. in the New York office. Furthermore, the effort and collaboration of BOE Executives to make this appointment happen, without any serious resistance or questioning, other than from the HRD Chief, is striking. The fact that a job bulletin was posted, interviews conducted, and candidates rated does not cloak this appointment with “merit.” The conduct and decisions of those in authority show that the competitive hiring process for the OT position was a sham.

The CRU found no evidence that A.M. acted in other than good faith. However, the evidence showing that BOE did not intend to observe the spirit and intent of civil service laws or make a reasonable and serious attempt to determine how these laws should be applied is overwhelming. Thus, in making this appointment, which was effective more

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[19] Besides A.M., two female candidates interviewed for the position. They were both from California and therefore traveled from California to New York to be interviewed.

than one year but less than five years ago, BOE did not act in good faith. Accordingly, corrective action is warranted.

Corrective Action 3:

The actions and conduct of BOE in securing this appointment violated the heart of the civil service merit system which is founded on fair and equitable competition. In addition, BOE expended unnecessary and avoidable expense, time, and effort in ensuring the employee would be hired to a position in the New York office. BOE also exploited the time, energy, and efforts of the two panelists and two candidates who traveled from California to New York to interview and be interviewed. Moreover, the actions of BOE harmed the public's trust that civil servants will perform their duties and functions according to applicable laws and policies, not for their own personal gain or relationships.

Therefore, it is recommended that CDTFA take immediate action to void the appointment. CDTFA shall afford the employee notice and the rights to respond and appeal, pursuant to Board rules 266.2 and 266.3. Because the employee is currently employed with CDTFA, CDTFA shall, in consultation with CalHR, determine the impact, if any, on his eligibility for his current classification and take any appropriate steps should there be any findings that negatively affect the employee's current civil service status. Within 60 days of the Executive Officer's approval of these findings, CDTFA must submit to CRU written confirmation that that the afore-stated corrective action has been taken and provide copies of any relevant documentation, including documentation showing that the appointment was voided.

Finding 4: The Appointment of an Employee to an Information Officer II Was Unlawful and Made in Bad Faith

In the relevant time periods, the online examination for the Information Officer II (IO II) included a Terms of Use Agreement (the Agreement) that required applicants to certify they understood they were prohibited from taking the examination more than once every six months. Specifically, the Agreement stated, "You must indicate your agreement to the [terms and conditions] by checking the boxes below. If you do not check the boxes, you will not be allowed to continue with the exam process." Next to the boxes are the following statements:

> I hereby assert that I am taking this exam for myself alone. I am NOT taking this exam on behalf of anyone else.
>
> I hereby assert my intention to provide information that is true and accurate to the best of my knowledge, and that contains no willful misrepresentations or falsifications.
>
> I understand that, if it is later determined that I did make any false or inaccurate representations in any of my responses, I may be removed from this examination and/or the eligible list(s) resulting from the examination,

> suffer loss of State employment, and/or suffer loss of the right to compete in any future State of California hiring processes.
>
> I understand that I am the person solely responsible for the accuracy of the responses I provide.
>
> I understand that I may take this exam only once every six (6) months. I hereby assert that I have not taken this exam within the last six (6) months under any other User I.D. and password, Social Security Number, or name. I understand that, if I retake this exam before the six (6) months are up, the new result will be inactivated, and that I will then have to wait another six (6) months to retake this exam. I understand that, by retaking this exam too early, once my eligibility expires, there may be a period of time that I am ineligible to apply for vacancies for this classification.

Applicants were required to review and certify their understanding of the Terms of Use Agreement in order to take the examination. In addition, they were required to create an ECOS ID,[20] which was unique to their user ID name and password. Applicants could also include their social security number but were not required to do so.

On May 6, 2015, the employee, D.E., took the online IO II examination and was placed in the third rank, making him eligible for appointment. His personal list eligibility was for one year or until May 6, 2016. D.E. took the online examination again on November 9, 2015, even though his personal list eligibility had not expired. Retaking the online examination on November 6 did not violate the Terms of Use Agreement, since he was taking the exam more than six months after he had taken the May 6 examination. The subsequent taking of the examination in November, however, placed D.E. in the fifth rank.[21]

On January 8, 2016, D.E. took the online examination for a third time and scored in the third rank, which would have made him eligible for appointment but for the fact that he had not waited the requisite six months between exams. Since D.E. had violated the Agreement by retaking the exam two months after the November 2015 exam, his ranking on the January 8 exam was invalid and could not be used as a basis for appointment.

CRU reviewed the online examination documents to determine how D.E. was able to take two examinations within the prohibited sixth month time frame. It was found that D.E. took the January 8 examination by creating an ECOS ID different from the one he

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[20] ECOS is CalHR's online system used by applicants seeking to take online civil service examinations.
[21] Only the candidates who score in the top three ranks are eligible for appointment. In this case, D.E. was reachable for one year based on his ranking in the May 2015 exam, but he was not reachable based on his ranking in the November 2015 exam. It was unclear if BOE, within the one year of D.E.'s ranking on the May exam, could have ignored his ranking on the November exam and hired him using his May exam eligibility. Regardless, his dual list ranking within one year is a moot point because the effective date of his hire was more than one year after he had taken the May exam, which means his personal list eligibility for the May exam had expired.

had created to take the May 6 and November 9 examinations, which is another violation of the Agreement.

On April 22, 2016, D.E. was interviewed for an IO II position with BOE, External Affairs Department (EAD), and was selected for appointment. The job offer was made and accepted on May 25, 2016. Even if usable, D.E.'s personal list eligibility for the May 6, 2015, examination had expired at that point. Therefore, his only valid list eligibility was based upon the November 9, 2015, examination; however, he was not eligible for appointment from that list, because he had placed in the fifth rank.

BOE inappropriately used D.E.'s ranking on the January 8, 2016, exam to hire him. Accordingly, the appointment was unlawful.

Corrective action is warranted given the lack of good faith associated with the appointment. BOE failed to act in good faith, because the agency did not ensure that the employee had appropriate civil service appointment eligibility. (Cal. Code Regs., tit. 2, § 249, subd. (a)(4).) Likewise, the employee failed to act in good faith because he did not provide BOE with complete, factual, and truthful information. (Cal. Code Regs., tit. 2, § 249, subd. (b)(2).) D.E. failed to disclose that he had taken the examination twice within six months. In addition, D.E. engaged in deceptive conduct when he took the exam in January 2016 by creating and using a different user I.D. and password than he had used to take the two previous examinations. D.E., thus, did not demonstrate the integrity, honesty and good judgment required of all candidates seeking employment with the State. (Cal. Code, Reg., tit. 2, § 172.)

Corrective Action 4:

It is recommended that CDTFA take immediate action to void the appointment. CDTFA shall afford the employee notice and the rights to respond and appeal, pursuant to Board rules 266.2 and 266.3. Within 60 days of the Executive Officer's approval of these findings, CDTFA must submit to CRU written confirmation that the afore-stated corrective action has been taken and provide copies of any relevant documentation, including documentation showing that the appointment was voided.

Finding 5: The Evidence was Insufficient to Find that the Appointments of Two Employees to Office Assistants (General) were Unlawful

During the course of this investigation, a complaint was forwarded to CRU by HRD that alleges two employees, S.G. and X.R., were appointed to vacant Office Assistant (OA) (General) positions in the Tax Revenue Branch, Imaging and Mail Processing Center (IMPC), because of their familial relationships with one of the IMPC supervisors, T.R., an Office Services Supervisor II (OSS II) (General). The complaint claims that S.G. is the daughter of T.R. and X.R. is the nephew of T.R. Additionally, the complaint alleges that

T.R. served as a panelist on both hiring interviews and thereafter directly supervised S.G. and X.R.

S.G. was hired on April 9, 2014, and X.R. was hired on April 14, 2014. Based on the limited documentation provided by the HRD,[22] the CRU could not verify that the recruitment and hiring process complied with merit civil service laws and Board regulations. However, witness interviews established that there was a competitive process for both recruitments, standard interview questions were developed, interviews were conducted, and candidates were compared and selected based on merit.

In addition, CRU found that S.G. is T.R.'s daughter; however, T.R. did not serve on the panel that interviewed S.G., nor did T.R. supervise her. In addition, there was no evidence that T.R. used or attempted to use her position to influence others to hire S.G. As to X.R., there was no evidence to support the allegation that he is T.R.'s nephew or that they have any other type of personal relationship. Consequently, CRU was unable to find sufficient evidence to support a finding that these appointments were unlawful.

Finding 6: The Evidence Was Insufficient to Find That The Promotion of The Administration Deputy Director's Daughter Was Due to Nepotism

In November 2007, E.H. was appointed in Sacramento as the new BOE Deputy Director for Administration (Administration Deputy Director). On May 31, 2012, her daughter, L.H., was appointed to a Tax Technician I (TT I) position in the BOE Culver City office. On June 10, 2013, L.H. was appointed from a list to a Business Taxes Representative (BTR). On October 28, 2013, L.H. was promoted from a BTR to an Associate Governmental Program Analyst (AGPA) in the BOE Irvine office. E.H. retired from state service in June 2014. On December 27, 2016, L.H. voluntarily resigned from state civil service.

During the course of the investigation, allegations were raised that the 2013 promotion of L.H. may have been the result of nepotism. The allegations were based upon the belief that job applications were not reviewed and the perception that L.H. would be promoted because her mother wanted her promoted, not firsthand knowledge of the actual selection or decision making process. CRU reviewed the relevant documentation submitted by BOE and also interviewed witnesses.

In her CRU interview, K.H., the Hiring Manager, who was a Staff Services Manager III (SSM III) at the time, stated that she did not have "full recall" of all the details of the AGPA hire. K.H. also stated that, prior to the hiring of L.H., she had very little interaction

[22] The appointments of the two OAs fell under the requirement that hiring-related documents be retained for a minimum of five years. (Cal. Code Regs., tit. 2, § 26.) There was, however, confusion as to how the new retention requirement would apply to appointments made prior to the effective date of section 26, which was January 1, 2016. Although this issue was clarified, IMPC destroyed the hiring-related documents for these appointments pursuant to the previous two-year retention requirement. CRU found that the destruction of the documents was not based on any type of ill intent, but was the result of the mistaken belief that the previous two-year retention period applied.

with E.H. K.H. further stated that E.H. “probably” told her that L.H. was applying for the AGPA vacancy but would have also said to treat L.H. the same as the others. K.H. described her interactions with E.H. as being on the “straight and narrow.” Additionally, K.H. stated that finding qualified candidates for the Irvine office was hard. K.H. interviewed two persons for the AGPA position, including L.H. K.H. stated that she used selection criteria and the same set of job-related questions for both candidates. K.H. also stated that L.H. was the most qualified candidate for the position. In addition, K.H. stated that L.H. was “a good hire” and that the hiring decision was merit based. Other than the allegation of nepotism, no evidence was found to dispute or contradict K.H.’s statements.

While CRU requested all recruitment and hiring documentation relevant to this promotion, BOE was not able to produce the applications, screening criteria, interview notes or rating criteria, as the documentation had been purged pursuant to the former two-year retention requirement. No documents were provided that showed or suggested that L.H. was preselected for the promotion or that there was undue pressure or influence to promote L.H. BOE produced documentation showing that there had been an initial inquiry into whether L.H. met the minimum qualifications of the AGPA classification. Those documents show that a determination was made that L.H. met the minimum qualifications. CRU’s review of the relevant documentation finds that L.H. satisfied Pattern II of the minimum qualifications of the AGPA classification.

The evidence thus shows that L.H. was qualified for the AGPA position and that the Hiring Manager selected L.H. after conducting interviews and determining that L.H. was the most qualified. While E.H. more than likely told K.H. that her daughter was applying for the AGPA position, CRU found no evidence that E.H. actually used or attempted to use her position to influence K.H. to select her daughter. However, given an Administration Deputy Director’s high level and scope of agency influence, it was inherently problematic for BOE to hire a person with whom the Administration Deputy Director had such a close personal relationship. In addition, it is questionable that only two candidates were interviewed for the AGPA position, even if the office is in a location that is hard to fill. Nonetheless, this investigation did not find sufficient evidence to substantiate the claim that L.H.’s promotion to an AGPA was due to nepotism.

III. HRD RECOMMENDATIONS FOR TWO DISTRICT OFFICES

Finding 1: BOE Failed to Act On Recommendations to Correct Hiring Practices Stemming from Appointments Made in December 2012

The BOE’s Executive Director requested that the Human Resources Division (HRD) conduct a hiring process review of 27 recruitment packages initiated in 2012 during the last week of December 2012. The purpose of the review was to ensure that the BOE’s hiring practices complied with merit-related laws, rules and policies. On April 12, 2017 the BOE’s HRD completed the hiring process review. The HRD provided the Executive Director with a report providing an overview of the BOE’s recruitment and hiring process including any deficiencies found in the BOE’s hiring practices.

The HRD findings identified deficiencies in 23 of the 27 recruitment packages reviewed. Additionally, the HRD report deemed 23 appointments unlawful because of the following deficiencies:

- Not clear if all recruitments were advertised for at least 10 days.
- No evidence of administrative clearance from the HRD to hire for these positions.
- No documentation to explain why candidates were hired on the last day of the pay period (12/31/12) instead of the first day of the pay period.
- Some STD 678's (State Application) were signed before the job advertisement was posted and in some cases after the final filing date (FFD).
- There were three (3) recruitment packages that had SROA candidates listed on the SROA/Surplus checklist, and HRD did not receive SROA exemption from CalHR.
- There was one recruitment for Southern California Appeals in Los Angeles, but the applicant was hired in Sacramento.
- The 10 recruitment packages for the Culver City Call Center did not contain appropriate justification to establish in blanket as all packages were identical and reference a Business Taxes Administrator I (BTA I) classification not a Tax Technician I (TT I).
- The 10 recruitment packages for the Culver City Call Center also did not have job-related screening criteria.

Based on the HRD findings, the BOE's HRD Chief recommended the following immediate actions:

1) The HRD shall immediately institute an internal audit function, in accordance with the CalHR delegated authority, of its hiring practices and procedures throughout the year and submit the audit reports to CalHR in compliance with the Delegation Agreement for Unlawful Appointment Investigations.
2) All managers and supervisors shall attend a mandatory specialized training conducted by CalHR on the BOE's hiring practices and procedures.
3) Appropriate administrative action shall be taken against all managers and supervisors who may have made an illegal hire or anyone who has taken part in the process and/or are complicit in the responsibility, as documented in the HRD report to the Executive Director.

The BOE failed to act on the findings and recommendations provided by the HRD's hiring process review. Therefore, corrective action is warranted.

<u>Corrective Action 1:</u>

To ensure adherence with civil service laws and SPB rules, the BOE and CDTFA shall implement the recommended actions identified in the HRD report immediately. Additionally, the BOE shall report any potential unlawful appointments discovered during

the hiring process review to CalHR for further review and administration. Within 60 days of the Executive Officer's approval of these findings and recommendations, the BOE must submit documentation demonstrating that the recommendations in the HRD report recommendations have been implemented.

Finding 2: BOE Failed to Act On Recommendations to Correct Hiring Practices in the Santa Clarita District Office

As a result of an investigation by the BOE's Internal Affairs Section (IAS) and complaints received by the BOE's Human Resources Division (HRD), the BOE conducted an internal review of their hiring practices and procedures. Specifically, the BOE's Classification and Pay (C&P) Section reviewed 29 recruitment packages from the Santa Clarita District Office that were initiated in 2012 - 2015. The BOE's C&P Section completed the hiring process review on December 8, 2016. On January 27, 2017, the HRD Chief provided the Executive Director with a report containing an overview of the BOE's Santa Clarita District Office's recruitment and hiring process, including any deficiencies found in the BOE's hiring practices.

The HRD identified the following deficiencies:

- One recruitment indicated that HR clearance for hire had been received but candidate selection was made prior to the interview schedule date. HRD identified the hire as a possible "unlawful" appointment.[23]
- Application Screening Criteria was either not applied or not scored in order to document the business reasons for not interviewing all applicants.
- No documentation was maintained to explain why candidates did not receive an interview for some recruitments.
- It was unclear if all interviews were conducted consistently for all candidates interviewed.
- The use of inappropriate, subjective rating criteria.
- There was missing interview rating criteria to document how suggested responses to the interview questions translated into final interview scores for all recruitments.
- Panel inconsistencies (e.g., panel member names not included on interview notes and scores and ratings between panel members were unusually varied.)

Based on the HRD report's findings, the HRD Chief concluded that the deficiencies must be addressed with hiring managers and supervisors. The HRD Chief also recommended that Santa Clarita District Office managers and supervisors attend a specialized training conducted by the C&P Section on the BOE's hiring process.

[23] The HRD report found that interviews for the Supervising Tax Auditor II position were scheduled for February 3, 2014. Clearance to hire the selected candidate was given on January 29, 2014.

The BOE failed to act on the findings and recommendations of the HRD Chief. Accordingly, corrective action is warranted.

Corrective Action 2:

To ensure adherence with civil service laws and SPB rules, it is recommended that BOE and CDTFA implement the recommended actions identified in the HRD report immediately, namely, (1) the deficiencies must be addressed with hiring managers and supervisors; and (2) the Santa Clarita District Office managers and supervisors must attend a specialized training on the BOE's hiring process conducted by the C&P Section. Additionally, BOE and CDTFA shall report to CalHR for further review and administration any potential unlawful appointments discovered as a result of the HRD report. Within 60 days of the Executive Officer's approval of these findings and recommendations, the BOE and CDTFA must submit documentation demonstrating compliance with the Executive Officer's order.

IV. OTHER OBSERVATIONS

During this special investigation, CRU observed that the culture of BOE was one in which Board members and their staff and Executives were perceived as having significant influence and power over civil service personnel matters. As one witness stated, "What a Board Member wanted, he or she got." In addition, while certainly not true for all BOE employees, favoritism or perceived favoritism, toward employees having personal relationships with other employees had a dispiriting and stressful impact on overall employee morale. The reorganization of BOE along with an updated and well-considered anti-nepotism policy that is properly followed and enforced should serve to improve, if not, correct and eliminate these problems. In addition, following civil service laws and rules, as well as the merit principle, will be key to CDTFA's success. CRU observed, however, that Executives and hiring managers tended to view HRD as an impediment rather than a valuable resource. CRU therefore recommends that Executives and hiring managers work cooperatively and in collaboration with HRD to ensure lawful and effective hiring practices are used. CRU also recommends that HRD be empowered to apply and enforce the merit rules in all civil service appointments.

In addition, during this special investigation, CRU reviewed the training and other human resource information received by and available to BOE managers relative to civil service hiring. By and large, the training and information was useful and instructive yet also technical and transactional in nature without providing the managers an understanding of the merit system and how the merit system can effectively serve to recruit and hire top talent. This may help to explain, at least in part, why BOE culture seemed to promote using civil service rules as a postscript for trying to legitimize hires and promotions rather than as an effective process by which top candidates are hired and promoted. CRU, therefore, recommends that BOE revise its training and human resource information to include the purpose, requirements, and benefits of the merit system.

V. RESPONSES

BOE and CDTFA submitted separate responses by letters dated November 13, 2017, which are included in the Appendix at the end of this report. Both agencies accept the CRU's findings and agree to comply with the recommendations, several of which have already been implemented.

VI. SPB REPLY

CRU is encouraged by CDTFA's proactive implementation of its revised hiring procedures, mandatory statewide training, new anti-nepotism policy, and employee ethics hotline. All of these initiatives will assist in ensuring that future civil service appointments are merit based. With respect to the temporary revocation of CDTFA's delegated authority, it was clear during the investigation that BOE was permeated with a culture that viewed the civil service rules as bureaucratic technicalities that are open to manipulation and circumvention. Since the former BOE management staff now resides at CDTFA, CRU deems it beneficial for CDTFA to work under the direction of CalHR until all hiring managers gain an appreciation for the purpose and benefits of a merit system.

CRU is similarly encouraged by BOE's implementation of a revised anti-nepotism policy. CRU is also sensitive to the workload demands placed on CDTFA by requiring it to perform all of BOE's merit-related HR functions. In light of this concern, CRU further recommends that, once CDTFA regains its delegated authority, it should work with CalHR to identify another department that can assist during peak workload periods. Similarly, with respect to BOE's concern regarding training resources, CRU recommends that BOE work with CalHR to identify external sources to provide the required training.

APPENDIX

CalGovOps

CALIFORNIA GOVERNMENT OPERATIONS AGENCY

EDMUND G. BROWN JR.
Governor

MARYBEL BATJER
Secretary

DEPARTMENTS

Office of Administrative Law

Franchise Tax Board

Department of General Services

Department of Human Resources

State Personnel Board

Public Employees' Retirement System

State Teachers' Retirement System

Department of Technology

Victim Compensation Board

Department of Tax and Fee Administration

915 Capitol Mall
Suite 200
Sacramento, CA 95814

TEL: (916) 651-9011

www.GovOps.ca.gov

November 13, 2017

Ms. Suzanne Ambrose
Executive Director
State Personnel Board
801 Capitol Mall
Sacramento, CA 95814

Re: Special Investigation Report, Calfiornia State Board of Equalization

Pursuant to the above special investigative report, enclosed are the California Department of Tax and Fee Administration's comments pertaining to the results of the investigation.

The Government Operations Agency would like to thank the State Personnel Board for its comprehensive review. The results provide us with the opportunity to ensure that all selection and hiring practices are merit-based and uphold the principles of equal employment opportunity.

Sincerely,

Marybel Batjer, Secretary
Government Operations Agency

Enc

STATE OF CALIFORNIA

CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION
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EDMUND G. BROWN JR.
Governor

MARYBEL BATJER
Secretary, Government Operations Agency

NICOLAS MADUROS
Director

November 13, 2017

Ms. Suzanne Ambrose
Executive Director
State Personnel Board
801 Capitol Mall
Sacramento, CA 95814

Ms. Ambrose:

The California Department of Tax and Fee Administration (CDTFA) received the State Personnel Board's (SPB) draft report on the special investigation of the California State Board of Equalization (BOE). At the outset, and as noted in the report, after passage of the Taxpayer Transparency and Fairness Act of 2017, the state reorganized BOE into three separate entities effective July 1, 2017. Most of the BOE's responsibilities for administering tax and fee programs were transferred to the newly established CDTFA, which reports to the California Government Operations Agency. In addition, the majority of the BOE's administrative tax appeals functions were transferred to the newly established Office of Tax Appeals, which is an independent state entity that reports to the Governor.

The report focused solely on the BOE's personnel and hiring practices prior to the July 1, 2017 reorganization. Therefore, CDTFA is responding to the report's findings and recommended corrective actions only as it pertains to items that are now under CDTFA's prevue, and welcomes the opportunity provided by the reorganization to reexamine its personnel practices and make necessary adjustments. Since BOE remains an independent constitutional entity, it must separately address how it will remediate its personnel practices.

The report is comprised of three sections pertaining to BOE's nepotism policy, BOE's personnel practices and the BOE Human Resource Division recommendations for two district offices.

We appreciate the SPB's investigative review and CDTFA concurs with the findings described in the report. The following is the CDTFA's response to SPB's findings and corrective actions.

I. BOE's Nepotism Policy

Findings #1 and 2: *BOE's nepotism policy was not timely reviewed and updated, and BOE's nepotism policy has never been consistent with statewide policy.*

Response: CDTFA concurs with these findings and since taking over the majority of BOE's responsibilities on July 1, 2017 has developed and issued a California Department of Human Resources (CalHR) and union-approved anti-nepotism policy and procedures. The policy and procedure were issued on October 27, 2017, and include a mandatory disclosure form for all current CDTFA employees and new hires, including transfers and reinstatements.

Finding #3: BOE has a large number of employees who have personal relationships with other BOE employees and work in the same department or division.

Response: Although CDTFA generally concurs with this finding, the survey and data referenced in the report need clarification. In April 2017, at the request of the SPB, BOE's excluded managers were asked to disclose familial and close personal relationships that they were aware of amongst their staff. A survey of all employees was not feasible at that time, because BOE was actively negotiating an anti-nepotism policy with the unions and could not implement a survey of represented employees until those negotiations concluded. As a result of CDTFA's newly implemented anti-nepotism policy and

mandatory disclosure process, CDTFA will have a more complete and accurate picture of the extent of employee personal relationships moving forward. CDTFA will work with CalHR to develop a corrective action plan for any reporting relationship identified that violates the new anti-nepotism policy.

CDTFA has no concerns with the corrective actions associated with the findings above, except for the recommendation that CalHR revoke its delegation agreements with CDTFA.

II. BOE's Personnel Practices

Findings #1 -6: *Unlawful appointment investigations transacted by BOE*

Response: CDTFA concurs with these findings and will work with CalHR to take appropriate corrective actions.

CDTFA has no concerns with the corrective actions associated with the findings above.

III. HRD Recommendations for Two BOE District Offices

Findings #1-2: *BOE failed to act on recommendations to correct hiring practices*

Response: CDTFA concurs with these findings and some recommendations have been partially implemented already. CDTFA has been reporting monthly on illegal hires to CalHR, as required per CalHR's delegation agreement for unlawful appointments. Additionally, all district office supervisors and managers received training on hiring policies and procedures in August 2017.

CDTFA has no concerns with the corrective actions associated with the findings above.

CDTFA is strongly committed to ensuring that all selection and hiring practices are merit-based and uphold the principles of equal employment opportunity. Since its establishment on July 1, 2017 of this year, CDTFA has:

- Issued a revised recruitment, selection and hiring procedures "Circular" (e.g. policy) to ensure all hiring personnel and managers and supervisors are aware of internal and external requirements around selection and hiring practices.
- Conducted mandatory statewide training for all managers and supervisors on the above-described policies and procedures.
- Issued a new anti-nepotism policy and mandatory disclosure form for current employees and incorporated that policy and disclosure into the hiring process for all new hires, including transfers and reinstatements. Once all employees have disclosed relationships, CDTFA will work with CalHR to address any inappropriate reporting relationships outlined in the policy. All new hires who disclose a familial or close personal relationship are now reviewed by CDTFA's Human Recourses Chief, Chief Deputy and Director, for appropriateness.
- Implemented an employee's ethics hotline to enable employees to report misconduct to the CDTFA internal affairs unit for assessment, and if appropriate, investigation. The CDTFA Chief Counsel, Chief Deputy Director and Director are briefed bi-weekly on all complaints and disposition of complaints.

If you have any questions concerning the CDTFA response please contact me or Katie S. Hagen, Chief Deputy Director, at (916) 324-4490.

Sincerely,

Nick Maduros, Director

CONFIDENTIAL

cc: Ms. Marybel Batjer
Ms. Katie Hagen
Mr. Tad Egawa
Ms. Sandra Mayorga
Ms. Sara Sheikholislam
Mr. David Gau (BOE)
Mr. Henry Nanjo (BOE)

CONFIDENTIAL

ANTI-NEPOTISM 1011

Authority: California Constitution Article VII, Government Code section 18500

POLICY 1011.1

Nepotism is prohibited at California Department of Tax and Fee Administration (CDTFA). Nepotism is favoritism by those with power or influence to appoint, employ, promote, advance, or advocate for relatives or persons with whom they have a personal relationship in an employment setting. Nepotism is antithetical to a merit-based personnel system, and CDTFA is committed to the state policy of recruiting, hiring and assigning employees on the basis of merit.

Nepotism may exist when personal relationships give rise to the perception of favoritism, bias, or partiality to persons with whom they have a personal relationship; it may also exist when those relationships give rise to the perception of inequity or partiality to other employees. Nepotism may exist when one employee may be perceived to affect another employee's work assignments, job duties, performance reviews, or promotional opportunities, or where the relationship may impact the integrity, morale, operational functioning, safety, or security of the workplace. As such, two employees with a personal relationship may not have a reporting relationship within the direct chain of command, nor may they sign or approve the other's expense advances or reimbursements. Other situations may also constitute nepotism, including two employees with a personal relationship within the same chain of command (although not direct) or within the same division or office.

Furthermore, employees of CDTFA may not attempt to exert any influence over CDTFA personnel matters involving relatives or persons with whom they have a personal relationship as defined herein. This prohibition shall apply to matters involving hiring, promotion, discipline, performance reviews and any other personnel action.

PERSONAL RELATIONSHIP DEFINED

Personal relationship means any relationship so personal that other CDTFA employees may reasonably perceive that one of the employees may be motivated to treat the other one more favorably than other employees. That includes, but is not limited to, any familial relationship established by blood, adoption, marriage, or registered domestic partnership. For the purposes of this policy, personal relationships are not limited to familial relationships but also include employees who reside together or have other close personal bonds.

IMPLEMENTATION AND DOCUMENTATION

Prospective Hires, Promotions, and Transfers

All prospective hires, prior to employment, including transfers and reinstatements, must complete, sign, and submit to their hiring supervisor a *Verification of Personal Relationships and Hiring of Relatives* (form CDTFA-249). The prospective hire must certify whether they have a personal relationship with a current CDTFA employee or not. Administrative clearance to hire will not be granted without an approved form CDTFA-249. The hiring supervisor will promptly submit a prospective hire's completed form to the Personnel Transactions Section in Human Resources Bureau (HRB).

If the prospective hire does not have personal relationships with any current CDTFA employees, then the hiring supervisor will promptly submit it to the Personnel Transactions Section in Human Resources Bureau (HRB) through the normal hiring process. If a prospective hire discloses a personal relationship on form CDTFA-249, the hiring supervisor must immediately notify the Chief of Human Resources Bureau (HRB Chief). The HRB Chief will prepare a recommendation for the Director's approval with respect to whether the relationship will violate the Policy. Whenever the Director approves the HRB Chief's recommendation that a personal relationship of a prospective employee will violate this Policy, CDTFA will refuse to hire, reinstate, or transfer that prospective employee.

If a previously undisclosed personal relationship involving a prospective hire is discovered, management may take remedial action to ensure compliance with this Policy. A failure to disclose a personal relationship may result in disciplinary action up to and including dismissal.

Current CDTFA Employees

In implementing this Policy, current employees are required to complete and sign form CDTFA-249 and provide it to their immediate supervisor. Employees must also immediately complete, sign, and submit to their immediate supervisor a new form CDTFA-249 any time circumstances in their personal lives change (such as new or different personal relationships) in a way that could violate this Policy.

Upon receipt of an employee's form CDTFA-249, a supervisor will promptly submit the completed form to the Personnel Transactions Section in HRB for inclusion in the employee's Official Personnel File (OPF). When an employee submits a form CDTFA-249 to a supervisor disclosing a personal relationship, or when a supervisor learns through other means of a relationship that may violate this policy, that supervisor must immediately notify the HRB Chief. If information regarding an employee's personal status is reported to the HRB Chief, he/she will discuss the information with the affected employee(s) and make a recommendation to the Director as to whether or not the relationship violates the Policy. The Director will make the determination if a violation has occurred.

Whenever the HRB Chief makes a recommendation that personal relationships of employees violate the Policy, and the Director approves that recommendation, management will work with the parties and take actions to remediate noncompliance, which may include involuntary transfer of employees, in accordance with applicable state employment laws and collective bargaining agreements.

ADDRESSING NEPOTISM COMPLAINTS

Alleged violations of this policy should be reported to the HRB. To file a nepotism complaint, represented and nonrepresented employees shall use form CDTFA-334 and submit to Labor Relations Office, MIC: 18. For more detailed information on filing a complaint, please refer to BEAM section 1604 which may be accessed by using the following link: http://eboe/eboe3/BEAM/Part2/1604.pdf.

STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION
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BETTY T. YEE
State Controller

DAVID J. GAU
Executive Director

November 13, 2017

Suzanne Ambrose
Executive Officer
State Personnel Board
801 Capitol Mall
Sacramento, CA 95814

RE: RESPONSE TO SPB INVESTIGATION REPORT

Dear Ms. Ambrose,

The State Board of Equalization appreciates this opportunity to respond to the State Personnel Board's (SPB's) Investigation into the State Board of Equalization (BOE) regarding "systemic complaints of nepotism" and the various complaints of improper hiring, etc. by the BOE. We appreciate the work done by the SPB's Compliance Review Unit (CRU) and look forward to continuing to implement changes to both prevent such issues from occurring in the future, and to remedy past improper hiring and appointment actions.

The BOE is committed to fully implementing proper processes to identify, correct and prevent inappropriate reporting structures, hiring, evaluations and reviews to minimize the effect of and address any "close personal relationships" between BOE employees and to apply and enforce a strong anti-nepotism policy throughout all levels of the organization. In addition, we welcome the report's recommendations for training and education so employees, managers and executives throughout all levels of the organization are trained and continue to be trained in current State Civil Service processes, including hiring, review of employees, appropriate merit promotions, reinforcing the benefits of the merit system, and to apply best practices in these areas wherever possible.

NEPOTISM FINDINGS

As stated above, the BOE will commit to addressing the remaining nepotism issues, consistent with the report's recommendations. It should be noted that the BOE, post-July 1, 2017[1] is a much smaller organization with approximately 190 employees. Of these 190 employees, only four employees have close "personal relationships" which each other and BOE has already started engaging the California Department of Human Resources (CalHR) to address these relationships. In addition, on Monday, November 13, 2017, the BOE adopted and issued a new, more comprehensive and thorough Nepotism policy which mirrors the policy that the California Department of Tax and Fee Administration (CDTFA) issued recently.

The attached policy, (Attachment A – BOE's Nepotism Policy) is designed to address and correct the situations where employees have personal relationships with other BOE employees:

[1] Assembly Bill No. 102 (2017, ch. 16), transferred any non-Constitutional duties, functions, administrative authority and its respective powers and duties from the BOE to the CDTFA which the bill created. In addition, on July 1, 2017, except for the approximately 190 employees that remained with the BOE, the balance of the nearly 4000 employees was transferred to the CDTFA. On January 1, 2018, the newly created Office of Tax Appeals will hear and determine appeals on sales and use tax, special taxes and fees (excluding the alcoholic beverage tax and the tax on insurers) and personal income and corporation matters.

1) Do not work in small units in close association with each other, to the extent possible.
2) Do not work for the same supervisor,
3) Do not have a direct or indirect supervisor/subordinate relationship.

The BOE, with the roll-out of this policy, will ensure that it carefully reviews potentially sensitive situations and associations and assesses them to ensure that the following are not adversely affected:

1) The work product of the unit,
2) Safety and morale of the employees in the unit and
3) The fair and impartial supervision and evaluation of the employees by supervisors in the unit.

We will work with CalHR to develop mechanisms and policies, and will complete our efforts to develop a way that such concerns can be anonymously reported to someone outside the BOE[2].

The BOE commits to regular (no-less frequently than every 6 months by the Executive Staff) review and update of the nepotism policy to ensure that it protects the employees and State civil service system and the concept of merit based hiring, selection, and promotion and that it is consistent with any State-wide nepotism policy. In developing future revisions to the Nepotism policy, the BOE will be guided by and implement the considerations mentioned in the report from the May 6, 2015, Personnel Management Letter.

The BOE is equally committed to requiring all Board Members, Executives, Board Member staff, Executive staff, Chiefs, Managers, Supervisors and where possible, employees to be trained consistent with the Report's recommendations.

BOE Concerns

One concern the BOE has with the Report's recommendations, is the recommendation to utilize and coordinate with CDTFA Human Resources Division (HRD) for all "...appointments, administer all BOE personnel planning and activities including but not limited to any civil service appointments." The BOE post-July 1, 2017, has a great deal of vacancies in both key management and staff levels. BOE is comfortable with the concept of not performing these functions, itself, but is concerned that CDTFA HRD may be overwhelmed with the tasks in addressing the nepotism issues identified in the report.

The BOE is interested in aggressively addressing and correcting these issues in a timely manner. Currently, the BOE has no resources who could provide the training recommended in the report. BOE requests consideration of identifying alternative Departments or entities that could assist BOE in these endeavors in case CDTFA HRD cannot timely assist BOE.

BOE'S PERSONNEL PRACTICES FINDINGS

The BOE appreciates the findings and recommendations in the report regarding the BOE's personnel practices. BOE agrees with the findings and supports correction of these inappropriate hiring actions and personnel practices.

The BOE notes that after July 1, 2017, the Board Members statutorily are prevented from participating in the hiring, firing, and direction of any BOE Executive, Chief, Manager, Supervisor or staff, save the Executive Director. The BOE is committed to working with CalHR to develop and implement policies, practices and procedures to prevent such hiring action and personnel practice failures from ever occurring again.

The BOE notes in reviewing the report, there were some erroneous titles being used. On pages 13 to 15 of the report is a reference to the "Acting Chief Deputy". There was no such title used at the time, but from the

[2] BOE Executive Staff was working on an anonymous reporting "hot line" approximately 6 months ago, but due to the division of the BOE to CDTFA and BOE, was unable to complete setting up the reporting line.

description, it appears to refer to the Administrator, Customer Services and Outreach division who was performing the actions described in the report.

THE HRD'S RECOMMENDATIONS FOR THE TWO DISTRICT OFFICES

The BOE acknowledges and appreciates the findings and recommendations of the report with regard to the two District offices. Both these offices are now part of the CDTFA, post-July 1, 2017, and as such any recommendations will be the responsibility of the CDTFA to implement. To the extent that the BOE has identified issues, to address, the BOE will aggressively and quickly comply with those recommendations and requested actions.

CONCLUSION

We appreciate the report, its findings and recommendations and look forward to continuing to implement changes to both prevent such issues from occurring in the future, and to remedy past improper hiring and appointment actions. The BOE is committed to fully implementing the processes needed to identify, correct and prevent inappropriate reporting structures, hiring, evaluations and reviews, to minimize the effect of and address any "close personal relationships" between BOE employees and to apply and enforce a strong anti-nepotism policy throughout all levels of the organization. In addition, we welcome the report's recommendations for training and education so employees, managers and executives throughout all levels of the organization are trained and continue to be trained in current State Civil Service processes, including hiring, review of employees, appropriate merit promotions, reinforcing the benefits of the merit system, and to apply best practices in these areas wherever possible.

As stated above, the BOE would appreciate consideration of its concern that CDTFA HRD may be overwhelmed with the tasks in addressing the CDTFA nepotism issues identified in the report, leaving little time for them to address and assist with BOE needs to address and correct these issues. BOE is happy to work with CDTFA's HRD, but BOE requests the consideration of identifying alternative Departments or entities that could assist BOE in these endeavors, if the CDTFA HRD is too busy.

Thank you for the efforts in preparing this report and providing the BOE an opportunity to respond. The BOE looks forward to working with SPB and CalHR collaboratively to address these issues.

Sincerely,

David J. Gau
Executive Director

DJG:yb

cc: Mr. Henry Nanjo
Ms. Marybel Batjer (GovOps)
Mr. Nick Maduros (CDTFA)
Ms. Katie Hagen (CDTFA)
Mr. Tadd Egauwa (CDTFA)
Ms. Sandra Mayorga (CDTFA)
Ms. Sarah Sheikholism (CDTFA)

CONFIDENTIAL

ORDER

CALIFORNIA
STATE PERSONNEL BOARD

801 Capitol Mall Sacramento, CA 95814 | www.spb.ca.gov

Governor Edmund G. Brown Jr.

November 15, 2017

David J. Gau, Executive Director
CA State Board of Equalization
450 N Street, MIC 73
Sacramento, CA 95814

Nick Maduros, Director
CA Dept of Tax and Fee Administration
450 N Street
Sacramento, CA 95814

Dear Mr. Gau and Mr. Maduros:

Enclosed is the State Personnel Board's (SPB) Report and Order regarding the Special Investigation into Allegations of Nepotism at the California State Board of Equalization. The order specifies various actions and timelines, some of which are extremely time sensitive. Please carefully review the timelines and take the action indicated.

SPB appreciates your cooperation throughout the investigation. If you have any questions or concerns, please feel free to contact Ben Platt, Compliance Review Manager, at Benjamin.Platt@spb.ca.gov or 916-651-0449.

Sincerely,

SUZANNE M. AMBROSE
Executive Officer

Enclosures

STATE PERSONNEL BOARD

801 Capitol Mall Sacramento, CA 95814 | www.spb.ca.gov

Governor Edmund G. Brown Jr.

November 15, 2017

STATE PERSONNEL BOARD

ORDER REGARDING THE SPECIAL INVESTIGATION INTO ALLEGATIONS OF NEPOTISM AT THE CALIFORNIA STATE BOARD OF EQUALIZATION

I. BOARD OF EQUALIZATION'S NEPOTISM POLICY

1. Within 60 days of the date of this order the California State Board of Equalization (BOE) and the California Department of Tax and Fee Administration (CDTFA) must submit to the State Personnel Board's Compliance Review Unit (CRU) a complete list of all personal relationships within their respective workforces, including name, title, relationship(s) with other employee(s), and organizational location. They must work with California Department of Human Resources (CalHR), pursuant to civil service rules, to address any organizational relationships that violate anti-nepotism principles.

2. Within 30 days of the date of this order, BOE and CDTFA must submit to CRU updated anti-nepotism policies that are consistent with CalHR's PML # 2015-014.

3. Within 6 months of CRU's approval of the updated anti-nepotism policies, BOE and CDTFA must submit documentation to CRU demonstrating that all employees have been trained on the new anti-nepotism policies. Thereafter, on a routine basis not less than every two years, all BOE and CDTFA employees shall be trained on the anti-nepotism policies. All new BOE and CDTFA employees shall receive anti-nepotism training within 60 days from the date of appointment.

4. Effective immediately, any current delegation agreements between CDTFA and CalHR authorizing CDTFA to conduct examinations and process appointments are revoked for a period of not less than one year. During the period of revocation, CDTFA must perform its merit-related human resources planning and activities under the supervision of CalHR, which includes, but is not limited to, seeking CalHR approval for any civil service examinations and appointments. At

the end of the one-year period, CalHR shall assess CDTFA's progress in regaining delegated authority and report its assessment to CRU.

5. Effective immediately, any current delegation agreements between BOE and CalHR authorizing BOE to perform merit-related human resources functions are permanently revoked and future delegation agreements are permanently prohibited. CDTFA shall be responsible for coordinating, operating, and administering all BOE merit-related human resources planning and activities, including but not limited to, any civil service examinations and appointments. If CDTFA is unable to assume BOE's workload due to resource limitations, it may work with CalHR to identify another department to assume BOE's workload. Additionally, until CDTFA regains its own delegated authority, CDTFA will perform all of BOE's merit-related human resources functions under the supervision of CalHR.

II. BOE'S PERSONNEL PRACTICES

A. Tax Technician I in the Sacramento District Office:

1. Before November 22, 2017, CDTFA shall void the appointment of the Tax Technician I who was hired in the Sacramento District Office on December 31, 2012. Because voiding the appointment will affect the employee's State civil service reinstatement rights, CDTFA shall afford him notice and the rights to respond and appeal, pursuant to Board rules 266.2 and 266.3. Within 60 days of the date of this order, CDTFA must submit to CRU documentation showing that the appointment was voided.

2. CalHR shall promptly inform Victim's Compensation Board (VCB) of this corrective action and, in consultation with VCB, determine what impact, if any, the voiding of the employee's appointment as a TTI will have on his OT appointment with VCB. Should there be findings that negatively impact the employee's OT appointment, CalHR, in coordination with VCB, shall take any appropriate steps, including voiding the appointment and notifying the employee of his rights. Within 60 days of the date of this order, CalHR shall inform CRU of its determination and any steps taken as a result.

3. Within 60 days of the date of this order, CDTFA shall submit documentation to CRU demonstrating that its Human Resources Department and Internal Affairs Section staff have been trained on the SPB's rules related to good faith and correction of appointments.

B. Associate Governmental Program Analyst in the Sacramento Office of the Outreach Services Division:

1. CDTFA shall take immediate action to void the appointment of the Associate Governmental Program Analyst hired in the Sacramento Office of the Outreach Services Division on November 2, 2015. CDTFA shall afford the employee notice and the rights to respond and appeal pursuant to Board rules 266.2 and 266.3. Within 60 days of this order, CDTFA must submit to CRU documentation showing that the appointment was voided.

C. Office Technician in the New York Office:

1. CDTFA shall take immediate action to void the appointment of the Office Technician in the New York Office on July 5, 2016. CDTFA shall afford the employee notice and the rights to respond and appeal, pursuant to Board rules 266.2 and 266.3. CDTFA shall, in consultation with CalHR, determine the impact, if any, on his eligibility for his current classification and take any appropriate steps should there be any findings that negatively affect the employee's current civil service status. Within 60 days of the date of this order, CDTFA must submit to CRU documentation showing that the appointment was voided and any additional actions taken with respect to his current classification.

D. Information Officer II in the External Affairs Department:

1. CDTFA shall immediately inform the affected employee of CRU's findings and recommendations regarding his Information Officer II appointment in the External Affairs Department on May 25, 2016, and afford him the opportunity to respond. Within 10 days of the date of this order, CDTFA shall report to CRU its compliance with this order, along with any response provided by the employee. CRU shall review the employee's response and make a final

recommendation to the Executive Officer as to the disposition of the appointment. If it is confirmed that bad faith existed, CDTFA shall void the appointment and afford the employee notice and the rights to respond and appeal, pursuant to Board rules 266.2 and 266.3. Within 60 days of the date of the Executive Officer's final decision regarding the disposition of the appointment, CDTFA shall submit to CRU documentation showing compliance with the order.

III. HRD RECOMMENDATIONS FOR TWO DISTRICT OFFICES

1. Upon regaining its delegated authority, CDTFA shall institute an internal audit function of its hiring practices and procedures throughout the organization in both CDTFA and BOE and submit a monthly audit report to CalHR. Any unlawful appointments identified shall be timely addressed so as to take action within the one year statute of limitations for good faith unlawful appointments.

2. Appropriate action shall be taken against all managers and supervisors who are found to have participated or been complicit in any unlawful appointments discovered through the internal audits.

3. Within 6 months of the date of this order, all managers and supervisors throughout both BOE and CDTFA shall attend a mandatory specialized training conducted or approved by CalHR on civil service hiring practices and procedures. The training should not only include the hiring rules and processes, but also the purpose and benefits of the merit system in general. This training may be combined with the training on the revised anti-nepotism policies. All new managers and supervisors shall receive the training within 60 days of appointment. Within 6 months of the date of this order, CDTFA shall submit to CRU documentation showing its compliance with this order.

Suzanne M Ambrose

SUZANNE M. AMBROSE
Executive Officer

11/15/17
Order Dated