



COMPLIANCE REVIEW REPORT

CALIFORNIA ARTS COUNCIL

Compliance Review Unit
State Personnel Board
May 16, 2016

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INTRODUCTION

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

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

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

EXECUTIVE SUMMARY

The CRU conducted a routine compliance review of California Arts Council (CAC) personnel practices in the areas of examinations, appointments, and EEO from August 1, 2014, through July 31, 2015. The following table summarizes the compliance review findings.

Area	Finding	Severity
Examinations	Job Analyses Were Not Developed or Used for the Examination Process	Very Serious
Appointments	Appointment Documentation Was Not Kept for the Appropriate Amount of Time	Serious
Appointments	Applications Were Not Date Stamped	Non-Serious or Technical
Equal Employment Opportunity	Equal Employment Opportunity Program Complied with Civil Service Laws and Board Rules	In Compliance

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

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

BACKGROUND

The mission of the CAC is to advance California through the arts and creativity. The agency is headed by the Director who reports to a policy board consisting of 11 council members - one appointed by the Senate, one by the Assembly, and nine by the Governor. The Director leads a staff comprised of 15-20 career civil servants.

The agency focuses on serving California through:

- sponsoring arts education programs, in classrooms and after-school settings
- furthering community development, economic development, and revitalization by means of the arts
- supporting interventional arts programs for at-risk juveniles in the juvenile justice system; and rehabilitative arts programs in California prisons, in partnership with the Department of Corrections and Rehabilitation
- fostering arts programs for underserved Californians (rural and inner-city areas)
- mentoring emerging arts organizations, with an emphasis on communities of color, recent immigrant and refugee communities, as well as tribal groups
- addressing the needs of California's veterans, active military, and their families through arts programs
- providing technical assistance to enhance opportunities for Californians with disabilities to participate in the arts, in partnership with the National Arts and Disability Center and the National Endowment for the Arts
- organizing the largest state-level Poetry Out Loud competition in the nation, in partnership with the National Endowment for the Arts and California Poets in the Schools
- assisting the Governor in the screening and adjudication process for the Poet Laureate post
- representing the Governor in matters of international cultural exchange

SCOPE AND METHODOLOGY

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

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

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

The CAC did not execute any PSC's subject to the Department of General Services approval during the compliance review period.¹

On April 7, 2016, an exit conference was held with the CAC to explain and discuss the CRU's initial findings and recommendations. The CRU received and carefully reviewed the CAC's written response on April 21, 2016, which is attached to this final compliance review report.

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

FINDINGS AND RECOMMENDATIONS

Examinations

Examinations to establish an eligible list must be competitive and of such character as fairly to test and determine the qualifications, fitness, and ability of competitors to perform the duties of the class of position for which he or she seeks appointment. (Gov. Code, § 18930.) Examinations may be assembled or unassembled, written or oral, or in the form of a demonstration of skills, or any combination of those tests. (*Ibid.*) The Board establishes minimum qualifications (MQ's) for determining the fitness and qualifications of employees for each class of position and for applicants for examinations. (Gov. Code, § 18931.) Within a reasonable time before the scheduled date for the examination, the designated appointing power shall announce or advertise the examination for the establishment of eligible lists. (Gov. Code, § 18933, subd. (a).) The advertisement shall contain such information as the date and place of the examination and the nature of the MQ's. (*Ibid.*) Every applicant for examination shall file an application in the office of the department or a designated appointing power as directed by the examination announcement. (Gov. Code, § 18934.) Generally, the final earned rating of each person competing in any examination is to be determined by the weighted average of the earned ratings on all phases of the examination. (Gov. Code, § 18936.) Each competitor shall be notified in writing of the results of the examination when the employment list resulting from the examination is established. (Gov. Code, § 18938.5.)

On behalf of the CAC, the California State Library (CSL) handled all examination administrations. During the period under review, the CSL conducted seven examinations on behalf of the CAC. The CRU reviewed all of these examinations, which are listed below:

Classification	Exam Type	Exam Components	Final File Date	No. of Applications
Assistant Arts Grants Administrator	Departmental Open	Supplemental Application (SA) ²	9/30/2014	15
Associate Arts Grants Administrator	Departmental Open	SA	9/30/2014	5

² In a supplemental application (SA) examination, applicants are not required to present themselves in person at a predetermined time and place. Supplemental applications are in addition to the regular application and must be completed in order to remain in the examination. Supplemental applications are also known as "rated" applications.

Classification	Exam Type	Exam Components	Final File Date	No. of Applications
Assistant Arts Grants Administrator	Departmental Open	SA	12/31/2014	8
Associate Arts Grants Administrator	Departmental Open	SA	12/31/2014	4
Assistant Arts Grants Administrator	Departmental Open	SA	3/31/2015	8
Associate Arts Grants Administrator	Departmental Open	SA	3/31/2015	4
Supervising Arts Grants Administrator	Departmental Promotional	Education & Experience ³	6/30/2015	2

FINDING NO. 1 – Job Analyses Were Not Developed or Used For the Examination Process

Summary: A complete job analysis is required for each civil service examination. The CAC was unable to provide sufficient job analyses for all the examinations reviewed. Partial job analyses were provided; however, they did not include the required elements of a job analysis as listed in the Merit Selection Manual (MSM).

The CAC was unable to provide complete job analyses for the following classifications:

Classification	List Active Date	List Expiration Date	No. of Eligibles
Assistant Arts Grants Administrator	3/31/2015	3/31/2016	8
Associate Arts Grants Administrator	3/31/2015	3/31/2016	4

Criteria: The MSM, which is incorporated in California Code of Regulations (CCR), title 2, section 50, mandates the development and use of a job analysis for the examination process. A "job analysis shall serve as the primary basis for demonstrating and documenting the job-relatedness of examination processes conducted for the establishment of eligible lists within the State's civil service." (MSM)

³ In an education and experience examination, one or more raters reviews the applicants' Standard 678 application forms, and scores and ranks them according to a predetermined rating scale that may include years of relevant higher education, professional licenses or certifications, and/or years of relevant work experience.

(Oct. 2003), § 2200, p. 2.) The MSM requires that job analyses adhere to the legal and professional standards outlined in the job analysis section of the MSM and that certain elements must be included in the job analysis studies. (Ibid.) Those requirements include the following: (1) that the job analysis be performed for the job for which the subsequent selection procedure is developed and used; (2) the methodology utilized be described and documented; (3) the job analytic data be collected from a variety of current sources; (4) job tasks be specified in terms of importance or criticality, and their frequency of performance; (5) and job tasks be sufficiently detailed to derive the requisite knowledge, skills, abilities (KSAs), and personal characteristics that are required to perform the essential tasks and functions of the job classification. (MSM, § 2200, pp. 2-3.)

Severity: Very Serious. The examinations may not have been job-related or legally defensible.

Cause: The CSL, on behalf of CAC, states the cause was a lack of training and/or awareness of the laws and rules governing the examination process during the time of the review.

Action: The CSL no longer provides services to the CAC; and the examinations administered without full job analyses have expired. Prior to administering any future examinations the CAC must create and develop each examination based upon a job analysis that meets the requirements of the MSM. The CAC has submitted a corrective action plan for ensuring job analyses are completed as part of its department response.

Furthermore, the CRU finds that any appointments made from the examinations that were administered without full job analyses were made in good faith, and do not merit being voided.

Appointments

In all cases not excepted or exempted by Article VII of the California Constitution, the appointing power must fill positions by appointment, including cases of transfers, reinstatements, promotions, and demotions in strict accordance with the Civil Service Act and Board rules. (Gov. Code, § 19050.) Appointments made from eligible lists, by

way of transfer, or by way of reinstatement, must be made on the basis of merit and fitness, which requires consideration of each individual’s job-related qualifications for a position, including his or her knowledge, skills, abilities, experience, and physical and mental fitness. (Cal. Code Regs., tit. 2, § 250, subd. (a).)

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

Classification	Appointment Type	Tenure	Time Base	No. of Appointments
Supervising Arts Grants Administrator	Certification List	Permanent	Full Time	1
Associate Governmental Program Analyst	Transfer	Permanent	Full Time	2

FINDING NO. 2 – Appointment Documentation Was Not Kept for the Appropriate Amount of Time

Summary: Specifically, of the three appointments reviewed, the CAC did not retain two NOPA’s and rating criteria for one appointment made from a designated three-rank eligible list.

Criteria: In relevant part, civil service laws require that the employment procedures of each state agency shall conform to the federal and state laws governing employment practices. (Gov. Code § 18720.) State agencies are required to maintain and preserve any and all applications, personnel, membership, or employment referral records and files for a minimum period of two years after the records and files are initially created or received. (Gov. Code, § 12946.) State agencies are also required to retain personnel files of applicants or terminated employees for a minimum period of two years after the date the employment action is taken. (Ibid.)

Severity: Serious. Without documentation, the CRU could not verify if the appointments were properly conducted.

Cause: The CSL, on behalf of CAC, acknowledges two NOPA's and rating criteria were not retained due to a shortage of staff resources and a lack of staff training during the time of the review.

Action: The CSL no longer provides services to the CAC. The CAC acknowledges and is aware of the necessary retention requirements for appointment documentation. To address the deficiency, the CAC has submitted a corrective action plan for ensuring appointment documentation is retained for the appropriate amount of time as part of its department response.

FINDING NO. 3 – Applications Were Not Date Stamped

Summary: The CSL, on behalf of the CAC, accepted and processed 60 out of 65 applications that were not date stamped.

Criteria: California Code Regulations, title 2, section 174 (Rule 174) requires timely filing of applications: All applications must be filed at the place, within the time, in the manner, and on the form specified in the examination announcement.

Filing an application 'within the time' shall mean postmarked by the postal service or date stamped at one of the department's offices (or appropriate office of the agency administering the examination) by the date specified.

An application that is not postmarked or date stamped by the specified date shall be accepted, if one of the following conditions as detailed in Rule 174 apply: (1) the application was delayed due to verified error; (2) the application was submitted in error to the wrong state agency and is either postmarked or date stamped on or before the specified date; (3) the employing agency verifies examination announcement distribution problems that prevented timely notification to an employee of a promotional examination; or (4) the employing agency verifies that the applicant failed to receive timely notice of promotional examination. (Cal. Code Reg., tit. 2, § 174, subs. (a), (b), (c), & (d).) The same final filing date procedures are applied to the selection process used to fill a job vacancy.

Severity: Non-Serious or Technical. Final filing dates are established to ensure all applicants are given the same amount of time in which to apply for a job vacancy and to set a deadline for the recruitment. Therefore, although the acceptance of applications after the final filing date may give some applicants more time to prepare their application than other applicants who meet the final filing date, the acceptance of late applications may not impact the results of the job vacancy selection.

Cause: The CSL, on behalf of CAC, acknowledges 60 out of 65 applications were not date stamped due to a lack of staff training during the time of the review.

Action: The CSL no longer provides services to the CAC. The CAC acknowledges the importance of ensuring the applications received and processed are date stamped in order to ensure the final filing date is upheld. To address the deficiency, the CAC has submitted a corrective action plan for ensuring applications are date stamped as part of its department response.

Equal Employment Opportunity

Each state agency is responsible for an effective EEO program. (Gov. Code, § 19790.) The appointing power for each state agency has the major responsibility for monitoring the effectiveness of its EEO program. (Gov. Code, § 19794.) To that end, the appointing power must issue a policy statement committed to EEO; issue procedures for filing, processing, and resolving discrimination complaints; issue procedures for providing equal upward mobility and promotional opportunities; and cooperate with the California Department of Human Resources by providing access to all required files, documents and data. (*Ibid.*) In addition, the appointing power must appoint, at the managerial level, an EEO Officer, who shall report directly to, and be under the supervision of, the director of the department to develop, implement, coordinate, and monitor the department's EEO program. (Gov. Code, § 19795.)

Because the EEO Officer investigates and ensures proper handling of discrimination, sexual harassment and other employee complaints, the position requires separation from the regular chain of command, as well as regular and unencumbered access to the head of the organization. In a state agency with less than 500 employees, like the CAC, the EEO Officer may be the Personnel Officer.

Each state agency must establish a separate committee of employees who are individuals with a disability, or who have an interest in disability issues, to advise the head of the agency on issues of concern to employees with disabilities. (Gov. Code, § 19795, subd. (b)(1).) The department must invite all employees to serve on the committee and take appropriate steps to ensure that the final committee is comprised of members who have disabilities or who have an interest in disability issues. (Gov. Code, § 19795, subd. (b)(2).)

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

FINDING NO. 4 – Equal Employment Opportunity Program Complied with Civil Service Laws and Board Rules

After reviewing the policies, procedures, and programs necessary for compliance with the EEO program's role and responsibilities according to statutory and regulatory guidelines, the CRU determined that the CAC's EEO program provided employees with information and guidance on the EEO process including instructions on how to file discrimination claims. Furthermore, the EEO program outlines the roles and responsibilities of the EEO Officer, as well as supervisors and managers. The EEO Officer, who is at a managerial level, reports directly to the Director of the CAC. In addition, the CAC has an established DAC. The CAC also provided evidence of its efforts to promote EEO in its hiring and employment practices, to increase its hiring of persons with a disability, and to offer upward mobility opportunities for its entry-level staff. Accordingly, the CAC EEO program complied with civil service laws and board rules.

DEPARTMENTAL RESPONSE

The CAC's response is attached as Attachment 1.

SPB REPLY

Based upon the CAC's written response, the CAC will comply with the CRU recommendations and findings. The CAC has already submitted corrective action plans for all departmental findings.

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

April 18, 2016

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

Dear Ms. Ambrose:

Re: California Arts Council Compliance Review Response

This letter is in response to the recent compliance review of the California Arts Council (CAC). Listed below are the findings of the report as well as the corresponding causes and corrective actions CAC will take.

Finding #1: Examinations - Job Analyses Were Not Developed or Used For the Examination Process.

Cause: The Department of General Services (DGS), on behalf of CAC acknowledges that the Department of State Libraries did not complete Job Analysis Reports for the examinations of Assistant Arts Grants Administrator and Associate Arts Grants Administrator.

Corrective Action: In July of 2015, DGS took over the services of administrating examinations for CAC. DGS Examinations Unit discovered immediately that Job Analysis Reports were not completed for the examinations of Assistant Arts Grants Administrator and Associate Arts Grants Administrator. DGS immediately contacted CAC and advised of the appropriate course of action. DGS Examinations Unit removed the examination bulletins and conducted a job analysis utilizing CAC subject matter experts on the dates of September 14-15 2015. The Job Analysis Report was completed as of October 2015 and a new exam was developed and administered.

Finding #2: Appointments – Appointment Documentation Was Not Kept for the Appropriate Amount of Time

Attachment 1

Cause: DGS/CAC acknowledges the finding and is aware of the necessary retention requirements for appointment documentation. DGS does have a procedure in place to ensure NOPAs are signed and returned by the appointed individual. This procedure is executed by a unit which has experienced high turnover.

Corrective Action: DGS/CAC has released HR Memo 15-025 to liaisons, managers, and other relevant parties. This memo includes which documents must be retained in the appointment package and for how long. In addition, the procedure to ensure signed NOPA's are received from hiring managers will be communicated and management will evaluate if a new procedure is necessary.

Finding #3: Appointments – Applications Were Not Date Stamped

Cause: DGS/CAC acknowledges the importance of ensuring the applications received and processed are date stamped in order to ensure the final filing date is upheld.

Corrective Action: DGS/CAC has released HR Memo 15-025 to all liaisons, managers, and other relevant parties. This memo includes several recommendations from this report, including the requirement that all received applications must be date stamped.

Sincerely,



Ayanna L. Kiburi, MPH
Deputy Director

cc: Lisa York, Personnel Officer, DGS

Attachment 1