

# **COMPLIANCE REVIEW REPORT**

## **CALIFORNIA DEPARTMENT OF EDUCATION**

Compliance Review Unit  
State Personnel Board  
December 13, 2016

## TABLE OF CONTENTS

Introduction .....	1
Executive Summary .....	1
Background .....	2
Scope and Methodology.....	3
Findings and Recommendations .....	4
Examinations .....	4
Appointments .....	7
Equal Employment Opportunity (EEO) .....	12
Personal Services Contracts.....	13
Mandated Training .....	17
Departmental Response.....	21
SPB Reply .....	21

## **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 Department of Education (CDE) personnel practices in the areas of examinations, appointments, EEO, and PSC's from November 1, 2015, through May 31, 2016, and mandated training from July 1, 2014, through July 1, 2016. The following table summarizes the compliance review findings.

Area	Finding	Severity
Examinations	Examinations Complied with Civil Service Laws and Board Rules	In Compliance
Appointments	Probationary Evaluations Were Not Provided for All Appointments Reviewed	Serious
Equal Employment Opportunity	Equal Employment Opportunity Program Complied with Civil Service Laws and Board Rules	In Compliance

Area	Finding	Severity
Personal Services Contracts	Personal Services Contracts Complied with Procedural Requirements	In Compliance
Mandated Training	Supervisory Training Was Not Provided for All Supervisors	Very Serious
Mandated Training	Ethics Training Was Not Provided for All Filers	Very Serious
Mandated Training	Sexual Harassment Training Was Not Provided for All Supervisors	Very Serious

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

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

## **BACKGROUND**

The CDE oversees the state's diverse and dynamic public school system, which is responsible for the education of 6.3 million students in more than 10,000 schools. The State Superintendent of Public Instruction and the 2,400 CDE employees are responsible for enforcing education law and regulations; and for continuing to reform and improve public elementary school programs, secondary school programs, adult education, some preschool programs, and child care programs.

Within the CDE, the State Special Schools & Services Division (SSSD) provides diverse and highly specialized services and resources to individuals with special needs, their families, and service/care providers. High quality technical assistance, assessment services, educational resources, and educational programs are provided to prepare students for transition to adulthood and promote their independence, cultural awareness, and personal growth.

The mission of the CDE is to provide a world-class education for all students, from early childhood to adulthood. The CDE serves our state by innovating and collaborating with educators, schools, parents, and community partners, preparing students to live, work, and thrive in a multicultural, multilingual, and in a highly connected world.

## **SCOPE AND METHODOLOGY**

The scope of the compliance review was limited to reviewing the CDE examinations, appointments, EEO program, and PSC's from November 1, 2015, through May 31, 2016, and mandated training from July 1, 2014, through July 1, 2016. The primary objective of the review was to determine if the CDE personnel practices, policies, and procedures complied with state civil service laws and board regulations, and to recommend corrective action for those deficiencies identified.

A cross-section of the CDE's examinations and appointments were selected to ensure that various samples of examinations and appointment types, classifications, and levels were reviewed. The CRU examined the documentation that the CDE 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 CDE's EEO program included examining written EEO policies and procedures; the EEO officer's role, duties, and reporting relationship; the internal discrimination complaint process; the upward mobility program; the reasonable accommodation program; the discrimination complaint process; and the Disability Advisory Committee (DAC).

The CDE's PSC's were also reviewed.<sup>1</sup> It was beyond the scope of the compliance review to make conclusions as to whether the CDE justifications for the contracts were legally sufficient. The review was limited to whether the CDE practices, policies, and procedures relative to PSC's complied with procedural requirements.

In addition, the CDE's mandated training was reviewed to ensure all employees required to file statements of economic interest were provided ethics training and that all

---

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

supervisors were provided basic supervisory and sexual harassment prevention training within statutory timelines.

On November 10, 2016, an exit conference was held with the CDE to explain and discuss the CRU's initial findings and recommendations. On December 6, 2016, the CRU received and carefully reviewed the response, which is attached to this final compliance report.

## **FINDINGS AND RECOMMENDATIONS**

### **Examinations**

Examinations to establish an eligible list must be competitive and of such character as to fairly 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 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 of 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 minimum qualifications. (*Ibid.*) Every applicant for examination shall file an application in the office of the department or a designated appointing power as directed in 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.)

During the period under review, the CDE conducted 49 examinations. The CRU reviewed 22 of those examinations, which are listed below:

Classification	Examination Type	Exam Components	Final File Date	No. of Applications
Transportation Program Consultant	Open	Modified Qualification Appraisal Panel <sup>2</sup>	4/15/2016	10
Deputy Superintendent, Instruction Learning Support Branch CEA- C	Open	Statement Of Qualifications (SOQ) <sup>3</sup>	12/7/2015	2
Director, Curriculum Frameworks Instructional Resources Division CEA- B	Open	SOQ	1/22/2016	9
Director, Early Education Support Division CEA- B	Open	SOQ	12/10/2015	3
Director, Government Affairs, CEA- B	Open	SOQ	1/7/2016	9
Automotive Equipment Operator II	Open	Training and Experience (T&E) <sup>4</sup>	2/16/2016	11

---

<sup>2</sup> A modified qualification appraisal panel (Mod QAP) examination is where a candidate uses a computer terminal to respond to examination questions. All questions are provided at the time of the examination and the candidate responses will be scored against a set number of pre-determined responses by a panel.

<sup>3</sup> In a statement of qualifications (SOQ's) examination, applicants submit a written summary of their qualifications and experience related to a published list of desired qualifications. Raters, typically subject matter experts, evaluate the responses according to a predetermined rating scale designed to assess their ability to perform in a job classification, assign scores and rank the competitors in a list.

<sup>4</sup> The training and experience (T&E) examination is administered either online or in writing, and asks the applicant to answer multiple-choice questions about his or her level of training and/or experience performing certain tasks typically performed by those in this classification. Responses yield point values, which are totaled by the online system or a department exam analyst, and then assigned a percentage score.

Classification	Examination Type	Exam Components	Final File Date	No. of Applications
Child Development Consultant	Open	T&E	3/15/2016	21
Child Nutrition Assistant	Non-Promotional Continuous	T&E	12/15/2015	18
Child Nutrition Consultant	Continuous	T&E	12/15/2015	12
Education Administrator I	Continuous	T&E	2/19/2016	13
Education Administrator I	Continuous	T&E	4/20/2016	5
Education Administrator II	Continuous	T&E	11/20/2015	1
Education Administrator II	Continuous	T&E	2/19/2016	3
Education Fiscal Services Consultant	Continuous	T&E	3/15/2016	6
Education Programs Assistant	Continuous	T&E	5/20/2016	15
Education Programs Consultant	Continuous	T&E	11/20/2015	28
Education Programs Consultant	Continuous	T&E	1/20/2016	21
Education Programs Consultant	Continuous	T&E	2/19/2016	17
Education Programs Consultant	Continuous	T&E	3/18/2016	21
Education Programs Consultant	Continuous	T&E	4/20/2016	33
Education Research and Evaluation Administrator I	Continuous	T&E	3/15/2016	4

Classification	Examination Type	Exam Components	Final File Date	No. of Applications
Education Research and Evaluation Assistant	Continuous	T&E	12/15/2015	3

### **FINDING NO. 1 – Examinations Complied with Civil Service Laws and Board Rules**

The CDE administered 22 open examinations to create eligible lists from which to make appointments. The CDE published and distributed examination bulletins containing the required information for all examinations. Applications received by the CDE were accepted prior to the final filing date and were thereafter properly assessed to determine whether applicants met the minimum qualifications for admittance to the examination. The CDE notified applicants as to whether they qualified to take the examination, and those applicants who met the minimum qualifications were also notified about the next phase of the examination process. After all phases of the examination process were completed, the score of each competitor was computed, and a list of eligible candidates was established. The examination results listed the names of all successful competitors arranged in order of the score received by rank. Competitors were then notified of their final scores.

The CRU found no deficiencies in the examinations that the CDE conducted during the compliance review period. Accordingly, the CDE fulfilled its responsibilities to administer those examinations in compliance with civil service laws and board rules.

#### 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 CDE made 302 appointments. The CRU reviewed 76 of those appointments, which are listed below:

Classification	Appointment Type	Tenure	Time Base	No. of Appointments
Accounting Technician	Certification List	Permanent	Full time	1
Associate Governmental Program Analyst	Certification List	Permanent	Full time	7
Career Executive Assignment B	Certification List	Permanent	Full time	5
Career Executive Assignment C	Certification List	Permanent	Full time	1
Education Administrator I	Certification List	Permanent	Full time	4
Education Administrator II	Certification List	Permanent	Full time	3
Education Programs Assistant	Certification List	Permanent	Full time	2
Education Programs Consultant	Certification List	Permanent	Full time	7
Education Research & Evaluation Administrator I	Certification List	Permanent	Full time	1
Executive Secretary	Certification List	Permanent	Full time	1
Heavy Truck Driver	Certification List	Permanent	Full time	2
Office Assistant (Typing)	Certification List	Permanent	Full time	2
Office Technician (Typing)	Certification List	Permanent	Full time	2
Office Technician (Typing) – LEAP	Certification List	Temporary	Full time	2
Staff Information Systems Analyst (Specialist)	Certification List	Permanent	Full time	1
Staff Services Analyst (General)	Certification List	Limited Term	Full time	1
Staff Services Analyst (General)	Certification List	Permanent	Full time	4
Staff Services Manager I	Certification List	Permanent	Full time	3

Classification	Appointment Type	Tenure	Time Base	No. of Appointments
Staff Services Manager II	Certification List	Permanent	Full time	2
Attorney III	Mandatory Reinstatement	Permanent	Full time	1
Business Services Officer I (Supervisor)	Mandatory Reinstatement	Permanent	Full time	1
Education Administrator I	Mandatory Reinstatement	Permanent	Full time	1
Staff Services Manager III	Mandatory Reinstatement	Permanent	Full time	1
Education Programs Consultant	Permissive Reinstatement	Limited Term	Full time	1
Dispatcher Clerk	Retired Annuitant	Temporary	Intermittent	1
Staff Services Manager II	Retired Annuitant	Temporary	Intermittent	1
Associate Governmental Program Analyst	Transfer	Permanent	Full time	1
Attorney III	Transfer	Permanent	Full time	1
Child Nutrition Consultant	Transfer	Permanent	Full time	1
Education Programs Consultant	Transfer	Permanent	Full time	11
Office Technician (Typing)	Transfer	Permanent	Full time	2
Staff Services Analyst (General)	Transfer	Permanent	Full time	1
Warehouse Worker	Transfer	Permanent	Full time	1

For each of the 51 list appointments, the CDE properly advertised the job vacancies, sent out contact letters, screened applications, interviewed candidates, and cleared the certification lists for SROA and reemployment, and conducted background and reference checks as appropriate.

The CDE made four appointments via mandatory reinstatement. A state agency is required to reinstate an employee to his or her former position if the employee is (1) terminated from a temporary or limited-term appointment by either the employee or the appointing power; (2) rejected during probation; or (3) demoted from a managerial position. (Gov. Code, § 19140.5.) The following conditions, however, must apply: the employee accepted the appointment without a break in continuity of service and the reinstatement is requested within ten working days after the effective date of the termination. (*Ibid.*) The CDE complied with the rules and laws governing mandatory reinstatements.

The CRU reviewed two retired annuitant appointments. The individuals submitted their applications and were eligible to be hired as retired annuitants, not to exceed 960 hours in a fiscal year.

The CRU reviewed 18 CDE appointments made via transfer and one appointment made via permissive reinstatement. A transfer of an employee from a position under one appointing power to a position under another appointing power may be made if the transfer is to a position in the same class or in another class with substantially the same salary range and designated as appropriate by the executive officer. (Cal. Code Reg., tit. 2, § 425.) The CDE verified the eligibility of each candidate to their appointed class.

However, the CDE did not provide probation reports for all appointments as described in finding 2.

**FINDING NO. 2 – Probationary Evaluations Were Not Provided for All Appointments Reviewed**

**Summary:** The CDE did not prepare, complete, and/or retain 13 required probationary reports of performance.

Classification	Appointment Type	No. of Appointments	No. of Uncompleted Prob. Reports
Associate Governmental Program Analyst	List Appointment	4	5
Education Administrator II	List Appointment	2	2
Executive Secretary	List Appointment	1	2
Education Programs Assistant	List Appointment	1	1

Classification	Appointment Type	No. of Appointments	No. of Uncompleted Prob. Reports
Office Technician (Typing)	List Appointment	1	1
Staff Services Manager I	List Appointment	1	1
Attorney III	Transfer	1	1
<b>Total</b>		<b>11</b>	<b>13</b>

**Criteria:**

A new probationary period is not required when an employee is appointed by reinstatement with a right of return. (Cal. Code Regs., tit. 2, § 322, subd. (d)(2).) However, the service of a probationary period is required when an employee enters state civil service by permanent appointment from an employment list. (Cal. Code Regs., tit. 2, § 322, subd. (a).) In addition, unless waived by the appointing power, a new probationary period is required when an employee is appointed to a position under the following circumstances: (1) without a break in service in the same class in which the employee has completed the probationary period, but under a different appointing power; and (2) without a break in service to a class with substantially the same or lower level of duties and responsibilities and salary range as a class in which the employee has completed the probationary period. (Cal. Code Regs., tit. 2, § 322, subd. (c)(1) & (2).)

During the probationary period, the appointing power is required to evaluate the work and efficiency of a probationer at sufficiently frequent intervals to keep the employee adequately informed of progress on the job. (Gov. Code, § 19172; Cal. Code Regs., tit. 2, § 599.795.) The appointing power must prepare a written appraisal of performance each one-third of the probationary period. (Cal. Code Regs., tit. 2, § 599.795.)

**Severity:** Serious. The probationary period is the final step in the selection process to ensure that the individual selected can successfully perform the full scope of their job duties. Failing to use the probationary period to assist an employee in improving his or her performance or terminating the appointment upon determination that the appointment is not a good job/person match is unfair to the employee and serves to erode the quality of state government.

**Cause:** The Personnel Services Division (PSD) makes good faith efforts to inform management of the requirements on probationary evaluations. Management is informed during the supervisory training modules, and are provided the forms and due dates of probationary evaluations of their employees. Currently, the probationary evaluations are tracked for compliance by first line supervisors. In the future, the CDE will also inform the second line supervisor if the probationary evaluations are not received timely.

**Action:** It is recommended that within 60 days of the Executive Officer's approval of these findings and recommendations, the CDE submit to the CRU a written corrective action plan that addresses the corrections the department will implement to ensure conformity with the probationary requirements of Government Code section 19172.

#### Equal Employment Opportunity (EEO)

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 equal employment opportunity; issue procedures for filing, processing, and resolving discrimination complaints; issue procedures for providing equal upward mobility and promotional opportunities; and cooperate with the CalHR by providing access to all required files, documents and data. (*Ibid.*) In addition, the appointing power must appoint, at the managerial level, an EEO officer, who shall report directly to, and be under the supervision of, the director of the department to develop, implement, coordinate, and monitor the department's EEO program. (Gov. Code, § 19795.) In a state agency with less than 500 employees, like the FPPC, the EEO officer may be the personnel officer. (*Ibid.*)

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.

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 CDE's EEO policies, procedures, and programs in effect during the compliance review period.

### **FINDING NO. 3 – 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 CDE'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 Executive Director of the CDE. In addition, the CDE has an established DAC that reports to the director on issues affecting persons with a disability. The CDE 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 CDE's EEO program complied with civil service laws and board rules.

#### Personal Services Contracts

A PSC includes any contract, requisition, or purchase order under which labor or personal services is a significant, separately identifiable element, and the business or person performing the services is an independent contractor that does not have status as an employee of the State. (Cal. Code Reg., tit. 2, § 547.59.) The California Constitution has an implied civil service mandate limiting the state's authority to contract with private entities to perform services the state has historically or customarily performed. Government Code section 19130, subdivision (a), however, codifies exceptions to the civil service mandate where PSC's achieve cost savings for the state.

PSC's that are of a type enumerated in subdivision (b) of Government Code section 19130 are also permissible. Subdivision (b) contracts include private contracts for a new state function, services that are not available within state service, services that are incidental to a contract for the purchase or lease of real or personal property, and services that are of an urgent, temporary, or occasional nature.

For cost-savings PSC's a state agency is required to notify the SPB of its intent to execute such a contract. (Gov. Code, § 19131.) For subdivision (b) contracts, the SPB reviews the adequacy of the proposed or executed contract at the request of an employee organization representing state employees. (Gov. Code, § 19132.)

During the compliance review period, the CDE had 49 PSC's that were in effect and subject to Department of General Services (DGS) approval, and thus our procedural review. The CRU reviewed all 21 of those contracts, which are listed below:

Vendor	Services	Contract Dates	Contract Amount	Justification Identified
Board of Governors of the California Community Colleges	Consulting	7/1/2015-6/30/2016	\$1,920,157.00	Yes
California Association of DECA, Inc.	Consulting	1/15/2016-1/14/2017	\$225,000.00	Yes
Foundation for California Community Colleges	Consulting	10/1/2015-6/30/2016	\$478,091.43	Yes
Inter-Con Security Systems, Inc.	Security Guard	3/1/2016-1/31/2018	\$169,712.40	Yes
Merced County Superintendent of Schools	Consulting	7/1/2015-6/30/2016	\$199,999.00	Yes
Napa County Superintendent of Schools	Consulting	7/1/2015-6/30/2016	\$588,589.25	Yes

Vendor	Services	Contract Dates	Contract Amount	Justification Identified
Napa County Superintendent of Schools	Consulting	2/1/2016-6/30/2017	\$999,058.18	Yes
Orange County Superintendent of School	Consulting	7/1/2015-6/30/2016	\$477,736.85	Yes
Public Works Group	Consulting	10/1/2013-12/31/2016	\$385,277.50	Yes
Sacramento City Unified School District	Consulting	7/1/2015-6/30/2017	\$467,655.30	Yes
Sacramento County Superintendent of Schools	Consulting	7/1/2015-6/30/2016	\$450,741.20	Yes
Sacramento County Superintendent of Schools	Training	5/15/2015-6/30/2017	\$4,766,278.00	Yes
San Joaquin County Superintendent of Schools	Consulting	7/1/2014-6/30/2016	\$257,935.93	Yes
Santa Clara County Superintendent of Schools	Consulting	1/1/2016-6/30/2016	\$204,982.58	Yes
The Regents of the University of California on Behalf of the Berkeley Campus	Consulting	7/1/2015-6/30/2016	\$954,800.00	Yes

Vendor	Services	Contract Dates	Contract Amount	Justification Identified
The Regents of the University of California on Behalf of the Davis Campus	Training	7/1/2015-6/30/2047	\$1,533,401.94	Yes
The Regents of the University of California on Behalf of the Los Angeles Campus	Consulting	1/1/2015-6/30/2016	\$243,828.86	Yes
The Regents of the University of California, on behalf of the San Francisco Campus	Consulting	8/1/2015-6/30/2017	\$275,546.60	Yes
TROMIK Technology Corporation	IT Services	7/1/2015-6/30/2017	\$896,313.00	Yes
WestEd	Consulting	7/1/2015-6/30/2017	\$299,999.94	Yes
WestEd	Consulting	7/1/2015-6/30/2016	\$599,338.73	Yes

**FINDING NO. 4 – Personal Services Contracts Complied with Procedural Requirements**

When a state agency requests approval from the DGS for a subdivision (b) contract, the agency must include with its contract transmittal a written justification that includes *specific and detailed factual information* that demonstrates how the contract meets one or more conditions specified in Government Code section 19131, subdivision (b). (Cal. Code Reg., tit. 2, § 547.60.)

The total amount of all the PSC's reviewed was \$16,394,443.69. It was beyond the scope of the review to make conclusions as to whether the CDE justifications for the contract were legally sufficient. For all PSC's subject to DGS approval, the CDE provided specific and detailed factual information in the written justifications as to how each of the 19 contracts met at least one condition set forth in Government Code section 19131, subdivision (b). Accordingly, the CDE PSC's complied with procedural requirements.

### Mandated Training

Each member, officer, or designated employee of a state agency who is required to file a statement of economic interest (referred to as "filers") because of the position he or she holds with the agency is required to take an orientation course on the relevant ethics statutes and regulations that govern the official conduct of state officials. (Gov. Code, §§ 11146 & 11146.1.) State agencies are required to offer filers the orientation course on a semi-annual basis. (Gov. Code, § 11146.1.) New filers must be trained within six months of appointment and at least once during each consecutive period of two calendar years, commencing on the first odd-numbered year thereafter. (Gov. Code, § 11146.3.)

Upon the initial appointment of any employee designated in a supervisory position, the employee shall be provided a minimum of 80 hours of training, as prescribed by the California Department of Human Resources (CalHR). (Gov. Code, § 19995.4, subd. (b).) The training addresses such topics as the role of the supervisor, techniques of supervision, performance standards, and sexual harassment and abusive conduct prevention. (Gov. Code, §§ 12950.1, subds. (a), (b), & (c), & 19995.4, subd. (b).) The training must be successfully completed within the term of the employee's probationary period or within six months of the initial appointment, unless it is demonstrated that to do so creates additional costs or that the training cannot be completed during this time period due to limited availability of supervisory training courses. (Gov. Code, § 19995.4, subd. (c).) As to the sexual harassment and abusive-conduct prevention component, the training must thereafter be provided to supervisors once every two years. (Gov. Code, § 12950.1.)

Within 12 months of the initial appointment of an employee to a management or career executive assignment (CEA) position, the employee shall be provided leadership training and development, as prescribed by CalHR. (Gov. Code, §§ 19995.4, subds. (d) & (e).) For management employees the training must be a minimum of 40 hours and for CEAs the training must be a minimum of 20 hours. (*Ibid.*) Thereafter, for both categories of appointment, the employee must be provided a minimum of 20 hours of leadership training on a biannual basis. (*Ibid.*)

The Board may conduct reviews of any appointing power's personnel practices to ensure compliance with civil service laws and Board regulations. (Gov. Code, § 18661, subd. (a).) In particular, the Board may audit personnel practices related to such matters as selection and examination procedures, appointments, promotions, the management of probationary periods, and any other area related to the operation of the merit principle in state civil service. (*Ibid.*) Accordingly, the CRU reviews documents and records related to training that appointing powers are required by the afore-cited laws to provide its employees.

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

#### **FINDING NO. 5 – Supervisory Training Was Not Provided for All Supervisors**

**Summary:** The CDE did not provide basic supervisory training to nine of 62 new supervisors within twelve months of appointment.

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

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

**Cause:** The Training Office within the CDE notifies all employees and their supervisors of the requirement to take mandatory training. Currently, the supervisory training is scheduled and advertised at least three times per year, and supervisors are expected to attend. In the future, the CDE will track attendees and notify next line supervisors of non-compliance.

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

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

#### **FINDING NO. 6 – Ethics Training Was Not Provided for All Filers**

**Summary:** The CDE did not provide ethics training to 25 of 536 existing filers. In addition, six of 189 new filers were not provide training within six months of appointment.

**Criteria:** New filers must be provided ethics training within six months of appointment. Exiting filers must be trained at least once during each consecutive period of two calendar years commencing on the first odd-numbered year thereafter. (Gov. Code, § 11146.3, subd. (b).)

**Severity:** Very Serious. The department does not ensure that its filers are aware of prohibitions related to their official position and influence.

**Cause:** Each year the PSD notifies employees that ethics training is mandated. Currently, the training is tracked and PSD notifies employees that are not up to date. In the future, the CDE will also notify next line supervisors of employees that are non-compliant.

**Action:** The CDE must take appropriate steps to ensure that filers are provided ethics training within the time periods prescribed.

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

## **FINDING NO. 7 – Sexual Harassment Training Was Not Provided for All Supervisors**

<b>Summary:</b>	The CDE did not provide sexual harassment prevention training to six of 62 new supervisors within six months of their appointment. In Addition, the CDE did not provide sexual harassment prevention training to one of 309 existing supervisors every two years.
<b>Criteria:</b>	Each department must provide its supervisors two hours of sexual harassment training every two years. New supervisors must be provided sexual harassment prevention training within six months of appointment. (Gov. Code, § 12950.1 subd. (a).)
<b>Severity:</b>	<u>Very Serious.</u> The department does not ensure its new supervisors are properly trained to respond to sexual harassment or unwelcome sexual advances, requests for sexual favors, and other verbal or physical harassment of a sexual nature. This limits the department's ability to retain a quality workforce, impacts employee morale and productivity, and subjects the department to litigation.
<b>Cause:</b>	Sexual harassment prevention training is mandatory and the CDE notifies all supervisors of the requirement and provides training opportunities during the quarterly supervisor training. Despite notification of the requirement, not all supervisors were able to attend the training for various reasons. If the future, the CDE Training Office will notify next line supervisor of non-compliance.
<b>Action:</b>	<p>The CDE must take appropriate steps to ensure that its supervisors are provided sexual harassment prevention training within the time periods prescribed.</p> <p>It is therefore recommended that no later than 60 days after the SPB's Executive Officer's approval of these findings and recommendations, the CDE must establish a plan to ensure compliance with sexual harassment training mandates and submit to the SPB a written report of compliance.</p>

### **DEPARTMENTAL RESPONSE**

The CDE's response is attached as Attachment 1.

### **SPB REPLY**

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

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



CALIFORNIA  
DEPARTMENT OF  
EDUCATION

**TOM TORLAKSON**

STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

December 5, 2016

Suzanne M. Ambrose, Executive Officer  
State Personnel Board  
801 Capitol Mall  
Sacramento, CA 95819

Dear Ms. Ambrose:

We have reviewed the Draft Compliance Review Report for the California Department of Education (CDE), prepared by the State Personnel Board's Compliance Review Team. The draft report summarized the Compliance Review Team's findings in the areas of examinations, appointments, Equal Employment Opportunity, and Personal Services Contracts from November 1, 2015, through May 31, 2016, and mandated training from July 1, 2014, through July 1, 2016.

Generally, we find the report to be thorough and an accurate summary of processes that existed during the time period reviewed. However, we are committed to correcting all deficiencies noted in the report and strive to comply with mandated civil service requirements by adjusting our processes.

Attached (Attachment A) are the Compliance Review Team's findings and CDE's responses. If you have any questions or would like to discuss further please contact Valarie Bliss, Manager, Personnel Services Division at 916-319-0682 or email at [vbliss@cde.ca.gov](mailto:vbliss@cde.ca.gov).

Sincerely,

  
Sharon Taylor, Director  
Personnel Services Division

cc: Michelle Zumot, Chief Deputy Superintendent of Public Instruction  
Nick Schweizer, Deputy Superintendent, Services for Administration, Finance,  
Technology, and Infrastructure Branch  
Kevin Chan, Director, Audits and Investigations Division

Attachment

## Attachment A

**Finding No. 2 – Probationary Evaluations Were Not Provided for All Appointments Reviewed:**

*The CDE did not prepare, complete, and/or retain 13 required probationary reports of performance.*

The Personnel Services Division (PSD) makes good faith efforts to inform management of the requirements on probationary evaluations. Management is informed during the supervisory training modules, and are provided the forms and due dates of probationary evaluations of their employees. Currently, the probationary evaluations are tracked for compliance by first line supervisors. In the future, CDE will also inform the second line supervisor if the probationary evaluations are not received timely.

**Finding No. 5 – Supervisory Training Was Not Provided for All Supervisors:**

*The CDE did not provide basic supervisory training to 10 of 62 new supervisors within twelve months of appointment.*

The Training Office within the CDE notifies all employees and their supervisors of the requirement to take mandatory training. Currently, the supervisory training is scheduled and advertised at least three times per year, and supervisors are expected to attend. In the future, CDE will track attendees and notify next line supervisors of non-compliance.

**Finding No. 6 – Ethics Training Was Not Provided for all Filers:**

*The CDE did not provide ethics training to 25 of 536 existing filers. In addition, 6 of 189 new filers were not provided training within six months of appointment.*

Each year the PSD notifies employees that Ethics training is mandated. Currently, the training is tracked and PSD notifies employees that are not up to date. In the future, CDE will also notify next line supervisors of employees that are non-compliant.

**Finding No. 7 – Sexual Harassment Training Was Not Provided for All Supervisors:**

*The CDE did not provide sexual harassment prevention training to 13 of 62 new supervisors within six months of their appointment. In addition, the CDE did not provide sexual harassment prevention training to one of 309 existing supervisors every two years.*

Sexual harassment prevention training is mandatory and the CDE notifies all supervisors of the requirement and provides training opportunities during the quarterly supervisor training. Despite notification of the requirement, not all supervisors were able

to attend the training for various reasons. If the future, CDE Training Office will notify next line supervisor of non-compliance.