

January 2025
PE 24-09-682

AGENCY REVIEW

OFFICE OF EQUAL OPPORTUNITY

AUDIT OVERVIEW

The West Virginia Office of Equal Opportunity Is Needed to Facilitate Compliance with Federal Anti-Discrimination Laws and to Minimize Liability Costs to the State from Violations of Such Laws

The OEO Complies with Statutory Responsibilities; However, Further Progress Is Needed in Developing a Statewide and Uniform Program, and Data Analytics Could Enhance the Effectiveness of the Agency's Training Program

The Agency's Website Needs More Improvement to User-Friendliness and Transparency



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WEST VIRGINIA OFFICE OF THE LEGISLATIVE AUDITOR

PERFORMANCE EVALUATION & RESEARCH DIVISION

Building 1, Room W-314
State Capitol Complex
Charleston, West Virginia 25305
(304) 347-4890

John Sylvia
Director

Christopher F. Carney
Research Manager

Brooke McCormick
Research Analyst

Andrew Holt
Referencer

WEST VIRGINIA LEGISLATURE
Performance Evaluation and Research Division

**1900 Kanawha Blvd. East
Building 1, Room W-314
Charleston, WV 25305-0610
(304) 347-4890**



**John Sylvia
Director**

January 7, 2025

The Honorable Jack Woodrum
State Senate
Building 1, Room 214W
1900 Kanawha Boulevard, East
Charleston, WV 25305

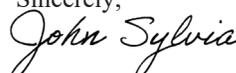
The Honorable Chris Phillips
House of Delegates
Building 1, Room 213E
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305

Dear Chairs:

Pursuant to the West Virginia Performance Review Act, we are transmitting an Agency Review of the *West Virginia Office of Equal Opportunity*. The issues covered herein are:

1. The West Virginia Office of Equal Opportunity Is Needed to Facilitate Compliance with Federal Anti-Discrimination Laws and to Minimize Liability Costs to the State from Violations of Such Laws;
2. The OEO Complies with Statutory Responsibilities; However, Further Progress Is Needed in Developing a Statewide and Uniform Program, and Data Analytics Could Enhance the Effectiveness of the Agency's Training Program; and
3. The Agency's Website Needs More Improvement to User-Friendliness and Transparency.

We transmitted a draft copy of the report to the agency on December 13, 2024. We held an exit conference on December 17, 2024. We received the agency response on December 18, 2024. If you have any inquiries on this report, please let me know.

Sincerely,

John Sylvia

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EXECUTIVE SUMMARY

The Performance Evaluation and Research Division (PERD) conducted this Agency Review of the West Virginia Office of Equal Opportunity (OEO) within the Department of Administration pursuant to West Virginia Code §4-10-7. The objectives of this review were to: 1) determine if there is a continued need for the OEO, 2) to determine if the OEO complies with its statutory responsibilities given by West Virginia Code §5A-1-11, and 3) to determine if the OEO’s website is user-friendly and transparent.

Frequently Used Acronyms in the Report:

ADA—Americans with Disabilities Act

BRIM—West Virginia Board of Risk and Insurance Management

CY—Calendar Year

EEO—Equal Employment Opportunity

FY—Fiscal Year

OEO—Office of Equal Opportunity

PERD—Performance Evaluation and Research Division

Report Highlights:

Issue 1: The West Virginia Office of Equal Opportunity Is Needed to Facilitate Compliance with Federal Anti-Discrimination Laws and to Minimize Liability Costs to the State from Violations of Such Laws

- The OEO was founded in 2022 by Senate Bill 522. This bill created the OEO by combining West Virginia’s Americans with Disabilities program and the Equal Employment Opportunity program.
- The OEO fulfills its purpose of facilitating compliance with federal anti-discrimination laws by state employees through trainings and compiling data on discrimination cases that OEO counselors and coordinators receive.
- The number of EEO cases that BRIM receives indicates that the OEO is needed to help prevent discrimination and litigation.

Issue 2: The OEO Complies with Statutory Responsibilities; However, Further Progress Is Needed in Developing a Statewide and Uniform Program, and Data Analytics Could Enhance the Effectiveness of the Agency’s Training Program

- The OEO complies with many of its statutory responsibilities, but there are some responsibilities that the OEO could do more to fulfill.
- The OEO should develop a statewide program as well as promulgate procedural rules or a procedures

manual related to the review, investigation, and resolution of EEO complaints.

- The OEO could be more proactive in its training program by using the data it collects to adapt its training program to certain agencies and types of discrimination cases.

Issue 3: The Agency’s Website Needs More Improvement to User-Friendliness and Transparency

- The OEO’s website received a composite score of 34 percent, indicating that the website needs more improvement.
- While the OEO’s website only needs modest improvement in user-friendliness, it needs substantial improvements in transparency.
- The website is currently at a college reading level. Consideration should be given to lowering it to the 7th grade reading level.

PERD’s Response to the Agency’s Written Response:

The OEO provided its response on December 18, 2024 (see Appendix C). The OEO did not dispute any findings in the report, and the director stated that the OEO would take the recommendations under advisement.

Recommendations:

1. *PERD recommends that the Legislature consider continuing the West Virginia Office of Equal Opportunity.*
2. *PERD recommends that the Office of Equal Opportunity consider adding sexual harassment and discrimination training to its virtual trainings for state agencies.*
3. *PERD recommends that the Office of Equal Opportunity continue to work towards developing a statewide, uniform program by either promulgating procedural rules or developing a manual that is made available to all counselors and coordinators. In carrying out this responsibility, the agency may need to collaborate with the Division of Personnel and other state departments.*
4. *The Office of Equal Opportunity should consider examining the analytics in the complaint data it compiles, as well as discrimination case data from the Board of Risk and Insurance Management, to enhance the effectiveness of its training program.*
5. *The Office of Equal Opportunity should consider adding more user-friendly and particularly transparency elements to its website as mentioned in this review.*
6. *The Office of Equal Opportunity should consider lowering the website’s reading level to the recommended 7th grade reading level.*

ISSUE 1

The West Virginia Office of Equal Opportunity Is Needed to Facilitate Compliance with Federal Anti-Discrimination Laws and to Minimize Liability Costs to the State from Violations of Such Laws

Issue Summary

This is an Agency Review of the West Virginia Office of Equal Opportunity (OEO) within the Department of Administration as authorized by West Virginia Code §4-10-7. The Office of Equal Opportunity, founded in 2022 by West Virginia Code §5A-1-11, is directed by the State Equal Opportunity Coordinator who has the responsibility to advise and assist in the development of a statewide program that assures compliance with the federal Equal Employment Opportunity Act, the Americans with Disabilities Act (ADA), and other federal anti-discrimination laws. To carry out this responsibility, the OEO provides training to state employees, and state agency OEO counselors/coordinators on federal anti-discrimination laws. The OEO does not directly receive or investigate discrimination complaints; however, it may consult and collaborate with state agencies in their reviews, investigations, and resolution of complaints of discrimination. PERD’s review finds that the State encounters claims of discrimination and equal employment violations. Some of these complaints have resulted in the State incurring legal and indemnity expenses through its insurance agency, the Board of Risk and Insurance Management. PERD finds that the OEO is needed to facilitate compliance with federal anti-discriminatory laws throughout state government, protect state employees, and to minimize the liability costs to the State from violations of such federal laws.

To carry out this responsibility, the OEO provides training to state employees, and state agency OEO counselors/coordinators on federal anti-discrimination laws.

The OEO Is the Result of Combining Two Separate Programs

During the 2022 legislative session, Senate Bill 522 was enacted to combine the State Americans with Disabilities program and the Equal Employment Opportunity program into the State of West Virginia Office of Equal Opportunity (OEO). The Equal Employment Opportunity program was established in 1990 by Governor Caperton through Executive Order 6-90. It originally operated in the Department of Administration’s Division of Personnel, but it was transferred to the Governor’s Office in 1994 through Governor Caperton’s Executive Order 3-94. Governor Justice continued the Equal Employment Opportunity program, but he transferred it back to the Department of Administration in 2018 through Executive Order 10-18. The State Americans with Disabilities program was established during the 2004 legislative session by the enactment of House Bill 4009 that added a new section to West

During the 2022 legislative session, Senate Bill 522 was enacted to combine the State Americans with Disabilities program and the Equal Employment Opportunity program into the State of West Virginia Office of Equal Opportunity (OEO).

Virginia Code designated §5A-1-11. Combining both programs resulted in fiscal savings of \$78,000 by consolidating two positions into one.

The OEO is directed by the State Equal Opportunity Coordinator (State Coordinator) who must be knowledgeable with the various federal Equal Employment Opportunity (EEO) laws, such as: the Americans with Disabilities Act; Title VII of the Civil Rights Act of 1964; the Equal Pay Act of 1963; the Age Discrimination in Employment Act of 1977; Sections 102 and 103 of the Civil Rights Act of 1991; Sections 501 and 505 of the Rehabilitation Act of 1973; and the Genetic Information Nondiscrimination Act of 2008. EEO laws generally protect job seekers or employees against discrimination based on race, color, religion, sex, age, national origin, and mental or physical disabilities.

The OEO is established to deal exclusively with state agencies and state employees as it relates to claims alleging EEO violations. All state departments and their respective agencies have employees who have been trained through the OEO to become an OEO counselor or coordinator. OEO coordinators are at the department level while counselors are at the agency level. OEO counselors and coordinators assume the role of neutral and confidential parties for employees who seek assistance with their allegations. An employee with an EEO-allegation may discuss it with a supervisor, an OEO counselor or the West Virginia Public Employees Grievance Board. However, individuals may also pursue legal recourse. If an employee speaks to an OEO counselor concerning an EEO matter, the counselor can explain the relevant EEO laws, assist in efforts to resolve the problem through informal resolution, or assist the employee in filing a complaint. EEO matters may also come before an OEO coordinator after the counselor has heard the allegations and a formal complaint has been filed.

The OEO is established to deal exclusively with state agencies and state employees as it relates to claims alleging EEO violations.

The State Coordinator does not directly receive formal OEO complaints, but she may consult in such matters with coordinators. However, the State Coordinator compiles the data on OEO complaints received by counselors and coordinators. Table 1 below shows the total number of cases filed by state employees in calendar years 2022 and 2023 through counselors and coordinators. The number of cases has nearly doubled from 2022 to 2023. Also, some state agencies have multiple cases. The OEO stated that it thinks the increase in cases is due to the COVID-19 pandemic.

Table 1		
Total Cases Filed with OEO Counselors/Coordinators		
CY 2022 - CY 2023		
	2022	2023
Total Cases Filed	53	98
Number of State Agencies Represented	26	39
<i>Source: Office of Equal Opportunity Annual Reports.</i>		

The OEO Provides Important Training and Compiles Data

The OEO provides training opportunities to state employees with the purpose of increasing awareness and sensitivity to discriminatory actions and deterring such issues. The OEO offers five online trainings sessions with logon accessibility for state employees. Viewing training sessions is voluntary. Table 2 shows the subject matters for the five online training sessions and the total number of times the training modules were accessed in calendar years 2022 and 2023.

The OEO provides training opportunities to state employees with the purpose of increasing awareness and sensitivity to discriminatory actions and deterring such issues.

Other types of trainings are available upon request, such as Sexual Harassment in the Workplace, and ADA Basics. The OEO conducts in-person trainings as requested. In-person trainings are mainly for OEO counselors, coordinators, and investigators. The OEO also hosts the OEO Annual Training Conference for its counselors and coordinators. Table 2 shows that 172 employees completed in-person training in CY 2022, and 334 completed in-person training in CY 2023. A total of 2,037 state employees completed online and in-person training in CY 2022, and 2,229 employees completed trainings in FY 2023.

Online Training Modules	2022 Number of Attendees	2023 Number of Attendees
Facing Bullying at Work	372	439
Valuing Diversity at Work	337	454
Mastering the Respectful Workplace	540	358
Managers Role in Promoting Respectful Workplace	248	172
Workplace Harassment	368	472
Total Online Viewings	1,865	1,895
In-Person Training	172	334
Total Online & In-Person Training	2,037	2,229

Source: Office of Equal Opportunity Annual Reports.

EEO Allegations Are Made Based on Several Protected Classes

Figure 1 below shows the status of cases received that went through OEO counselors and coordinators in FY 2022 and 2023. According to the OEO, when a case is referred, it will often go to an investigator. However, claims may also be referred to other entities if the issues are not EEO violations, or if the individual filing a complaint is not a state employee, the case would be referred to an appropriate agency. Also,

the OEO stated that referrals may go to the federal EEO Commission, the West Virginia Human Rights Commission, the West Virginia Public Employees Grievance Board, or an agency's human resources unit. An investigator may determine an EEO violation is substantiated by competent evidence, or the claim is unsubstantiated. Some cases were still open, and others were withdrawn.

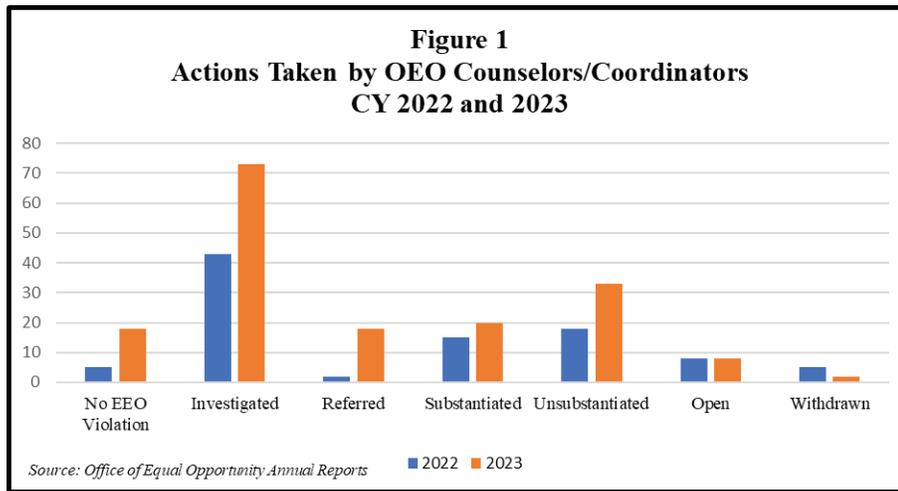


Figure 2 below shows EEO allegations received by protected class. A protected class is a type of employment discrimination or unfair treatment that applicants, employees, and former employees are protected against. It is important to note that a complainant can file under multiple protected classes. For example, a person can file a complaint based on discrimination for both sex and race. The protected classes consist of the following:

A protected class is a type of employment discrimination or unfair treatment that applicants, employees, and former employees are protected against.

- **Age:** Age discrimination occurs when an applicant or employee is treated unfavorably because of his or her age.
- **Ancestry:** Ancestry-based discrimination occurs when an applicant or employee is treated unfavorably because of his or her ancestry or perceived ancestry.
- **Disability:** Disability discrimination occurs when an applicant or employee is treated unfavorably because of a disability. A disability is a mental or physical condition that significantly limits any major life activity.
- **Disparate Treatment:** Disparate treatment is described by the EEO Commission as an intentional act of discrimination in the workplace.
- **Hostile Environment:** A hostile environment can be created from a variety of actions from coworkers, supervisors, or non-

employees. These actions can include, but are not limited to, harassment, threats, and intimidation. Hostile treatment usually refers to several incidents occurring over time but can also apply to a single incident.

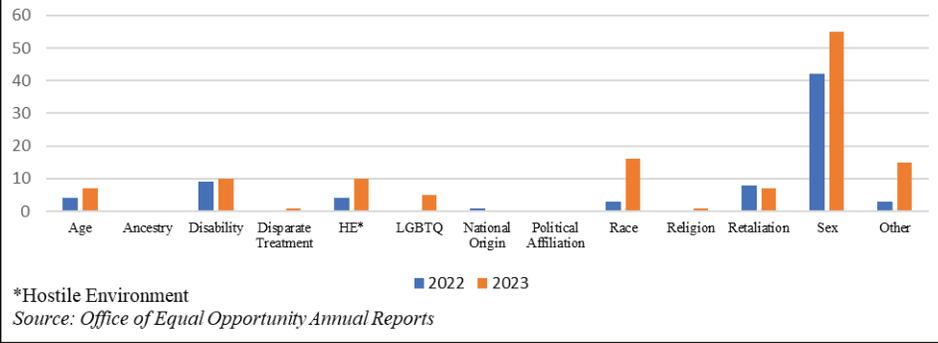
- **LGBTQ:** LGBTQ discrimination occurs when applicants or employees are treated unfavorably due to their sexual orientation or gender identity.
- **National Origin:** National origin discrimination occurs when an applicant or employee is treated unfavorably based on the person’s country of origin, ethnicity, or accent.
- **Political Affiliation:** Discrimination based on political affiliation occurs when an employee is favored or disfavored because of his or her political affiliation.
- **Race:** Race discrimination occurs when an applicant or employee is treated unfavorably because of race or because of personal characteristics that are associated with race, such as skin color, hair texture, or facial features.
- **Religion:** Religious discrimination occurs when an applicant or employee is treated unfavorably because of his or her religious beliefs.
- **Retaliation:** Retaliation occurs when an employer or employees punish, treat differently, or harass other employees because they filed an EEO claim, or are friends or related to someone who has filed a job discrimination complaint. For example, it would be considered retaliation for an employer to punish an employee for filing an EEO complaint.
- **Sex:** Gender or Sex-based discrimination occurs when an applicant or employee is treated unfavorably because of his or her gender.
- **Other:** The “other” category consists of cases where the complainant marks that the issue is “other.” For example, non-EEO cases, such as human rights cases, would fall under this category.

For CY 2022 and 2023, sex-based allegations were 57 and 43 percent of all allegations respectively. Due to the disproportionate number of sex-based allegations, **PERD recommends that the OEO consider adding sexual harassment training to its available online training for state employees.**

CY 2022 and 2023, sex-based allegations were 57 and 43 percent of all allegations respectively.

PERD recommends that the OEO consider adding sexual harassment training to its available online training for state employees.

Figure 2
Office of Equal Opportunity
EEO Allegations by Protected Class
CY 2022 and 2023



Cases Involving Legal Recourse Demonstrate the Need for the OEO

In evaluating the need for the OEO, PERD examined incidences of state employment discrimination or unfair treatment in the workplace that led to legal recourse. This was done by acquiring data from the West Virginia Board of Risk and Insurance Management (BRIM), which is responsible for providing casualty insurance coverage for state agencies. PERD requested from BRIM all cases involving allegations of EEO violations for FY 2022 through FY 2024. For the period requested, BRIM identified a total of 38 cases alleging EEO violations involving 12 state agencies. Figure 3 below shows the 38 cases combined within BRIM's category descriptions. The left (blue) axis measures the number of EEO cases, and the right (orange) axis measures total expenses associated with the cases. Not all cases included in Figure 3 have resulted in expenses or indemnity payments. Twenty-three (23) cases have incurred expenses, either only legal expenses or legal expenses and indemnity payments, while the remaining 15 cases have no expenses. However, it must be noted that 26 of the 38 EEO cases are still open as of the writing of this report. Therefore, expense totals for these cases may be higher once they are closed, including those that presently have not incurred expenses. The aggregate amount of expenses incurred by BRIM for these cases is \$962,309.

Below is a list of the types and number of cases, and associated expenses. BRIM provided aggregated monetary amounts, so no distinction is made between legal fees and indemnity payments.

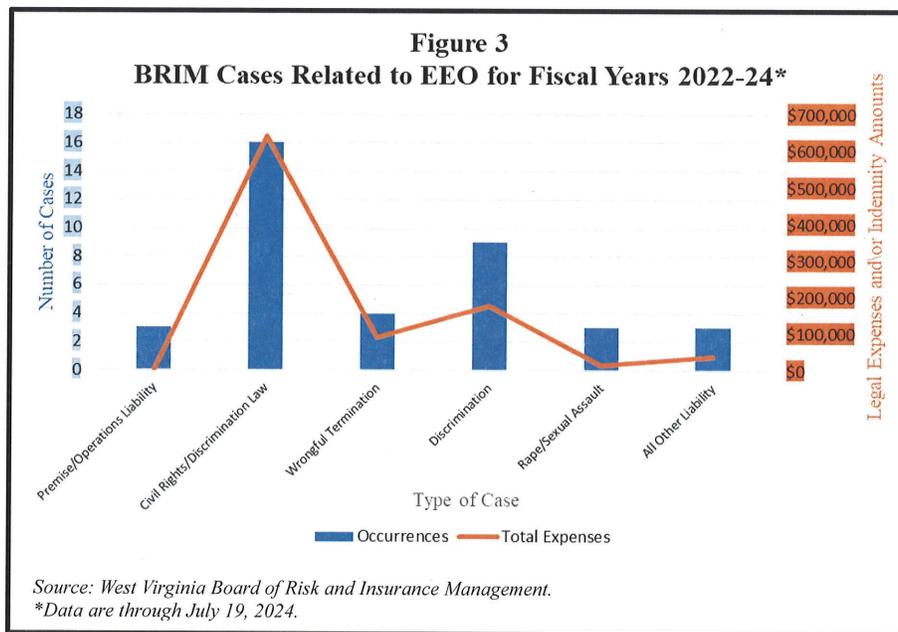
- **Premise/Operations Liability -- 3 Cases:** No expenses incurred, but 2 are still open.

In evaluating the need for the OEO, PERD examined incidences of state employment discrimination or unfair treatment in the workplace that led to legal recourse.

The aggregate amount of expenses incurred by BRIM for these cases is \$962,309.

- **Civil Rights/Discrimination Law – 16 Cases:** 10 have incurred expenses totaling \$640,099, and 6 have no expenses. However, 10 cases are still open.
- **Wrongful Termination – 4 Cases:** Total expenses equals \$91,091, but 3 cases are still open.
- **Discrimination – 9 Cases:** 5 cases have expenses totaling \$176,811, and 4 cases have no expenses. However, 6 cases are still open.
- **Rape/Sexual Assault – 3 Cases:** Total expenses equals \$15,196, but 2 cases are still open.
- **All Other Liability – 3 Cases:** 1 case has expenses totaling \$39,112, and 2 cases have no expenses. However, these 3 cases are still open.

PERD concludes that the OEO serves an important function of keeping state agencies abreast of Equal Employment Opportunity laws to minimize the occurrence of employment discrimination and unfair treatment in the workplace.



Conclusion

PERD concludes that the OEO serves an important function of keeping state agencies abreast of Equal Employment Opportunity laws to minimize the occurrence of employment discrimination and unfair treatment in the workplace. The OEO provides important training for thousands of state employees as well as its counselors and coordinators. Without the OEO’s training and efforts to prevent employment discrimination and unfair workplace practices, discrimination and possible litigation may increase, which would be costly to the State and impact agencies’ effectiveness.

Recommendations

1. *PERD recommends that the Legislature consider continuing the West Virginia Office of Equal Opportunity.*
2. *PERD recommends that the Office of Equal Opportunity consider adding sexual harassment and discrimination training to its virtual trainings for state agencies.*

ISSUE 2

The OEO Complies with Statutory Responsibilities; However, Further Progress Is Needed in Developing a Statewide and Uniform Program, and Data Analytics Could Enhance the Effectiveness of the Agency’s Training Program

Issue Summary

Overall, the Office of Equal Opportunity complies with many of its statutory responsibilities in addressing the issues of employment discrimination and unfair practices in the workplace. The State Coordinator has in-depth knowledge of the federal EEO laws, and the agency offers sufficient and relevant training opportunities to state employees to minimize the occurrence of employment discrimination and to address discrimination complaints. However, since the agency is relatively new, further progress is needed in facilitating a statewide program that documents standard procedures and encourages uniformity in receiving, reviewing, investigating, monitoring, and resolving discrimination complaints. Furthermore, the agency compiles complaint data and has access to BRIM discrimination case data that can be analyzed to enhance the effectiveness of the agency’s training program. PERD finds that the OEO can be more proactive by identifying disproportionate incidences of discrimination and state agencies that have relatively high frequencies of discrimination complaints.

The Office of Equal Opportunity complies with many of its statutory responsibilities in addressing the issues of employment discrimination and unfair practices in the workplace.

The OEO Complies with Many of Its Statutory Responsibilities

The OEO is established by West Virginia Code §5A-1-11 to be directed by the State Equal Opportunity Coordinator. This section of Code lists several responsibilities for the State Coordinator to carry out. PERD examined these mandates and the extent to which they are performed. These are listed below.

PERD finds that the OEO can be more proactive by identifying disproportionate incidences of discrimination and state agencies that have relatively high frequencies of discrimination complaints.

- The State Coordinator is required to be knowledgeable in the various federal EEO laws as required by W. Va. Code §5A-1-11(b). The State Coordinator is a member of and/or attends regular meetings for several state and U.S. committees and panels, as required by W. Va. Code §5A-1-11(c)(5), including:
 - Access and Functional Needs Committee,
 - Arc of the Three Rivers,
 - Center for Excellence in Disabilities,
 - Disability Rights of WV,

- Governor’s Committee for the Purchase of Commodities and Services from the Handicapped,
 - Job Accommodation Network,
 - Mid-Atlantic ADA Network,
 - Olmstead Council, and the
 - U.S. Department of Labor.
- The OEO is responsible for training managers, supervisors, and agency heads on issues related to the ADA and other EEO laws, according to W. Va. Code §5A-1-11(c)(4). The agency’s compliance with this statutory responsibility is evident in the online and in-person trainings for state agencies as discussed in Issue 1 of this report.
 - West Virginia Code §5A-1-11(c)(6) and §5A-1-11(c)(7) require the State Coordinator to advise and consult state agencies and the governor on issues relating to federal EEO laws, and on hiring persons with disabilities. The State Coordinator stated that “The OEO provides support and guidance to departments, agencies, and the executive office on a case-by-case basis. If issues arise, WVOEO provides guidance.”
 - The State Coordinator is also required under W. Va. Code §5A-1-11(c)(8) to be available to inspect and advise the leasing section of the Division of Purchasing on all physical properties owned or leased by the State of West Virginia for ADA compliance. The State Coordinator indicated that she is available to fulfill this requirement as requested.
 - Pursuant to West Virginia Code §5A-1-11(c)(9), the OEO reports annually to the Governor, President of the Senate, and Speaker of the House. The OEO has published annual reports for calendar years 2022 and 2023 that describe its management and workload.

PERD finds that it is not clear that a statewide compliance program involving comprehensive policies, programs, and monitoring exists.

There Are Some Statutory Responsibilities that May Need Further Progress

According to West Virginia Code §5A-1-11(c)(1), the State Coordinator is responsible for advising the director of the Division of Personnel in developing comprehensive policies and programs for the development, implementation, and monitoring of a statewide program to assure compliance with federal EEO laws. PERD finds that it is not clear that a statewide compliance program involving comprehensive policies, programs, and monitoring exists. The State Coordinator discussed this with PERD and stated that the program currently takes the form of the State Coordinator’s daily responsibilities which include giving trainings

and advice to state agency managers and supervisors. Also, according to the OEO’s 2022 annual report, “The office develops standard procedures, monitors agency responsiveness and exercises investigative authority on behalf of the Office of the Cabinet Secretary for the Department of Administration to address complaints of workplace harassment and discrimination.”

In addition, West Virginia Code §5A-1-11(c)(2) states that the State Coordinator shall “assist in the formulation of rules and standards relating to the review, investigation, and resolution of complaints of discrimination in employment, education, housing, and public accommodation.” PERD finds that there are no rules promulgated by the OEO, the Department of Administration, or the Division of Personnel related to reviewing, investigating, and resolving complaints of employment discrimination. PERD did find that West Virginia’s three recently established departments, known as the Department of Health, the Department of Human Services, and the Department of Health Facilities, have on a website for all three departments a policy statement titled “Non-Discrimination Grievance Procedures” dated June 12, 2023. This document describes the procedures for the departments’ coordinators to follow and the form to use in receiving, investigating, and resolving complaints of discrimination. PERD also found documented procedures for addressing discrimination complaints for the Division of Corrections and Rehabilitation, the Department of Environmental Protection, and the Department of Transportation.

A statewide program with comprehensive policies and procedures that includes monitoring should be documented. Also, a comprehensive statewide program should encourage uniformity in terms of a complaint form to document allegations, and how discrimination allegations should be reviewed, investigated, resolved, and monitored. Therefore, **PERD recommends that the OEO continue to work towards developing a statewide, uniform program by either promulgating procedural rules or developing a manual that is made available to all counselors and coordinators.** This is something that may also be done through collaborating with the Division of Personnel and other state departments.

PERD recommends that the OEO continue to work towards developing a statewide, uniform program by either promulgating procedural rules or developing a manual that is made available to all counselors and coordinators.

The data that the OEO compiles can be used for a proactive approach to the agency’s training.

The OEO Could Be More Proactive in Its Training Program

As Issue 1 shows, the OEO provides training to state agencies, managers, and supervisors, through five virtual training modules and four in-person training sessions. The trainings are general and applicable to every state employee and their counselors and coordinators. The OEO also keeps track of the types of cases that state agencies are addressing. However, the data that the OEO compiles can be used for a proactive approach to the agency’s training. For example, as shown in Issue 1, the agency’s compiled data for CY 2022 and 2023 indicate that of the listed

protected classes, sex-based allegations were more prevalent than other protected classes. This is an indicator that the sex-based protected class may need more attention in the agency's training. Moreover, the data identify the state agencies involved. There are several agencies that have multiple complaints each year. The OEO should consider analyzing its data with the purpose of adapting its trainings to the specific needs of certain agencies, and to address protected classes that have a disproportionate number of allegations compared to other protected classes. Furthermore, the OEO should consider examining BRIM discrimination case data that involve alleged EEO violations. This could be beneficial for the agency to examine how cases progressed to the need for legal recourse. It is PERD's opinion that adding data analytics and targeted training to the OEO's operation would enhance the agency's effectiveness.

Conclusion

PERD found that the OEO, a relatively new agency, complies with many of its statutory responsibilities. However, there are some aspects that need further progress. The OEO should consider ways to facilitate a statewide, uniform program that assures compliance with federal EEO laws and consistently addresses discrimination allegations. The OEO should also examine the analytics of its complaint data and BRIM's discrimination case data which could allow for targeted training for specific protected classes and particular agencies. Such an approach could increase the effectiveness of the agency's training program.

The OEO should consider analyzing its data with the purpose of adapting its trainings to the specific needs of certain agencies, and to address protected classes that have a disproportionate number of allegations compared to other protected classes.

Recommendations

3. *PERD recommends that the Office of Equal Opportunity continue to work towards developing a statewide, uniform program by either promulgating procedural rules or developing a manual that is made available to all counselors and coordinators. In carrying out this responsibility, the agency may need to collaborate with the Division of Personnel and other state departments.*
4. *The Office of Equal Opportunity should consider examining the analytics in the complaint data it compiles, as well as discrimination case data from the Board of Risk and Insurance Management, to enhance the effectiveness of its training program.*

ISSUE 3

The Agency’s Website Needs More Improvement to User-Friendliness and Transparency

Issue Summary

To be able to engage with a state agency online, an agency’s website needs to be user-friendly and transparent; citizens must be able to access and comprehend the information on the website. Every website should include some elements such as a search tool, names and contact information of administrative officials, and the physical address of the agency. Other website elements, such as audio/video features, social media links, and graphics, may not be practical or necessary for all state agencies. PERD developed an assessment tool to evaluate West Virginia’s agency websites (see Appendix I). Table 3 shows that the agency incorporates 34 percent of checklist items in its website. This is a composite score of both user-friendliness and transparency items. This measure shows that the agency’s website needs more improvement in user-friendliness and transparency.

Table 3 shows that the agency incorporates 34 percent of checklist items in its website. This measure shows that the agency’s website needs more improvement in user-friendliness and transparency.

Table 3 Office of Equal Opportunity Website Evaluation Score			
Substantial Improvement Needed	More Improvement Needed	Modest Improvement Needed	Little or No Improvement Needed
0 - 25%	26 - 50%	51 - 75%	76 - 100%
	Board 34%		
<i>Source: PERD’s review of the Office of Equal Opportunity’s website as of October 10, 2024.</i>			

The Agency Should Consider Adding Features to Its Website to Significantly Improve Its User-Friendliness and Transparency

Government websites should be user-friendly in design. To engage with an agency online, citizens must first be able to access and comprehend the information on the agency’s website. A user-friendly website is understandable and easy to navigate. Government websites should also provide transparency of an agency’s operation, thereby promoting accountability and trust.

A review of the agency’s website was conducted by PERD for both user-friendliness and transparency. Table 4 shows the individual

and composite scores for the website. PERD found that overall, the website can benefit from enhancements; however, user-friendliness needs only modest improvements while transparency needs substantial improvements. The agency should consider adding elements that would benefit the public.

Category	Possible Points	Agency Points	Percentage
User-Friendly	18	10	56%
Transparency	32	7	22%
Total	50	17	34%

Source: PERD's review of the Office of Equal Opportunity website as of October 10, 2024.

The Agency's Website Needs Modest Improvements in User-Friendliness

The agency's website is easy to navigate because it has a search tool and a site map. However, there are modest improvements that could be made. For example, there is currently no feature to adjust font size, so the website may be difficult to navigate for users with visual impairments. The website includes a link to a webpage with instructions for increasing font size on a browser, but again, if a user has visual impairments this webpage may be difficult to read. Also, user-friendliness would be enhanced by changing the reading level from the current college reading level to the recommended 7th grade reading level. Below is a list of features that are not currently included on the website that should be considered. However, some of these features may not be practical or necessary for the agency.

PERD found that overall, the website can benefit from enhancements; however, user-friendliness needs only modest improvements while transparency needs substantial improvements.

User-Friendliness Considerations

The following attributes would improve the website's user-friendliness:

- **Help Link:** The agency's contact information could be included in the FAQ section.
- **Foreign Language Accessibility:** The website could include a link to translate webpages into languages other than English.
- **Content Readability:** The website could have a 7th grade reading level.

- **Site Functionality**: The website could include a feature to adjust font size.
- **Feedback Options**: The website could have a page where users can voluntarily submit feedback about the website.
- **Online Survey/Poll**: The website could have a short survey that pops up and requests users to evaluate the website.
- **Social Media Links**: The website could have a feature that allows users to post an agency's website content to social media pages such as Facebook and X.
- **RSS Feeds**: The website could allow users to receive regularly updated work in a standardized format.

The Agency's Website Needs Substantial Improvements for Transparency

A transparent government website should promote accountability, provide information about the agency's performance, and encourage public participation. Although the website has a link to a calendar page, it is blank and requires a password to access. The agency should consider implementing several of the checklist items listed below. Again, some of these features may not be practical or necessary for the agency.

A transparent government website should promote accountability, provide information about the agency's performance, and encourage public participation.

Transparency Considerations

The following attributes would improve the website's transparency:

- **Email**: The website could have a general website contact listed.
- **Location of Agency Headquarters**: The agency's contact page could include an embedded map that shows the agency's location.
- **Administrative Officials**: The names and contact information of administrative officials could be included.
- **Administrator(s) Biography**: A biography describing the professional qualifications and experience of the administrator(s) could be included.
- **Complaint Form**: The website could have an online form to submit a complaint.

- **Budget**: Budget information at the checkbook level, ideally in a searchable database, could be included.
- **FOIA Information**: The website could include information on how to submit a FOIA request, ideally with an online submission form.
- **Calendar of Events**: The website could have information on events, meetings, etc., ideally embedded using a calendar program.
- **Agency History**: A page could be included that explains how and when the agency was created, what it has done, and how, if applicable, has its mission changed over time.
- **Public Records**: The website could contain all applicable public records relating to the agency's function.
- **e-Publications**: The website could have agency publications published and downloadable.
- **Agency Organizational Chart**: A narrative describing the agency organization, preferably in a pictorial representation could be added.
- **Graphic Capabilities**: The website could allow users to access relevant graphics.
- **Audio/Video Features**: The website could allow users to access and download relevant audio and video content.
- **Performance Measures/Outcomes**: A page linked to the homepage explaining the agency's performance measures and outcomes could be added.
- **Website Updates**: The website could have a website update status on screen.
- **Job Postings/Links to Personnel Division Website**: The website could have a section on the homepage for open job listings and a link to the application page of the Personnel Division.

Conclusion

The agency's website needs more improvement primarily in the transparency component. Therefore, the OEO should consider implementing the previously mentioned user-friendliness and transparency elements to ensure that the public is able to successfully navigate and receive information from the site. The OEO is an important agency, especially for state employees, and it is important that the agency be able to share information with those it serves.

Recommendations

5. *The Office of Equal Opportunity should consider adding more user-friendly and particularly transparency elements to its website as mentioned in this review.*
6. *The Office of Equal Opportunity should consider lowering the website's reading level to the recommended 7th grade reading level.*

Appendix A Transmittal Letter

WEST VIRGINIA LEGISLATURE *Performance Evaluation and Research Division*

1900 Kanawha Blvd. East
Building 1, Room W-314
Charleston, WV 25305-0610
(304) 347-4890



John Sylvia
Director

December 13, 2024

Kim Nuckles, Director
Office of Equal Opportunity
1900 Kanawha Blvd, East
Building 6, Room B-13
Charleston, WV 25305

Dear Director Nuckles:

This is to transmit a draft copy of the Agency Review of the Office of Equal Opportunity. This report is tentatively scheduled to be presented during the January 5-7, 2025, interim meeting of the Joint Committee on Government Organization. We will inform you of the exact time and location once the information becomes available. It is expected that a representative from your agency be present at the meeting to answer any questions committee members may have during or after the meeting.

We need to schedule an exit conference to discuss any concerns you may have with the report. We would like to meet anytime from December 16–18, 2024. Please notify us to schedule a time. In addition, we will need your written response by noon on Monday, December 23, 2024, in order for it to be included in the final report. If your agency intends to distribute additional material to committee members at the meeting, please contact the House Government Organization staff at 304-340-3192 by Thursday, January 2, 2025, to make arrangements.

We request that your personnel not disclose the report to anyone unaffiliated with your agency. However, PERD advises that you inform any non-state government entity of the content of this report if that entity is unfavorably described, and request that it not disclose the content of the report to anyone unaffiliated with its organization. Thank you for your cooperation.

Sincerely,

John Sylvia
John Sylvia

Enclosure

Appendix B

Objectives, Scope and Methodology

The Performance Evaluation and Research Division (PERD) within the Office of the Legislative Auditor conducted this performance review of the Office of Equal Opportunity (OEO) as part of the Agency Review of the Department of Administration, as required and authorized by the West Virginia Performance Review Act, Chapter 4, Article 10, of the *West Virginia Code*, as amended. The purpose of the OEO, as established in West Virginia Code §5A-1-11, is to provide insight into federal anti-discrimination laws, and to facilitate compliance with such laws within state agencies through the development of a statewide program and the provision of trainings to state agencies and employees.

Objective(s)

The objectives of this review are to determine if there is a continued need for the OEO, to determine if the OEO is complying with its statutory responsibilities, and to assess the OEO's website for user-friendliness and transparency.

Scope

The scope of this review consists of the OEO's training logs for CY 2022 through CY 2024, annual reports that include the status of OEO cases, cases by protected class, the state agencies involved in OEO cases, the OEO's compliance with its statutory responsibilities (WVC §5A-1-11), and key features of the OEO's website.

Methodology

PERD gathered and analyzed several sources of information and conducted audit procedures to assess the sufficiency and appropriateness of the information used as audit evidence. The information gathered and audit procedures are described below. PERD staff visited the OEO and met with its staff. Testimonial evidence was confirmed by written statements and in some cases by corroborating evidence. Testimonial evidence was used to gain an understanding of the OEO's procedures and the complaint process as well as the statewide program that the OEO is responsible for.

PERD obtained the OEO's training logs, annual reports, a list of OEO counselors and coordinators, and a list of state agencies involved in Equal Employment Opportunity (EEO) cases. PERD examined the OEO complaint process, trainings, types of cases, and case statuses to determine the need for the OEO. PERD also used this information, as well as testimonial evidence, to determine the OEO's compliance with its statutory responsibilities.

PERD also obtained information regarding EEO cases from the West Virginia Board of Risk and Insurance Management (BRIM). PERD analyzed data from BRIM to determine the frequency of EEO cases and the litigation associated with these cases. This information provided insight into the need for the OEO in preventing discrimination cases from occurring and minimizing the State's litigation costs.

In order to evaluate state agency websites, PERD conducted a literature review of government website studies, reviewed top-ranked government websites, and reviewed the work of groups that rate government

websites in order to establish a master list of essential website elements. The Brookings Institute’s “2008 State and Federal E-Government in the United States” and the Rutgers University’s 2008 “U.S. States E-Governance Survey (2008): An Assessment of State Websites” helped identify the top ranked states in e-government. PERD identified three states (Indiana, Maine and Massachusetts) that were ranked in the top 10 in both studies and reviewed all 3 states’ main portals for trends and common elements in transparency and open government. PERD also reviewed a 2010 report from the West Virginia Center on Budget and Policy that was useful in identifying a group of core elements from the master list that should be considered for state websites to increase their transparency and e-governance. It is understood that not every item listed in the master list is to be found in a department or agency website because some of the technology may not be practical or useful for some state agencies. Therefore, PERD compared the OEO’s website to the established criteria for user-friendliness and transparency so that the OEO can determine if it is progressing in step with the e-government movement and if improvements to its website should be made.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix C

Agency Response



December 18, 2024

John Sylvia, Director
West Virginia Legislature
Performance Evaluation and Research Division
1900 Kanawha Blvd, E W-314
Charleston, WV 25305-0610

Dear Director Sylvia:

Thank you for your December 13, 2024, letter with attached Agency Review Report of the Office of Equal Opportunity (OEO) and for meeting with us on December 17, 2024, to conduct the exit conference.

Our office has no comments or corrections to the report. We appreciate that your office finds that the OEO is essential to facilitate compliance with anti-discrimination laws throughout state government, protect state employees, and minimize the liability costs to the State.

We will take the suggestions your office made under advisement and will continue to operate the office as efficiently and effectively as possible.

Sincerely,

A handwritten signature in blue ink that reads 'Kim Nuckles'.

Kim Nuckles
Director, Office of Equal Opportunity

Appendix I Website Criteria Checklist and Points System

Website Criteria Checklist and Points System			
User-Friendly	Description	Total Points Possible	Total Agency Points
Criteria	The ease of navigation from page to page along with the usefulness of the website.	18	10
		Individual Points Possible	Individual Agency Points
Search Tool	The website should contain a search box (1), preferably on every page (1).	2 points	2 points
Help Link	There should be a link that allows users to access a FAQ section (1) and agency contact information (1) on a single page. The link’s text does not have to contain the word help, but it should contain language that clearly indicates that the user can find assistance by clicking the link (i.e. “How do I...”, “Questions?” or “Need assistance?”)	2 points	1 point
Foreign language accessibility	A link to translate all webpages into languages other than English.	1 point	0 points
Content Readability	The website should be written on a 6 th -7 th grade reading level. The Flesch-Kincaid Test is widely used by Federal and State agencies to measure readability.	No points, see narrative	
Site Functionality	The website should use sans serif fonts (1), the website should include buttons to adjust the font size (1), and resizing of text should not distort site graphics or text (1).	3 points	1 point
Site Map	A list of pages contained in a website that can be accessed by web crawlers and users. The Site Map acts as an index of the entire website and a link to the department’s entire site should be located on the bottom of every page.	1 point	1 point
Mobile Functionality	The agency’s website is available in a mobile version (1) and/or the agency has created mobile applications (apps) (1).	2 points	2 points
Navigation	Every page should be linked to the agency’s homepage (1) and should have a navigation bar at the top of every page (1).	2 points	2 points

Website Criteria Checklist and Points System			
FAQ Section	A page that lists the agency's most frequent asked questions and responses.	1 point	1 point
Feedback Options	A page where users can voluntarily submit feedback about the website or particular section of the website.	1 point	0 points
Online survey/poll	A short survey that pops up and requests users to evaluate the website.	1 point	0 points
Social Media Links	The website should contain buttons that allow users to post an agency's content to social media pages such as Facebook and Twitter.	1 point	0 points
RSS Feeds	RSS stands for "Really Simple Syndication" and allows subscribers to receive regularly updated work (i.e. blog posts, news stories, audio/video, etc.) in a standardized format.	1 point	0 points
Transparency	Description	Total Points Possible	Total Agency Points
Criteria	A website which promotes accountability and provides information for citizens about what the agency is doing. It encourages public participation while also utilizing tools and methods to collaborate across all levels of government.	32	7
		Individual Points Possible	Individual Agency Points
Email	General website contact.	1 point	0 points
Physical Address	General address of stage agency.	1 point	1 point
Telephone Number	Correct telephone number of state agency.	1 point	1 point
Location of Agency Headquarters	The agency's contact page should include an embedded map that shows the agency's location.	1 point	0 points
Administrative officials	Names (1) and contact information (1) of administrative officials.	2 points	1 point
Administrator(s) biography	A biography explaining the administrator(s) professional qualifications and experience.	1 point	0 points
Privacy policy	A clear explanation of the agency/state's online privacy policy.	1 point	1 point
Complaint form	A specific page that contains a form to file a complaint (1), preferably an online form (1).	2 points	1 point

Website Criteria Checklist and Points System			
Budget	Budget data is available (1) at the checkbook level (1), ideally in a searchable database (1).	3 points	0 points
FOIA information	Information on how to submit a FOIA request (1), ideally with an online submission form (1).	2 points	0 points
Calendar of events	Information on events, meetings, etc. (1) ideally imbedded using a calendar program (1).	2 points	1 point
Mission statement	The agency’s mission statement should be located on the homepage.	1 point	1 point
Agency history	The agency’s website should include a page explaining how the agency was created, what it has done, and how, if applicable, has its mission changed over time.	1 point	0 points
Public Records	The website should contain all applicable public records relating to the agency’s function. If the website contains more than one of the following criteria the agency will receive two points: <ul style="list-style-type: none"> • Statutes • Rules and/or regulations • Contracts • Permits/licenses • Audits • Violations/disciplinary actions • Meeting Minutes • Grants 	2 points	0 points
e-Publications	Agency publications should be online (1) and downloadable (1).	2 points	0 points
Agency Organizational Chart	A narrative describing the agency organization (1), preferably in a pictorial representation such as a hierarchy/organizational chart (1).	2 points	0 points
Graphic capabilities	Allows users to access relevant graphics such as maps, diagrams, etc.	1 point	0 points
Audio/video features	Allows users to access and download relevant audio and video content.	1 point	0 points
Performance measures/outcomes	A page linked to the homepage explaining the agencies performance measures and outcomes.	1 point	0 points

Website Criteria Checklist and Points System			
Website updates	The website should have a website update status on screen (1) and ideally for every page (1).	2 points	0 points
Job Postings/links to Personnel Division website	The agency should have a section on its homepage for open job postings (1), and a link to the West Virginia Personnel Division's application page (1).	2 points	0 points



WEST VIRGINIA OFFICE OF THE LEGISLATIVE AUDITOR

PERFORMANCE EVALUATION & RESEARCH DIVISION

Building 1, Room W-314, State Capitol Complex, Charleston, West Virginia 25305

telephone: 1-304-347-4890 | www.wvlegislature.gov/Joint/perd.cfm | fax: 1-304-347-4939