

## **Performance Update and Further Inquiry Report**

# **Commission For The Deaf and Hard-of-Hearing**

**The Commission is in Partial Compliance with Maintaining a Register and Census of the Deaf and Hard-of-Hearing Population**

**The Commission Is Still Failing to Investigate the Condition of the Hearing Impaired**

**The Commission Now Has Authority to Conduct Evaluations and Certify Interpreters**

**The Commission Is Still Successfully Implementing Three Statutory Mandates**

**The Commission Participation Has Improved**

**The Commission Purchased TDDs with General Revenues to be Given Away to the Public; Commission Distributed TDDs to Public Without a Defined Criteria**

**The Commission Is Not in Compliance with the Open Meetings Law**

**The Commission Now Properly Filing Annual Reports with the Governor and the Legislature**



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John Sylvia  
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December 15, 2002

The Honorable Edwin J. Bowman  
State Senate  
129 West Circle Drive  
Weirton, West Virginia 26062

The Honorable Vicki V. Douglas  
House of Delegates  
Building 1, Room E-213  
1900 Kanawha Boulevard, East  
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Dear Chairs:

Pursuant to the West Virginia Sunset Law, we are transmitting a *Performance Update and Further Inquiry Report of the Commission for the Deaf and Hard-of-Hearing*, which will be presented to the Joint Committee on Government Operations on Sunday, December 15, 2002. The issues covered herein are "The Commission is in Partial Compliance with Maintaining a Register and Census of the Deaf and Hard-of-Hearing Population;" "The Commission Is Still Failing to Investigate the Condition of the Hearing Impaired;" "The Commission Now Has Authority to Conduct Evaluations and Certify Interpreters;" "The Commission is Still Successfully Implementing Three Statutory Mandates;" "The Commission Participation Has Improved;" "The Commission Purchased TDDs with General Revenues to be Given Away to the Public; Commission Distributed TDDs to Public Without a Defined Criteria;" "The Commission is Not in Compliance with the Open Meetings Law;" and "The Commission is Now Properly Filing Annual Reports with the Governor and the Legislature."

We transmitted a draft copy of the report to the Commission for the Deaf and Hard-of-Hearing on November 26, 2002. We held an Exit Conference with the Commission on December 5, 2002. We received the agency response on December 9, 2002.

Let me know if you have any questions.

Sincerely,

Handwritten signature of John Sylvia in cursive script.  
John Sylvia

JS/wsc

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*Joint Committee on Government and Finance*

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# Executive Summary

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This report is an update of the Preliminary Performance Review of the Commission for the Deaf and Hard-of-Hearing, issued in December 1998. The review is conducted in accordance with the West Virginia Sunset Law, West Virginia *Code*, Chapter 4, Article 10, Section 11a.

The December 1998 Evaluation found that the Commission had not fulfilled three of its statutory mandates, that the Commission was losing thousands of dollars on the certification of interpreters, and that Commission participation was low. In addition, the 1998 Evaluation discussed the Commission's non-compliance with the Open Meetings Law and with the requirement to file annual reports with the Governor and the Legislature.

The purpose of this update is to determine whether or not the agency has complied with recommendations made in the original evaluation. Specifically, this update discusses the following issues:

1. The Commission is in partial compliance with maintaining a register and census of the deaf and hard-of-hearing population.
2. The Commission is still failing to investigate the condition of the hearing impaired.
3. The Commission now has authority to conduct evaluations and certify interpreters.
4. The Commission is still successfully implementing three statutory mandates
5. Commission participation has improved
6. The commission purchased TDDs with general revenues to be given away to the public; the Commission distributed TDDs to the public without a defined criteria
7. The Commission is not in compliance with the Open Meetings Law
8. The Commission is now properly filing annual reports with the Governor and the Legislature

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This update uses the following designations for levels of compliance:

<b>Table 1</b> <b>Levels of Compliance</b>
<u>In Compliance</u> - The Commission has corrected the problems identified in the 1998 audit report.
<u>Partial Compliance</u> - The Commission has partially corrected the problems identified in the 1998 report.
<u>Planned Compliance</u> - The Commission has not corrected the problem but has provided sufficient documentary evidence to find that the Commission will do so in the future.
<u>In Dispute</u> - The Commission does not agree with either the problem identified, or the proposed solution.
<u>Non-Compliance</u> - The Commission has not corrected the problem identified in the 1998 audit report.
<u>Requires Legislative Action</u> - The recommendation was intended to call the attention of the Legislature to one or more statutory issues.

Of the 18 recommendations made in the 1998 review, the Legislative Auditor finds that the Commission for the Deaf and Hard-of-Hearing is now in compliance with three, in partial compliance with seven, and in non-compliance with four. Legislative action has been taken in three of the recommendations made, and one recommendation requires legislative action.



# Review Objective, Scope and Methodology

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This preliminary performance further inquiry update of the Commission for the Deaf and Hard-of-Hearing is required and authorized by the West Virginia Sunset Law, Chapter 4, Article 10, Section 11a of the West Virginia *Code*, as amended. The purpose of this further inquiry update is to update aspects of the operation of the Commission for the Deaf and Hard-of-Hearing reviewed in the 1998 performance evaluation.

## **Objective**

The objective of this further inquiry update is to determine the level of compliance to recommendations made in the 1998 performance evaluation.

## **Scope**

The performance evaluation covers the period from December 1998 to November 2002. For this report, the review was limited to issues identified in the 1998 performance evaluation.

## **Methodology**

The information contained within this report has been acquired through interviews and review of Commission documents. Every aspect of this review complied with Generally Accepted Government Auditing Standards (GAGAS).



## **The Commission is in Partial Compliance with Maintaining a Register and Census of the Deaf and Hard-of-Hearing Population**

### **Recommendation 1:**

*The Commission should formulate and maintain a census/register database as required by West Virginia Code §5-14-5. The register shall contain such information as the person's name, age, the condition and cause of the hearing problem, the person's capacity for education and industrial training and other facts the Commission considers valuable. As part of the register, the Commission should maintain data on each person's county and city of residence so that it can maintain a census by state, county and city figures.*

### **Level of Compliance: Partial Compliance**

The Legislative Auditor finds that the Commission has not fully met the statutory requirements to maintain a register and census. According to the information provided, some census data with state, county and city figures are being maintained by the Commission. However, given the U.S. census data for 1990,<sup>1</sup> the Commission's census is likely significantly less than the actual number of deaf and hard-of-hearing people. In addition, the Commission has developed a register of the hearing-impaired that includes some data on the condition and cause of the hearing problem. However, this register does not have the required information detailing the ages and capacity for education and industrial training of the hearing-impaired.

The Commission has indicated to the Legislative Auditor that it has encountered roadblocks in fulfilling its mandates to maintain a register and census. Although the Commission's statute permits it to obtain information on deaf and hard-of-hearing persons from other state agencies, this has not occurred because other agencies fear violating confidentiality rights. **According to a legal opinion from the Legislative Services there are federal regulations that would prevent the Commission from obtaining this identifying information from other state agencies.** As stated in the legal opinion,

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<sup>1</sup>The 1990 U.S. Census reported West Virginia's hearing impaired population to be over 115,000, with 9,000 who were unable to hear. The 2000 U.S. Census did not separate out the hearing impaired population from other sensory impairments, as it did in the 1990 Census.

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*The information required by state law to be submitted, including name, age and residence of the hearing impaired, is individually identifiable health information as defined by rules implementing the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-191, which generally preempts state law. The act protects the privacy of consumers, and tightly restricts the disclosure of this health information by covered entities without consent of the individual.*

This law means that the Commission would be unable to obtain the identifying information from anyone but the hearing-impaired individual.

These two mandates are the building base to fulfill the other statutory mandates. Until the Commission identifies the population, determining its size and demographics, it has limited ability to investigate the condition of the population, or adjust its outreach and clearinghouse of information accordingly.

## **Recommendation 2**

*The Commission should create a comprehensive procedure on the methods of collecting and maintaining data in the deaf and hard-of-hearing registry/census database.*

## **Level of Compliance: Non-Compliance**

The Legislative Auditor requested the Commission provide its procedure for collecting and maintaining information for the registry and census. This information was not provided.

### The Commission is Still Failing to Investigate the Condition of the Hearing-Impaired

#### Recommendation 3:

*The Commission should immediately comply with its charge to investigate the condition of hearing-impaired population.*

#### Level of Compliance: Non-Compliance

The Commission is statutorily required to investigate, as stated in β5-14-5,

*...the condition of the hearing-impaired in this state **with particular attention** to those who are **aged, homeless, needy, victims of rubella and victims of abuse or neglect**. It shall also determine the means the state possess for establishing group homes for its hearing-impaired citizens and the need for additional facilities. The commission shall also determine the advisability and necessity of providing services to the multi-handicapped hearing-impaired. (Emphasis added)*

The Legislative Auditor was provided with no documentation to demonstrate the investigation has commenced or had even been addressed with respect to any one of the specific populations enumerated above.

The statute provides further insight into the Legislative intent for one part of the population in β5-14-1(e),

*A rubella epidemic from 1963-1965 caused a number of infants in West Virginia to be born hearing-impaired. These individuals are approaching ages where they will no longer be eligible for educational services, thus requiring services as young adults. The Legislature, therefore, declares that there is an unprecedented and imperative need to plan and prepare for the multiplicity of services required in order to ensure a life-long continuum of services to this particular population.*

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This age group has now passed young adulthood and is approaching middle age. The Legislature continues to be without the findings it mandated the Commission to investigate and will continue to be unable to plan and prepare services for this particular population and the rest of the deaf and hard-of-hearing population. Further, the Legislative Auditor is concerned that the census data the Commission has collected in no way reflects the rubella epidemic. Census statistics only reflect 17, or 5%, of persons on the census who state the cause of deafness was rubella. Such numbers do not reflect an epidemic and signify there is a specific group of individuals who have been unidentified by the Commission.

The Legislative Auditor does note that, as discussed in Issue 1, **given the Commission's difficulties in obtaining registry information from other state agencies, the ability to fulfill this statutory mandate is questionable.**

## The Commission Now Has Authority to Conduct Evaluations and Certify Interpreters

### Recommendation 4:

*The Legislature should consider amending the Commission statute to clearly indicate Commission power to conduct evaluations and certify interpreters.*

### Level of Compliance: Legislative Action Taken

The Commission statute was amended to clearly indicate that the Commission can conduct evaluations and certify interpreters.

### Recommendation 5:

*The Commission should conduct evaluations of only West Virginia residents and focus more attention on its other statutory mandates.*

### Level of Compliance: Non-Compliance

In 1998, it was found that licensing out-of-state individuals to be interpreters provided no benefit for the hearing-impaired population of West Virginia. Furthermore, the 1998 Evaluation discovered that the evaluation of out-of-state interpreters required the use of general revenues. Out-of-state residents are still being evaluated by the Commission. In 1998, the Legislative Auditor found that only 10%, or 34 of 350 persons evaluated were West Virginians. During the course of this review, the Legislative Auditor found that of 10 persons evaluated, 6 or 60% were West Virginians. The Legislative Auditor notes that while the percentage of West Virginians evaluated has increased, **it is still questionable what benefit the State derives from the Commission continuing to evaluate out-of-state residents.**

### Recommendation 6:

*At the change in the fiscal year, the Commission should create a new special revenue account to be used for the exclusive purpose of interpreter certification program. This will help the Commission to better*

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*monitor expenses in relation to revenues collected. The Commission should also raise evaluation fees to defray all evaluation-related costs, including estimated staff hours.*

### **Level of Compliance: Non-Compliance**

A separate revenue account exclusively for the interpreter certification program was not created. According to the Commission, it made a request that a separate account be created. However, the Legislative Auditor was not provided with documentation to verify this claim.

During the original review, an analysis was conducted which showed that the program's expenses exceeded revenues by nearly \$24,000. A similar analysis was not conducted for this update. However, given the use of staff and other state resources, the program is not cost effective and most likely costs more than the direct costs the Commission acknowledges. A separate fund would help monitor the extent to which expenses of the program exceed revenues. It would also help the Commission to know how much it needs to increase fees.



## The Commission Is Still Successfully Implementing Three Statutory Mandates

### Recommendation 7:

*The Legislative Auditor recommends the Commission begin keeping a usage log of its clearinghouse of information to anticipate what areas need focus of resources.*

### Level of Compliance: In Compliance

The Legislative Auditor finds that during the scope of the review, the Commission kept a usage log of program activity; including referrals, town hall meetings, incoming telephone calls, and drop-in visits to the Commission office. However, use of the clearinghouse of information has not been logged, except for information regarding all referrals, in which referrals for interpreter services have been grouped.

Statute requires that the clearinghouse of information assist hearing-impaired persons and others in obtaining appropriate services, including employment, independent living skills, education and recreational facilities. **A usage log of each service specifically mentioned in statute could aid the Legislature in gaining an understanding of areas for which a demand has been suggested.**

### Recommendation 8:

*The Legislative Auditor recommends the Commission continue to develop its website to facilitate the implementation of various mandates of the Commission.*

### Level of Compliance: In Compliance

The Commission has developed its website since the original review in 1998. The website has information that includes minutes of previous meetings, a form inquiring information for the required census, a link to the most recent annual report, and the most recent newsletter.

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**However, some information, including the names of Commission members on the website, is outdated and should be updated.** For instance, the previous Cabinet Secretary of the Department of Health and Human Resources is still listed as the ex-officio Commission member, approximately two years after the current Cabinet Secretary was appointed to the position.

## The Commission Participation Has Improved

### Recommendation 9:

*The Legislature should consider reformulation of the West Virginia Commission for the Deaf and Hard-of-Hearing to enhance participation. The Legislature may want to give additional consideration to providing majority representation to persons of the Commission's primary consumer group, since voting ex officio Members outnumber appointed Members 8 to 7. The Commission should provide the Joint Committee on Government Operations insight in this concern.*

### Level of Compliance: Legislative Action Taken

The Legislature increased the number of commission members by adding two deaf or hard-of-hearing persons to the Commission. However, when the number of commission members was adjusted, the terms for the new members were not provided for in the statute. **The Legislative Auditor suggests that the Legislature consider amending the statute to provide for terms for the additional members.**

### Recommendation 10:

*Members should diligently attend or send designees and participate in meetings to respond to the needs of the deaf and hard-of-hearing population.*

### Level of Compliance: Partial Compliance

In the 1998 report, the Legislative Auditor found that meeting attendance was poor for both ex-officio and appointed commission members. Meeting attendance has improved. Table 2 illustrates the change in meeting attendance for ex-officio members.

<b>Table 2 - Meeting Attendance Rates</b>						
<b>Member</b>	<b>1998 Evaluation</b>			<b>2002 Update</b>		
	<b>Meetings Attended</b>	<b>Total Meetings Held</b>	<b>Percent Attended</b>	<b>Meetings Attended</b>	<b>Total Meetings Held</b>	<b>Percent Attended</b>
Commissioner of DHHR	16	27	59%	12	12	100%
Commissioner of Labor	0	27	0%	3	12	25%
Director of Public Health	2	27	7%	8	12	67%
State Superintendent of Schools	10	27	37%	10	12	83%
Director of Division of Rehabilitation Services	21	27	78%	12	12	100%
Director of Handicapped Children's Services	1	27	4%	10	12	83%
Chair of Advisory Council for Education of Exceptional Children	1	27	4%	10	12	83%
Superintendent of WV School for the Deaf	22	27	81%	9	12	75%

Appointed members' attendance rates at meetings has not materially changed. In the 1998 report, the rate of attendance was 65% for the twenty-seven meetings that occurred during the scope of the last review. During the scope of this review, the attendance rate for the twelve meetings held was 76%.

The Legislative Auditor again reiterates the importance of attendance for commission members, so that representative agencies are aware of the services those agencies are to be providing the deaf and hard-of-hearing, and appointed members need to attend to represent the deaf and hard-of-hearing population.

### **The Commission Purchased TDDs with General Revenues to be Given Away to the Public; Commission Distributed TDDs to Public without a Defined Criteria**

#### **Recommendation 11:**

*The Legislative Auditor recommends the Commission develop a loan program for the purpose of distributing TDDs purchased by the Commission. A model for consideration by the Commission is the Library of Congress program administered through the West Virginia Library Commission for loaning audio equipment for books on tape to blind and disabled individuals.*

#### **Level of Compliance: Partial Compliance**

The Commission has developed a loan program for the purpose of distributing TDDs purchased by the Commission with general revenue monies. However, the Legislative Auditor is concerned that the loan is indefinite. Applicants to the Commission are required to return TDD devices only if they reside out-of-state. Alternatively, the National Library Service (NLS) organized under the Library of Congress, has an equipment loan program that permits a free loan to readers as long as recorded materials are being borrowed.

#### **Recommendation 12:**

*Should the Commission receive donations in the future with which to purchase additional TDDs for distribution to the needy, it should develop a needs test and require applicants to provide reasonable verification of all assertions to be copied to the Commission's records. The Commission should also maintain complete, accurate and up-to-date records of who receives the devices (and identifying information), evidence that the needs tests were satisfied and serial numbers for the TDDs.*

#### **Level of Compliance: Partial Compliance**

While the Commission has not received donations to purchase additional TDDs, it has developed an application which requires that applicants be deaf, be residents of WV, and be at least age 5. The Legislative Auditor finds that the Commission is maintaining records of who receives the devices, the serial

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numbers of those devices, and has required applicants to provide statements signed by medical personnel and others asserting the person's deafness. However, income is not a factor considered when determining need. **The Legislative Auditor is of the opinion that income should be a factor considered.** Evidence presented to the Legislative Auditor indicates there is demand for these free devices, which can be kept indefinitely, and that several of the recipients have incomes that would provide them the means to purchase devices of their own.

## The Commission is Not in Compliance With the Open Meetings Law

### Recommendation 13:

*The Commission should immediately comply with the requirements of the Open Meetings Law.*

### Level of Compliance: Partial Compliance

The Commission is filing its notices of meeting with the Secretary of State's Office timely and has been meeting the required four times a year. However, the Legislative Auditor finds that other requirements of the open meetings law are not being met. According to §6-9A-5 of the *Code*,

*Each governing body shall provide for the preparation of written minutes of all of its meetings....Minutes of all meetings except minutes of executive sessions, if any are taken, shall be available to the public within a reasonable time after the meeting and shall include, at least, the following information:*

- (1) *The date, time and place of the meeting;*
- (2) *The name of each member of the governing body present and absent;*
- (3) *All motions, proposals, resolutions, orders, ordinances, and measurements proposed, the name of the person proposing the same and their disposition, and*
- (4) *The results of all votes and, upon the request of a member, pursuant to the rules, policies or procedures of the governing board for recording roll call votes, the vote of each member, by name.*

The Commission's meeting minutes do not always reflect members present and absent. Furthermore, the meeting minutes seldom mention the place of the meeting, as required, and the minutes do not provide the results of votes (unanimous, 14-3, etc.). The Legislative Auditor discussed this issue with the Commission during this audit. As a result, the unapproved Commission minutes from the November 2002 meeting show an improvement; however, the minutes still fail to reflect the place of the meeting.

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**Recommendation 14:**

*As stated in the Legislative Auditor's 1998 Reports on the Board of Examiners for Speech Language Pathology and Audiology and Tree Fruit Industry Self Improvement Assessment Board, in lieu of the existing lack of coordination and training of members of professional and occupational licensing boards and other State organizations, the Legislature should consider amending the Code to require training for members of professional or occupational licensing boards and other State organizations to be conducted by the State Auditor's Office, with the cooperation of the Budget and Purchasing Divisions of the Department of Administration, the Ethics Commission, the Attorney General's Office, and the Secretary of State's Office. Training should include budgeting, purchasing, open meetings, ethics, filing annual reports, and records management.*

**Level of Compliance: Legislative Action Taken**

The Legislature implemented this recommendation in 1999 for professional licensing boards.



## **The Commission Now Properly Filing Annual Reports with the Governor and the Legislature**

### **Recommendation 15:**

*Commission should comply with West Virginia Code  $\beta$ 5-14-9 and file annual reports with the Governor and Legislature.*

### **Level of Compliance: In Compliance**

The Legislative Auditor was able to document that the Commission filed its 2001 and 2000 annual report with the Legislature and the Governor.

### **Recommendation 16:**

*The Commission should change the format of its annual reports to provide summary information of programs, recommendations, including statistics on the State's deaf and hard-of-hearing population (census and register information), statistics on the interpreter evaluation program (number tested, disposition of those tests, number of registered interpreters in WV, frequency of testing, etc.), budgetary information, findings and discussion of research of the deaf and hard-of-hearing population, usage statistics of the Commission's information clearinghouse, and other relevant activities.*

### **Level of Compliance: Partial Compliance**

The Commission's annual reports include recommendations and summarize the Commission's programs as required. However, the annual reports do not include budgetary information, and have limited clearinghouse usage statistics. The Commission informed the Legislative Auditor that the budgetary information was filed as a supplement to the annual report. The Legislative Auditor was provided with documentation to substantiate this statement.

Although the annual report does contain census and register statistics, the presentation could be improved. For instance, in presenting employment information, one category puts student and unknown together. The Legislative Auditor suggests separating the categories so the reader has a better

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understanding of the percentage of the population that were non-responsive as distinct from those persons who are students.

**Recommendation 17:**

*The Commission should report back to the Joint Committee on Government Operations at the May 1999 Interim meeting, to brief the membership on its progress regarding issues discussed in this report.*

**Level of Compliance: In Compliance**

The Commission reported back to the Joint Committee on Government Operations at the November 1999 interim meeting to brief the membership on the issues discussed in the 1998 report.

**Recommendation 18:**

*Because of the Commission's failure to address three of its six primary statutory directives within its first 10 years of existence; general revenue subsidizing of NAD interpreter evaluations provided primarily to out-of-state interpreters; the purchase of TDDs with general revenue to be given away without proper authority and the giving of TDDs purchased with grant proceeds without an objective criteria for such distribution; lack of participation by Commission Members and failure to meet the required four times per year; noncompliance with the Open Meetings Law; and failure to file an annual report as required by statute, the Legislature should consider terminating the Commission or continuing it for the minimum of one year pursuant to the Sunset Law.*

**Level of Compliance: Requires Legislative Action**

The Legislative Auditor recommends that the Legislature consider terminating the Commission for the Deaf and Hard-of-Hearing. As discussed in Issues 1 and 2 of this report, the Commission may be unable to fulfill some mandates as a result of federal privacy laws. Consequently, the Commission is left with serving the four remaining functions in statute. These functions are as

1. make available upon request a list of statewide qualified interpreters for the deaf;
2. conduct interpreter evaluations and certification;
3. maintain a clearinghouse of information to aid hearing-impaired

- 
- persons; and
  4. develop an outreach program to familiarize the public with the rights and needs of hearing-impaired people.

**Given the decrease in the functions originally designed for the Commission, it may not be necessary to maintain a 17 member Commission, a staff of five and a separate office to carry out these limited operations.** Instead, a more cost effective approach may be to have these functions provided by another state agency if the Legislature wishes for these services to continue.

**As an alternative, the Legislature may wish to consider amending statute to define some additional duties of the Commission.** Based on the Legislative Auditor's attendance at a recent Commission meeting, it appears that the Commission is focusing its efforts on improving services of the deaf and hard-of-hearing in the State. For example, the Commission is currently conducting research on possible improvements to educational services and 911 programs for the hearing-impaired in West Virginia. This research is an extension of the current mandates of the Commission. The Legislature may wish to amend the Commission's statute to clearly define these additional duties that are being performed by the Commission.



# Appendix A: Transmittal Letter

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## WEST VIRGINIA LEGISLATURE *Performance Evaluation and Research Division*

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John Sylvia  
Director

November 26, 2002

Doug Godfrey, Chair  
Commission for the Deaf and Hard-of-Hearing  
P.O. Box 1764  
Martinsburg, WV 25402-1764

Dear Mr. Godfrey:

This letter transmits a draft copy of the Preliminary Performance Further Inquiry Update of the Commission for the Deaf and Hard-of-Hearing. This report is scheduled to be presented at the Sunday, December 15, 2002 interim meeting of the Joint Committee on Government Operations. The expectation is that a representative from your agency will be present at the meeting to respond to the report and answer any questions the committee may have.

We need to schedule an exit conference to discuss any concerns you may have with the report by December 3, 2002. Please notify us to schedule an exact time. In addition, we need your written response by noon on December 6, 2002 in order for it to be included in the final report.

We request that your personnel treat the draft report as confidential and request that it not be disclosed to anyone not affiliated with your agency. Thank you for your cooperation.

Sincerely,

A handwritten signature in cursive script that reads "John Sylvia".

John Sylvia

C: Paul L. Nusbaum, Cabinet Secretary  
Department of Health and Human Resources

Shana Phares, Assistant to the Secretary  
Department of Health and Human Resources

Barbara King, Deaf, Hearing Impaired & Independent Living Services  
Division of Rehabilitation Services

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*Joint Committee on Government and Finance*

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# Appendix B: Agency Response

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STATE OF WEST VIRGINIA  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

Bob Wise  
Governor

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Paul L. Nusbaum  
Secretary

December 9, 2002

John Sylvia, Director  
Performance Evaluation and Research Division  
West Virginia Legislature  
1900 Kanawha Boulevard, East  
Charleston, WV 25305

Dear Mr. Sylvia:

The West Virginia Commission for the Deaf and Hard of Hearing accepts the Preliminary Performance Update of the Commission for the Deaf and Hard of Hearing completed by the Office of the Legislative Auditor. As we noted in November, this review process has proven invaluable to the Commission's efforts to improve performance and reexamine its mandate. In this response, only those recommendations which reflect non-compliance or partial compliance are addressed.

### Response to Recommendations

**Recommendation 1:** *The Commission should formulate and maintain a census/register database as required by West Virginia Code §5-14-5. The register shall contain such information as the person's name, age, the condition and cause of hearing problem, the person's capacity for education and industrial training and other facts the Commission considers valuable. As part of the register, the Commission should maintain data on each person's county and city of residence so that it can maintain a census by state, county and city figures.*

The Commission agrees that it has not fully met the statutory requirements. It also agrees with the findings of the Performance Evaluation and Research Division (PERD) in regard to the concerns of other state agencies and the overriding influence of the federal Health Insurance Portability and Accountability Act of 1996, Public Law 104-191.

**Recommendation 2:** *The Commission should create a comprehensive procedure on the methods of collecting and maintaining data in the deaf and hard-of-hearing registry census database.*

The Commission collects and maintains data in the deaf and hard-of-hearing registry census database, however the office has no written office procedures describing this process. WVCDHH staff will transcribe the procedures and submit to PERD.

***Recommendation 3:*** *The Commission should immediately comply with its charge to investigate the condition of the hearing-impaired population.*

In light of the difficulties in collecting the specific information required by statute on these populations, the Executive Director of the Commission held ten town meetings across the state in fiscal year 2000 to meet with members of the deaf community and to listen to their concerns and document the need for services. These meetings helped set the work plan and other activities of the Commission for the subsequent two years. These activities are documented in the Commission's annual reports.

In regard to the rubella epidemic, the Division of Vital Statistics, Office of Disease Surveillance and Control, Bureau for Public Health, Department of Health and Human Resources reports that in 1963 - 1438 cases were reported and in 1964 - 6774 cases were reported and in 1965 - 2091 cases were reported. There is no information regarding the degree of deafness for any of these victims; morbidity numbers are available.

The Commission agrees with the PERD that given the statutory constraints around confidentiality, it is unclear that this statutory mandate is achievable.

***Recommendation 6:*** *The Commission should conduct evaluations of only West Virginia residents and focus more attention on its other statutory mandates.*

The Commission concedes that it continues to evaluate out-of-state candidates for interpreter certification. West Virginians have preference in filling available evaluation slots. The Commission believes that interpreters and interpreting agencies serve West Virginians. In fact the Commission has two interpreting agencies under contract, one of which is based in West Virginia. The Commission in the next recommendation requests an audit by PERD to empirically determine the value of evaluating out-of-state residents.

Recommendation 6: At the change in the fiscal year, the Commission should create a new special revenue account to be used for the exclusive purpose of the interpreter certification program. This will help the Commission to better monitor expenses in relation to revenues collected. The Commission should also raise evaluation fees to defray all evaluation-related costs, including estimated staff hours.

Special revenue accounts require legislative action to be established. On December 3, 1998, in its response to the original PERD report, the Commission requested legislative action to establish a special revenue account as recommended by PERD staff. This letter appears at Appendix A. The Commission discussed this letter with PERD staff during the exit conference, but it appears that staff did not receive a copy of the documentation due to technical error.



As mentioned above, the Commission respectfully requests a full audit of the interpreter evaluation program by PERD. It also asks that the scope of the audit be broadened to provide an update to the committee as to the need for such services. The Commission sincerely hopes the Committee can honor this request.

***Recommendation 10:*** *Members should diligently attend or send designees and participate in meetings to respond to the needs of the deaf and hard-of-hearing populations.*

The Commission agrees with the findings of PERD. The dramatic increase in ex-officio attendance as shown in Table 1 reflects their commitment to this Commission.

***Recommendation 11:*** *The Legislative Auditor recommends the Commission develop a loan program for the purpose of distributing TDDs purchased by the Commission. A model for consideration by the Commission is the Library of Congress' program administered through the West Virginia Library Commission for Loaning audio equipment for books on tape to blind and disabled individuals.*

There seems to be a difference of interpretation as to the purpose of the TDD program. TDDs are not recreational equipment. TDDs, amplified phones, low-vision TDDs, and braille TDDs serve as equipment for communication and safety.

The Commission reviews the loan agreement on an annual basis to ensure that the recipient still resides in the state of West Virginia and continues to be able to use the device on loan.

***Recommendation 12:*** *Should the Commission receive donations in the future with which to purchase additional TDDs for distribution to the needy, it should develop a needs test and require applicants to provide reasonable verification of all assertions to be copied to be copied to the Commission records. The Commission should also maintain complete, accurate and up-to-date records of who receives the devices (and identifying information), evidence that the needs tests were satisfied and serial numbers for the TDDs.*

The Commission accepts PERD's recommendation regarding the consideration of income in distributing TDDs and other telephonic devices. The Commission will develop income criteria for the receipt of assistive telephonic devices and will report back the PERD.

**Recommendation 13:** *The Commission should immediately comply with the requirements of the Open Meetings Law.*

The Commission will comply with the remaining issues in the Open Meetings Law.

**Recommendation 16:** *The Commission should change the format of its annual reports to provide summary information of programs, recommendations, including statistics on the State's deaf and hard-of-hearing population (census and register information, statistics on the interpreter evaluation program (number tested disposition of those tests, number of registered interpreters in WV, frequency of testing, etc.), budgetary information, findings and discussion of research of the deaf and hard-of-hearing population, usage statistics of the Commission's information clearinghouse, and other relevant activities.*

The Commission accepts PERD's recommendations.

**Recommendation 18:** *Because of the Commission's failure to address three of its six primary statutory directives within its first ten years of existence; general revenue subsidizing of NAD interpreter evaluations provide primarily to out-of-state interpreters; the purchase of TDDs with general revenue to be given away without proper authority and the giving of TDDs purchased with grant proceeds with out and objective criteria for such distribution; lack of participation by Commission Members and failure to meet the required four times per year; noncompliance with the Open Meetings Law; and failure to file an annual report as required by statute, the Legislature should consider terminate the Commission or continuing it for the minimum of one year pursuant to the Sunset Law.*

The Commission believes this Performance Update shows significant improvement since the initial performance review. The needs of the deaf and hard-of-hearing in West Virginia continue to be great and the Commission tries to be attuned to those needs and advocate for services and policy changes - such as the law passed by the Legislature last year to add the deaf designation to West Virginia driver's licenses and state identification cards. However, the statute governing the Commission remains the same as it was more than twenty years ago.

The Commission desires to work with the Legislature to modify the statute to more closely reflect the needs of the deaf and hard-of-hearing in West Virginia in 2002 and beyond. The Commission requests continuance under the Sunset Law and the opportunity to work with the Legislature to refine the Commission statute. As part of that effort, the Commission respectfully submits draft legislation to make technical corrections to the terms of the Commission members at Appendix B.

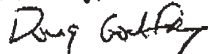
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John Sylvia, Director, PERD  
December 9, 2002  
Page # 5

**Conclusion**

Again, the Commission appreciates the work of your staff and reiterates that the review process has been very helpful. The Commission looks forward to continuing to work closely with your office in the upcoming months.

Sincerely,



Doug Godfrey, Board Chair  
West Virginia Commission for the Deaf and Hard of Hearing





STATE OF WEST VIRGINIA  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
West Virginia Commission for the Deaf and Hard of Hearing  
4190 Washington Street, West  
Charleston, WV, 25313  
(304) 558-2175  
(Voice/TDD)

Cecil Underwood  
Governor

Executive Director

December 3, 1998

Antonio E. Jones, Ph.D., Director  
Performance Evaluation and Research Division  
West Virginia Legislature  
1900 Kanawha Boulevard, East  
Charleston, WV 25305

Dear Dr. Jones,

The West Virginia Commission for the Deaf and Hard of Hearing accepts the preliminary performance review of the Commission for the Deaf and Hard of Hearing completed by the Office of the Legislative Auditor. The Commission continues to review the recommendations and analysis contained in the report. This reports has proven valuable to the Commission in its effort to improve its performance.

#### General Comments

During the past year, the Commission has conducted an extensive search for a new Executive Director and continues to seek a suitable candidate to fill this role. The absence of an Executive Director notwithstanding, the Commission has continued to serve the needs of the deaf and hard-of-hearing community in a variety of ways including: offering workshops to health care agencies, attending legal hearings with the deaf involved, working with county school systems on educational interpreters, attending IEP meetings, assisting parents of deaf children in the public school setting and advocating for deaf employees with the goals toward independence in the work place. The Commission maintains open communication with the hearing and hearing impaired worlds and is always willing to assist when necessary for the benefit and understanding of the deaf and hard-of-hearing population involved.

**Issue Area #1: Commission is Not Maintaining Register or Census of Deaf and Hard-of-Hearing as Required by Code**

The Commission acknowledges and accepts that it has been deficient in the Virginia Association of the Deaf. The completion date for this distribution is April 1, 1999.

In addition the Commission will collect any existing information from the following state agencies:

- a) Office of Vital Statistics, Bureau of Public Health;
- b) Department of Education, Office of Special Education Programs;
- c) Division of Rehabilitation Services;
- d) West Virginia School for the Deaf and Blind;
- e) Secretary of State's Office; and
- f) Early Intervention Program, Office of Maternal and Child Health, Bureau of Public Health.

The goal of the Commission is to develop a comprehensive database of deaf and hard-of-hearing citizens which includes not only basic information such as name age and gender, but in compliance with the WV Code, the person's cause of hearing problem, degree of deafness, capacity for education and other facts the Commission considers valuable. The expected completion date of this project is September 1, 1999.

In addition, the Commission will seek the assistance of the West Virginia Board of Hearing Aid Dealers to identify West Virginians who are hearing impaired by January 1, 1999.

### **Issue Area #2: Failure to Investigate the Condition of the Hearing Impaired**

The Commission also acknowledges and accepts that it has not aggressively pursued the investigation of the condition of the hearing-impaired. The Commission will consult with the following state agencies to comply with this statutory requirement:

- a) the Bureau of Senior Services - to determine what proportion of the elderly population have hearing loss;
- b) the Department of Health and Human Resources, Bureau for Public Health, Office of Vital Statistics - to determine how many West Virginia citizens are victims of rubella, especially the 1963-1965 rubella epidemic;
- c) the Division of Rehabilitation Services - the number of persons who report employment handicaps due to hearing loss;
- d) the Bureau of Employment Programs, Division of Workers' Compensation to determine how many West Virginia citizens have developed hearing loss from adverse working conditions;
- e) the Developmental Disabilities Planning Council to determine how many West Virginia Citizens are multi-handicapped and hearing-impaired;
- f) Statewide Independent Living Centers to determine the need for housing for the hearing-impaired and hearing-impaired, multi-handicapped.

Based on this data, the Commission will make recommendations to the Governor regarding the advisability and necessity of providing services to the multi-handicapped, hearing-impaired. The goal completion date for this project is June 1, 1999.

### **Issue Area #3: Commission Losing Thousands on Certification of Interpreters**

The Commission understands that PERD has determined the National Certification of the Deaf (NAD) evaluation program is losing money. The Commission was unaware of this. The Commission accepts the recommendation that a new special revenue account be established for the exclusive purpose of the interpreter certification program and requests that any necessary legislative action be taken to make this possible.

The Commission will reevaluate the operation of the NAD evaluation program with consideration of its other statutory duties. In addition, the Department of Health and Human Resources, Inspector General is conducting an internal audit of Commission finances. The Commission has directed its staff to cooperate fully with the Inspector General's office and to extend them every courtesy. At its December 4, 1998, meeting the Commission issued an immediate and ongoing moratorium on out-of-state evaluations. Resumption of the out-of-state evaluation program will be carefully considered.

It should be noted that the administration of the NAD interpreter evaluation has literally put West Virginia on the map in the deaf community nationwide. West Virginia is the only state on the East Coast which administers the NAD evaluation. Not only is this program a source of great pride for the deaf community in West Virginia, but it is also paramount to providing qualified interpreters to the schools, the court system, state government and businesses. For the Commission not to have an interest in interpreter certification and training would be analogous to the Superintendent of Education not having an interest in teacher education and training.

There is no doubt that the NAD evaluation can be administered by the Commission in a manner that does not require the West Virginia subsidization of the testing of out-of-state residents. The Commission will ensure that this type of administration is in place before considering the resumption of out-of-state testing.

#### **Issue Area #4: Commission's Lack of Participation has Resulted in Ineffectiveness**

The Commission agrees that there has been a marked lack of participation by the members. In an effort to correct this situation, in November the Chair of the Commission sent out letters to each of the ex officio members requesting that a designee be named should a member be unable to attend the December 4, 1998 meeting. In addition, Commission staff followed-up this request with a phone call to ensure maximum attendance of members at meetings. Calls to all members prior to meetings is now standard procedure.

The Commission has received conflicting advice on the status of ex officio members was unaware that ex officio members had voting powers or were required for a quorum. We appreciate PERD clarifying this issue for us.

#### **Issue Area #5: Commission Purchased TDDs with General Revenues to be Given**



**Away to the Public; Commission Distributed TDDs to the Public without a Defined Criteria**

The Commission was unaware that it could not purchase TDDs with general revenue funds and agrees that the TDDs could be distributed in a more equitable manner. The Commission is developing a long-term loan program for TDDs to be provided to deaf individuals. The Commission will adopt specific criteria and use a process similar to that used by the Library Commission to determine for the distribution of audio-visual equipment to people who are vision-impaired or otherwise handicapped. This process will be in place by January 1, 1998.

**Issue Area #6 - The Commission is Not in Compliance with the Open Meetings Law**

Larry Arnold, Department of Health and Human Resources attorney and expert in Open Meetings Law provided training to the Commission Chair and Commission staff on the Open Meetings Law on November 19, 1998. The Commission have taken active steps to ensure complete compliance with the Open Meetings Law and has requested the continuing assistance of Mr. Arnold in this effort.

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Antonio E. Jones, Ph.D.  
December 3, 1998  
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**Issue Area #7 - Commission is Not Properly Filing Annual Reports with Governor and Legislature**

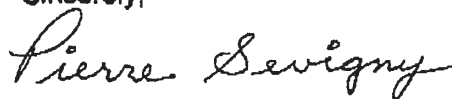
The Commission understands that the Summary of Activities provided to the Office of the Governor and the Secretary of the Department of Health and Human Resources does not suffice as an annual report. The Commission will provide an annual report to the Governor, the Secretary of the Department of Health and Human Resources, the Secretary of State and the Clerks of the House and Senate. This annual report will also be available to the public. The report shall include, but not be limited to: a message from the Commission Chair, a message from the Executive Director, accounting of the Commission's budgetary expenditures, statistics and data on the deaf and hard of hearing in West Virginia, activities of the Commission (workshops, advocacy, et cetera), new and existing resources available from the Commission (i.e. the data clearing house, the website, the interpreter evaluations) and a copy of the Interpreter registry.

**Conclusion**

The West Virginia Commission for the Deaf and Hard of Hearing thanks the Office of the Legislative Auditor for this report. We appreciate its thoroughness and the recommendations for improvement. It identifies areas that need further review and others that need correction. We have accepted them and are in the process of implementing the recommendations.

The Commission also appreciates the opportunity to respond to this report prior to its release. We are deeply committed to improving the everyday lives of the deaf and hard of hearing citizens in West Virginia and we will use the findings of the Legislative Auditor to further that mission.

Sincerely,



Pierre Sevigny  
Chair

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Bill No.  
(By ...)

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[Introduced; referred to the Committee  
.]

10 A BILL to amend and reenact section four, article fourteen,  
11 chapter five of the code of West Virginia, one thousand nine  
12 hundred thirty-one, as amended, relating to establishing and  
13 correcting the terms of members of the West Virginia  
14 commission for the deaf and hard-of-hearing.

15 *Be it enacted by the Legislature of West Virginia:*

16 That section four, article fourteen, chapter five of the  
17 code of West Virginia, one thousand nine hundred thirty-one, as  
18 amended, be amended and reenacted to read as follows:

19 **ARTICLE 14. WEST VIRGINIA COMMISSION FOR THE DEAF AND HARD-OF-**  
20 **HEARING.**

21 §5-14-4. Terms of office; quorum.

22 Members of the commission who do not serve ex officio shall  
23 serve a term of three years, except all members shall be

1 appointed or reappointed for terms beginning the first day of  
2 July, two thousand three for the following terms: Three members  
3 shall be appointed for a term of three years; three for a term of  
4 two years and ~~one~~ three for a term of one year. When a vacancy  
5 occurs, an appointment shall be made for the unexpired term. The  
6 members shall annually elect a chairman. A majority of the  
7 members constitutes a quorum for the transaction of business.

NOTE: The purpose of this bill is to establish and correct the terms of members of the West Virginia Commission for the Deaf and Hard-of-Hearing.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.